



# **DISABILITY ACCOMMODATIONS FOR EMPLOYEES AND JOB APPLICANTS AND PERSONAL ASSISTANCE SERVICES FOR PEOPLE WITH TARGETED DISABILITIES**

**Effective Date: April 13, 2023**

**Management Directive 256-006**

**Revision Number: 01**

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## **I. Purpose**

This management directive (MD) establishes U.S. Citizenship and Immigration Services (USCIS) policy and procedures relating to the processing of disability accommodation requests from employees and applicants for employment or requests for personal assistance services (PAS).

## **II. Scope**

This MD applies to all USCIS employees and applicants for employment.

## **III. Authority and Supersedence Information**

- A. The following laws, regulations, orders, policies, directives, and guidance authorize and govern this MD:
1. The Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 et seq.;
  2. The Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.;
  3. The Americans with Disabilities Act Amendments Act of 2008, Public Law 110-325;
  4. Executive Order 13163 (July 26, 2000): Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government;
  5. Executive Order 13164 (July 26, 2000): Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation;
  6. 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);
  7. Department of Homeland Security (DHS) MD 259-01, "Providing Reasonable Accommodations for Employees and Applicants with Disabilities;

8. EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (October 17, 2002).
  9. DHS Instruction 259-01-001, "Providing Reasonable Accommodations for Employees and Applicants with Disabilities and Personal Assistance Services for People with Targeted Disabilities";
  10. Title 29 of the Code of Federal Regulations, Part 1614, Federal Sector Equal Employment Opportunity; and
  11. DHS Instruction 259-01-002, "Procedures for Conducting Department-Wide Search for A Reassignment as a Reasonable Accommodation of Last Resort."
- B. This MD supersedes Management Directive 256-006, Disability Accommodations for Employees and Job Applicants, effective May 7, 2015.

#### **IV. Definitions**

- A. Accessible Format: A format that meets an individual's particular need, including braille, large print, audio files, etc.
- B. Appeal: The process by which an individual who requested an accommodation may seek review by the Associate Director or Program Office head for the organizational unit in which they work of a determination by a Decision-maker not to reconsider the denial of an accommodation request or PAS or the approval of an alternate accommodation.
- C. Back-Up: An individual designated to provide coverage to continue receiving, processing, and providing accommodations or PAS when a Receiving Official or Decision-maker is unavailable.
- D. Decision-maker: An individual with authority to determine whether an accommodation or PAS request will be approved or denied, or whether an alternative accommodation will be provided. In the case of an applicant for employment needing assistance during the application process, this official will be an individual from the Office of Human Capital and Training (HCT). Each USCIS Directorate or Program Office must designate Decision-makers who will be delegated principal responsibility for identifying possible accommodations and for determining whether an accommodation will be provided. The preference will be for an individual's first line supervisor to be the Decision-maker because such a process tends to assist in the timely processing of requests and eliminates unnecessary levels of review.
- E. Disability: With respect to an individual, means a physical or mental impairment that substantially limits one or more major life activity, a record of such an impairment and/or being regarded as having such an impairment that is not both transitory and minor.
- F. Disability Accommodation Program Manager (DAPM): An Office of Equal Opportunity and Inclusion (OEOI) official responsible for monitoring and facilitating employee requests for reasonable accommodation by providing guidance and assistance to employees and Decision-makers and ensuring that accommodation requests are processed in accordance with EEOC regulations and DHS policy. The DAPM is also responsible for receiving accommodation

requests, for approving any follow up requests for medical documentation related to an accommodation request, for reviewing all proposed accommodation denials, and is custodian of all medical documentation received during the accommodation process.

- G. Essential functions: Job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed and not simply the components of a generic position description.
- H. Extenuating circumstances: Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation or PAS or limited situations in which unforeseen or unavoidable events prevent prompt processing of a request and delivery of an approved accommodation.
- I. Interactive process: The process by which an individual requesting an accommodation or PAS and the Decision-maker engage with one another concerning the request for accommodation, the precise limitations resulting from the disability, the process for determining whether an accommodation will be provided, and potential alternate accommodations. The process should identify the precise limitations and potential reasonable accommodations that could overcome the limitations. An informal process in which the employer and employee work together to clarify what the individual's needs are and identify the appropriate reasonable accommodation.
- J. Local commuting area: The geographic area usually considered as a single area for employment purposes, which includes any population center and the surrounding localities where people live and can reasonably be expected to travel back and forth daily to their usual place of employment.
- K. Major life activity: A basic activity that the average person in the general population can perform with little or no difficulty, such as (but not limited to) caring for oneself, performing manual tasks, walking, sitting, standing, seeing, hearing, speaking, breathing, learning and working as well as the operation of a major bodily function, including (but not limited to) functions of the immune system and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.
- L. Personal Assistance Services: Personal assistance services are services that help someone perform basic daily living activities like eating and using the restroom. They are not the same as services that help the individual perform job-related tasks, such as sign language interpreters for individuals who are deaf or readers for individuals who are blind or have learning disabilities. These services are already required under Section 501 of the Rehabilitation Act as reasonable accommodations.
- M. Qualified individual: An individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position they hold or desire and who can perform the essential functions of the position with or without reasonable accommodation.

- N. Reasonable accommodation: Any change in the workplace or the way things are customarily done that provides an equal employment opportunity to an individual with a disability, including: (i) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; (ii) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position; or (iii) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.
- O. Reassignment: A form of reasonable accommodation that, absent undue hardship, can be provided to employees (not applicants) who, because of a disability, are no longer able to perform the essential functions of their jobs, with or without reasonable accommodation. Reassignment offers are made only to vacant positions and to employees who are otherwise qualified to perform the duties of the new position. Reassignment is an accommodation of last resort. Where possible, reassignment is to an equivalent position, but if no equivalent position is available, reassignment to a lower-level position that is as close as possible to the employee's current position.
- P. Receiving Official: An official designated to receive a written or oral request for reasonable accommodation. A Receiving Official will be an employee's immediate supervisor, another supervisor or manager in the employee's immediate chain of command, or OEOI Disability Accommodation Program staff, and, in connection with the application process, an agency employee in HCT with whom the applicant has had contact in connection with the application process.
- Q. Reconsideration: The process by which an individual whose accommodation request has been denied, or who has been provided an alternate accommodation, can request that the Decision-maker reconsider that determination with or without providing additional information.
- R. Request for Personal Assistance Services: A request for personal assistance services allow individuals to perform activities of basic daily living that an individual would typically perform if they did not have a disability. PAS do not help individuals with disabilities perform their specific job functions, such as reviewing documents or answering questions received at a call center.
- S. Request for reasonable accommodation: An oral or written statement that, because of a mental or physical impairment, an individual needs an adjustment or change at work, in the job application process, or to access a benefit or privilege of employment.
- T. Targeted Disability: A subset of the larger disability category. The federal government has recognized that qualified individuals with certain disabilities, particularly manifest disabilities, face significant barriers to employment, above and beyond the barriers faced by people with the broader range of disabilities. These barriers are often due to myths, fears, and stereotypes about such disabilities. Targeted disabilities include but are not limited to blindness, deafness, partial and full paralysis, missing extremities, intellectual and psychiatric disabilities.
- U. Undue hardship: An action requiring significant difficulty or expense to USCIS when considering

factors such as: the impact of the accommodation on the operations of the agency's mission, including the impact on the ability of other employees to perform their duties and to conduct business; the nature and net cost of the accommodation needed, and the financial resources of DHS as a whole. Undue hardship determinations are made on a case-by-case basis.

## V. Policy, Procedures and Requirements

A. Policy: It is the policy of USCIS to comply fully with the reasonable accommodation requirements of the Rehabilitation Act of 1973 by accommodating the known physical and mental limitations of qualified disabled employees and applicants for employment in order to ensure these individuals enjoy full access to equal employment opportunity (EEO), unless doing so would impose an undue hardship on the agency's operations. In making a determination whether undue hardship would be imposed because of cost, the agency will consider all resources available to it as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation. USCIS also provides personal assistance services to individuals with targeted disabilities in accordance its obligations pursuant to the Rehabilitation Act, unless doing so would impose an undue hardship on the agency. Pursuant to the Rehabilitation Act, USCIS is prohibited from retaliating, coercing, threatening, harassing, or interfering with any employee because that employee has made a request for reasonable accommodation or request for personal assistance services. These procedures, a denial letter, or any forms required by the procedures can be converted to an accessible format upon request.

### B. Procedures:

1. **Requests**: An individual may request a reasonable accommodation or PAS orally or in writing whenever they choose. A request is any communication in which the individual states a need for the agency to provide or to change something because of a medical condition. The Agency will process the request in a prompt and efficient manner in accordance with the time frames set forth in the procedure. There may be limitations on the agency's ability to provide a requested accommodation at a specific time if insufficient notice is provided. Therefore, individuals should request accommodations or PAS as soon as practicable after the need for such assistance becomes known. Generally, USCIS has no obligation to provide an accommodation until an individual makes such a request; however, in some circumstances where an individual has a recurring, predictable need for an accommodation, the agency may be obligated to provide the accommodation as needed, whether or not the individual has requested it. The reasonable accommodation process begins when a request for accommodation is made. The following procedures apply to the request:
  - a. A request for accommodation or PAS can be made: 1) through any USCIS reasonable accommodation database/tracking system; or, 2) to a Receiving Official whether in writing (A sample request form is provided at Appendix A) or orally.
  - b. A request does not have to include any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." A request is any communication in which an individual asks or states that they need USCIS to provide or to change something because of a medical condition. A supervisor, manager, or OEOI Disability Accommodation Program staff member should ask an individual whether they are

- requesting a reasonable accommodation if the nature of the initial communication is unclear. An individual requesting an accommodation need not have a particular accommodation in mind before making a request;
- c. A family member, friend, health professional, or other representative may make a written or oral request on behalf of an employee or applicant. Such request should be made to an appropriate Receiving Official;
  - d. If a request is made to a manager or supervisor who is not a proper Receiving Official for the employee, that individual must immediately forward the request to OEOI Disability Accommodation Program staff or an appropriate Receiving Official for the employee;
  - e. If a Receiving Official receives an oral request for accommodation, they should ask that the employee or applicant submit it through the ACMS or memorialize the request in writing. However, a request through ACMS or in writing is not mandatory and will not delay its processing;
  - f. When an individual needs a specific accommodation or PAS on a recurring basis (e.g., the assistance of sign language interpreters or readers), an oral or written accommodation request is only required on the first occasion requested; however, appropriate advance notice must be given each subsequent time the accommodation or PAS is needed;
  - g. Within two (2) business days of receipt of an oral or written accommodation or PAS request, a Receiving Official must submit the written request or confirmation of an oral request to OEOI Disability Accommodation Program staff;
  - h. OEOI Disability Accommodation Program staff will retain administrative responsibility for tracking and facilitating the processing of the request and, if not the Receiving Official, will notify an appropriate Decision-maker, if one has not been identified, who will make the determination whether to grant the request; and
  - i. Information regarding the process may be directed to [disabilityaccommodations@uscis.dhs.gov](mailto:disabilityaccommodations@uscis.dhs.gov) or, for those requests related to the application process, sent to the following address:

U.S. Citizenship and Immigration Services  
70 Kimball Avenue  
South Burlington, VT 05403  
[hrocstaffinghelpdesk@uscis.dhs.gov](mailto:hrocstaffinghelpdesk@uscis.dhs.gov)  
952-697-8380 (phone)

- 2. **Written Confirmation:** To ensure accurate records relating to accommodation or PAS requests, where an employee makes an oral request and fails to follow up such a request in writing or by submitting it through the ACMS, the Receiving Official must confirm the request in writing in the following manner:
  - a. The Receiving Official must complete the written confirmation form provided at Appendix B and provide a copy to the employee and OEOI Disability Accommodation Program staff within two (2) business days of the oral request;
  - b. For accommodations provided to an individual on a recurring basis, the Receiving Official should only complete the written confirmation form for the initial request, and not for any subsequent request for the same accommodation.
- 3. **The Interactive Process:** Communication between the Decision-maker and the individual

requesting an accommodation or PAS is a priority throughout the accommodation process. The individual requesting the accommodation and the Decision-maker should communicate with each other about the request for accommodation, how a disability is prompting a need for an accommodation, and alternative accommodations that may be effective. The following procedures will apply to this process:

- a. USCIS officials involved in the provision of reasonable accommodations or PAS should take a proactive approach in searching out and considering possible accommodations and should include consultation with appropriate resources for assistance;
- b. The individual requesting an accommodation or PAS should also participate, to the extent possible, in helping to identify effective accommodations or services;
- c. The Decision-maker and individual requesting an accommodation or PAS should communicate directly with each other to make sure that there is a full exchange of relevant information, and on-going communication is particularly important where the specific limitation or barrier is unclear, where an effective accommodation is not obvious, or where the parties are considering different possible accommodations or services;
- d. Appendix E lists resources that may assist the Decision-maker and the individual requesting an accommodation or PAS in identifying a possible accommodation or services. The DAPM or other Disability Accommodation Program staff are also available to provide assistance to the Decision-maker as are personnel from the Office of Chief Counsel (OCC), Labor and Employee Relations (LER), the Office of Information Technology (OIT), the Facilities Management Division (FMD) in the Office of Administration, and the Emergency Management and Safety Division (EMS) in the Office of Security and Integrity, and the USCIS Medical Officer, if needed; and
- e. When a Decision-maker is considering providing assistive technology or equipment as an accommodation, they should contact the DAPM or other Disability Accommodation Program staff prior to making such a decision, regardless of the funding source for the item.

4. **Reassignment as an Accommodation:** Generally, reassignment as a reasonable accommodation will only be considered if no other accommodation is available that will enable an employee to perform the essential functions of his or her current job or if the only effective accommodation would impose undue hardship. USCIS must consider providing reassignment to a vacant position as a reasonable accommodation when it has determined that no other reasonable accommodation will permit the disabled employee to perform the essential functions of his or her position. In determining whether to explore reassignment as an accommodation, the following procedures will apply:
  - a. The Decision-maker must work with the DAPM or other Disability Accommodation Program staff and HCT staff, as well as the employee, to determine if reassignment is being requested by the employee and whether reassignment could be a viable, effective accommodation;
  - b. In considering whether there are positions available for reassignment, the agency will initially identify all vacant positions at USCIS within the local commuting area for which the employee may be qualified with or without reasonable accommodation and all positions HCT has reason to believe will become vacant over the next forty (40) business days for which the employee may be qualified;
  - c. An employee must be qualified for any new position. An employee is qualified for a

position if the employee: (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the new position, with or without reasonable accommodation. The employee does not need to be the best qualified individual for the position in order to obtain it as a reassignment;

- d. If a vacant position is located for which the employee is qualified, the employee should be reassigned to the position and should not have to compete for it;
  - e. If an appropriate position is not available or will not become available locally within USCIS within forty (40) business days, the Decision-maker will inquire whether the employee is interested in a reassignment that would require relocating to any agency office locations outside the local commuting area;
  - f. If an appropriate position is not available or will not become available locally within USCIS, and the employee is not interested in relocating to any agency office locations outside the local commuting area, all local vacant positions within DHS for which the employee may be qualified, with or without reasonable accommodation, will be considered;
  - g. The agency will initially focus on USCIS and DHS positions equivalent to the employee's current job in terms of pay, status, and other relevant factors; however, if no appropriate equivalent position is vacant, lower level positions for which the individual is qualified will be considered;
  - h. If reassignment to a vacant position outside of the employee's commuting area to which the employee is willing to relocate is available, as with other transfers not required by management, the agency will not pay for an employee's relocation;
  - i. Reassignment as a form of reasonable accommodation can only be offered to current employees and is not available as an accommodation for job applicants; and
  - j. Because reassignment is an accommodation of last resort, if USCIS is unable to find a reassignment position at DHS or the employee refuses the offered reassignment, the employee may be separated from employment.
5. **Medical Information Requests:** USCIS is entitled to know that an employee or applicant has a covered disability or targeted disability that qualifies them for, and requires, reasonable accommodation or PAS, and may require that an individual provide information documenting his or her disability and functional limitations where the disability and need for accommodation are not obvious or otherwise already known to the agency. The agency will not request medical information when the employee or job applicant has already provided the agency with sufficient information to document the existence of a disability or targeted disability and his or her functional limitations. When medical information is required to support a reasonable accommodation or PAS request, it should describe the nature of the individual's disability, his or her need for reasonable accommodation or PAS, and how the requested accommodation or services, if any, will assist the individual to apply for a job, perform the essential functions of a job, enjoy the benefits and privileges of the workplace, or provide personal assistance services. Requests for such medical information must be made in the following manner:
- a. The Decision-maker can consider unsolicited medical information supplied by the individual requesting an accommodation or PAS;
  - b. If a Decision-maker has not been provided with any unsolicited documentation concerning the employee's condition and believes that medical information is necessary in order to



- evaluate an accommodation or PAS request, they must provide the form found at Appendix C to the employee, who will have it completed by an appropriate medical professional, such as a doctor, social worker, or rehabilitation counselor;
- c. If unsolicited information provided by an employee or information received in response to the form found at Appendix C is insufficient for the Decision-maker to make an informed decision on an accommodation or PAS request and they believe that a request for additional or more specific medical information is necessary, that individual must notify the DAPM or other Disability Accommodation Program staff to obtain approval to request any additional medical information;
  - d. If the DAPM or other Disability Accommodation Program staff determine that additional medical documentation is necessary, they will work with the Decision-maker, HCT staff, OCC staff, and any other individual designated by USCIS, as appropriate, to determine what specific information may be required to be provided. This may include consultation with the USCIS Medical Officer and/or other designated staff;
  - e. The written request for additional medical information from the Decision-maker must be reviewed and approved by the DAPM or other Disability Accommodation Program staff and must explain to the individual seeking the accommodation or PAS, in specific terms, why the information provided was insufficient, what additional information is needed, and why the additional information is necessary to make a determination on his or her accommodation request;
  - f. If it is determined by the DAPM or Disability Accommodation Program staff that additional medical documentation is not necessary, the Decision-maker shall be notified that processing of the accommodation or PAS request must be promptly completed;
  - g. When necessary, the Decision-maker may provide any medical documentation they receive to the DAPM or Disability Accommodation Program staff for review to determine whether a reasonable accommodation or PAS is appropriate;
  - h. If USCIS determines that medical information submitted must be reviewed by a medical expert other than the DHS Medical Liaison Officer, it will choose the expert and bear the cost of review;
  - i. If, after multiple requests for medical information, there is still not sufficient information to demonstrate that the individual has a disability and needs an accommodation, USCIS may request that the employee be examined by a physician chosen by USCIS and at agency expense. The employee is entitled to any medical records that result from such an examination;
  - j. An employee's failure to provide the requested appropriate documentation or to cooperate in efforts to obtain such documentation may result in denial of an accommodation or PAS request; however, an employee's failure to provide more documentation may not be grounds for denying a reasonable accommodation or a PAS request if the Decision-maker already has sufficient information from which to make a decision or if the disability and need for accommodation or PAS is obvious;
  - k. All medical records obtained during the accommodation or PAS request process must be kept in files separate from the employee's personnel file;
  - l. Upon completion of the interactive process following a final decision on an accommodation or PAS request, copies of all medical documentation related to the matter must be provided to the DAPM, who will be the custodian of all medical information received during the interactive process;

- m. In the event of a change in an employee's supervisor or designated Decision-maker, any medical documentation that had been provided to substantiate the need for an accommodation or PAS should be transferred to the successor official in order to avoid duplicate requests and to safeguard continuity in providing a previously approved accommodation or PAS request; and
  - n. A Decision-maker who believes an accommodation or PAS is no longer needed or is no longer supported by the medical documentation upon which it was originally granted must contact the DAPM to discuss whether further steps should be taken to determine the employee's continuing need for the accommodation or PAS.
6. **Processing times.** All USCIS officials are expected to act as expeditiously as reasonably possible in processing requests and providing accommodations or PAS, as failure to respond promptly to a request may result in a violation of the Rehabilitation Act; however, the time necessary to process a request will depend on the nature of the accommodation and/or PAS requested and whether it is necessary to obtain supporting information. Because engaging in the interactive process and collecting all relevant information about possible accommodations may take longer than expected, a Decision-maker should not delay beginning this process or processing the request in a timely manner. At a minimum, requests must be processed in the following manner:
- a. **Requests Not Involving Extenuating Circumstances:**
    - i. Absent extenuating circumstances, if a request does not require supporting medical information, it must be processed as quickly as possible and without unnecessary delay, with any denial or approved accommodation or PAS being provided within twenty (20) business days from the date of the initial request whenever feasible.
    - ii. If a Decision-maker determines that supporting medical information needs to be obtained, the following procedures and timeframes apply:
      - (1) They will make such a request as soon as possible after receipt of the initial accommodation or PAS request, but before expiration of the twenty (20) business day period, which will be stayed pending the requested information being provided;
      - (2) When the DAPM or Disability Accommodation Program staff is consulted to determine whether supplemental medical information is needed, calculation of the twenty (20) business day period will be stayed pending such determination;
      - (3) If the DAPM or Disability Accommodation Program staff determine that additional medical documentation is not necessary, the Decision-maker will be notified of that decision and processing of the request will resume;
      - (4) In a case where the DAPM or Disability Accommodation Program staff determines that medical documentation is needed, the twenty (20) business day period will be stayed until the requested information is received and reviewed, at which time calculation of the twenty (20) business day period will resume; and
      - (5) If there is a delay in obtaining and evaluating medical documentation, and a determination has not yet been made whether the individual is entitled to an accommodation or PAS, the Decision-maker may agree to provide an accommodation or PAS to the employee on a temporary basis, but must notify the individual in writing that the accommodation is only being provided temporarily pending the decision on the requested accommodation or PAS. If it does not

appear that a temporary accommodation or PAS is possible in such a circumstance, the Decision-maker should contact the DAPM or other Disability Accommodation Program staff, or other personnel from OCC or LER, for guidance.

- b. **Request Involving Extenuating Circumstances:** When extenuating circumstances are present, the twenty (20) business time day period for making a decision to approve or deny an accommodation or PAS request, and providing an approved accommodation or services, may be extended. Extensions based on extenuating circumstances should be minimized whenever feasible. The processes and procedures outlined below will apply in circumstances involving extenuating circumstances:
- i. The following situations are examples of extenuating circumstances:
    - (1) A delay in the purchase of equipment due to regulatory or policy requirements;
    - (2) A delay because equipment must be ordered, the vendor typically used by USCIS for certain goods or services has unexpectedly gone out of business, or a vendor cannot promptly supply the needed goods or services and another vendor is not immediately available;
    - (3) The employee needs to try working with equipment on a trial basis to ensure that it is effective before USCIS purchases the equipment;
    - (4) A delay because new staff (reader, sign language interpreter, etc.) needs to be hired or contracted for;
    - (5) A delay caused by the need for the employee or job applicant to secure medical documentation evidencing the need for an accommodation or PAS; or
    - (6) A delay because an accommodation involves the removal of an architectural barrier.
  - ii. Where extenuating circumstances are present and there is a delay in either processing a request or providing a reasonable accommodation or PAS, the Decision-maker should notify the individual requesting an accommodation, in writing, before expiration of the twenty (20) business day period, of the reason(s) for the delay, including any extenuating circumstances, and the approximate date when provision of the accommodation is expected.
  - iii. Any further delays, developments, or changes should also be communicated promptly to the individual requesting an accommodation or PAS.
  - iv. The agency will not be expected to adhere to its usual timelines if an individual's health professional fails to provide needed documentation in a timely manner; however, once medical information is received by the agency, the pause in the period for making a determination on the request ceases.
  - v. A Decision-maker may agree to provide an accommodation or PAS to the employee on a temporary basis, but should notify the individual in writing that the accommodation or services is only being provided temporarily pending the decision on the accommodation or PAS request. If it does not appear that a temporary accommodation or services is possible in such a circumstance, the Decision-maker should contact the DAPM or other Disability Accommodation Program staff, or other personnel from OCC or LER, for guidance.
  - vi. When all the facts and circumstances known to the agency make it reasonably likely that an individual will be entitled to a reasonable accommodation or PAS, but the accommodation or services cannot be provided immediately, the agency shall provide an interim accommodation or services that allows the individual to perform some or

all of the essential functions of his or her job, or activities of daily living for individuals with targeted disabilities requesting PAS if it is possible to do so without undue hardship on the agency.

- vii. Where the timeframes have been paused due to a request for medical information from the employee or applicant, the processing timeframe shall resume as soon as the requested medical documentation is received.

- 7. **Expedited Processing.** In certain circumstances, the review and decision on an accommodation request may be necessary in less than twenty (20) business days. These situations may include, but are not limited to, a request for accommodation or PAS needed:
  - a. To ensure an applicant is guaranteed equal opportunity to compete for a position with the agency; and
  - b. To ensure an employee is able to meaningfully participate in a meeting scheduled to occur in less than twenty (20) business days.

8. **Decision on Request:**

- a. **Approval.** Where a Decision-maker approves an accommodation or PAS request, the following procedures will apply:
  - i. The decision should immediately be communicated in writing to the individual requesting an accommodation, with a copy to the DAPM or other Disability Accommodation Program staff;
  - ii. The Decision-maker should take steps to secure the equipment or services that constitute the approved accommodation as expeditiously as feasible; and
  - iii. If the accommodation cannot be provided quickly, the Decision-maker must inform the individual of the projected timeframe for providing the accommodation or PAS and the reason(s) for delay.
- b. **Denial or Approval of Alternative.** Where a Decision-maker intends to deny an accommodation or PAS request or to provide an alternative accommodation or services, the following procedures will apply:
  - i. If a Decision-maker is considering denying an accommodation or PAS request or providing an alternative accommodation or PAS, they must first contact the DAPM or Disability Accommodation Program staff, who will have five (5) business days to provide a non-binding recommendation;
  - ii. If a Decision-maker denies an accommodation or PAS request, or grants an alternative accommodation or services not agreed upon with the requesting employee during the interactive process, they must issue a written decision to the individual who requested an accommodation or PAS, with a copy to the DAPM or Disability Accommodation Program staff, that explains in plain language the specific reasons for the denial or, in the case of providing an alternative, both the reason(s) for the denial of the requested accommodation or PAS and the reasons that the alternative would be effective;
  - iii. Any written denial, or correspondence notifying an employee that an alternate accommodation will be provided, must be reviewed by the DAPM or Disability Accommodation staff before transmittal to the individual who requested the accommodation or PAS;
  - iv. If a Decision-maker grants an alternative accommodation or PAS, they must follow the procedures provided in section V.B.8.a.

- v. A written denial of a request for accommodation or PAS must include the specific reason(s) for that action, which may include:
  - (1) The requested accommodation or PAS would not be effective;
  - (2) After exploring whether other effective accommodations or services may exist, it was determined that providing the requested accommodation or PAS would result in undue hardship to the agency;
  - (3) Medical documentation provided in support of the request was inadequate to establish the individual has a disability and/or needs an accommodation or PAS;
  - (4) The requested accommodation would require the removal of an essential job function; or
  - (5) The requested accommodation would require the lowering of a performance or production standard.
- vi. The written notice of denial, or approval of an alternative, must inform the individual that they have the right to have that decision reconsidered, initiate an EEO complaint pursuant to 29 C.F.R. § 1614.106, and may have rights to pursue Merit Systems Protection Board (MSPB) or negotiated grievance procedures. An individual must initiate contact with an EEO Counselor within 45 days of notice of the denial or approved alternative, regardless of whether the applicant or employee requests reconsideration or appeal as provided in section V.B.9 below.

**9. Reconsideration, Appeal, and Statutory or Negotiated Grievance Procedures:**

- a. Where an accommodation or PAS request has been denied or an alternative accommodation or PAS has been provided, an individual may seek reconsideration of that decision in the following manner:
  - i. Within ten (10) business days of receipt of the decision, an individual may request that the Decision-maker reconsider it and may, if appropriate, present additional information in support of the request that had not been previously provided;
  - ii. Within ten (10) business days after its receipt, the Decision-maker will respond to the reconsideration request with a written letter granting or denying it;
  - iii. If the reconsideration request is granted, the procedures outlined in section V.B.8.a of this MD will be followed; and
  - iv. If the reconsideration request is denied, the individual will be informed of the right to appeal that determination to the Associate Director or Program Office head responsible for the office in which they work.
- b. Where a reconsideration request is denied, an individual may appeal that decision in the following manner:
  - i. Within ten (10) business days of receipt of the decision denying reconsideration, an individual may appeal to the Associate Director or Program Office head responsible for the office in which they work;
  - ii. The Associate Director or Program Office head will make a written determination on the appeal within fifteen (15) business days, which will be provided to the individual and Decision-maker; and
  - iii. If the Decision-maker's decision is reversed on appeal and the requested accommodation granted, the procedures outlined in section V.B.8.a of this MD will be followed.
- c. Depending on the circumstances and whether the individual is in a bargaining unit, an

individual may be able to pursue statutory or negotiated grievance procedures as a result of the denial of an accommodation or PAS request by:

- i. Initiating an EEO complaint by contacting OEOI within forty-five (45) calendar days of receipt of the written notice of denial;
  - ii. Filing an appeal with the MSPB within thirty (30) calendar days of an appealable adverse action as defined in 5 C.F.R. 1201.3; or
  - iii. Initiating a grievance pursuant to the procedures in any governing collective bargaining agreement.
- d. Seeking reconsideration or filing an appeal under sections V.B.9.a or V.B.9.b does not constitute an administrative complaint or union grievance and will not affect the time limits for initiating any of these procedures.

**10. Confidentiality and Disclosure.** All medical information, including information about diagnosis, functional limitations and reasonable accommodation or PAS, obtained in connection with a request for reasonable accommodation or PAS, must be kept confidential and stored in accordance with Privacy Act and Rehabilitation Act requirements. Agency supervisory and managerial employees must be aware of the EEOC's *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act* (July 27, 2000). The following procedures will apply:

- a. All medical information must be kept in files separate from the individual's personnel file;
- b. All employees who obtain or receive medical information as part of the reasonable accommodation process are strictly bound by the confidentiality requirements outlined in this MD;
- c. Medical information obtained during the reasonable accommodation or PAS process, including information concerning restrictions and functional limitations, may be disclosed only to the following individuals on a need-to-know basis:
  - i. the Decision-maker and, if different, an employee's first-line supervisor;
  - ii. OEOI Disability Accommodation Program staff, and OCC or LER personnel who may be involved in advising the Decision-maker whether an accommodation should be granted;
  - iii. First aid and safety personnel if the disability might require emergency treatment;
  - iv. Government officials when the information is necessary to investigate DHS or USCIS compliance with the Rehabilitation Act;
  - v. Other officials with a need to know, including new supervisors of employees who have received accommodations or PAS in order to safeguard against a break in the continuity of providing a previously granted accommodation or PAS; and
  - vi. In certain circumstances, workers' compensation offices or insurance carriers.
- d. Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of that information about the confidentiality requirements.

**11. Information Tracking and Reporting.** The agency will keep records that it may use to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501 and Section 508 of the Rehabilitation Act and will make such records available to the EEOC upon its request.

- a. The DAPM or other Disability Accommodation Program staff will be responsible for updating information regarding the status of a request in ACMS.

- b. Within ten (10) business days after a decision has been issued, the Decision-maker will submit a copy of the decision to the DAPM along with all documents received or generated as part of process, including medical records, written requests for medical information, and other correspondence, unless the DAPM already possess these items.
- c. Records will be maintained for the longer of the employee's tenure with USCIS or three years.
- d. For reporting purposes, USCIS will maintain adequate records to enable it to identify the following information:
  - i. the number and types of accommodations requested in the application process and whether those requests have been granted or denied;
  - ii. the positions (occupational series and grade level) for which accommodations or PAS have been requested and the types of accommodations requested;
  - iii. the number and types of accommodations or PAS for each position that have been approved or denied;
  - iv. the number and types of requests that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
  - v. the number and types of requests that relate to the need to perform the essential functions of the employee's job and whether those requests have been approved or denied;
  - vi. the reasons for any accommodation or PAS request denial;
  - vii. the identity of the deciding official;
  - viii. the amount of time taken to process each request; and
  - ix. the sources of technical assistance consulted in trying to identify possible accommodations or PAS.

C. Requirements: The processes and procedures described in this MD must be followed by all employees.

## VI. Responsibilities

- A. The USCIS Director is responsible for ensuring employee compliance with this MD.
- B. Associate Directors and Program Office heads, or their designees, are responsible for making determinations on an employee appeal from a decision by a Decision-maker not to grant a reconsideration request.
- C. OEOI is responsible for:
  - 1. Developing and issuing procedures for processing requests for, and providing, reasonable accommodations or PAS that are consistent with governing laws, regulations, Executive orders, EEOC directives, and Department policy;
  - 2. Ensuring that training is available to all employees involved in the disability accommodation or PAS process, including supervisors and managers, and human resource and EEO officials, to assist them in understanding their obligations with respect to the provision of reasonable accommodations or PAS, including maintaining the confidentiality of medical information

- obtained in connection with the accommodation or PAS process; and
3. Developing systems to track and report on the processing of requests for reasonable accommodation or PAS.
- D. OCC is responsible for providing legal advice and guidance to management officials and the DAPM or Disability Accommodation Program staff, when requested, on issues related to requests for reasonable accommodations or PAS.
- E. OIT is responsible for the following duties:
1. Ensuring that employees with disabilities have access to electronic and information technologies that are comparable to the access available to individuals without disabilities, unless undue hardship would be imposed on the agency; and
  2. Providing guidance to Decision-makers and the DAPM with respect to electronic and information technologies.
- F. HCT is responsible for the following duties:
1. Ensuring that all vacancy announcements and hiring and promotion procedures describe how applicants may request reasonable accommodations;
  2. Providing guidance to Decision-makers and the DAPM regarding the agency's human capital policies and procedures;
  3. Processing requests for reasonable accommodation from applicants for employment;
  4. To the extent necessary, assisting managers and supervisors in implementing approved accommodations or PAS that may require human resource actions; and
  5. Providing accommodations or PAS, as necessary, for employees attending training sessions it manages or administers.
- G. LER is responsible for advising Decision-makers and the DAPM, when requested, on labor management issues concerning requests for accommodation or PAS.
- H. EMS is responsible for coordinating ergonomic assessments.
- I. FMD is responsible for assessing the need for the removal of architectural barriers or the provision of structural assistive devices, like electronic doors, at agency office locations.
- J. Office heads, managers, and supervisors are responsible for the following duties:
1. Receiving requests for accommodation or PAS from employees;
  2. Complying with all requirements of this MD, including its confidentiality provisions;
  3. Cooperating with Decision-makers and the DAPM, to the extent necessary, to execute the requirements of this MD; and
  4. Ensuring equal access to locally sponsored trainings, meetings, or other activities for employees who may need accommodations or PAS.
- K. The DAPM or other Disability Accommodation Program staff are responsible for the following



duties:

1. Receiving requests for accommodation or PAS from employees;
2. Entering requests for accommodation or PAS from employees into ACMS when acting as a Receiving Official or when provided with written requests or confirmations by other Receiving Officials;
3. Reviewing follow up requests for medical records related to the processing of disability accommodation or PAS requests submitted by Decision-makers, and approving or denying such requests;
4. Providing assistance and guidance to employees, HCT personnel, and Decision-makers, as may be necessary, to process reasonable accommodation or PAS requests;
5. Monitoring all accommodation requests through closure to determine whether Decision-makers are complying with the timeframes outlined in this MD; and
6. Acting as the custodian of certain documents generated or received during the accommodation process, including medical records.

L. Employees are responsible for the following duties:

1. Making requests for reasonable accommodation or PAS in compliance with this MD;
2. Initiating requests for reasonable accommodation or PAS as soon as practicable after the need for such assistance becomes known;
3. Cooperating with Job Accommodation Network and Computer/Electronic Accommodations Program to the extent that those entities are involved in assessing an individual's accommodation or PAS needs or providing an accommodation or PAS;
4. Responding to requests for medical information in a timely manner, as may be necessary, to document their disabilities and functional limitations and to support their request for reasonable accommodation or PAS;
5. Engaging in the interactive process and assisting the Decision-maker in identifying reasonable accommodations or PAS that will enable them to perform the essential function of their positions or that enable them to apply for agency vacancies or perform activities of daily living for employees with targeted disabilities; and
6. Informing the Decision-maker or their immediate supervisor if a granted accommodation or PAS is ineffective.

M. Decision-makers are responsible for the following duties:

1. Engaging in an interactive process with employees who have requested accommodations or PAS;
2. Complying with the timeframes and requirements outlined in this MD;
3. Making determinations whether to grant or deny an accommodation or PAS request, or to provide an alternative accommodation or services; and
4. Determining whether to reconsider the decision to deny the Requesting Party's accommodation or PAS request or to provide an alternative accommodation or PAS.

N. The Chief, OEOI, is responsible for the overall management of the agency's reasonable accommodation and PAS process and procedures as outlined in this MD.

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## **VII. Questions, Comments, and Suggestions**

Please address any questions, comments, or suggestions to OEOI at [disabilityaccommodations@uscis.dhs.gov](mailto:disabilityaccommodations@uscis.dhs.gov).

**Note:** This USCIS Management Directive (MD), issued in accordance with established USCIS guidance, establishes mandatory agency-wide policy that without compromise is effective for USCIS operations as stated hereafter and shall be observed by all USCIS employees. USCIS MDs are not intended to and shall not provide a basis for any policy or practice that contravenes or supersedes any currently effective Federal or Department of Homeland Security policy or practice. Neither the proponent office for this MD nor any USCIS official other than the Deputy Director or Director may issue qualifications or revisions to this MD. All revisions to this MD shall become effective only upon satisfaction of the USCIS MD process and approval of the Deputy Director or Director.

## **VIII. Appendices:**

**Appendix A:** [G-1437, Request for Reasonable Accommodation](#)

**Appendix B:** [G-1438, Confirmation of Request for Reasonable Accommodation](#)

**Appendix C:** [G-1439, Medical Inquiry in Response to a Disability Accommodation Request](#)

**Appendix D:** [Select Reasonable Accommodation Resources](#)

**Appendix E:** [Personal Assistance Services \(PAS\) Fact Sheet with Resources](#)