

**PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION**

INITIATING THE REASONABLE ACCOMMODATION PROCESS

I. ESTABLISHING A REASONABLE ACCOMMODATION ADVISORY TEAM

A. Reasonable Accommodation Advisory Team: A reasonable accommodation advisory team will be established to process all requests for reasonable accommodation. The establishment of a team to process any RA request is necessary due to the various areas of expertise needed to process a request for accommodation and the overall management of the RA process for consistency, timeliness and reporting purposes.

At a minimum, the advisory team should include the employee's first-level supervisor, a Human Resources Specialist, and the designated reasonable accommodation (RA) point of contact (POC). For example, the first-level supervisor is the individual best able to identify and define the essential functions of a position; the Human Resources Specialist will provide the HR expertise; and, the RA POC will provide the expertise on the reasonable accommodation process and is responsible for ensuring that each request is processed in a consistent, timely manner. In addition, the RA POC is responsible for updating the tracking and monitoring system for RA requests.

B. Additional Members: Depending upon the specific circumstances and/or complexity of a reasonable accommodation request, membership of the advisory team may be augmented to include representatives from the medical, safety, and legal offices. Other members, as appropriate, may be requested to participate on the advisory team.

C. Coordination of Efforts: Advisory team members should meet as frequently as needed and share information immediately upon receipt in order to process the request for reasonable accommodation within the timeframes outlined in Chapter 2.

D. Training: Formal training on reasonable accommodation procedures is strongly recommended. Members of the advisory team should be familiar with and process all reasonable accommodation requests in accordance with the provisions of this subchapter.

II. REQUESTS FOR REASONABLE ACCOMMODATION

A. Initial Request: An employee or an applicant for employment may initially submit a request for accommodation verbally. However, the verbal request must be subsequently documented, in writing, signed and dated. A sample "**Confirmation of Reasonable Accommodation Request Form**" is included as Attachment 1 to this chapter.

1. If the Initial Request for accommodation is made to an individual who is not a member of the Advisory Team, he/she must provide the request to the Team within two (2) working days after receipt from the employee.

2. The Advisory Team should begin processing the request for accommodation, both verbal and written, as soon as it is received. A completed Confirmation of Reasonable Accommodation Request Form is not required to initiate the process.

3. For those accommodations that are needed on a repeated basis, e.g., sign language interpreter, the individual is not required to submit a written request for each subsequent request for accommodation after the initial request is approved.

B. Who can submit a Request for Reasonable Accommodation: An employee or an applicant for employment may request an accommodation on their own behalf. In addition, a family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability.

C. Identification of a Request for Reasonable Accommodation: An employee or applicant for employment may request a reasonable accommodation in "plain English". In other words, the individual does not have to reference the Americans with Disabilities Act, Rehabilitation Act or use the phrase "reasonable accommodation" in order for a request to be considered a request for reasonable accommodation.

1. Example 1: An employee tells his/her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is treated as a request for reasonable accommodation.

2. Example 2: An employee tells his/her supervisor, "I need six weeks off to get treatment for a back problem." This is treated as a request for reasonable accommodation. However, a request for reasonable accommodation must always relate a request for an adjustment or change at work to a reason related to a medical condition. (See Chapter 2 for a more detailed discussion.)

D. Confidentiality of Information regarding Requests for and Provision of Reasonable Accommodation: The Americans with Disabilities Act of 1990 specifically prohibits the disclosure of medical information except in certain limited situations. Therefore, an employer may not disclose that an employee is receiving a reasonable accommodation because this usually amounts to a disclosure that the individual has a disability. See EEOC's Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act dated 17 October 2002, question/answer #42, for additional guidance.

III. APPLICANTS FOR EMPLOYMENT

A. Participation in the Application Process: Reasonable accommodation must be provided to a qualified applicant with a disability that will enable the individual to have an equal opportunity to participate in the application process and to be considered for a position.

B. Hiring Process: It is appropriate to tell all applicants for employment what the hiring process involves, e.g., interview, timed written test, or job demonstration; to ask all applicants whether they will need a reasonable accommodation for this process; and to explain the reasonable accommodation procedures.

IV. CIRCUMSTANCES FOR EXPEDITED PROCESSING

A. Processing Requests for Accommodation: All requests for accommodation should be processed in as short a time as reasonably possible. The time necessary to respond to any particular request for accommodation will depend largely on the nature of the accommodation.

B. Special Circumstances for Expedited Processing: Special circumstances may influence the timing of the reasonable accommodation process. The expedited processing of a reasonable

accommodation request may be appropriate in the following situations:

1. The reasonable accommodation is needed to enable an individual to apply for a job; or

2. The reasonable accommodation is needed for a specific agency activity that is scheduled to occur shortly.

Submit

FOR OFFICIAL USE ONLY WHEN FILLED

Form Approved:
OMB No. 0703-0063

10c. IF REQUEST IS DUE TO A WORK RELATED INJURY, PLEASE PROVIDE WORKER'S COMPENSATION CLAIM #:

10d. DESCRIBE THE NATURE OF YOUR MEDICAL CONDITION AND YOUR LIMITATIONS (include if Limitations are permanent or temporary):

I certify that the statements and information contained in this document and any attachments are true and complete to the best of my knowledge. I hereby give permission to release any information contained in this request to authorized officials with a need to know.

PART III Certification of Requestor and/or Designated Appointee or Approving Official

11. REQUESTOR'S SIGNATURE:	12. ORGANIZATION/DEPARTMENT:	13. PHONE NUMBER:	14. DATE (DDMM/YYYY):
15. SUPERVISOR'S SIGNATURE	15a. SUPERVISOR'S E-MAIL ADDRESS:	15b. PHONE NUMBER:	

The signature above acknowledges receipt of this request for accommodation and all attachments if any.

**PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION
CHAPTER 2**

PROCEDURES FOR ASSESSING A DISABILITY CLAIM

I. ASSESSMENT OF THE DISABILITY CLAIM

A. Goal of Reasonable Accommodation: The goal of reasonable accommodation is to enable qualified individuals with disabilities to perform the essential functions of their position and to enjoy equal employment opportunities. Many disabled individuals are able to perform their jobs without accommodation. However, there may be barriers in the workplace that prevent others from performing tasks that they could otherwise do with accommodation. The Rehabilitation Act of 1973, which was modified by the Americans with Disabilities Act of 1990, requires federal agencies to accommodate applicants and employees who are qualified individuals with disabilities, unless to do so would impose an undue hardship on the operation of its programs and/or poses a direct threat to the employee or others.

B. Qualified Individual with a Disability: A "qualified individual with a disability" is an individual with a disability who, with or without reasonable accommodation, **can perform the essential functions of the position** in question and **who meets the requisite skill, experience, education, and other job-related requirements of the position** in question or meets the criteria for appointment under one of the special appointing authorities for individuals with disabilities. **An employee or an applicant for employment must demonstrate that he/she is a qualified individual with a disability to trigger the agency's obligation to provide a requested reasonable accommodation.**

1. With respect to whether the employee is a qualified individual with a disability, the analysis is **not limited to the position actually held by the employee, but also includes positions that the employee could have held as a result of job restructuring or reassignment.**

2. Only after determining that reassignment to a vacant position is not possible or would result in an undue hardship would the Rehabilitation Act permit the activity to conclude that an employee is not a qualified individual with a disability.

C. Steps in Assessing a Disability Claim: The following are the steps the Advisory Team will utilize in determining whether an employee requesting a reasonable accommodation meets the definition of a "qualified individual with a disability" and therefore entitled to an accommodation.

1. A determination whether an individual is one who has a physical or mental impairment that substantially limits one or more of his/her major life activities.

2. A determination whether the individual is able to perform the essential functions of the position, with or without a reasonable accommodation.

Details regarding each step in the assessment of a disability claim are provided in the sections below.

II. DETERMINATION WHETHER AN EMPLOYEE HAS A DISABILITY

A. Definition of Disability: A person has a disability, for purposes of the Rehabilitation Act, if he/she **has a physical or mental impairment that substantially limits a major life activity.**

B. Physical Impairment: A physical impairment is any physiological condition or disorder, cosmetic disfigurement, anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genitor-urinary, hemic, lymphatic, skin, and endocrine.

C. Mental Impairment: A mental impairment is any mental or psychological disorder such as, mental retardation or organic brain syndrome, and can also encompass emotional or mental illness and specific learning disabilities.

D. Exceptions: If an employee is currently using illegal drugs, to include illegal usage of legal drugs such as prescription medications, the employee does **not** meet the definition of an employee with a disability.

E. Major Life Activity: Once an individual establishes that he/she has a physical or mental impairment, he/she must be able to establish that the disability substantially limits (see paragraph H. below for more information on the term "substantially limits") one or more of his/her major life

activities. Major life activities include such obvious characteristics as hearing, seeing, walking, speaking, breathing, caring for oneself, performing manual tasks, and working.

1. Generally, a major life activity is something of fundamental significance within the meaning of the Rehabilitation Act and not simply an activity important to a particular individual.

2. Major life activities do not include activities such as swimming, shopping, or enduring physical stress.

3. Individuals who claim they are limited in the major life activity of working must show that they are significantly restricted in their ability to perform either a class of jobs, or a broad range of jobs in various classes, as compared to the average person of comparable training skills, and abilities. For example, in *Murphy v. United Parcel Services, Inc.*, the Supreme Court determined that UPS's mechanic jobs, which required the ability to drive commercial vehicles, was a single job and not representative of the class of mechanics jobs. According to the Supreme Court, UPS only viewed Murphy as unable to perform its unique job requiring a mechanic to drive a commercial vehicle, and not as unable to work in the class of mechanics jobs, which would include diesel mechanics, automotive mechanics, gas-engine repairers, and gas-welding equipment mechanics - none of which require an individual to drive commercial vehicles.

F. Substantially Limits: An impairment that substantially limits a major life activity if that impairment renders the individual either **unable** to perform a major life activity **or significantly restricts** his/her performance of that activity as compared to the average person's performance of the activity.

1. Not all medical conditions are substantially limiting. A person with a broken bone(s) or a sprained ankle does not have a permanent or long-term impairment because the condition will heal within a reasonable time.

2. In addition, if an individual employs measures to mitigate his/her impairment, e.g., medication, eyeglasses, prosthetic devices, etc., the effect of these measures should be considered in determining whether the impairment is substantially limiting for the individual.

3. Some permanent impairments may not substantially limit a major life activity. For example, an individual with a mental impairment may not be substantially limited in the major life activity of sleeping if he/she had trouble getting to sleep or sometimes slept fitfully. Although this individual may be slightly restricted in sleeping, he/she is not significantly restricted as compared to the average person in the general population.

G. Individualized Assessment of a Disability:

1. To determine whether the individual has a disability, an individualized assessment must be made; assumptions based upon the condition itself should not be made. Decisions cannot be made based upon personal knowledge of, or experience with, a particular condition or generalizations based upon stereotypes or myths.

2. This, and other decisions made about reasonable accommodation, are very fact-specific and individualized. There is one condition which does not necessitate this individualized assessment, AIDS or HIV positive. Any individual who is HIV positive is disabled under the law even if he/she has no symptoms.

H. Medical Documentation:

1. In some situations, both the need and the appropriate type of accommodation are obvious, e.g., an individual who is blind, in a wheelchair, etc.

2. In those instances where the need and the appropriate type of accommodation is not obvious or otherwise unknown, it is necessary to engage in an interactive process with the employee. See section IV. below.

3. In the event the interactive process does not produce the necessary information, a request for medical documentation may be required. The request for medical documentation should be in writing and issued to the employee as

soon as it has been determined that this step is required. If a request for medical documentation is issued to the employee, a signed, dated copy of the letter must be included in the reasonable accommodation case file. More specific guidance for requesting medical documentation may be found in Attachment 1 to this chapter. Attachment 2 may be used as a sample letter for requesting medical documentation.

4. The written request for medical documentation should include a copy of a waiver for the employee to sign giving permission for any official, with a need to know, to review the medical records. Attachment 2 includes a sample consent to release medical information form. A copy of the consent to release must be included in the reasonable accommodation case file.

5. Medical documentation must be provided by an appropriate medical professional. The medical documentation must explain the nature of the disability and the need for reasonable accommodation, or to clarify how the requested accommodation will assist the employee to perform the essential functions of the job.

6. The timeframes for processing a request for reasonable accommodation will be tolled from the time the written request for medical documentation is issued to the employee up to the point when the requested medical documentation is received by the supervisor.

6. If the information submitted is not sufficient to substantiate that the individual has a disability and/or needs the reasonable accommodation requested, supplemental medical information may be required including, if appropriate and with the employee's consent, an examination by a medical specialist of the activity's choosing and expense.

7. Medical information provided by the employee should be reviewed with the assistance of a medical specialist.

8. If the employee does not provide the requested medical documentation and there is insufficient information to process their request for accommodation, the request may be denied. See Section VI. below.

III. ESSENTIAL FUNCTIONS OF A POSITION

A. Essential Functions of the Position: The essential functions of a position are those functions that define the job. In other words, the job exists to perform those tasks.

1. The essential functions of a job are not the marginal or infrequently performed tasks that could be eliminated without altering the fundamental nature of the job.

2. The employee must be able to perform the essential functions of a position, with or without accommodation, in order to be considered to be "qualified" for the job. See paragraph I.B. above for a definition of a "qualified individual with a disability" as it applies to the Rehabilitation Act.

3. The law does not require the DON to change or alter the essential functions of a job. For example, an essential function of a security officer at a particular location is to the ability to read identification cards. It would be unreasonable for an applicant with a visual impairment to request an accommodation that would require DON to hire a reader to assist him/her so that the cards can be read. The law does not require an employer to reallocate the essential functions of the job to another individual. In this example, reading is an essential function. If reading were only a minor or unimportant aspect of the job, some form of accommodation would be in order.

4. In some cases, however, an accommodation may involve restructuring a job or altering the non-essential requirements of a particular position. Job restructuring includes modifications such as:

a. reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability; and

b. altering when and/or how a function, essential or marginal, is performed.

B. Determining the Essential Functions of a Position: If the supervisor does not already have the essential functions of a position documented, as soon as he/she is notified of a request for accommodation, an assessment of the essential

functions of the employee's position should be immediately initiated. Attachment 3 to this chapter, "**Guidance for Determining the Essential Functions of a Position**", is provided as a sample to facilitate this determination. Attachment 4 is a sample form that can be utilized to document this step of the assessment process.

IV. INTERACTIVE DISCUSSIONS

A. Purpose of Interactive Discussions: These discussions will assist the Advisory Team in making the determination whether the employee is a qualified individual with a disability. Interactive discussions may also be useful in determining if additional medical documentation is necessary, obtaining information about the essential functions of the position and how they can be performed, the appropriate accommodation if the employee is found to be a qualified individual with a disability, the parameters of a job search (if applicable), etc.

B. Timing of Discussions: The supervisor and employee should immediately commence the interactive dialogue upon receipt of the request for accommodation to clarify the employee's needs and to identify the appropriate reasonable accommodation. Attachment 5, "**Guidance for the Interactive Process**", to this chapter provides guidance on the type of information the supervisor should seek from the employee during the interactive discussion.

C. Frequency of Discussions: A continuing dialogue throughout the reasonable accommodation process is highly encouraged. These discussions will provide critical information necessary for making the decision to accommodate or not to accommodate the individual. These discussions should also be used as an opportunity to keep the employee advised of the status of their request for accommodation.

V. DISABILITY ANALYSIS

A. Analysis by the Advisory Team: After all the relevant information has been obtained from the employee, the Reasonable Accommodation Advisory Team must conduct an analysis to determine whether the employee meets the definition of a qualified individual with a disability as defined in the Rehabilitation Act and the Americans with Disabilities Act. This analysis should include all the steps outlined in section I.C.

of this chapter. The analysis and resultant decision must be documented in writing by the RA POC and filed for the record in the case file.

B. Other Information to be Considered by the Advisory Team: Additional sources of information that may assist the Advisory Team in its analysis may include past medical records, current medical examinations, and the employee's work history.

C. Timing of Analysis: Every effort should be taken to complete this portion of the reasonable accommodation process as soon as possible to avoid unnecessary delays in providing accommodation to qualified individuals. Where there is a delay in processing a request for reasonable accommodation, the supervisor must notify the individual of the reason for the delay. Extenuating circumstances that may result in a delay in providing an accommodation may include situations in which equipment must be back-ordered or the vendor typically used by the agency has unexpectedly gone out of business. To the extent possible, the individual will be kept informed of the date when the reasonable accommodation process is expected to be complete. If there is a delay, the supervisor must investigate whether there are temporary measures that could be taken to assist the individual with a disability. For example, temporary job restructuring or the use of equipment that might permit the individual to perform some of the functions of his/her job may be appropriate.

D. Required Documentation: A copy of the disability analysis and copies of all the documentation considered in the analysis will be retained in the reasonable accommodation case file.

VI. DECISION TO ACCOMMODATE/NOT ACCOMMODATE

A. Employee is Determined Not to be an Individual with a Disability: There is no requirement to provide a reasonable accommodation if the disability analysis establishes that the employee did not establish that he/she: has a disability; an impairment that substantially limits a major life activity; or, has requested an accommodation that is related to a disability. The employee must be notified of this decision, in writing. A sample letter is provided as attachment 6. A copy of this determination will be included as part of the reasonable accommodation case file.

1. There may be occasions when a determination has been made that no accommodation is required. Even with this determination, an activity may still provide some form of assistance to the employee based on the desire to be a good employer, not out of legal necessity. Caution should be taken in these circumstances to maintain consistency with similar requests to avoid disparate treatment claims and precedent-setting situations. The activity must document the reasons for providing a form of assistance to the employee, in writing, in language that clearly states what is being provided and why it is being provided. A sample letter is provided as attachment 7.

2. The employee's option for disability retirement should be discussed with him/her at this point. If no other options, including reassignment, are available, the employee may be removed for inability to perform the essential functions of his/her current position.

3. A written summary of the case detailing the information considered, analysis performed, and the reasons for denying the request for accommodation will be forwarded to the major claimant's Command Deputy EEO Officer (CDEEOO) for review and tracking purposes. The written summary, to include all documentation considered in the activity's determination and a copy of the decision letter, must be submitted to the CDEEOO within 14 calendar days after the issuance of the decision to deny the request for accommodation.

4. The closed case file will be maintained by the activity's EEO Office. To safeguard the confidentiality of medical and/or other sensitive information contained in the case file, access will be granted on a strictly limited basis.

B. Decisions to Grant an Accommodation: If the Advisory Team determines that providing an accommodation is the appropriate course of action, all reasonable alternatives to accommodate the individual in their current position will be explored, e.g., assistive software/devices, modified furniture, location of desk, job restructuring, telework, etc.

1. The Advisory Team should consult with all appropriate resources to identify potential accommodations. These resources include:

a. The job applicant or employee who can advise the supervisor what he/she thinks is needed to enable them to perform the job.

b. Consultation with other management officials, safety and/or medical personnel, as appropriate, to determine whether the employee's proposed accommodation is feasible and/or whether other accommodations can be made.

c. State agencies and nonprofit organizations that are dedicated to assisting individuals with disabilities in the workplace, e.g., State Department of Rehabilitation. Information on some of these resources are listed in Appendix C.

2. The Advisory Team is responsible for determining whether an accommodation is necessary and what the appropriate effective accommodation would be. The employee may have some suggestions or may be aware of resources to contact. However, it is the Advisory Team's responsibility, not the employee's, to explore the various possibilities such as assistive devices, workplace modifications, scheduling changes, etc. If there are multiple accommodations which would be equally effective in permitting the employee to perform the job, it is the Advisory Team's choice which one of the accommodations will be implemented.

3. Once potential accommodations are identified, it is the Advisory Team's responsibility to determine whether the potential accommodations are reasonable. Considerations include whether the potential accommodation would:

a. Eliminate or alter the essential functions of the job.

(1) There is no requirement to reduce the expectations of an employee's quantitative or qualitative performance standards as an accommodation.

(2) The employee requesting an accommodation is expected to satisfactorily perform the essential functions of their position at the same level as any other employee in the same or similar position.

c. Impose an undue hardship on the DON. There are a number of factors which must be considered before making a determination that a particular accommodation would constitute an undue hardship.

(1) Expense. The overall economic resources available to an agency are an important factor for consideration. However, there is no formula to use in making the determination whether or not an accommodation is too costly for implementation. Generally, an economic defense is not successful as a reason for undue hardship, especially for an agency as large as the DON.

(2) Impact on Operations. Another undue hardship defense is that providing an accommodation would significantly interfere with the operation of the program. The Advisory Team should consider the nature of the accommodation, the number of employees at the activity, the impact on the operations, the potential for accommodation at another activity, the composition/structure/function of the workforce at the activity, and the geographic location/separateness of the activity. There may be occasions when it simply is not feasible to provide an accommodation due to the impact on the activity's operations.

d. Violate the seniority provisions of a collective bargaining agreement.

e. Fail to eliminate or reduce the direct threat of harm. Direct threat is a significant risk of substantial harm to the health or safety of the employee or others that cannot be reduced or eliminated by reasonable accommodation.

(1) The Advisory Team must believe that the danger posed by the employee is connected to the disability itself, medication taken for the disability, or an assistive device used for the disability. If the risk is for reasons not associated with the disability, then it is not a direct threat issue.

(2) In making the determination whether or not there is a "significant risk of substantial harm", the Advisory Team must consider several factors: duration of risk; nature and severity of the potential harm; likelihood of the harm; imminence of harm. The determination that there is a danger must be based on an objective assessment of the employee,

not generalizations or stereotypes, and in order to conduct a further inquiry when there is a belief, there must be a legitimate reason for the belief.

4. The activity is not required to provide personal use items. These items include those which may be needed on the job but are also needed by the employee to perform other daily activities outside the workplace, e.g., glasses, hearing aids, wheelchairs.

5. The employee's preferences, the effectiveness of each accommodation and its costs should be considered by the Advisory Team. The accommodation selected should be the one most appropriate for both management and the individual. The chosen accommodation need not be the best or most expensive, or even the one preferred by the employee. As long as the accommodation is reasonable and enables the employee to perform the essential functions of their position, it is acceptable.

The individual's supervisor is responsible for making the ultimate decision as to what accommodation, if any, will be adopted.

6. A listing of all reasonable alternatives for accommodating the employee in his/her position should be compiled and documented with supporting documentation, if appropriate. A copy of this listing must be included in the reasonable accommodation case file.

7. If the Advisory Team determines that an employee can be accommodated in his/her current position, that decision and the adopted accommodation is documented in the case file and implemented. The determination to accommodate an employee should be **completed within 30 calendar days** from the date the individual's supervisor receives the request for accommodation. This timeframe may be extended due to extenuating circumstances. The employee will be notified, in writing, of the decision to approve the request for accommodation. The decision letter will include the date the accommodation will be provided or the implementation schedule, whichever is applicable. A sample approval letter is provided as attachment 8. The closed case file will be maintained in the activity's EEO Office. To safeguard the confidentiality of medical and/or other

sensitive information contained in the case file, access will be granted on a strictly limited basis.

C. Determination that the Employee Cannot be Accommodated in his/her current position: If it is determined as a result of the analysis of the available accommodation options that the employee cannot be accommodated in his/her current position, the employee will be notified of this decision, in writing, and the interactive process continues.

1. At this point in the process, the following options are available to both the activity and/or the employee:

a. Reassignment to a vacant position within the activity and/or DON. This option is only available for current DON employees. Once it has been determined that there is no feasible, effective accommodation that would enable the employee to retain his/her current position, then DON must consider reassignment of the employee to a vacant position. See Chapter 3 for more detailed guidance on this option.

b. Removal for inability to perform the essential functions of the employee's current position if the employee declines an offer of reassignment. See attachment 6 for a sample denial letter.

c. Application for disability retirement. Attachment 9 provides a sample template for notifying the employee he/she cannot be accommodated in their current position and gives the option of a reassignment. Attachment 10 is a sample form for the employee to document their decision to accept/decline the offer of reassignment. Attachment 11 is guidance for the interactive discussion(s) that should take place at this point in the reasonable accommodation process. The results of this interactive discussion must be documented in writing and signed and acknowledged by the employee. To simplify this step in the process, attachment 10 may be used to document that this discussion took place.

Attachment 1

GUIDANCE FOR REQUESTING MEDICAL DOCUMENTATION

When a disability and/or need for accommodation is not obvious or otherwise already known, reasonable documentation may be required to support the existence of a disability and the need for the accommodation requested. This documentation must come from an appropriate medical professional to explain the nature of the disability and the need for reasonable accommodation, or to clarify how the requested accommodation will assist the employee to perform the essential functions of the job.

The Advisory Team must consider medical information that the employee's physician(s) may provide to determine job-related limitations and how they could be overcome.

Other important sources of information that will assist the Advisory Team in determining the employee's abilities and limitations include: past medical records, current medical examinations, and work history.

The following information must be provided, in writing, by the employee's first level supervisor to the employee's health professional to assist him/her in providing the required medical documentation:

-

Description of the nature of the job.

-

Description of the essential functions the job.

-

Any other information that is relevant to evaluating the request for accommodation.

If the information provided by the employee's health professional is not sufficient to substantiate that the individual has a disability and/or needs the reasonable accommodation requested, supplemental medical information may be required including if appropriate, examination by a medical specialist of the activity's choosing and expense.

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. Mishandling of information relating to an individual's disability or medical condition may constitute a violation of the Privacy Act and/or the Rehabilitation Act for which DON may be liable for damages. Supervisors and managers who have a need to know the information to perform their responsibilities may be told about the necessary medical restrictions or the need for accommodations, but medical information should be disclosed only when necessary.

Attachment 2

SAMPLE LETTER FOR REQUESTING MEDICAL DOCUMENTATION

MEMORANDUM

From: (Supervisor)

To: (Employee)

Subj: REQUEST FOR CURRENT MEDICAL DOCUMENTATION

Ref: (a) Rehabilitation Act of 1973
(b) Americans with Disabilities Act (ADA) of 1990
(c) DON CHRM Subchapter 1606

Encl: (1) Position Description
(2) Permission to Release Medical Documentation

1. The purpose of this letter is to request information regarding your current medical condition and its impact on your ability to perform the duties of your position as a *Job Title, Pay Plan-Series-Grade*, in the *organizational title*. This information will assist me in determining the agency's obligation to provide you reasonable accommodation in accordance with references (a) through (c) and to assist me in making informed decisions regarding your employment status.

2. *Paragraph 2 should contain a narrative summary of events leading to the request for additional medical documentation. For example: On (date), you provided me a copy of a return to work certificate which placed the following temporary restrictions on your work: "no heavy lifting of more than 30 lbs., no climbing up ladders or general ship board work for 2 weeks." On (date) you submitted a letter from your doctor, Dr. _____ dated _____. In her/his letter, Dr. _____ states that you are suffering from high blood pressure and degenerative joint disease. She/he recommends that "the following action be taken to minimize further exacerbation of these conditions: (a) Prolonged standing or walking should be avoided; (b) Undue stress to knee such as but not limited to, working aboard boats or ships, step or ladder climbing and walking or climbing in sand or uneven surfaces should absolutely be avoided. (c) Carrying of heavy equipment should be limited or avoided." Dr. _____ further recommended that you*

"not be assigned to projects that would result in any of the above-related conditions, as this would contribute to further exacerbation and deterioration of his knees."

3. "Reasonable Accommodation" refers to changes in the work environment or in the way that things are customarily done that would enable an individual with a disability to perform the essential functions¹ of their position and remain productively employed. Accommodations may include, but are not limited to: making facilities readily accessible or usable by individuals with a disability, job restructuring, modification of work schedules, acquisition or modification of equipment or other similar actions.

4. Federal agencies are required to provide reasonable accommodation to employees and applicants that meet the criteria of a qualified disabled employee as outlined in references (a) through (c) unless the agency can show that the accommodation that has been requested would be overly burdensome to the agency. It should be noted that an entitlement to accommodation requires more than a documented medical condition or diagnosed disability.

5. Entitlement to accommodation is dependent on an employee meeting the criteria of a "qualified individual with a disability" under the ADA. The ADA defines a "qualified individual with a disability" as a person having a physical or mental impairment that substantially limits one or more major life activities (i.e., activities an average person would be able to perform, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working). Furthermore, the accommodation that is requested must be of a nature that would enable an applicant or employee to perform the essential functions of the position and remain productively employed. To meet the criteria of a "qualified individual with a disability" the employee must be able to perform the essential duties of the position either with or without accommodation. Employees who do not meet the definition of a "qualified individual with a disability" under the ADA do not have a specific entitlement to accommodation.

¹ The essential functions of a job are those duties that are so fundamental to the position that the individual cannot do the job without being able to perform those job duties. A function can be "essential" if, among other things, the position exists specifically to perform that function, or the function is specialized and the incumbent is hired based on his/her ability to perform it.

6. In order for me to make an informed decision regarding your employment status, I am requesting that you provide your physician's medical opinion on the following. I am also providing a copy of this letter to *Dr. _____* so *she/he* will be aware of the information that is needed.

- a. The nature, severity, and duration of your medical condition and physical impairment;
- b. Explanation of the impact of your medical condition on your activities both on and off the job;
- c. The extent to which your impairment(s) limits your ability to perform an activity or activities;
- d. Explanation whether the impairment is or can be controlled by medication or other medical intervention;
- e. Estimate of expected date of full or partial recovery;
- f. On the basis of *his/her* medical expertise and knowledge of your position from the information provided, an assessment of your ability to successfully perform the essential elements (see below) of your position, with or without accommodation;
- g. If an accommodation is required, the particular accommodation requested, with explanations as to how the accommodation will assist you in performing the essential functions of your position.

7. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), which became effective 14 April 2003, imposes new requirements on medical providers, employers, health plans and plan administrators to ensure that your individual medical and health information is kept confidential. In adhering to this regulation, your health provider will not release medical documentation without your permission. In order for this office to obtain the required medical documentation, it is requested you complete enclosure (2) and fax it to me at _____.

8. The following information regarding the essential functions and physical requirements of your position as *Title, Pay Plan-Series-Grade* is provided to assist your physician in responding to these questions. The *organizational title* is responsible for *insert mission of employee's department, division, branch or section*. As a *job title* in the *department, division branch or section*, the essential functions of your position require you to *insert physical requirements of the position i.e., travel,*

climbing, lifting etc. A summary of the essential functions of your position is as follows:

- a. *Insert essential functions*
- b.
- c.
- d.
- e.
- f.
- g.

The physical demands of your position are summarized in your position description, enclosure (1). In the position description it indicates that the work requires *insert actual physical tasks required of the position, i.e., considerable and strenuous physical exertion, requires long periods of standing, recurring bending, crouching, stooping, or recurring lifting of moderately heavy items (50 pounds), transport to and from ships by helicopter, etc.*

9. It is imperative that the Agency receive a response to this request for information to assess and address your entitlement to reasonable accommodation. **Please forward this information to (identify POC) by (date)** at the following address:

COMMANDER
Insert activity's address

10. If you have any questions or concerns, please contact _____, Human Resources Department, at _____.

Supervisor's signature

Copy to:
Dr. _____

Attachment 2

PERMISSION TO RELEASE MEDICAL INFORMATION

By my signature on this document, I give permission to (name of personal physician) to release medical information to the following authorized agency officials, (*identify the specific officials who will have access to the medical information*), in order to respond to my request for reasonable accommodation.

Signature: _____ Date: _____

Attachment 3

GUIDANCE FOR DETERMINING THE ESSENTIAL FUNCTIONS OF A POSITION

The essential functions of a job are those functions that define the job. In other words, the job exists to perform those tasks. The essential functions of a job are not the marginal or infrequently performed tasks that could be eliminated without altering the fundamental nature of the job.

A job function may be considered essential for several reasons, including but not limited to, the following:

- The function may be essential because the position exists to perform that function.
- The function may be essential because of the limited number of employees available to whom the performance of the job function can be distributed.
- The function may be highly specialized so that the incumbent in the position is hired for his/her expertise or ability to perform the particular function.

Some examples of essential functions:

1. An electronics technician whose primary duty is servicing radar. An essential function would be the requirement to climb radar equipment.

2. A photographer whose primary duty is to photograph test events. Essential functions might include the requirement to travel, to climb ladders aboard ship and to transport equipment weighing up to 50 pounds each.

Evidence of whether a particular function is essential includes, but is not limited to, the following:

- The employer's judgment regarding a determination as to which functions are essential.
- Written job descriptions.
- The amount of time spent performing the function.
- The consequences of not requiring the incumbent to perform the function.

- The terms of a collective bargaining agreement.
- The work experience of past incumbents in the job.
- The current work experience of incumbents in a similar job.
- Actual duties performed by a person holding the job.

The essential functions of the job are determined on a case-by-case basis. Do not presume that any two jobs are necessarily alike. For example, the actual responsibilities of an electrician may vary depending on the tour, operation, size, age and configuration of the facility. Similarly, the actual functions for a shipyard electrician may vary significantly from that of an electrician at a Naval Air Station or Marine Base. Job descriptions and job announcements can assist you in determining the essential functions of the job. However, these may only generically describe the requirements of the job. It may be necessary to interact with others to ascertain beyond written descriptions the actual essential functions of the particular job at your facility.

Involve the employee by asking questions such as:

1. At the present time, the essential functions are performed in this manner. Can you tell us how you could achieve the same results using a different method?
2. This equipment is used on a regular basis in this manner. Can you describe how you would use it in a different manner to complete required tasks?
3. Historically, this job has been done using this sequence and method. Do you feel you could accomplish the same results in this or in another way within your limitations?
4. This is the normal arrangement of the work area. Do you have any suggestions regarding changes or modifications that may be necessary to enable you to perform the job?
Sometimes an accommodation involves a job restructuring or altering the nonessential requirements of a particular job. The law, however, does not require change or alteration of the essential functions of a job.

DOCUMENTATION OF ESSENTIAL FUNCTIONS OF POSITION

Name of employee:

Title, series, grade of position:

Activity and Organization code:

Name of supervisor, Organization, Code, Telephone Number:

Identify the essential functions of the position in the space provided below. Provide a brief explanation describing why these functions are essential to the position.

Supervisor's signature:

Date:

Attachment 5

GUIDANCE FOR THE INTERACTIVE PROCESS BETWEEN THE SUPERVISOR AND EMPLOYEE

Information obtained during interactive discussions will assist the Advisory Team in making the determination whether the employee is a qualified individual with a disability. Interactive discussions may also be useful in determining if additional medical documentation is necessary, obtaining information about the essential functions of the position and how they can be performed, the appropriate accommodation if the employee is found to be a qualified individual with a disability, the parameters of a job search (if applicable), etc.

The interactive discussion(s) between the supervisor and the employee should be used to obtain the following information in order to assess the disability claim: (NOTE: The interactive process is usually between the supervisor and the employee. However, under certain circumstances, the Advisory Team may determine that some other agency official should engage in the interactive process with the employee.)

1. Does the person claim that they have a present physical or mental impairment? If so, what is the impairment?

The employee should be asked to describe the impairment in some detail, if it is not otherwise obvious (i.e., the individual is blind or deaf or uses a wheelchair etc.)

2. Does the impairment substantially limit a major life activity?

The employee should be asked to describe the limitation(s) in detail.

An impairment substantially limits a major life activity if that impairment renders the individual either unable to perform a major life activity or significantly restricts his or her performance of that activity as compared to the average person's performance of the activity. Not all medical conditions are substantially limiting. A person with broken bones or a sprained ankle does not have a permanent or long-term impairment because the condition will heal within a reasonable time. In addition, if an individual employs measures to mitigate his or

her impairment (e.g., medication, eyeglasses), the effect of those measures should be considered in determining whether an impairment is substantially limiting as to that individual. Furthermore, some permanent impairments may not substantially limit a major life activity.

The employee should be asked if they employ any measures that may mitigate their impairment.

Major life activities include such obvious characteristics as hearing, seeing, walking, speaking, breathing, caring for oneself, performing manual tasks, and working. Generally, a major life activity is something of fundamental significance within the meaning of the Rehabilitation Act and not simply an activity important to a particular individual. Major life activities do not include activities such as swimming, shopping, or enduring physical stress. It is important to note that where individuals claim that they are limited in the major life activity of working, they must show that they are significantly restricted in their ability to perform either a class of jobs, or a broad range of jobs in various classes, as compared to the average person of comparable training, skills, and abilities. Generally this requirement could not be met simply by asserting inability to work in any particular job for a particular employer.

If the individuals' impairment substantially limits a major life activity, the person should be asked to describe the limitation(s) in some detail. If the individual establishes he/she has a present physical or mental impairment that substantially limits a major life activity, they establish that they have a disability as that term is defined under the Rehabilitation Act. If they are unable to establish that they have a disability, there is no obligation under the Rehabilitation Act to provide an accommodation. However, you may have to consider other programs that may require accommodation such as the Federal Employees' Compensation Act or USERRA.

3. Is the person "qualified?"

If the individual establishes that he/she has a disability, it must then be determined whether he/she:

(1) Satisfies the requisite skill, experience, education and other job-related requirements of the job, and

(2) Can perform the "essential functions of the job", with a reasonable accommodation or without a reasonable accommodation. Involve the employee by asking questions such as:

(a) At the present time, the essential functions are performed in this manner. Can you tell us how you can achieve the same results using a different method?

(b) This equipment is used on a regular basis in this manner. Can you describe how you would use it in a different manner to complete required tasks?

(c) Historically, this job has been done using this sequence and method. Do you feel you could accomplish the same results in this or in another way within your limitations?

(d) This is the normal arrangement of the work area. Do you have any suggestions regarding changes or modifications that may be necessary to enable you to perform the job?

Remember that in making a determination as to whether or not the individual is "qualified", he/she must meet these two criteria as they relate to either their present job or the job they are seeking (either as an applicant or through the accommodation of last resort; reassignment.)

5. What accommodation has the employee requested?

Determine from the employee or applicant what he/she thinks is needed to enable them to perform the job. You will need to consult with Human Resources, safety and/or medical personnel, as appropriate, to determine whether the employee's proposed accommodation is feasible and whether other accommodations can be made. Consider the individual's preferences and the effectiveness of each accommodation and its cost. Select the most appropriate for both management and the individual. The chosen accommodation need not be the best or most expensive or even the one preferred by the individual. The accommodation must, however, be reasonable and enable the individual to perform the essential functions of his or her position. The employer makes the ultimate decision as to what accommodations, if any, will be adopted.

SAMPLE LETTER DENYING REQUEST FOR ACCOMMODATION

MEMORANDUM

From:

To:

Subj: DENIAL OF REQUEST FOR ACCOMMODATION

1. On ___(date) ___, you submitted a request for reasonable accommodation. You identified your disability as _____, your limitation(s) as _____, and requested the following as an accommodation(s) _____.

2. This is to notify you that after assessing all of the information you have provided, as well as using the resources available to me, your request for reasonable accommodation is denied. The basis for this decision is that (select one of the following:)

- you do not meet the definition of an individual with a disability.
- you did not provide the requested medical documentation necessary to make an informed determination.
- there is no accommodation we can provide that will enable you to perform the essential functions of your job or any other available position.
- you declined the offer of a reassignment as a form of accommodation.

This decision is based on the following information. Be specific and provide as much detail as necessary to justify the decision, e.g., why the accommodation would not be effective or why it would result in undue hardship.

3. You have the right to:

- Invoke the Alternative Dispute Resolution (ADR) process;
- Submit a request for reconsideration; or
- File a grievance under the negotiated procedure; or
- File a discrimination complaint.

To invoke the ADR process, you must submit a written request to (provide point of contact information) within 14 calendar days of your receipt of this initial denial.

a. If the ADR process is used but resolution is Not reached, you may request reconsideration of this initial denial. If you elect to request reconsideration, you must submit a written request for reconsideration to (provide name and contact information for deciding official) within 14 calendar days of your receipt of this initial decision or if the issues are not resolved in the ADR processes, within 14 calendar days of the conclusion of the ADR process. **You are not required to participate in the ADR process in order to request reconsideration.** NOTE: ADR may also be appropriately considered as an option in the negotiated grievance and/or discrimination complaint procedures.

b. (for bargaining unit members) You have the Right to file a negotiated grievance, in accordance with (reference appropriate provisions of the collective bargaining agreement)

c. You also have the right to initiate a discrimination complaint pursuant to 29 CFR 1614. To initiate an EEO complaint, you must contact (provide contact information for EEO Counselor) within 45 calendar days from your receipt of this notification of the initial denial. You may submit a request for reconsideration as set forth above and initiate an EEO complaint so long as the individual identified above receives your request for reconsideration within 14 calendar days of your receipt of the initial decision. NOTE: 29 Code of Federal Regulations 1614.301 states that when a person is employed by an agency subject to 5 U.S.C. 7121(d) and is covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance, a person wishing to file a complaint or a grievance on a matter of alleged employment discrimination must elect to raise the matter under either 1614 or the negotiated grievance procedure, but not both. The sample, generic appeal language provided above should be modified, as appropriate, at the activity level.

Unless noted as an exception above, you must file a request for ADR, reconsideration, negotiated grievance or a discrimination complaint within the applicable timeframes for it to be considered a timely filing.

4. If you are eligible, you also have the option of applying for disability retirement. For further information regarding this option, please contact _____ . You are further advised that if you are unable to perform the essential functions of your position, appropriate administrative action up to and including your removal may be taken.

5. If you have any questions on the above, please contact
(provide contact information).

Attachment 7

**SAMPLE LETTER
DENIAL OF REASONABLE ACCOMMODATION REQUEST,
WITH OFFER OF OTHER ASSISTANCE**

From:

To:

Subj: DENIAL OF REASONABLE ACCOMMODATION REQUEST WITH
OFFER TO PROVIDE AN ALTERNATE FORM OF ASSISTANCE

1. 1. On (date), you submitted a request for accommodation. You identified your disability as _____, your limitation(s) as _____, and requested the following accommodation(s) _____.

2. This is to notify you that, after assessing all of the information that you have provided, as well as using the resources available to me, I have made the determination that we are unable to accommodate you in your current position due to the following reasons:

Be specific and provide as much detail as necessary to justify the decision, e.g., why the accommodation would not be effective or why it would result in undue hardship.

Select one of the following:

- You do not meet the definition of a qualified individual with a disability.

- You did not provide the requested medical documentation to make an informed determination.

3. Although your request for reasonable accommodation has been denied, the command, in its desire to be a good employer, not out of legal or regulatory necessity, is offering to provide the following assistance to you. The intent of this offer of assistance is to alleviate some of the difficulty you are experiencing in accomplishing the essential functions of your position.

Describe in detail the assistance the command is willing to provide.

4. If you are interested in any of the above forms of assistance, please contact your Reasonable Accommodation (RA) POC within 14 calendar days of the date of your receipt of this correspondence. If you fail to contact the RA POC within this timeframe, it will be assumed you are not interested in the assistance offered and your case will be closed.

5. Please be advised that because you (insert reason from paragraph 2), and the determination has been made that there is no obligation to accommodate you in your current position, you have the right to:

- Invoke the Alternative Dispute Resolution (ADR) process.
- Submit a request for reconsideration; or
- File a grievance under the negotiated grievance procedure.
- File a discrimination complaint.

To invoke the ADR process, you must submit a written request and it must be received by _____ within 14 calendar days of your receipt of this initial denial. Provide point of contact information for ADR process.

a. If the ADR process is used but resolution is not reached, you may request reconsideration of this initial denial. If you choose to request reconsideration, you must submit a written request for reconsideration to (identify contact information for reconsideration official) within 14 calendar days of your receipt of this initial decision or if the issues are not resolved in the ADR processes, within 14 calendar days of the conclusion of the ADR process. **You are not required to participate in the ADR process in order to request reconsideration.**

b. You may elect to file a negotiated grievance, In accordance with provide applicable collective bargaining agreement information to include appropriate timeframes (for bargaining unit members).

c. You also have the right to initiate an Equal Employment Opportunity (EEO) complaint pursuant to 29 C. F. R. 1614. To initiate an EEO complaint, you must contact (provide EEO Counselor contact information) within 45 calendar days from your receipt of this notification of the initial denial.
NOTE: 29 Code of Federal Regulations 1614.301 states that when a person is employed by an agency subject to 5 U.S.C. 7121(d)

and is covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance, a person wishing to file a complaint or a grievance on a matter of alleged employment discrimination must elect to raise the matter under either 1614 or the negotiated grievance procedure, but not both. The sample, generic appeal language provided above should be modified, as appropriate, at the activity level.

You may submit a request for reconsideration as set forth above and initiate an EEO complaint so long as the individual identified above receives your request for reconsideration within 14 calendar days of your receipt of this initial decision.

4. If you are eligible, you also have the option of applying for disability retirement. For further information regarding this option, please contact (provide contact information).

5. If you are unable to perform the essential functions of your position, even with the offer of assistance described in paragraph 3 above, appropriate administrative action up to and including your removal may be taken.

Attachment 8

SAMPLE LETTER APPROVING REQUEST FOR ACCOMMODATION

From:

To:

Subj: APPROVAL OF REQUEST FOR ACCOMMODATION

1. On (date), you made an oral or written request for accommodation. You identified your disability as _____, your limitation(s) as _____, and requested the following accommodation(s) _____.

2. This is to notify you that, after assessing all of the information you provided, as well as using the resources available to me, your request for accommodation has been approved. The following is a list of the equipment that will be provided to you and the date of expected receipt.

- a.
- b.
- c.

OR

2. This is to notify you that, after assessing all of the information you provided, as well as using the resources available to me, your request for accommodation has been approved. You are advised that it has been determined that an alternative form of accommodation will allow you to effectively perform the essential functions of your position. Therefore, the following is a list of the equipment that will be provided to you and the date of expected receipt.

- a.
- b.
- c.

3. If you have any questions or concerns regarding this please do not hesitate to contact me at _____.

calendar days of receipt of this notice. If you accept this option, you may indicate your position preferences, if any, and the parameters of the job search on enclosure (1).

c. If you accept the option to be considered for a reassignment, you must submit an updated resume so that a determination of the positions for which you qualify can be accomplished. If you do not provide a resume at the same time you submit enclosure (1), your current series, grade and position description will be used to make this determination. You are encouraged to submit an updated resume because your position description may not describe your duties to the extent needed for an accurate qualification determination.

d. If you decline the option to be considered for a reassignment, you will be issued a decision on your request for reasonable accommodation.

4. This is to advise you that you may also be eligible to apply for disability retirement. For further information regarding this option, please contact _____. You are further advised that if you decline the option to be considered for a reassignment and you are unable to perform the essential functions of your position, appropriate administrative action up to and including your removal may be taken.

5. If you have any questions on the above, please contact _____.

Attachment 10

**SAMPLE ACCEPTANCE/DECLINATION LETTER FOR OPTION TO BE CONSIDERED
FOR REASSIGNMENT**

From: Employee

To: First level supervisor

Subj: ACCEPTANCE/DECLINATION OF OPTION TO BE CONSIDERED
FOR A REASSIGNMENT

1. _____ I want to be considered for a reassignment outside of *(identify employee's current activity)* as a reasonable accommodation. My preferences for the job search process are indicated below.

_____ I do not want to be considered for a reassignment outside of *(identify employee's current activity)* as a reasonable accommodation.

2. My preferences for the parameters of a job search of vacant positions are provided below (please provide a response to all the questions):

a. If there are no appropriate, available positions at my current activity, I want to be considered for placement into appropriate, vacant positions at other activities with the *(identify major command and/or geographic area)* within the commuting area.

Yes _____ No _____

b. If there are no available positions within the *(identify major command and/or geographic area)* in the commuting area, I want to be considered for placement in a position at any command in the commuting area.

Yes _____ No _____

c. If there are no available positions at any command in the commuting area, I want to be considered for placement at any activity within the *(identify major command and/or geographic area)* Navy-wide.

Yes _____ No _____

d. If there are no available positions at any of the activities within the *(identify major command and/or geographic area)*, I want to be considered for placement in any position, at any command, Navy-wide.

Yes _____ No _____

e. I would like to be considered for the following positions:

_____ Any position for which I am qualified.

_____ Only the positions identified below: **NOTE: The employee is required to identify the specific positions that he/she wants to be considered for placement if this box is checked.**

3. I further understand/acknowledge that:

a. If the job search results in my placement outside of my current commuting area, I may be required to relocate at my own expense.

b. If I am placed at a lower grade level than my current position, I will be changed to the lower grade with saved pay.

c. If a position is not identified for placement, within the parameters I specified in paragraph 2 above or I do not want to be considered for reassignment, I understand that I may be removed for medical inability to perform the duties of my position.

d. If I want to be considered for a reassignment, I must submit an updated resume within 5 calendar days of the date on this document. If I do not submit an updated resume by this date, job placement efforts will be based on my current series, grade and position description.

e. I may be eligible to apply for disability retirement. My signature below documents that I have identified the parameters of the job search and acknowledges that I was advised of and understand the information contained in this document.

Employee's Signature Date

Attachment 11

GUIDANCE FOR INTERACTIVE DISCUSSION WITH EMPLOYEE ON OPTIONS AVAILABLE AFTER NON-ACCOMMODATION DETERMINATION

When the employee is issued the letter notifying him/her that he/she cannot be accommodated in their current position, an interactive dialogue must take place between the employee and supervisor to document the employee's understanding of the following information. The results of the dialogue must be documented in writing and should be signed/acknowledged by the employee.

- Advise the employee of his/her options for:
 - reassignment,
 - disability retirement, or
 - removal for inability to perform

The employee must be asked the following questions with respect to the option of reassignment:

• If no positions within the activity are found, is he/she willing to accept a reassignment at **another activity within the major command and/or geographic area in the commuting area?**

Yes _____ No _____

• If no positions with the major command in the commuting area are found, is he/she willing to accept a position with **another major command and/or geographic area in the commuting area?** Yes _____ No _____

• If no positions with other major commands in the commuting area are found, is he/she willing to accept a position within the **major command Navy-wide?**

Yes _____ No _____

• If no positions with the major command Navy-wide are found, is he/she willing to accept a position in **another major command Navy-wide?**

Yes _____ No _____

The employee must be advised that if the option of reassignment is selected:

- relocation costs may be at his/her expense
- an up-to-date resume is critical for this process

- he/she is responsible for submitting an up-to-date resume
 - qualifications for vacant positions will be determined based on their current series and grade if an up-to-date resume is not submitted
 - may result in a voluntary change-to-lower grade, with pay retention
 - he/she understands that he/she will be referred only to those geographical areas for which they have indicated a preference
 - he/she may provide his/her job preferences, if any
- (NOTE: The employee should be advised that identification of job preferences does not guarantee their availability for placement purposes.)

**PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION
CHAPTER 3**

REASSIGNMENT AS AN ACCOMMODATION

I. Determining when Reassignment is an Appropriate Accommodation:

A. Consider other forms of Accommodation: Before considering reassignment as a reasonable accommodation, the activity must first consider those accommodations that would enable an employee to remain in his/her current position.

B. Reassignment as an Accommodation: Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that (1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position, or (2) all other reasonable accommodations would impose an undue hardship or pose a threat to the employee's or others' safety. See Chapter 2, VI. B. and C.

II. Eligibility for Reassignment:

A. Current DON employees who are qualified individuals with a disability and who cannot be accommodated in their current position must be considered for reassignment into a vacant position.

1. The employee must be able to perform the essential functions of any potential vacancy and meet the requisite skills, experience, education, and other job-related requirements of the vacancy, with or without an accommodation.

2. The employee does not have to be the best qualified employee for the vacant position, they only have to be qualified.

2. The employee may be offered a position at a lower grade level if there is no vacant position that is equivalent to the same grade and/or pay as their current position.

3. There is no requirement to create a new position to accommodate an employee.

5. Employees may not receive a promotion as a result of the reasonable accommodation process.

B. Probationary employees: A probationary employee with a disability is eligible for reassignment to a vacant position as long as the employee has adequately performed the essential functions of their current position, with or without reasonable accommodation, before the need for a reassignment arose.

1. The longer the period of time in which an employee has adequately performed the essential functions, with or without reasonable accommodation, the more likely it is that reassignment to a vacant position is appropriate if the employee becomes unable to continue performing the essential functions of the current position due to a disability.

2. If, however, the probationary employee, with a disability, has never adequately performed the essential functions of the position, with or without reasonable accommodation, then he/she is not entitled to reassignment because he/she was never qualified for the original position.

3. The same parameters for reassignment, as described in paragraph A.1. to A.5., are also applicable to probationary employees.

C. Applicants for employment are **not** eligible to be considered for a reassignment to a vacant position. An applicant for a position must be qualified for, and be able to perform the essential functions of, the position sought with or without accommodation.

III. Activity Job Search Process: Upon notification that the employee has decided he/she wants to be considered for reassignment (see Chapter 2, VI.C.(1)), the activity will immediately commence a job search within the activity. If the employee cannot be reassigned to a funded, vacant position, within the activity, the job search process will continue within the parameters specified by the employee (as documented on attachment 10, Chapter 2).

A. Qualifications Determination: The activity's servicing HRO will identify the series and appropriate grade level(s) of positions that the employee is qualified to perform utilizing the Office of Personnel Management Operating Manual for Qualification Standards for General Schedule Positions, the

Federal Wage System Qualification Handbook or when applicable, DoD developed qualification standards for the position. For purposes of this chapter, the term "qualified" means the employee meets the qualifications in the Manual and the Handbook referenced above.

1. If the employee has identified his/her position preferences for placement, he/she will be considered for placement into those specific positions, if qualified, before any other vacant positions are considered.

2. The employee's resume will serve as the basis for the qualifications determination. If the employee does not submit a resume, qualifications will be determined based on their current series, grade level, and position description.

3. The scope of the job search will be limited to the geographic area(s) identified by the employee. See attachment 10 of this chapter.

B. Identification of Vacant Positions: The employee's first level supervisor and the servicing HRO will identify current vacant positions to include those that will become vacant within the next 60 calendar days.

1. A listing of all current vacant positions to include those that will become vacant within the next 60 calendar days will be maintained and documented by the HRO. A sample form to document the activity's job search efforts is provided as attachment 1. When completed, this form will be filed in the Reasonable Accommodation case file.

2. The employee will be considered only for those vacancies for which he/she is qualified.

C. Placement:

1. The employee will be placed in the vacancy that is the most similar to their current position. The employee must be able to perform the essential functions of the identified position, with or without accommodation. If an accommodation is required, the Advisory Team and the gaining supervisor will make this determination utilizing the applicable sections in Chapter 2.

2. If a match is found, the employee is reassigned, without competition, into the vacant position.

3. The job search/placement process should be completed within 30 calendar days from the date of the decision that the employee could not be accommodated in his/her current position.

4. The reassignment action should be documented and filed in the reasonable accommodation case file. Attachment 1 may be used for this purpose.

5. The closed reasonable accommodation case file will be maintained in the activity's servicing EEO Office.

C. No Vacant Positions at the Activity Level: If no positions were identified in the review of internal vacancies, the first level supervisor and the HRO must document the process utilized at the activity level. Attachment 1 may be used for this purpose.

1. The Commanding Officer of the activity will certify that there were no current vacant positions (or anticipated vacancies) at the activity for placement of the employee. A sample letter for the required certification is provided as attachment 2. The Commanding Officer's certification and the case file will be reviewed by the major command's Director, Civilian Personnel Programs (DCPP) and the command's legal counsel to validate that the assessment of the claim and the activity's job search efforts were thorough and complete.

2. A copy of the signed certification letter will be filed in the case file.

3. To facilitate the review at the major claimant level, a written summary of the disability assessment and job search efforts should be provided by the Advisory Team.

4. As part of the continuing interactive discussions with the employee, he/she should be advised that the activity's job placement efforts were not successful and that the job search will proceed to the next stage, within the parameters identified by the employee.

5. The activity will continue to review any new vacancies for potential placement of the employee even after HRSC involvement has been initiated.

IV. HRSC Job Search Process: If the employee has indicated his/her willingness to be reassigned to another activity and after the major claimant has concurred with the activity's disability assessment and job search efforts, the activity's HRO will request the servicing HRSC to assist in the placement of the employee.

A. Information Provided to HRSC: Only the necessary information in the Reasonable Accommodation case file that will enable the HRSC to continue the job search process will be provided, i.e., description of the employee's limitations, documentation of the activity's job search efforts, a copy of the letter from the activity's commander certifying that the employee could not be placed (see attachment 2). A sample letter forwarding the relevant information to the HRSC is provided as attachment 3.

B. Vacant Position at Activity Level becomes Available: If at **any time** during the job search process, a vacant position, for which the employee is qualified, becomes available at the activity level the employee will be placed into the vacancy and the HRSC will be notified of the placement action.

C. HRSC Responsibilities: The HRSC will verify the series and grades, for which the employee is qualified, validate the activity HRO's job search actions, review the information forwarded by the activity and execute their job search responsibilities under the reasonable accommodation procedures process. HRSC job search efforts will continue for a period of 60 calendar days from the date notification for reassignment as a reasonable accommodation was received, or less, if the employee is placed before the expiration of this time period.

D. No Vacant Positions Identified: If no vacancies are identified during the 60 calendar days, the HRSC will document their job search efforts and results. This documentation will be forwarded to the activity HRO with a copy to the major command DCPD within 5 calendar days after the expiration of the 60 day time period. A copy of this documentation will be filed in the Reasonable Accommodation case file.

1. Appropriate administrative action should be taken by the activity HRO if the HRSC job search results in no identification of vacancies for placement of the employee. See Chapter 2, VI.C. (1) b. and c.

3-5

2. The employee will be notified of the negative

results of the job search and their options at this point in the process, i.e., removal for medical inability or possible eligibility for disability retirement. Attachment 6, provided in Chapter 2, may be used as a sample for the required employee notification.

3. The Advisory Team will forward a written summary of the case addressing all the steps, to include the employee's final employment action, to the major command's CDEEOO for review and tracking purposes.

4. The closed case file will be maintained in the activity's servicing EEO Office.

E. Placement: If a vacant position is identified for which the employee is qualified, the HRSC will contact the gaining activity HRO and DCPD to advise them of the pending referral for reassignment as a reasonable accommodation.

1. If several appropriate vacant positions are identified, a decision on the best placement for the employee will be made.

a. For vacancies within a single major command, the HRSC, with advice from the DCPD and the servicing HRO, will make the decision on the best placement for the employee. The HRSC determination will take into consideration: the employee's qualifications for a particular vacancy, the grade level of the vacancy; and, the employee's identified parameters for the job search.

b. For vacancies that cross command lines, the HRSC will make the decision on the best placement for the employee following the established job search order:

- (1) activities in the employee's major command within the commuting area;
- (2) activities in all major commands within the commuting area;
- (3) activities in the employee's major command Navy-wide;
- (4) activities in all major commands Navy-wide.

2. An interactive discussion with the employee to

discuss his/her placement options may be useful in determining the best placement for the employee.

3. Placement decisions made by either the major command or the HRSC will document all identified vacancies and the basis for the decision to place the employee in a specific vacancy. A copy of this documentation will be filed in the Reasonable Accommodation case file.

4. Once a placement decision has been made, the HRSC will prepare a Priority Consideration Certificate and forward it and relevant information provided by the losing activity's HRO on the employee's accommodation needs to the gaining activity's HRO. The form included in attachment 4 may be used as a template for identifying the employee's accommodation needs.

a. The HRSC will provide sufficient information on the accommodation needs of the employee in order for the gaining activity to make a determination whether the employee is able to perform the essential functions of the identified vacancy, with or without an accommodation.

b. Medical documentation will not be provided to the gaining activity during the placement determination process.

c. The RA POC at the gaining activity should be used as a resource to advise and educate the gaining supervisor on his/her responsibilities for reasonable accommodation. To further assist the gaining supervisor in understanding the reasonable accommodation process, attachment 4 is an information sheet that explains DON's policy to provide reasonable accommodation to qualified employees and applicants with disabilities and outlines the threshold for determining undue hardship.

d. Once it has been determined that the employee is able to perform the essential functions of the vacant position and if the gaining activity cannot articulate an undue hardship, the employee will be placed into the identified position.

e. In accordance with established business processes, the HRSC or gaining HRO will make a written job offer to the employee.

3-7

f. Documentation of all the actions leading

up to and including the employee's placement will be prepared by the HRSC and gaining HRO. A copy of this documentation will be placed in the Reasonable Accommodation case file.

g. The complete Reasonable Accommodation case file will be forwarded to the gaining activity's servicing EEO Office for retention.

h. Relocation costs will typically be borne by the employee. However, if the activity routinely pays for relocation expenses for other, similar reassignment actions, the activity may be obligated to assume these costs. For pay purposes under the National Security Personnel System (NSPS), employees are not eligible to receive an increase in base salary for a reassignment action that is a result of the reasonable accommodation process.

F. Declination of a Job Placement Offer: If the employee declines the job placement offer, his/her servicing HRO will be notified of the decision. The employee will be issued a letter denying his/her request for reasonable accommodation based on his/her decision to decline the offer of reassignment. Attachment 6, provided in Chapter 2, may be used as a sample for the required employee notification.

G. Determination that Employee Cannot be Accommodated in a Vacancy: If the gaining activity determines that the employee cannot perform the essential functions of the position and/or that they cannot accommodate the employee and there are no other vacancies at the gaining activity, the HRO will document, in writing, the specific reasons for non-placement.

1. The gaining activity's Commanding Officer must sign this document and certify that the employee cannot be placed into the vacant position(s).

2. If the basis for non-placement is undue hardship, the gaining activity's DCPD and major command's legal counsel will review the analysis that led to this determination.

3. A copy of the analysis and the Commanding Officer's certification will be provided to the HRSC and the employee's HRO. Copies will be filed in the Reasonable Accommodation case file.

will continue for 60 calendar days until the employee is either placed, the list of vacancies is depleted, or the employee is separated.

1. The job search should be completed within 30 60 calendar days to avoid unnecessary delay in providing the employee reasonable accommodation.

2. The HRSC will document, in writing, all its efforts to place the employee. This document will be filed in the Reasonable Accommodation case file.

3. If the HRSC job search efforts are not successful, the HRSC will document its actions and return the job search package to the employee's HRO.

I. Final Action if Placement Efforts are not Successful: If the employee is not placed, despite the agency's best efforts, the employee will be issued a letter denying his/her request for reasonable accommodation because no vacant positions for which he/she is qualified were identified. Attachment 6, provided in Chapter 2, may be used as a sample for the required employee notification.

1. The activity's servicing EEO Office is responsible for maintaining the complete case file.

2. A summary of the actions, disability analysis and decisions will be forwarded to the major command's CDEEO for review.

**SAMPLE
DOCUMENTATION OF ACTIVITY JOB SEARCH EFFORTS**

Date search initiated: _____

Name of Employee: _____

Current Position: _____

In the space provided below, list all vacant positions, to include those that may become vacant in the next 60 calendar days, by title, series, grade level and as much other identifying information as possible. Annotate next to each vacancy whether or not the employee is qualified for placement into the position. If the employee is not eligible for placement, provide a brief explanation for this determination.

Title/Series/Grade Other Information Qualified/Not Qualified

Employee placed into: **Identify title, series, grade and any other relevant information**

Effective date of placement: _____

Employee could not be placed. Date job search terminated:

SAMPLE CERTIFICATION LETTER FROM COMMANDING OFFICER

From: Commander *of local activity*

To: *Major command's DCP*

Via: Legal Counsel (major commands)

Subj: CERTIFICATION OF LACK OF INTERNAL VACANCIES FOR
REASONABLE ACCOMMODATION PLACEMENT

Ref: (a) DON CHRM Subchapter 1606

Encl: (1) Reasonable Accommodation Case file

1. Enclosure (1) documents the activity's determination that (*name of employee*) could not be accommodated in their current position as a (*identify current position by title, series, grade*). Per reference (a), a job search at the activity level for placement. was conducted. No positions were identified

2. The case file, enclosure (1), to include documentation of the internal job search, is forwarded for review and concurrence. If you concur with the actions as described in enclosure (1), you are requested to document your concurrence in the space provided below.

3. If you have any questions, please contact

_____.

Reviewed and concur Reviewed and concur

Legal Counsel Date DCP Date

SAMPLE LETTER TO HRSC TO CONTINUE JOB SEARCH EFFORTS

From:

To: Servicing HRSC

Subj: REQUEST FOR JOB PLACEMENT ASSISTANCE FOR
REASONABLE ACCOMMODATION CASE

Encl: (1) Documentation of activity's job search efforts
(2) CO's certification that employee could not be
placed at the activity level

1. The activity's efforts to place identify employee as part of the reasonable accommodation process were not successful. The HRSC's assistance in locating a position commensurate with his/her job qualifications and within the parameters identified by the employee is requested.

2. Information to assist the HRSC in its job search efforts is provided as enclosure(s) _____ .

3. If you have any questions on the above, please contact
_____ .

REASONABLE ACCOMMODATION INFORMATION SHEET

The goal of reasonable accommodation is to enable qualified individuals with disabilities to perform the essential functions of their position and to enjoy equal employment opportunities. Many disabled individuals are able to perform their jobs without accommodation. However, there may be barriers in the workplace that prevent others from performing tasks that they could otherwise do with accommodation. The Rehabilitation Act of 1973, which was modified by the Americans with Disabilities Act of 1990, requires federal agencies to accommodate applicants and employees who are qualified individuals with disabilities, unless to do so would impose an undue hardship on the operation of its programs or pose a direct threat to the safety of the employee or others.

In accordance with the Rehabilitation Act and the Americans with Disabilities Act, it is DON policy to provide reasonable accommodation to qualified employees and applicants with disabilities, unless to do so would cause an undue hardship or pose a direct threat to the safety of the employee or others. DON's policy to provide reasonable accommodation includes the reassignment of a qualified employee with a disability to a vacant position within the agency if the employee is able to perform the essential functions of the identified position, with or without accommodation.

Your Role as a Selecting Official

A vacancy in your organization has been identified as a possible placement option for an employee who needs an accommodation. Several preliminary actions have been completed:

- It has been determined that the employee meets the definition of a qualified individual with a disability, however, he/she cannot be accommodated in his/her current position of record. *A qualified individual with a disability is defined as an individual who, with or without reasonable accommodation, can perform the essential functions of the position in question and meets the experience or education requirements of the position in question.*
- The employee meets the basic qualifications for the vacancy identified in your organization.

- The employee must be considered for reassignment into a vacant position within the DON.

Your role is to assist the HRSC and the activity HRO in determining the essential functions of your vacancy. The essential functions of a job are those functions that define the job. In other words, the job exists to perform those tasks. The essential functions of a job are not the marginal or infrequently performed tasks that could be eliminated without altering the fundamental nature of the job.

A job function may be considered essential for several reasons, including but not limited to, the following:

- The function may be essential because the position exists to perform that function.
- The function may be essential because of the limited number of employees available to whom the performance of the job function can be distributed.
- The function may be highly specialized so that the incumbent in the position is hired for his/her expertise or ability to perform the particular function.

Some examples of essential functions:

1. An electronics technician whose primary duty is servicing radar. An essential function would be the requirement to climb radar equipment.

2. A photographer whose primary duty is to photograph test events. Essential functions might include the requirement to travel, to climb ladders aboard ship and to transport equipment weighing up to 50 pounds each.

Evidence of whether a particular function is essential includes, but is not limited to, the following:

- The employer's judgment regarding a determination as to which functions are essential.
- Written job descriptions.
- The amount of time spent performing the function.
- The consequences of not requiring the incumbent to perform the function.
- The terms of a collective bargaining agreement.

- The work experience of past incumbents in the job.
- The current work experience of incumbents in a similar job.
- Actual duties performed by a person holding the job.

The essential functions of the job are determined on a case-by-case basis.

Sometimes an accommodation involves a job restructuring or altering the nonessential requirements of a particular job. The law, however, does not require change or alteration of the essential functions of a job.

If you require assistance in determining the essential functions of your position, you should consult with your activity's reasonable accommodation Advisory Team and/or reasonable accommodation point of contact. A description of the employee's medical restrictions is provided as an attachment to assist you in determining if the employee is able to perform the essential functions of your vacancy. Once the essential functions of the vacancy have been determined, you should document them in writing. **The prospective supervisor may use attachment 4 in Chapter 2 to document the essential functions of his/her vacancy.**

If the identified employee is able to perform the essential functions of your vacancy, with or without an accommodation, he/she will be reassigned into the position, unless the accommodation would cause an undue hardship for the agency or pose a direct threat to the safety of the employee or others.

There are a number of factors which must be considered before making a determination that a particular accommodation would constitute an undue hardship.

- Expense. The overall economic resources available to an agency are an important factor for consideration. There is no formula to use in making the determination whether or not an accommodation is too costly for implementation. Generally, an economic defense is not successful as a reason for undue hardship, especially for an agency as large as the DON.
- Impact on Operations. Another undue hardship defense is that providing an accommodation would significantly interfere with the operation of the program. The nature of the accommodation, the number of employee at the activity, the impact on the operations, the potential for

accommodation at another activity, the composition/structure/function of the workforce at the activity, and the geographic location separateness of the activity are factors to be considered. There may be occasions when it simply is not feasible to provide an accommodation due to the impact on the activity's operations.

- Violate the seniority provisions of a collective bargaining agreement.
- Fail to eliminate or reduce the direct threat of harm. Direct threat is a significant risk of substantial harm to the health or safety of the employee or others that cannot be reduced or eliminated by reasonable accommodation.

The threshold for undue hardship is very high. Therefore, exceptions to this threshold are very rare. All undue hardship claims will be reviewed by the activity's major command's Director, Civilian Personnel Program, and legal counsel.

**MEDICAL RESTRICTIONS AND
DESCRIPTION OF REQUEST FOR REASONABLE ACCOMMODATION**

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

Description of the activity(ies) that the impairment limits.

Description of the extent to which the impairment limits the individual's ability to perform the activity(ies).

Description why the individual requires reasonable accommodation or the particular reasonable accommodation request, as well as how the reasonable accommodation will assist the individual to perform the essential functions of the job, or enjoy a benefit of the workplace.

**PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION
CHAPTER 4**

ALTERNATIVE DISPUTE RESOLUTION (ADR)

I. USE OF ADR IN REASONABLE ACCOMMODATION DETERMINATIONS

A. Definition: Includes any procedure, which is used in lieu of a formal process or litigation to resolve conflicts and issues in controversy, including, but not limited to peer review, collaborating, conciliation, facilitation, mediation, ombudsman-ship, fact-finding, mini-trials, neutral evaluation, and arbitration or any combination thereof.

B. DON ADR Policy:

1. Mediation is the ADR method of choice for DON.

2. ADR techniques, i.e., mediation, shall be used as an alternative to litigation or formal administrative procedures to the maximum extent practicable. ADR is encouraged at the earliest stage for appropriate workplace cases and disputes. ADR is not limited to Equal Employment Opportunity (EEO) issues. ADR is appropriate for all kinds of workplace disputes, including but not limited to administrative and negotiated grievance procedures, unfair labor practices, matters covered under the Merit Systems Protection Board and the Office of Special Counsel. Every conflict and issue in controversy is a potential candidate for ADR.

C. Reasonable Accommodation Cases:

1. The use of ADR in reasonable accommodation cases is appropriate at any stage of the process to include:

- a. Interactive discussions,
- b. Determination of essential functions of a position,
- c. Job Search process,
- d. Requests for Reconsideration,
- e. Administrative Grievance,

f. Negotiated Grievance, or,

g. EEO discrimination complaint.

2. Activities are encouraged to consider the use of ADR during the reasonable accommodation process to resolve any conflicts and issues in controversy at the lowest possible level.

II. ADR PROCEDURES

A. ADR Instructions: The use of ADR in reasonable accommodation cases will be in accordance with DON Civilian Human Resources Manual subchapter 773, Alternative Dispute Resolution, and SECNAVINST 5800.13, Alternative Dispute Resolution.

B. Initiating the ADR Process: The employee, supervisor and/or a member of the Advisory Team may initiate the ADR process by contacting the activity's ADR Convener.

C. ADR Process: ADR Conveners will process an ADR event for reasonable accommodation requests utilizing normal standard operating procedures.

**PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION
CHAPTER 5**

AVENUES FOR REDRESS

I. Alternative Dispute Resolution (ADR)

A. USE OF ADR: Activities and employees are encouraged to consider the use of ADR at any stage of the reasonable accommodation process to resolve any conflicts and issues in controversy at the lowest possible level. See Chapter 4 for more information on the ADR process.

B. USE OF ADR WHEN REQUEST FOR ACCOMMODATION HAS BEEN DENIED: An employee, whose request for reasonable accommodation has been denied by the activity, will be offered the opportunity to use ADR as an avenue of redress.

1. The denial letter must inform the employee that he/she has 14 calendar days from receipt of the decision to request ADR.

2. ADR requests will be processed in accordance with the activity's standard procedures for ADR.

C. IMPACT ON EMPLOYEE'S OTHER AVENUES OF REDRESS:

1. If the employee elects another avenue for redress, the parties are not precluded from utilizing ADR in that forum.

2. The employee's election to utilize ADR will not count as a timely filing for any other avenue of redress that the employee subsequently elects to file, i.e., negotiated grievance and/or discrimination complaint. However, if the ADR process does not result in successful resolution of the reasonable accommodation dispute, and the employee desires to further pursue this dispute by filing a request for reconsideration, he/she may do so but must file the request within 14 calendar days after the conclusion of the ADR process in order for the request for reconsideration to be considered timely.

II. REQUEST FOR RECONSIDERATION

A. RECONSIDERATION PROCESS: An employee, whose request for reasonable accommodation has been denied by the activity, will be offered the opportunity to request reconsideration of the decision.

1. The denial letter must inform the employee that he/she has 14 calendar days from receipt of the decision, or if the issue is not resolved in the ADR process, within 14 calendar days of the conclusion of the ADR process, to submit a request for reconsideration to the deciding official.

2. The activity is responsible for determining the appropriate level of management for designation as the deciding official in reasonable accommodation cases.

3. The deciding official will issue a decision on the request for reconsideration within 21 calendar days of receipt of the request.

4. The deciding official's decision will be issued in writing and specify the reason(s) for his/her decision.

B. IMPACT ON EMPLOYEE'S OTHER AVENUES OF REDRESS: The employee's election to utilize the reconsideration process will not count as a timely filing for any other avenue of redress that the employee subsequently elects to file, i.e., negotiated grievance and/or discrimination complaint.

III. NEGOTIATED GRIEVANCE

A. APPLICABILITY: A bargaining unit employee, whose request for reasonable accommodation has been denied by the activity, will be advised of their right to file a negotiated grievance if this matter is not excluded under the collective bargaining agreement.

B. NEGOTIATED GRIEVANCE PROCEDURES: The denial letter will advise the employee of his/her entitlement to file a negotiated grievance in accordance with the provisions of the applicable local collective bargaining agreement.

1. The employee's election to utilize the negotiated grievance procedure will not count as a timely filing for any other avenue of redress that the employee subsequently elects to file, i.e., request for reconsideration and/or discrimination complaint.

2. Per the provisions of 29 CFR 1614.301, when a person is employed by an agency subject to 5 U.S.C. 7121(d) and is covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance, a person wishing to file a complaint or a grievance on a matter of alleged employment discrimination must elect to raise the matter under either 1614 or the negotiated grievance procedure, **but not both**.

3. An election to precede under 29 CFR 1614.301 is indicated by the filing of a written complaint; use of the pre-complaint procedures does not constitute an election for the purposes of 1614.301.

IV. DISCRIMINATION COMPLAINTS

A. DISCRIMINATION COMPLAINT PROCEDURES: An individual, whose request for reasonable accommodation has been denied by the activity, will be advised of their right to file an informal discrimination complaint in accordance with the provisions of 29 CFR 1614.

1. The denial letter will advise the individual of the requirement to initiate contact with an EEO Counselor within 45 days of the date the request was denied.

2. The denial letter will also include information on how to contact an EEO Counselor.

B. IMPACT ON EMPLOYEE'S OTHER AVENUES OF REDRESS: The following information applies if an employee elects to file both an informal discrimination complaint and to exercise their option to pursue another avenue of redress.

1. Negotiated Grievance: Per the provisions of 29 CFR 1614.301, when a person is employed by an agency subject to 5 U.S.C. 7121(d) and is covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance, a person wishing to file a

complaint or a grievance on a matter of alleged employment discrimination must elect to raise the matter under either 1614 or the negotiated grievance procedure, **but not both**. An election to precede under 29 CFR 1614.301 is indicated by the filing of a written complaint; use of the pre-complaint procedures does not constitute an election for the purposes of 1614.301. Thus, if the employee files a grievance under the collective bargaining agreement before they file a formal complaint of discrimination, that constitutes an election of the grievance forum and the formal discrimination complaint will be dismissed pursuant to 29 C.F.R. 1614.107(a)(4).

2. Request for Reconsideration: Employees may submit a request for reconsideration and initiate an informal discrimination complaint at the same time. However, each action must be filed within the applicable timeframes of these forums.

V. NOTICE TO EMPLOYEE OF AVENUES OF REDRESS

Individuals will be advised of all applicable avenues of redress, as described above, if their request for accommodation is denied by the activity.

**PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION
CHAPTER 6**

REASONABLE ACCOMMODATION RECORDS MAINTENANCE

I. REASONABLE ACCOMMODATION CASE FILE

A. Contents of the Case File: The reasonable accommodation case file will include the following documents, if applicable.

1. Reasonable Accommodation Request Form.
2. Letter requesting medical documentation.
3. Signed, permission to release medical information.
4. Medical documentation provided by employee's health professional.
5. Documentation of the essential functions of the employee's current position of record.
6. Documentation of all the interactive discussions with the employee, to include the discussion advising the employee of the reassignment option.
7. Documentation of the Advisory Team's disability analysis, to include all information considered in the analysis.
8. Listing of all reasonable alternatives considered for accommodating the employee, to include any supporting documentation.
9. Letter offering reassignment as an accommodation.
10. Employee's signed acceptance/declination of offer of reassignment.
11. Copy of activity HRO qualifications determination using the OPM Operating Manual for GS Positions or the FWS Qualification Handbook.

12. Employee's resume.
13. Listing of vacant positions identified at the activity level.
14. Commanding Officer certification that no vacant positions were available at the activity, to include summary of disability assessment and activity's job placement efforts.
15. Letter to HRSC to continue job search efforts.
16. Documentation of HRSC job search efforts.
17. HRSC letter to major claimant DCPD and activity HRO documenting that their job search efforts were not successful.
18. Copy of Priority Consideration Certificate.
19. Copy of Reasonable Accommodation Information Sheet provided selecting official.
20. Selecting official's documentation of essential functions of his/her vacancy.
21. Written job offer.
22. Documentation of employee's placement as a result of a reassignment action.
23. If job offer declined, employee's written declination.
24. Gaining activity's determination employee could not be placed in vacancy, to include reasons for non-placement.
25. Commanding Officer's certification of non placement as a result of undue hardship.
26. Decision letter (approval or denial of request for accommodation).
27. Letter to major claimant CDEEO to include summary of actions, disability analysis and decisions if employee is not placed.

28. Copy of final employment action, e.g., reassignment, removal letter, copies of SF-50s, disability retirement decision, etc.

B. Confidentiality of Medical Information:

1. The Rehabilitation Act of 1973 requires that all medical information be kept confidential.

a. All medical information obtained in connection with a request for reasonable accommodation must be kept separate from the individual's official personnel folder.

b. Individuals with access to medical information necessary to make a decision whether to grant a request for accommodation may not disclose this information. Exceptions to this provision are described in paragraph B.2. below.

c. Medical information will be kept in a secure file with access granted on a strictly limited basis.

2. Exceptions:

a. Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodations.

b. First aid and safety personnel may be told if the disability may require emergency treatment. This exception would include sharing information about the type of assistance an individual may need in the event of an evacuation with medical professionals, emergency coordinators, floor captains, colleagues who have volunteered to act as "buddies", building security officers who need to confirm that everyone has evacuated, and other non-medical personnel who are responsible for ensuring safe evacuation. These individuals are entitled to the information necessary to fulfill their responsibilities under the activity emergency evacuation plan.

c. Government officials may be given information necessary to investigate the activity's compliance with the Rehabilitation Act.

d. In certain circumstances, information may be disclosed to workers' compensation offices or insurance carriers.

e. EEO officials may be given the information to maintain records, evaluate, and report on the activity's performance in processing reasonable accommodation requests.

f. If medical information is disclosed to any of the individuals described above, the activity must inform these individuals that this information must be kept confidential and is subject to the provisions of the Privacy Act.

II. RECORDS MAINTENANCE

A. Responsibility for Maintenance: The servicing EEO Office of the activity where the individual is employed is responsible for maintaining the reasonable accommodation case file.

B. Retention of Records: Activities will retain records related to a particular employee who has requested a reasonable accommodation for the duration of that individual's employment.

C. Records Disposal: Records maintained in this system of records will be retained and disposed of in accordance with the provisions of the OPM Government wide Systems of Records, 65 FR 27432.

**PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION
CHAPTER 7
REPORTING REQUIREMENTS**

I. REPORTS TO THE ACTIVITY'S MAJOR COMMAND

A. Denial of Reasonable Accommodation Requests: If a request for reasonable accommodation is denied at the activity level, the following information will be provided to the CDEEO for review and tracking purposes:

1. Written summary of reasonable accommodation case detailing the information considered, analysis performed, and the reasons for denying the request for documentation.

2. Copies of documentation considered in the activity's determination.

3. Copy of the denial letter.

4. The information outlined above will be provided to the major command within 14 calendar days after the issuance of the decision to deny the request for accommodation.

5. The RA POC is responsible for collecting and transmitting the information listed above.

B. No Vacant Positions Identified at the Activity Level during Job Search Process: If no vacant positions are identified at the activity level during the job search process, the following information will be provided to the major command for a higher level review:

1. Certification by Commanding Officer that there are no current vacant positions at the activity level for placement of the employee.

2. Written summary of the disability assessment and activity's job search efforts. The RA POC is responsible for preparing the written summary.

C. No Vacant Positions Identified by the HRSC during Job Search Process: If no vacant positions are identified by the HRSC during the job search process, the following information

will be provided to the major command for review and tracking purposes:

1. Written summary of reasonable accommodation case detailing the information considered and analysis performed.

2. Copies of documentation considered in the activity's analysis.

3. Written summaries of activity and HRSC job search efforts.

4. Copy of the denial letter.

4. Copy of final employment action, i.e., disability retirement, removal letter.

II. EEOC AGENCY SELF-ASSESSMENT CHECKLIST (Management Directive [MD] 715, PART G)

A. Establishing a Model EEO Program in Compliance with EEO MD-715: The EEO MD-715 identifies the six essential elements of a Model Title VII and Rehabilitation Act Programs as:

1. Demonstrated commitment from agency leadership;
2. Integration of EEO into the agency's strategic mission;
3. Management and program accountability;
4. Proactive prevention of unlawful discrimination;
5. Efficiency; and,
6. Responsiveness and legal compliance.

B. Annual Self-Assessment Checklist (MD-715, Part G): Annually each activity is required to conduct a self-assessment to determine whether its EEO Program is properly established and compliant with the EEO MD-715 standards utilizing the checklist included as part of the MD-715 (Part G). The relevant portions of the self-assessment checklist, as it pertains to the Rehabilitation Act, are highlighted below:

1. Demonstrated Commitment from Agency Leadership (Essential Element A).

a. Are managers and supervisors evaluated on their commitment to agency EEO policies and principles, including their efforts to ensure the provision of requested disability accommodations to qualified individual with disabilities when such accommodations do not cause an undue hardship?

b. Have the procedures for reasonable accommodation for individuals with disabilities been made readily available/accessible to all employees by disseminating such procedures during orientation of new employees and by making such procedures available on the World Wide Web or Internet?

c. Have managers and supervisors been trained on their responsibilities under the procedures for reasonable accommodation?

2. Integration of EEO into the agency's strategic mission (Essential Element B).

a. Is there sufficient budget allocated to all employees to utilize, when desired, all EEO Programs, including the complaint processing program and ADR, and to make a request for reasonable accommodation?

b. Has funding been secured for publication and distribution of EEO materials (e.g. harassment policies, EEO posters, reasonable accommodation procedures, etc.)?

c. Is there a central fund or other mechanism for funding supplies, equipment and services necessary to provide disability accommodations?

d. Does the agency fund major renovation projects to ensure timely compliance with Uniform Federal Accessibility Standards?

e. Is there sufficient funding to provide all managers and supervisors with training and periodic updates on their EEO responsibilities to provide disability accommodations in accordance with the agency's written procedures?

3. Management and Program Accountability (Essential Element C).

a. Does the agency review disability accommodation decisions/actions to ensure compliance with its written procedures and analyze the information tracked for trends, problems, etc.?

4. Efficiency (Essential Element E).

a. Is there a designated agency official or other mechanism in place to coordinate or assist with processing requests for disability accommodations in all major components of the agency?

b. Are 90% of accommodation requests processed within the period set forth in the agency procedures for reasonable accommodation?

III. EXECUTIVE ORDER 13164: ESTABLISHING PROCEDURES TO FACILITATE THE PROVISION OF REASONABLE ACCOMMODATION

A. Executive Order Tracking Requirements: The Executive Order states, an agency's reasonable accommodation procedures must: Ensure that agencies' systems of recordkeeping track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information received in accordance with applicable law and regulations. (Section 1(b)(9) of Executive Order 13164)

B. Information to be tracked: All activities must be able to identify, at a minimum, the following information on reasonable accommodation requests:

1. The number and types of reasonable accommodations that have been requested in the application process and whether those requests have been granted or denied;

2. The jobs (occupational series, grade level and activity) for which reasonable accommodations have been requested;

3. The types of reasonable accommodations that have been requested for each of those jobs;

4. The numbers and types of reasonable accommodations for each job, by activity, that have been approved, and the number and types that have been denied;

5. The number and types of requests for reasonable accommodations that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;

6. The reasons for denial of requests for reasonable accommodation;

7. The amount of time taken to process each request for reasonable accommodation; and

8. The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

C. Maintenance of Tracking Information: Activities should keep any cumulative records used to track its performance with regard to reasonable accommodation for at least 3 years. Tracking performance over a 3 year period is critical to enable an activity to assess whether it has adequately processed and provided reasonable accommodations. Activities can use this tracking information to evaluate whether and where they need to improve their handling of reasonable accommodation requests.

D. Recommended Use of Tracking Information: Activities should regularly review its tracking information to:

1. Evaluate its performance in responding to requests for reasonable accommodation.

2. Assess how long the activity takes to respond to requests for different types of reasonable accommodations.

3. Determine whether there are particular types of reasonable accommodations that the activity has been unable to provide.

4. Determine the reasons for denial of reasonable accommodation requests, if no requests have been granted.

5. Determine if there are any repeated delays in the processing of reasonable accommodation requests. If so, investigate the reasons for the problem and take the necessary steps to correct the situation.

FOR REASONABLE ACCOMMODATION
Appendix A

DEFINITIONS

Administrative Grievance - A grievance is any employment matter of concern or dissatisfaction relating to the employment of a non-bargaining employee which is subject to the control of management. This forum covers bargaining unit employees only when a matter covered under this system cannot be grieved under a negotiated grievance procedure.

Advisory Team - An ad hoc team established to process a request for reasonable accommodation. At a minimum, the advisory team includes the employee's first-level supervisor, a Human Resources Specialist, and the EEO Office reasonable accommodation point of contact. Depending upon the specific circumstances and/or complexity of a reasonable accommodation request, membership of the advisory team may be augmented to include representatives from the medical, safety, and legal offices. Other members, as appropriate, may be requested to participate on the advisory team.

Alternative Dispute Resolution (ADR) - Includes any procedure, which is used in lieu of a formal process or litigation to resolve conflicts and issues in controversy, including, but not limited to peer review, partnering, conciliation, facilitation, mediation, ombudsman-ship, fact-finding, mini-trials, neutral evaluation, and arbitration or any combination thereof. Mediation is the ADR method of choice for DON.
Americans with Disabilities Act of 1990 (as amended) - The first comprehensive civil rights law for individuals with disabilities.

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. The individualized assessment shall be based on the most current medical knowledge and/or the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include: (1)

duration of risk; (2) nature/severity of potential harm; (3) likelihood potential harm occur; and, (4) imminence of the potential harm.

Disability - A person has a disability, for purposes of the Rehabilitation Act, if he/she has a physical or mental impairment that substantially limits a major life activity.
Discrimination Complaint (informal) - A forum (see 29 CFR 1614) where aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age or handicap must initiate contact with a Counselor within 45 calendar days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 calendar days of the effective date of the action.

Equal Employment Opportunity Commission (EEOC) - The agency that enforces federal laws that prohibit job discrimination and provides oversight and coordination of all federal equal employment opportunity regulations, practices and policies.
Essential Functions - The essential functions of a position are those functions that define the job. In other words, the job exists to perform those tasks. The essential functions of a job are not the marginal or infrequently performed tasks that could be eliminated without altering the fundamental nature of the job.

Interactive Discussion(s) - A discussion(s) between the decision maker and the individual requesting the accommodation where the specific limitation, problem or barrier is unclear; where an effective accommodation is not obvious; where the parties are choosing between different possible reasonable accommodations; or to obtain any relevant information as it pertains to a request for accommodation.

Job Restructuring - Includes modifications such as: reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability; and altering when and/or how a function, essential or marginal, is performed. An employer never has to reallocate essential functions as a reasonable accommodation.

Job Search - A reassignment to a vacant position is the accommodation of "last resort" when an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without accommodation.

Major Life Activity(ies) - Once an individual establishes that he/she has a disability, he/she must be able to establish that the disability substantially limits (one or more of his/her major life activities. Major life activities include such obvious characteristics as hearing, seeing, walking, speaking, breathing, caring for oneself, performing manual tasks, and working. Generally, a major life activity is something of fundamental significance within the meaning of the Rehabilitation Act and not simply an activity important to a particular individual.

Negotiated Grievance - A process that is negotiated in a collective bargaining agreement, which provides procedures for the settlement of a matter of concern or dissatisfaction relating to the employment of a bargaining unit employee.

Qualified Individual with a Disability (QWD) - An individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

Reasonable Accommodation - In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.

Reasonable Accommodation Point of Contact - The individual or office designated to oversee the activity's reasonable accommodation process. The individual or office has developed expertise in the requirements of the Rehabilitation Act, potential accommodations, and available resources, and is a resource for individuals with disabilities and activity decision makers.

Rehabilitation Act of 1973 (as amended) - A law that requires agencies to provide reasonable accommodation to qualified employees and applicants with disabilities.

Request for Reconsideration - An internal, informal dispute resolution process through which an individual can request reconsideration of an activity's denial of a request for reasonable accommodation, regardless of whether the person has initiated the discrimination complaint process.

Substantially Limits - An impairment substantially limits a major life activity if that impairment renders the individual either **unable** to perform a major life activity **or significantly**

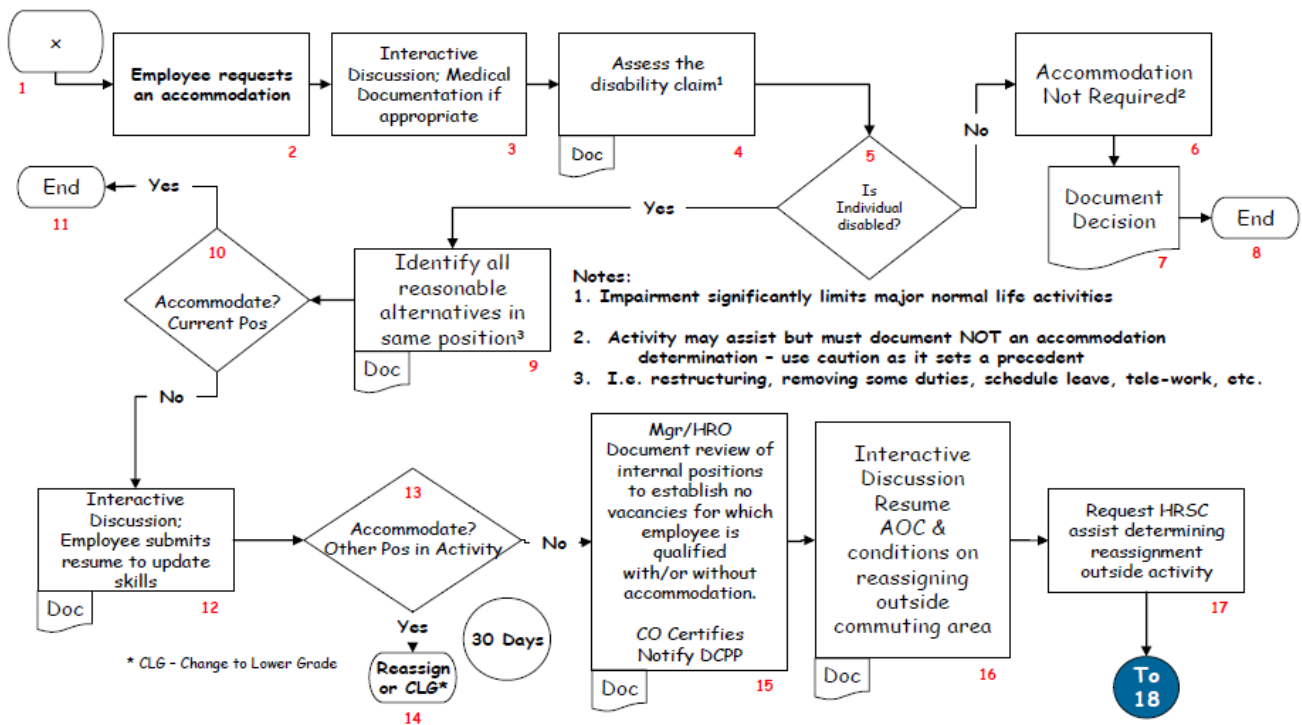
restricts his/her performance of that activity as compared to the average person's performance of the activity.

Undue Hardship - The only statutory limitation on an employer's obligation to provide reasonable accommodation is that no such change or modification is required if it would cause "undue hardship" to the employer. "Undue hardship" means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. "Undue hardship" refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.



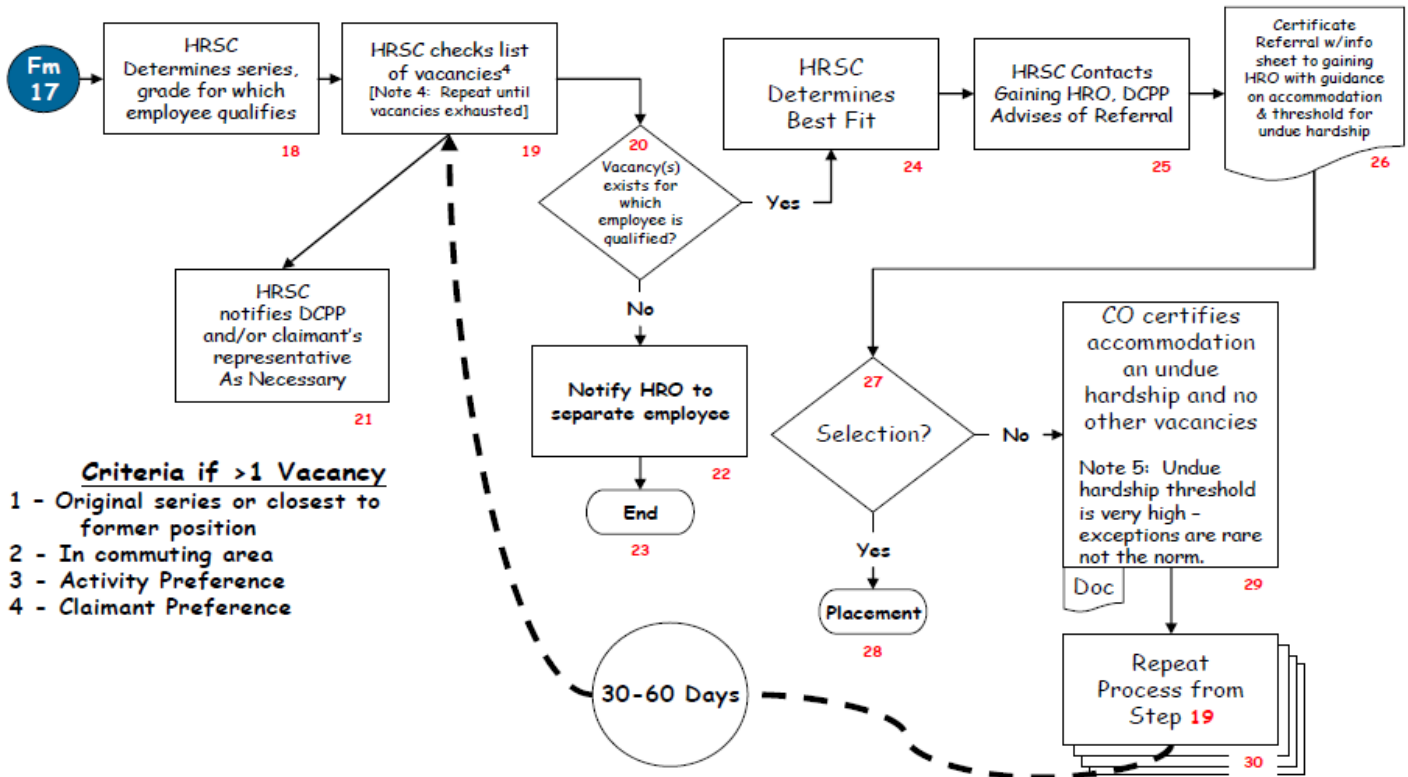
Reasonable Accommodation

APPENDIX B





Reasonable Accommodation



**PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION PROCEDURES
APPENDIX C**

REASONABLE ACCOMMODATION RESOURCES

I. JOB ACCOMMODATION NETWORK (JAN)

JAN is a free consulting service of the Office of Disability Employment Policy, U.S. Department of Labor, designed to increase the employability of people with disabilities by: 1) providing individualized worksite accommodations solutions, 2) providing technical assistance regarding the ADA and other disability related legislation.

<http://janweb.icdi.wvu.edu/>

(800) 526-7234 (Voice) (877) 781-9403 (TTY)

II. COMPUTER/ELECTRONIC ACCOMMODATIONS PROGRAM (CAP)

CAP provides assistive technology and services to people with disabilities, managers, supervisors, and IT professionals. CAP increases access to information and works to remove barriers to employment opportunities by eliminating the costs of assistive technology and accommodation solutions. CAP buys it, pays for it, and gets it to the users.

<http://www.tricare.osd.mil/cap/>

5111 Leesburg Pike, Suite 810 Falls Church, VA 22041 (703) 681-8813 (Voice) (703) 681-0881 (TTY) (703) 681-9075 (Fax)

cap@tma.osd.mil (E-Mail)

III. ADA DISABILITY AND BUSINESS TECHNICAL ASSISTANCE
CENTERS (DBTACs)

Ten federally funded regional centers provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

(800) 949-4232 (Voice/TT)

IV. REGISTRY OF INTERPRETERS FOR THE DEAF (RID)

RID is a national membership organization of professionals who provide sign language interpreting/transliterating services for Deaf and Hard of Hearing persons.

<http://www.rid.org/>

Registry of Interpreters for the Deaf, Inc.
333 Commerce Street
Alexandria, VA 22314
(703) 838-0030 (Voice)
(703) 838-0459 (TTY)
(703) 838-0454 (Fax)

V. REHABILITATION ENGINEERING AND ASSISTIVE TECHNOLOGY SOCIETY OF NORTH AMERICA (RESNA)

RESNA is an interdisciplinary association of people with a common interest in technology and disability. Their purpose is to improve the potential of people with disabilities to achieve their goals through the use of technology. To serve that purpose, RESNA promotes research, development, education, advocacy and provision of technology; and by supporting the people engaged in these activities.

<http://www.resna.org/>

(703) 524-6686 (Voice)
(703) 524-6639 (TTY)
(703) 524-6630 (Fax)

VI. LOCAL STATE DEPARTMENT OF REHABILITATION

The different, local State Department of Rehabilitation may also be a useful resource. As the services may differ from state to state, users are encouraged to contact their local State Department of Rehabilitation for specific information about their services.

**PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION
APPENDIX D**

REASONABLE ACCOMMODATION INFORMATION REFERENCES/GUIDES

I. EEOC WEBSITE - DISABILITY DISCRIMINATION

<http://eeoc.gov/types/ada.html>

This website provides information on:

1. Titles I and V of the ADA
2. The regulations:
 - a. 29 CFR Part 1630 - Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act.
 - b. 29 CFR Part 1640 - Procedures for Coordinating the Investigation of Complaints or Charges of Employment Discrimination Based on Disability Subject to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.
3. EEOC Enforcement Guidance and Policy Documents:
 - a. Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002
 - b. ADA Technical Assistance Manual: Addendum, October 2002
 - c. Enforcement Guidance: Application of the ADA to Contingent Workers Placed by Temporary Agencies and Other Staffing Firms, December 2000
 - d. Questions and Answers: Enforcement Guidance: Application of the ADA to Contingent Workers Placed by Temporary Agencies and Other Staffing Firms
 - e. EEOC Policy Guidance on Executive Order 13614: Establishing Procedures to Facilitate the Provisions of Reasonable Accommodation, October 2000
 - f. Questions and Answers: Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation.
 - g. Enforcement Guidance on Disability Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act, July 2000

h. Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act

i. EEOC Policy Guidance on Executive Order 13145: To Prohibit Discrimination in Federal Employment Based on Genetic Information, July 2000

j. Questions and Answers: EEOC Policy Guidance on Executive Order 13145 Prohibiting Discrimination in Federal Employment Based on Genetic Information.

k. Instructions for Field Offices Analyzing ADA Charges after Supreme Court Decisions Addressing "Disability" and "Qualified", December 1999

l. EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities, March 1997

m. EEOC Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person is a "Qualified Individual with a Disability" Under the Americans with Disabilities Act of 1990, February 1997

n. Enforcement Guidance: Workers' Compensation and the ADA, September 1996

o. ADA Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations, October 1995

p. Compliance Manual Section 902: Definition of the Term Disability, March 1995

q. Executive Summary: Compliance Manual Section 902: Definition of the Term Disability

4. Other References:

a. Reasonable Accommodations for Attorneys with Disabilities

b. The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964

c. Your Responsibilities as an Employer

d. Your Employment Rights as an Individual with a Disability

e. Job Applicants and the ADA

f. Work at Home/Telework as a Reasonable Accommodation

f. Obtaining and Using Employee Medical

g. Information as Part of Emergency Evacuation Procedures

5. Questions and Answers Series:

- a. Questions and Answers about Deafness and Hearing Impairments in the Workplace and the Americans with Disabilities Act
- b. Blindness and Vision Impairments in the Workplace and the ADA
- c. The Americans with Disabilities Act's Association Provision
- d. Diabetes in the Workplace and ADA
- e. Epilepsy in the Workplace and the ADA
- f. Persons with Intellectual Disabilities in the Workplace and ADA
- h. Cancer in the Workplace and the ADA
- i.

6. Mediation and the ADA:

- a. Questions and Answers for Mediation Providers: Mediation and the Americans with Disabilities Act
- b. Questions and Answers for Parties to Mediation: Mediation and the Americans with Disabilities Act

NOTE: Individuals involved in reasonable accommodation issues are encouraged to periodically check the EEOC website for the latest information on this topic.

III. DISABILITYINFO.GOV WEBSITE

<http://www.disabilityinfo.gov/digov-public/public/DisplayPage.do?parentFolderId=500>

DisabilityInfo.gov is the federal government's one-stop website for people with disabilities, their families, employers, veterans and service members, workforce professionals and many others. This website is the result of a collaborative effort among 22 federal agencies and connects individuals to the information and resources that individuals with disabilities need to actively participate in the workforce and in their communities.

**PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION
APPENDIX E**

REASONABLE ACCOMMODATION - SUPREME COURT DECISIONS

I. WHETHER A PERSON HAS A DISABILITY AS DEFINED BY THE ADA

A. Supreme Court decisions:

1. *Bragdon v. Abbott*, 524 U.S. 624 (1998). The Supreme Court broadly interpreted the terms "impairment", "major life activity" and "substantial limitation" in *Bragdon*, holding that a woman with asymptomatic HIV infection had an ADA "disability".

2. *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 119 S. Ct. 2139 (June 22, 1999). The Supreme Court held in *Sutton* and *Murphy* that the determination of whether a person has an ADA "disability" must take into consideration whether the person is substantially limited in a major life activity when using a mitigating measure, such as medication, a prosthesis, or a hearing aid. A person who experiences no substantial limitation in any major life activity when using a mitigating measure does not meet the ADA's definition of "disability".

3. *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516, 119 S. Ct. 2133 (1999). In *Murphy*, the Supreme Court followed *Sutton* to find that a person whose high blood pressure was controlled through medication did not have an impairment that substantially limited a major life activity.

3. *Albertsons, Inc. v. Kirkingburg*, 527 U.S. 555, 119 S. Ct. 2162 (1999). In *Albertsons*, the Supreme Court extended the analysis in *Sutton* and *Murphy* to include individuals who specifically develop compensating behaviors to mitigate the effects of impairment. In this case, the Court found that individuals with monocular vision could develop compensating behaviors that would prevent the impairment from substantially limiting the major life activity of seeing.

B. Application of Supreme Court decisions:

1. The Supreme Court has emphasized that; consistent with EEOC's position, the determination of whether a person has a "disability" must be made on a case-by-case basis.

2. The Supreme Court also emphasized that the

disability determination must be based on a person's actual condition at the time of the alleged discrimination.

II. WHETHER A PERSON WITH A DISABILITY IS QUALIFIED

A. Supreme Court decisions:

1. *Cleveland v. Policy Management Systems Corp.*, 119 S. Ct. 1597 (1999). In *Cleveland*, the Supreme Court held that claims for Social Security Disability Insurance (SSDI) benefits and for damages under ADA do not inherently conflict to the point where courts should apply a special negative presumption that receipt of SSDI benefits stops the recipient from pursuing an ADA claim. SSDU does not take into account the possibility of reasonable accommodation in assessing claims.

2. *Albertsons, Inc., v. Kirkingburg*, 527 U.S. 555, 119 S. Ct. 2162 (1999). In *Albertsons*, the Supreme Court determined that an employer does not have to follow an experimental waiver program designed to permit persons with monocular vision to qualify for DOT certification to operate commercial motor vehicles. This type of waiver program did not modify the general safety standard that precludes persons with monocular vision from obtaining certification. Rather, the waiver program was designed to obtain data to determine if changes could be made in the general safety standard.

B. Application of Supreme Court decisions:

1. The Supreme Court has determined that an employer can require a person to meet an applicable federal safety standard, even if the standard can be waived under an experimental program.

III. SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY DETERMINATIONS (WORKING)

A. Supreme Court decisions:

1. *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 119 S. Ct. 2139 (June 22, 1999). In *Sutton*, the Supreme Court determined that a global airline pilot is only one job and not a class of jobs. Since United Airlines only viewed Sutton as unable to work as a global pilot, it did not regard her as unable to work in the class of pilot jobs, which would include other types of positions such as regional pilots, pilot instructors, and freight pilots.

2. *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516, 119 S. Ct. 2133(1999). In *Murphy*, the Supreme Court determined that UPS's mechanics job, which required the ability to drive commercial vehicles, was a single job and not representative of the class of mechanics jobs. Thus, according to the Court, UPS only viewed *Murphy* as unable to perform its unique job requiring a mechanic to drive a commercial vehicle, and not as unable to work in the class of mechanics jobs, which would include diesel mechanics, automotive mechanics, gas-engine repairers, and gas-welding equipment mechanics - none of which require an individual to drive commercial vehicles.

B. Application of Supreme Court decisions: If working is the major life activity at issue, the activity must determine that a person is substantially limited in working, i.e., unable to work in a class of jobs or broad range of jobs in various classes.

IV. SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY DETERMINATIONS (PERFORMING MANUAL TASKS)

A. Supreme Court decision: In *Toyota Motor Manufacturing v. Williams*, 534 US 184 (2002), the Supreme Court constricted the definition of disabled employees further, finding that an employee's inability to do repetitive work with her hands and arms above shoulder levels because of diagnosed carpal tunnel syndrome did not constitute a substantial limitation to the major life activity of performing manual tasks. The Court went on to state that household chores, brushing one's teeth, and bathing are the types of manual tasks that are of "central importance to people's daily lives." It ruled that *Williams* was not substantially limited in the major life activity of performing manual tasks as she was able to wash her face, bathe, tend to her flower garden, fix breakfast, and do laundry.

B. Application of Supreme Court decision: The *Toyota* decision strictly limited protection only to those employees severely, permanently (or long-term) restricted, to a large degree, in activities of central importance to their daily lives.

V. REASSIGNMENTS

A. Supreme Court decision: In *US Airways, Inc. v.*

Barnett, 535 U.S., 122 S. Ct. 1516, 1523 (2002), the Supreme Court held that it was unreasonable, absent "special circumstances" for an employer to provide a reassignment that conflicts with the terms of a seniority system.

B. Application of Supreme Court decision: If an activity routinely makes exceptions for deviating from the terms of its seniority system, then it wouldn't be unreasonable also to make an exception for an employee with a disability.

VI. DIRECT THREAT

A. Supreme Court decision: In *Echazabal v. Chevron*, 532 U.S., 925 (2002), the Supreme Court held that employers may refuse to hire employees if hiring them would pose a direct threat to their own health and safety.

B. Application of Supreme Court decision: The court found that the direct threat defense must be "based on a reasonable medical judgment that relies on the most current medical knowledge and/or best available objective evidence," and upon an "individualized assessment of the individual's present ability to safely perform the essential functions of the job," reached after considering, among other things, the imminence and likelihood of the risk and the severity of the harm.