

U.S. Merit Systems Protection Board



REASONABLE ACCOMMODATION POLICY AND PROCEDURES

Reasonable Accommodation Policy and Procedures

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1. PURPOSE

This policy implements Executive Order 134548, which requires each Federal agency to establish procedures to facilitate the provision of reasonable accommodations including establishing effective written procedures for processing requests for reasonable accommodation made by qualified job applicants and employees with disabilities. This directive further fulfills Merit System Protection Board's (MSPB's) obligation to provide reasonable accommodations pursuant to the Rehabilitation Act of 1973, as amended, where applicable, and in accordance with the provisions of Title I of the Americans with Disabilities Act of 1990¹. This policy supersedes the previous MSPB Reasonable Accommodation Policy of January 2007.

2. SCOPE

This policy applies to all MSPB employees and applicants for employment. Applicants for employment with MSPB and employees who do not meet the statutory requirements of the Rehabilitation Act, however, are not eligible for reasonable accommodation under this policy.

3. AUTHORITIES

- A. [The Rehabilitation Act of 1973 \(29 U.S.C. Section 791\)](#), as amended to date.
- B. [The Rehabilitation Act of 1992 \(29 U.S.C. Section 701\(g\)\)](#).
- C. [Americans with Disabilities Act Amendments Act of 2008](#).
- D. [Equal Employment Opportunity Commission \(EEOC\) Final Rule Implementing the Americans with Disability Act Amendments Act of 2008](#) (March 25, 2011)
- E. [Title I of the Americans with Disabilities Act of 1990](#).
- F. [Executive Order 134548 of July 26, 2010](#): Increasing Federal Employment of Individuals with Disabilities.
- G. [Executive Order 13163 of July 28, 2000](#): Increasing Federal Employment of Individuals with Disabilities.
- H. [29 C.F.R. Part 1614](#): Federal Sector Equal Employment Opportunity.
- I. [29 C.F.R. Part 1630](#): Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act.
- J. [Privacy Act of 1974](#), as amended.

¹ On May 21, 2002, EEOC implemented the amendments to section 501 of the Rehabilitation Act and updated the EEOC's Rehabilitation Act regulation in 29 C.F.R. § 1614.203. The regulatory limits on reassignment of Federal employees with disabilities as a reasonable accommodation, formerly included in 29 C.F.R. § 1614.203(g), have been deleted, and the ADA standard will now be applied.

- K. [Equal Employment Opportunity Commission \(EEOC\) Policy guidance on Executive Order 13164](#): Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, No. 915-003 (October 20, 2000).
- L. The Equal Employment Opportunity Commission (EEOC) final [Genetic Information Nondiscrimination Act \(GINA\) regulations](#) (November 9, 2010).
- M. [EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, No. 915.002](#) (October 17, 2002).
- N. [EEOC Technical Assistance Manual on the Employment Provisions \(Title 1\) of the Americans with Disabilities Act](#). (January 1992)
- O. [Equal Employment Opportunity Management Directive 715](#) (October 1, 2003).

4. DEFINITIONS

- A. **Agency**. The U.S. Merit Systems Protection Board (MSPB), including headquarters, regional and field offices, and agency contracted personnel.
- B. **Assistive Technology**. An item, piece of equipment, or system that is commonly used to increase, maintain, or improve the functional capabilities of individuals with disabilities. Assistive technology includes ergonomic keyboards, screen-enlarging software, TTYs/TDDs (text telephones), split screen reading software, etc. The term “assistive technology” is used interchangeably with “computer adaptive equipment.”
- C. **Day**. Calendar day, unless otherwise specified.
- D. **Disabled**. Refers to a person who (1) has a physical impairment or mental impairment (psychiatric disability) that substantially limits one or more of such person's major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment.
- E. **Decision-maker**. The individual who is responsible for determining whether to grant or deny a request for reasonable accommodation. This person is typically the Disability Program Manager (DPM), however, not always, for example, when a request relates to building accessibility or is made by a job applicant, then other parties may have the final say in the decision.
- F. **Disability Program Manager (DPM)** is an MSPB employee who assembles and organizes information relating to a request for reasonable accommodation; assists and advises management on issues relating to disability accommodations. The DPM is also the final decision-maker who determines whether to grant a reasonable accommodation request. The DPM works under the guidance of the Office of Equal Employment Opportunity and, when necessary, may consult with the Office of General Counsel to obtain advice on pertinent legal questions.

- G. **Direct Threat**. A significant risk of substantial harm to the health or safety of the individual with a disability or others that cannot be eliminated or reduced by reasonable accommodation.
- H. **Disability**. An impairment that substantially limits one or more of a person's major life activities.
- I. **Essential Function**. A fundamental duty or task that is integral to the position or job to be performed. Determination of the essential job functions of a position must be done on a case by case basis so that it reflects the job as actually performed, and not simply the components of a generic position description. A function can be essential if, among other things, the position exists specifically to perform that function; there are a limited number of other employees who could perform the job function; or the function is specialized and the individual is hired based on his or her ability to perform it.
- J. **Extenuating Circumstance**. Unforeseen or unavoidable events which prevent the prompt processing of a request for or delivery of an accommodation. For example, a delay caused by a supplier's inability to deliver a product in a timely manner because of manufacturing delays. However, the unavailability of a particular staff member to process a request for reasonable accommodation is not an extenuating circumstance.
- K. **Individual with a Disability**. A person who (1) has a physical impairment or mental impairment (psychiatric disability) that substantially limits one or more of such person's major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment.
- L. **Interactive Process**. The process by which the individual requesting a reasonable accommodation, supervisors, managers, and the DPM talk to each other about the request for reasonable accommodation and related issues including potential alternative accommodations and timeframes for providing an accommodation.
- M. **Major Life Activity**. Basic activities that most people in the general population can perform with little or no difficulty. Major life activities generally include, but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Major life activities also include the operation of major bodily functions, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, circulatory, respiratory, endocrine, and reproductive functions.

- N. **Medical Review Officer (MRO)**. Medical professional(s) acting on behalf of MSPB who review medical documentation, when necessary, and provide medical opinions as they relate to requests for reasonable accommodation.
- M. **Non-visible disability**. This term refers to disabilities that cannot be seen and are not obviously apparent. This term is preferred over “hidden” to avoid the connotations of purposeful concealment or shame that may be associated with the adjective “hidden.” Non-visible disabilities include partial sensory impairments such as low vision or hearing loss; chronic health conditions like arthritis, asthma, or diabetes; mental health conditions; learning disabilities; and serious illnesses, such as cancer.
- O. **Organizational Element**. Headquarters or any regional or field office of MSPB.
- P. **Physical or Mental Impairment**. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting (1) one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin and endocrine; or (2) any mental or psychological disorder, such as severe intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- Q. **Qualified Individual with a Disability**. An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such a position.
- R. **Reasonable Accommodation**. An adjustment or alteration that enables a qualified individual with a disability an equal opportunity to apply for a job, perform job duties, or enjoy benefits and privileges of employment. There are three categories of reasonable accommodation:
- (1) Modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job, such as providing application forms in alternative formats like large print or Braille.
 - (2) Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job, such as providing assistive technology to allow a sight-impaired employee to use a computer.
 - (3) Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment, such as removing physical barriers in an organization’s office space or facilities.
- S. **Request for Reasonable Accommodation**. An oral statement or a written statement indicating that an individual needs an adjustment, change at work, or modification in the application process, for a reason related to a medical condition.

- T. **Requester**. An employee, including federal contractors, or applicant, or representative acting on the employee's or applicant's behalf, who requests reasonable accommodation.
- U. **Substantially Limits**. The inability of an individual to perform a major life activity that most people in the general population can perform; or being significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which most people in the general population can perform that same major life activity. Consistent with EEOC regulations found at 29 C.F.R., part 1630, the term 'substantially limits' shall be construed broadly in favor of expansive coverage.
- V. **Undue Hardship**. The significant difficulty or expense to the agency that would result, or is likely to result, from a proposed reasonable accommodation. If a requested accommodation would cause undue hardship, MSPB is not required to provide that particular accommodation. Determination of undue hardship must always be made on a case-by-case basis, considering factors that include the nature and cost of the accommodation, the impact of the accommodation on the operation of the agency, and other relevant considerations.

5. RESPONSIBILITIES

- A. **Executive Director**, or his or her designee, will ensure that an effective process for handling a request for reasonable accommodation is established.
- B. **Director of the Office of Equal Employment Opportunity (OEEO)** will:
- (1) Establish procedures to facilitate the provision of reasonable accommodation to qualified employees or applicants with disabilities.
 - (2) Analyze and evaluate the effectiveness of the process for responding to requests for accommodation.
 - (3) Coordinate with the Chairman and/or his/her designee to ensure that sufficient resources are provided by MSPB for effective implementation and management of a process for responding to requests for reasonable accommodation.
 - (4) Coordinate with managers and supervisors to ensure they receive reasonable accommodation training as designated by MSPB in accordance with Executive Order 13164 and EEOC Management Directive-715.
 - (5) Refer all incoming reasonable accommodation requests and inquiries to the Disability Program Manager within five (5) calendar days of receipt.

- (6) Monitor the status of EEO complaints alleging unlawful discrimination on the basis of disability as they move through the process.
- (7) Provide guidance to and coordinate with the DPM on processing requests, and facilitating and ensuring accurate tracking and reporting of reasonable accommodation provisions to employees with disabilities at the MSPB.
- (8) Provide an annual report on all reasonable accommodation and disability program activities to the Chairman of the MSPB and the Chair of the EEOC in accordance with MD-715 on or before December 31 of each year.

C. **Disability Program Manager (DPM)** will:

- (1) In consultation with the Executive Director, be appointed by the Director of OEEEO to manage employment matters affecting people with disabilities and serve as technical advisor to the MSPB workforce on all disability issues. The DPM responsibilities include providing general guidance on disability employment, developing and delivering disability related training, such as training related to reasonable accommodation, approving and assisting with the processing of Reasonable Accommodation requests, and providing guidance to the Director of Human Resources on disability related employment opportunities.
- (2) Engage in an interactive process with supervisors, managers, applicants, and employees on determinations of reasonable accommodation requests, whether the accommodation requests are received from agency officials or directly from the employee.
- (3) Answer questions from the requester regarding the process, and the rules and regulations governing reasonable accommodation.
- (4) Provide guidance to managers and supervisors on statutory and regulatory requirements of reasonable accommodation and related issues.
- (5) Provide advice, guidance, and recommendations on determining effective accommodations; whether additional information is needed from requester, whether a disability is a covered disability; whether the requester is a qualified individual with a disability requiring reasonable accommodation; and whether a request for reasonable accommodation presents an undue hardship to the agency.
- (6) Determine the need for medical documentation; review submitted medical documentation, and decide whether to approve requests for reasonable accommodations based on medical documentation and informs requester, their supervisors, and the EEO Director.

- (7) Maintain confidentiality of all medical documentation submitted or obtained for the purpose of determining whether a reasonable accommodation should be granted.
- (8) Provide guidance to human resource (HR) specialists (for applicant requests) and employees with disabilities and their supervisors to assist with identifying internal and external resources available to help facilitate the selection of an effective accommodation.
- (9) Collect, prepare and report, MSPB Reasonable Accommodation data (including barrier and trend analysis) to the Director of the Office Equal Employment Opportunity on an annual basis to identify and eliminates barriers as required by MD-715.
- (10) Serve as the agency's Selective Placement Program Coordinator (SPC) for individuals with disabilities. In this role, the DPC will:
 - a. Advise managers about candidates available for placement in jobs under the Schedule A hiring authority (as set forth in EEOC's guidelines (The ABC's of Schedule A) and OPM's website guidelines for employing people with disabilities noncompetitively through the Schedule A hiring authority²); and provide managers with information on reasonable accommodations, and needs assessments for applicants and employees.
 - b. In consultation with the Human Resources Management Office, assist managers in determining essential duties of vacant positions and identifying architectural barriers and possible modifications that will allow people with disabilities to perform essential duties.
 - c. In consultation with the Human Resources Management Office, assist persons with disabilities obtain information about current job opportunities at MSPB, the general application process including types of jobs and how these jobs are filled, and available reasonable accommodations.
 - d. Work with other Federal agencies, private organizations, and the general public involved with the employment of persons with disabilities to foster a wide network to keep abreast of trends and leading practices.
 - e. Monitor and evaluate selective placement program efforts and activities for people with disabilities to determine their effectiveness and make changes to the program as necessary and work with the EEO Director and agency managers to remove any potential barriers.

² US Office of Personnel Management website, [Federal Employment of People with Disabilities](#)" Implementation Guidelines.

D. Office of the General Counsel will:

Conduct research and provide legal and technical advice and guidance to HR, OEEEO, the DPM/SPC and MSPB managers regarding reasonable accommodation requests, policies, and procedures, as needed.

E. Managers and Supervisors will:

- (1) Actively participate in the reasonable accommodation process.
- (2) Engage in an interactive process with employees who request reasonable accommodation and the DPM to keep informed of steps in the process.
- (3) Establish, in writing, the essential functions of the requester's job, if necessary.
- (4) Provide the MSPB Request for Reasonable Accommodation form to the requester to document a reasonable accommodation request if necessary.
- (5) Upon receipt of a request for reasonable accommodation forward the request to the DPM, as soon as possible, but not later than five (5) calendar days after receipt of the request.
- (6) Ensure the request is reviewed and evaluated expeditiously and within the timelines and procedures established by this policy (30 days).
- (7) Upon receiving decisions from the DPM for reasonable accommodation respond to the requesting employee in writing within 30 days unless extenuating circumstances prevent such correspondence (see the attached approval/denial forms).
- (8) Ensure implementation of approved accommodations within the time specified within this policy or the time frame agreed upon by DPM and the requesting employee.
- (9) Request and ensure, when necessary, that appropriate training for the use of a reasonable accommodation is provided for MSPB employees who are granted reasonable accommodations.
- (10) Notify the DPM/SPC upon the selection of an individual with an obvious or known disability to ensure reasonable accommodations are in place, if necessary or required, before such new hires report to work.

F. Director, Human Resource/APHIS Representative will:

- (1) Ensure vacancy announcements contain a statement that MSPB provides reasonable accommodation to applicants with disabilities.
- (2) Ensure a point of contact is included on all vacancy announcements so that applicants have a direct resource to which they can make a request for reasonable accommodation. Preferably this should be the MSPB DPM or an employee from the Human Resources Office/APHIS unless otherwise stated.
- (3) Receive applicant requests for reasonable accommodation and forward to the DPM and/or appropriate decision-maker for processing.
- (4) Assist in identifying vacancies and anticipated vacancies when reassignment is being considered as a reasonable accommodation.

G. MSPB Employees will:³

- (1) Communicate requests for reasonable accommodation for a qualifying disability to a supervisor or manager in their chain of command or to the DPM.
- (2) Where the disability or the need for an accommodation is not obvious, provide relevant and recent medical and other relevant documentation in support of each request for reasonable accommodation to authorized agency officials in a timely manner.
- (3) Engage in an interactive process with agency officials concerning a request for reasonable accommodation.
- (4) Participate in needs assessments for assistive technology when recommended by authorized agency officials or the reviewing medical practitioner.
- (5) Learn to use and maintain skills required for using any assistive technology provided as a reasonable accommodation, including upgraded versions of assistive technology, if applicable.

H. MSPB Applicants will:

- (1) Communicate requests for reasonable accommodation to any agency official involved in the application and hiring process or contact the DPM/SPC.

³ MSPB employees who fail to comply with this section of the policy may delay their entitlement to an accommodation until all requirements are fulfilled.

- (2) Participate in an interactive process with agency officials concerning a request for reasonable accommodation.
- (3) Upon receipt of a job offer, provide recent medical and other relevant documentation to support a request for reasonable accommodation to agency officials, including the DPM, in a timely manner.

6. POLICIES AND PROCEDURES

It is the policy of MSPB to review each request for reasonable accommodation in a timely manner. It is also the policy of MSPB to implement reasonable accommodations whenever the requesting applicant or employee meets all defined criteria and the requested accommodation does not significantly alter or affect MSPB operations or otherwise result in a failure to comply with MSPB's statutory requirements. Requests for which an applicant or employee does not qualify, or which would cause an undue hardship to MSPB operations, will not be implemented.

A. Request.

- (1) An **employee** may request a reasonable accommodation orally or in writing from his or her immediate supervisor, another supervisor or manager in his or her chain of command, or the DPM. The MSPB reasonable accommodation process begins as soon as the request for accommodation is made either orally or in writing. The MSPB **Reasonable Accommodation Request Form** is included in this policy as Attachment 2 and is also located in the MSPB Document Management System (DMS) and on the EEO Portal (for employees only) and the MSPB public website (for applicants and others). A qualified individual with a disability may request a reasonable accommodation whenever he or she chooses, even if he or she has not previously disclosed the existence of a disability to agency officials.
- (2) An **applicant** may request a reasonable accommodation by telephone or in writing from the MSPB Disability Program Manager or any MSPB official with whom the applicant has had contact with in connection with the application process such as a representative from the MSPB Human Resources Office or its servicing personnel office. Appropriate forms may also be obtained by contacting the MSPB Disability Program Manager.
- (3) If authorized by the requester, a representative may request a reasonable accommodation on behalf of an employee or applicant. A written request to the agency is preferred, however, it is not mandatory.
- (4) For recurring requests of the same type (e.g. the assistance of sign language interpreters or readers), the written form is required only for the first request, although appropriate notice must be given each time the accommodation is needed.

B. Written Confirmation.

- (1) Any employee or applicant who makes a request for reasonable accommodation can expect to receive a written confirmation within five (5) calendar days of making the request, from either his or her supervisor, if an MSPB employee, or the DPM.

C. Interactive Process.

- (1) Communication is a priority throughout the reasonable accommodation process. MSPB officials involved in the reasonable accommodation process should take a proactive approach in searching for and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation should also participate in helping to identify an effective accommodation. The DPM and the employee's supervisor(s) will utilize reasonable accommodation resources to determine the appropriate, effective accommodation. A non-exhaustive list of these resources can be found at Attachment 6.
- (2) Ongoing communication is particularly important when (a) the specific limitation, problem or barrier is unclear; (b) when an effective accommodation is not obvious; or (c) when the parties are considering different possible reasonable accommodations. In cases when the DPM knows the disability, the need for accommodation, and the type of accommodation, extensive discussions may not be necessary. Even so, the DPM will interact with appropriate agency officials and the requesting individual to ensure that there is a full exchange of relevant information.

D. Request for Medical Information.

- (1) The DPM may request medical information or documentation that verifies that an employee or applicant has a specific physical or mental impairment or condition, or to supplement medical information that has already been provided. In some cases the impairment or condition will be obvious and further medical information may not be necessary. However, when a medical or physical impairment or condition is not obvious or otherwise already known, the DPM may require that the individual provide relevant and recent documentation about the disability and his or her functional limitations to enable management to respond to a request for reasonable accommodation. A supervisor may not request medical documentation from the employee or the employee's physician.

In making the request for medical documentation, the DPM will be guided by principles set forth in the ADA Amendments Act of 2008 and EEOC's Final Rules Implementing the ADAAA of March 2011. Specifically, the ADA Amendments Act directs that the definition of disability be construed broadly and that the determination of whether an individual has a "disability" generally should not require extensive analysis. The DPM may require medical information in order to determine that the

requester meets the requirements for accommodation and in designing an appropriate and effective accommodation.

- (2) If the DPM believes that medical information is necessary in order to evaluate a request for reasonable accommodation, or that medical information already provided needs to be supplemented in order to evaluate the request, and the individual requesting the accommodation fails to provide the information, the DPM *shall* notify the requester in writing that failure to provide the necessary medical documentation may result in a denial of the request.
- (3) The DPM may request a consultation with the Medical Review Officer (MRO) and/or as necessary, the OGC to aid in the determination of whether medical documentation is necessary and, if so, the type and extent of the documentation required.
- (4) If medical documentation is necessary, it should address at a minimum:
 - the nature, severity, and duration of the individual's impairment;
 - the activity or activities that the impairment limits;
 - the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or,
 - why the individual requires reasonable accommodation or the particular reasonable accommodation requested and how the reasonable accommodation will assist the individual in applying for a job, performing the essential functions of the job, or enjoying a benefit of the workplace.

The individual should be asked to obtain such information from an appropriate healthcare professional such as a physician, physical therapist, or other individual with recognized expertise regarding the individual's condition. The individual is expected to describe the nature of his or her job to the healthcare professional, the essential function(s) expected to be performed, and any other relevant data that will assist the healthcare professional in preparing the medical information needed.

- (5) Once the requested medical information is received, the DPM, in consultation with the MRO, will evaluate the documentation and, if appropriate, may consult with any other agency official such as the Director of Human Resources or OGC. If the requested information is insufficient to enable the DPM to determine whether an accommodation is appropriate, the DPM may seek further information from the requester. The DPM must explain why the information provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.

- (6) The DPM may ask the requesting individual to sign a limited release for MSPB or other authorized official (MRO) to obtain additional information directly from the healthcare professional. This medical information may be needed to answer questions about the nature of the disability or the effectiveness of the accommodation under consideration. The **MSPB Medical Consent Form** can be found at attachment 3 in this policy (see page 24).
- (7) If the DPM determines that the medical information submitted must be reviewed by other medical experts, MSPB will make arrangements and inform the employee of such medical reviews. Additional medical reviews will be performed at the expense of MSPB.
- (8) Failure by the individual to provide appropriate medical documentation or to cooperate with MSPB's efforts to obtain such documentation may result in a denial of the request for reasonable accommodation. Such notification will be presented to the requester in writing. Notification shall indicate the allotted additional time the requester will have (usually no more than 15 calendar days), to present the necessary documentation to substantiate the request.

E. Time Frame for Processing a Request and Providing Reasonable Accommodation.

The length of time to process a request for reasonable accommodation may vary depending upon the nature of the accommodation requested and whether it is necessary to obtain supporting medical information. Generally, a request shall be processed as follows:

- (1) **Request Not Involving Extenuating Circumstances.** The process from date of initial request to decision to provide the accommodation should take approximately 30 days. However, if the request requires additional supporting medical or other information, the process may take longer. When medical documentation is required, the following will apply:
 - (a) The DPM will make such a request for medical documentation from the employee immediately and before the expiration of the 30 day period.
 - (b) If the requested documentation is insufficient, see Section D8 above in this policy. If the DPM determines that the medical or other documentation is sufficient, the decision to grant or deny the request will be conveyed to the supervisor. The decision will describe the reasons for granting the request and will include the accommodation to be provided. In some cases, an effective alternative accommodation(s) may be recommended.
 - (c) Upon receipt of a recommendation to grant the accommodation, the supervisor, working in consultation with the DPM, will provide the accommodation as soon as possible. The DPM will inform the decision-

maker (the supervisor or responsible management official) about the specific steps necessary to fulfill the request immediately.

(2) **Request Involving Extenuating Circumstances.**

- (a) When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as necessary. All MSPB officials are expected to act as quickly as is reasonably possible in processing requests and providing reasonable accommodation.
- (b) When extenuating circumstances are present, the DPM, in consultation with the supervisor, will notify the requester in writing of the reason for the delay, and the approximate date on which a decision regarding the request for reasonable accommodation will be provided or when a provision of the agreed upon accommodation may be expected. The DPM should inform the requester about any further developments or changes.
- (c) If there is a delay in providing an accommodation that has been approved, the DPM, in consultation with the supervisor, will decide whether temporary measures can be taken to assist the individual. This could include providing an alternative form of accommodation if:
 - It does not reasonably interfere with MSPB's operations; and,
 - The employee is clearly informed that this measure is being provided only on a temporary, interim basis until a more permanent accommodation can be arranged.
- (d) If a delay is attributed to the need to obtain or evaluate necessary medical information and the DPM has not yet determined that the individual is entitled to an accommodation, the DPM may also offer temporary measures. In such cases, the DPM will notify the individual in writing that measures are being taken on a temporary basis pending a decision on the accommodation request.
- (e) If temporary measures are taken, the DPM and appropriate manager or supervisor are responsible for ensuring that the modifications do not take the place of an approved accommodation and that all necessary steps are taken to provide the approved accommodation as quickly as possible.

F. **Expedited Process.**

- (1) In certain circumstances, a request for reasonable accommodation may require an expedited review and decision in a time frame that is shorter than thirty (30) days. This includes, for example, situations where a reasonable accommodation is needed:

- (a) To enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has equal opportunity to apply for a job.
 - (b) To enable an employee to participate in a specific agency activity that is scheduled to occur shortly, such as attending a meeting scheduled on short notice.
- (2) Where the expedited process is necessary, the supervisor is authorized to take the necessary steps to provide the accommodation without consulting with the DPM, but is required to notify the DPM of the actions taken or proposed.

G. Granting or Denying a Reasonable Accommodation Request.

- (1) If a request for reasonable accommodation is granted by an agency official other than the DPM, the DPM must be informed in writing of the date the accommodation will be provided and if there will be a delay in providing the accommodation, the projected time frame for providing the accommodation and the reason for the delay. If a temporary accommodation can be arranged, the employee will also be informed in writing by the approving agency official with a copy to the DPM.
- (2) Employees and applicants may decline an accommodation offered by the agency. If this occurs, the DPM should document the declination and notify the agency officials involved.
- (3) If the DPM decides to deny a request for accommodation, s/he must first consult with the Director, OEEEO, and the Office of General Counsel and then notify the requester and management officials in writing, specifying why the request was denied. The DPM should use the attached denial form as a template. (See Attachment 6) If the attached letter is not used, then the written decision should include the specific reasons for the denial. Factors supporting the denial of a request for accommodation include, but are not limited to:
 - (a) A determination that the requested accommodation would result in undue hardship. This requires MSPB to find that a specific accommodation would result in significant difficulty or expense, and would have a significant negative impact on MSPB's operations or procedures. When evaluating reasonable accommodation requests to determine if undue hardship exists, the DPM should refer to the EEOC's "[Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act.](#)" EEOC Notice No. 915.002 (October 17, 2002);

- (b) Medical documentation that is too vague or inadequate to establish that the individual is a qualified individual with a disability and/or needs a reasonable accommodation;
 - (c) The requested accommodation would require the removal of an essential function of the job;
 - (d) The requested accommodation would require the lowering of a performance or production standard;
 - (e) The requested accommodation would not be effective or is not the most appropriate accommodation under the circumstances and/or there are no alternative reasonable accommodations; and,
 - (f) The individual refuses to accept an effective alternative accommodation.
- (4) When the DPM or other agency official denies a specific requested accommodation, but offers to provide an effective alternative accommodation, the written decision should explain both the reasons for the denial of the requested accommodation and the reason the management official selected the chosen accommodation as an effective alternative.
- (5) In determining whether an individual with a disability poses a direct threat, the factors to be considered include:
- (a) The duration of the risk;
 - (b) The nature and severity of the potential harm;
 - (c) The likelihood that the potential harm will occur; and,
 - (d) The imminence of the potential harm.

Even if the individual is found to pose a significant risk of substantial harm, the agency must consider whether the individual can be accommodated in such a way that eliminates the direct threat or reduces it to an acceptable level, before a denial of his or her request for accommodation is rendered.

- (6) The written notice of denial must also inform the individual that s/he may file an EEO complaint with MSPB Office of Equal Employment Opportunity and of the timeframe for initiating such a complaint (e.g., 45 days). This notice must also contain MSPB's procedures for seeking reconsideration of a denial decision, as well as other options for redress, such as the bargaining unit grievance process, if the requester is a member of the Professional Association, and other potential appeal rights. (See Denial Letter template found at Attachment 6 and Section I below.)

H. **Reconsideration of a Denial.**

- (1) Upon written denial of an accommodation, the individual may, within five (5) business days, ask the Chairman, or his or her designee, in writing to reconsider the decision. The individual may present additional information or documentation in support of his or her request to the Chairman or Chairman's designee. The Chairman or designee, after consultation with the DPM, the Director, OEEO, the manager, supervisor, or other agency official, must respond to the request for reconsideration within **fifteen (15) calendar days of receipt of the reconsideration request.**
- (2) Pursuing reconsideration does not affect the time limits for initiating an EEO complaint in accordance with 29 C.F.R. § 1614.105. If an individual chooses to file an EEO complaint, he or she must contact an MSPB EEO Counselor within **forty-five (45) calendar days** from the date of receipt of the written notice of the initial denial. Failure to file a timely EEO complaint may result in a loss of rights to participate in the EEO complaint process.

I. **Re-evaluation of Granted Accommodation.**

- (1) The re-evaluation process is intended to allow the agency to ensure that an accommodation, previously granted, is effective, still appropriate, and not causing an undue burden to the overall operation of the agency and operating components.
- (2) A supervisor, manager, or other agency official within the employee's immediate supervisory chain, may request a re-evaluation of an existing accommodation if it is believed that the reasonable accommodation is no longer required and the employee refuses to or has not come forward with information justifying the continuation of the accommodation. The request for a re-evaluation should be submitted in writing to the DPM. Re-evaluation of an existing accommodation will not be initiated as a form of disciplinary action, retaliation, or reprisal. Such actions are a violation of the Rehabilitation Act.
- (3) The DPM may initiate a re-evaluation of an existing accommodation upon a change of medical condition, work conditions, or within a reasonable period of time after the original decision at the request of the supervisor, manager, or other designated agency official.
- (4) The DPM is responsible for conducting all re-evaluations and determining if they are appropriate. If the DPM determines that a re-evaluation is appropriate, then the DPM will notify the employee and the supervisor (if initiated by the DPM) in writing within ten (10) days of the request.
- (5) In determining whether a change is necessary, the DPM will follow the policy and procedures (including timeframes) set forth within this MSPB policy for requesting

reasonable accommodation. The re-evaluation will be conducted in consultation with the employee's supervisor and the employee.

- (6) The DPM will then notify the employee and the supervisor of the outcome of the re-evaluation and will advise both parties of the next steps and their appeal rights, if any.

J. Reassignment as an Accommodation.

Reassignment will be considered as a reasonable accommodation only if a determination is made that no other reasonable accommodations are available to enable the individual to perform the essential job functions of his or her current job or if the only other effective accommodation would cause undue hardship. In considering whether there are positions available for reassignment, the DPM should work with the individual requesting the accommodation and appropriate HR advisors to identify:

- (1) Existing vacant positions within MSPB for which the employee may be qualified, with or without reasonable accommodation; and,
- (2) Positions within MSPB that the employee qualifies for that will become vacant within sixty (60) calendar days of the request or shortly after that period if extenuating circumstances prevent meeting the sixty day requirement.

Note: The first focus will be to identify positions that are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there is not an equivalent vacant position, the DPM will consider vacant lower-level positions for which the individual is qualified. Reassignment cannot be made to a position with greater promotion potential than the original position held by the employee.

- (3) Reassignment may be made to a vacant position outside the employee's commuting area if the employee is willing to relocate. The MSPB is not obligated to pay for the employee's relocation expenses unless MSPB policy provides such payments for employees without disabilities who request reassignments to other locations for personal reasons.

K. Confidentiality and Disclosure.

- (1) All medical information, including information about functional limitations and reasonable accommodation needs, obtained in connection with a request for reasonable accommodation **must be kept confidential**. The information shall be kept in a file separate from the individual's personnel file. No one shall have access to this file other than the DPM, the Director of OEEEO, or the Director of Human Resources. Individuals who have access to information necessary to make a decision

about whether to grant a requested accommodation **may not disclose this information except as follows:**

- (a) Supervisors and managers who need to know may be told about the necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);
 - (b) First aid and safety personnel may be told if the disability requires emergency treatment;
 - (c) Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;
 - (d) The information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers;
 - (e) Agency EEO officials may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation requests; and
 - (f) To respond to challenges involving the processing of and decisions made related to requests for reasonable accommodation pursuant to this policy and/or the agency's compliance with the Rehabilitation Act.
- (2) Whenever medical information is disclosed, the individual disclosing the information must inform the recipients about the confidentiality responsibility attached to the disclosed information.

L. Information Tracking and Reporting.

- (1) The DPM will maintain records relating to reasonable accommodation requests for the duration of the employee's tenure with the MSPB, or five (5) years, whichever is longer.
- (2) When an individual files an EEO complaint alleging denial of reasonable accommodation, all records shall be maintained in compliance with federal records management policy.
- (3) The DPM will provide an annual report to the Director of OEEO on or about November 1 of each fiscal year for the previous year in accordance with section 5 C (9) above.
- (4) The Director of OEEO, or his or her designee, will provide an annual report to the MSPB Chairman for review and approval in accordance with MD-715 on or before

December 31 of each fiscal year. The report shall be maintained for at least three (3) years and contain the following information:

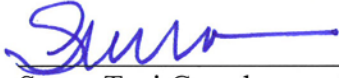
- (a) The number, type, and cost of accommodations that have been requested in the application process and whether those requests have been granted or denied.
- (b) The number, type and cost of accommodations that relate to the benefits or privileges of employment and whether those requests have been granted or denied.
- (c) The jobs (occupational series, pay grade and organizational element) for which reasonable accommodations were requested.
- (d) The types of reasonable accommodation that have been requested for each of the jobs cited above.
- (e) The number and types of reasonable accommodation requests by employees, the number and types of accommodation that have been approved, and the number and types of accommodation that have been denied.
- (f) The reasons for denial of requests for reasonable accommodation.
- (g) The amount of time taken to process each request for reasonable accommodation.
- (h) The sources of technical assistance that have been consulted in working to identify possible reasonable accommodations.
- (i) A qualitative assessment of MSPB's reasonable accommodation program, including any recommendations for improvement of policies and procedures.

7. DISTRIBUTION

This policy shall be made readily available to all MSPB employees. All new MSPB employees will be provided with a written summary of this policy as part of the new employee orientation process. In accordance with 29 C.F.R. § 1614.102(b) (5), this policy will be prominently posted in or near the EEO office and the office of the Director of Human Resources. It will also be posted in designated areas at headquarters. Regional and field offices will have a designated area solely for EEO purposes to post policies, publicize the names, business telephone numbers, and business addresses of EEO Counselors, post a notice of the time limits and necessity for contacting a counselor before filing a complaint, and the telephone number and address of the EEO Director. Additionally, this policy will be posted on the MSPB public web page and the MSPB portal page (intranet) to provide guidance to MSPB employees and applicants for employment with MSPB.

8. EFFECTIVE DATE AND IMPLEMENTATION

This policy is effective immediately upon signature.



Susan Tsui Grundmann, Chairman

09.08.11

Date

CHANGES HISTORY

Changes

January 2007

Issuance of New Policy

August 2011

Revised per E.O. 13548 of July 2010

Attachment 2



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of Equal Employment Opportunity
1615 M Street, NW, 5th Floor
Washington, DC 20419

ACCOMMODATION REQUEST FORM

Date: _____

Full Name:

Last First Middle Initial

Mailing Address:

Street

City State Zip Code

Email Address: _____ Fax: _____

Phone: _____

Day Evening Cell

MSPB Office: _____ Supervisor: _____

Disability Claimed:

How Disability Affects Your Major Life Activity/ies:

*Accommodation Requested (describe specific accommodation or modification that you are requesting):

*NOTE: If your need for an accommodation is not obvious, you must provide documentation from an appropriate medical professional, such as a doctor, rehabilitation counselor, or vocational counselor, concerning your disability and functional limitations as they pertain to the requirements of your current position or the one for which you are applying. We have included a medical consent form for you to sign if we need to contact your doctor for additional information

Your request will be processed and evaluated by qualified personnel, who will work with you, to determine the most appropriate reasonable accommodation for your claimed disability. However, this assistance does not necessarily signify a determination by the agency that you are a qualified individual with a disability under the Rehabilitation Act. You will be contacted via the email address or phone number you provide above. Any documentation you submit will become part of your record of request for an accommodation, or part of your application package if you are an applicant for employment with our agency. Your identity and information pertinent to your request for accommodation may be revealed to federal officials with a need to know.

Your failure to provide this information may result in the inability of MSPB to grant your request. Fax the completed form and documentation to the Disability Program Manager, at fax number (202) 653-7831. A fax cover sheet is attached for your convenience. For questions you may phone the Disability Program Manager at: (202) 653-6772 ext. 4496 or (202) 254-4405. You may also email your request to: DisabilityProgramManager@mspb.gov. Requests may also be mailed (or hand-delivered) to the attention of the Disability Program Manager at the U.S. Merit Systems Protection Board, 1615 M Street, NW, 5th Floor, Washington, DC 20036.



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of Equal Employment Opportunity
1615 M Street, NW, 5th Floor
Washington, DC 20419

Attachment 3

MEDICAL CONSENT FORM

Please check the appropriate block and sign below. Return the original signed copy to this office and keep a copy for your records.

I hereby authorize the U.S. Merit Systems Protection Board (MSPB) Disability Program Manager to request and receive materials and information about me pertinent to my request for accommodation based on an asserted disability. I authorize MSPB officials to contact the medical professionals I have listed in my requests and supporting materials to gather further information about my medical condition as it may pertain to my request. I understand that it may be necessary to reveal to others my identity and medical information regarding my request to MSPB officials.

I also understand that any information gathered to process my request will be considered by MSPB when making the decision to grant or deny my request and will become a part of my record of request for an accommodation or, if a job applicant, it will be part of my application package for employment.

Please check one of the following blocks and sign below:

Consent. I have read and understand the above notice and authorize MSPB to request and receive medical material and information about me pertinent to my request for accommodation.

Consent Denied. I have read and understand the above notice. *I do not want* MSPB to request and receive medical material and information about me. I understand that MSPB's lack of access to this information is likely to impede the review of my request and could result in the MSPB being unable to grant my request.

Signature: _____ **Date:** _____

Name: _____ **Phone:** _____

Address: _____

Attachment 4

U.S. MERIT SYSTEMS PROTECTION BOARD
OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY
1615 M Street, NW, 5th Floor
Washington, DC 20419



Fax

To: MSPB Disability Program Manager

Fax: (202) 653-7831 (secure fax number)

From: _____

Phone: _____

Date: _____

No. of pages (including cover sheet): _____

Subject: _____

Attached you will find my request for accommodation. *I have placed a check mark next to each item that I am including in support of my request.*

- 1. ACCOMMODATION REQUEST FORM _____
- 2. MEDICAL CONSENT FORM _____
- 3. SUPPORTING DOCUMENTATION _____

Signed _____

Comments:

Note: This fax contains information intended only for the use of the individual or entity named above. If the reader of this fax is not the intended recipient or an employee or agent responsible for delivering it to the intended recipient, any dissemination, publication or copying of this fax is strictly prohibited. If you have received this fax in error, please notify the sender immediately.

Attachment 5



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of Equal Employment Opportunity
1615 M Street, NW, 5th Floor
Washington, DC 20419

Approval of Reasonable Accommodation Request Letter

[Date:]

[Recipient Name]
[Title]
[Company Name]
[Street Address]
[City, ST ZIP Code]

Dear [Recipient Name]:

After careful consideration of your request for a reasonable accommodation, I have determined that your request meets the criteria for a reasonable accommodation and is *approved*. This decision is based on my discussions with you, a review of your medical documentation (if provided), and consultation with your supervisor.

As your request has been approved, your supervisor and I will immediately arrange the specific accommodation you requested. If there are any delays in providing you this accommodation, you will be notified.

This approval letter completes the reasonable accommodation process and will become the final documentation within the file. If you have any questions about the reasonable accommodation process or this letter, please contact me at the number below.

Sincerely,

Disability Program Manager
[telephone number]
[e-mail address]

Attachment 6



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of Equal Employment Opportunity
1615 M Street, NW, 5th Floor
Washington, DC 20419

Denial of Reasonable Accommodation Request Letter

[Date:]

[Recipient Name]
[Title]
[Company Name]
[Street Address]
[City, ST ZIP Code]

Dear [Recipient Name]:

On ____ date I received a request for reasonable accommodation from you. In your request you specifically asked for _____. Since receiving your request, I have consulted with you and your supervisor, and have also reviewed the medical documentation. After careful consideration, I have determined that your request does not meet the criteria for a reasonable accommodation and is denied for the reasons identified below.

_____ Medical documentation is inadequate to establish that the individual is a qualified individual with a disability and/or needs a reasonable accommodation. Explain:

_____ Failure to provide further medical documentation as requested to establish that the individual is a qualified individual with a disability and/or needs a reasonable accommodation.

Explain:

_____ Another accommodation has been offered and accepted, which the supervisor and DPM believe to be effective. Explain:

_____ **Removal of an essential function/lowering performance standards** from the position was not considered since it would render the employee ineligible for the position. However, reassignment to a qualified position has been offered and accepted and will be effective by or on [Insert Date Here].

_____ Requester **provided an inadequate explanation to justify the need for a reasonable accommodation.** Explain:

_____ **To grant such an accommodation would pose an undue hardship for the agency.** Explain:

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

- Submit a written request for reconsideration to the Chairman or her designee within five (5) business days following receipt of this letter.

You may also choose one of the following of options:

- Pursue an EEO complaint under 29 C.F.R. 1614 and contact an EEO Counselor or the MSPB Office of Equal Employment Opportunity within 45 days from the date of this notice or denial. As part of this process, the requester will have the option to resolve the matter through Alternative Dispute Resolution.
- If you are a Bargaining Unit employee, you may choose between pursuing a grievance under MSPB Personnel Manual Chapter 6020 within fifteen days of receipt of this letter, and filing a grievance under the Collective Bargaining Unit Agreement, Article 14, within the specified time frame.
- Initiate an appeal to the Merit Systems Protection Board *within 30 days of an appealable adverse action* as defined in 5 C.F.R. § 1201.3. Under MSPB Regulations found at §1201.13, MSPB employees should file such an appeal with the Office of the Clerk of the Board.

This denial letter completes the processing of your request for reasonable accommodation and will become the final documentation within the file. If you have any questions about this decision or your options, feel free to contact me at the number below.

Sincerely,

Disability Program Manager

Selected Reasonable Accommodation Resources

[Computer/Electronic Accommodations Program \(CAP\)](#)

[Disability.gov](#)

[EEOC: The ADA: Your Responsibilities as an Employer](#)

[USDA TARGET Center](#)

[Jobs Accommodation Network](#)

[USDOL - Office of Disability Employment Policy \(ODEP\)](#)

<http://www.pascenter.org/home/index.php>

[My Disability Program Manager](#)