



## **Memorandum**

From: Executive Director, Acting, Advisory Council on Historic Preservation

To: Staff and Membership of the Advisory Council on Historic Preservation

Date: July 12, 2021

**SUBJECT: Reasonable Accommodation for Individuals with Disabilities**

### 1. Purpose.

In compliance with the authorities listed below, the Advisory Council on Historic Preservation (ACHP) has established policy and procedures for processing reasonable accommodation requests. This document outlines the requirements and instructions by which ACHP employees will act on requests for reasonable accommodation from employees and applicants for employment. This document remains in effect until either rescinded or superseded. The ACHP shall make a copy of its procedures available to all job applicants and employees in written and accessible formats.

### 2. Authority.

- Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791).
- Americans with Disabilities Act Amendments Act of 2008 (42 U.S.C. 12101).
- 29 CFR Part 1630 (Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act); 29 CFR 161.4.203(a) (applying ADA regulations to Rehabilitation Act).
- Genetic Information Non-discrimination Act of 2008.
- Equal Employment Opportunity Commission Management Directive 715.

### 3. Policy.

The ACHP will provide reasonable accommodation for the known physical or intellectual limitations of qualified employees and applicants with a disability unless the accommodation would impose an undue hardship on the ACHP.

### 4. Scope.

The policy and procedures in this document apply to all employees of the ACHP and applicants for employment with ACHP who have a disability as defined by law (see Appendix: Reasonable Accommodation Policy and Procedures). In addition, the procedures provided in the Appendix shall

govern the procedure for making, considering, and deciding requests for Personal Assistance Services (PAS).

#### 5. Responsibilities.

- A. The Director of Equal Employment Opportunity (EEO Director) is designated as the ACHP official responsible for ensuring there is an ACHP-wide policy on reasonable accommodation and coordinating with the United States Postal Service (USPS) regarding any requests for reasonable accommodation that are made for qualified employees or applicants with a disability in accordance with applicable laws, regulations, and bargaining unit agreements. The EEO Director is also responsible for coordinating with USPS on the development, implementation, and operation of the ACHP's disability program- including providing guidance on reasonable accommodation matters related to employees and applicants. The EEO Director is responsible for promoting equal opportunity and equal access for individuals with disabilities within the agency.
- B. The Administrative Officer (OA) and the Office of General Counsel (OGC) are responsible for providing operational human resources services to the ACHP. OA, OGC, or designated staff, are responsible for assisting deciding officials in processing reasonable accommodation requests; determining essential functions of the job; identifying effective accommodations; conducting job analyses on vacant positions, in case of reassignment as a last resort; and removing barriers from the hiring process. The OA, OGC, or designated staff are responsible for training any human resources specialists who may be involved in the application process to recognize requests for reasonable accommodation and handle them in accordance with ACHP Reasonable Accommodation Policy and Procedures.
- C. First line supervisors shall serve as deciding officials on requests for reasonable accommodations. Deciding officials should consult with appropriate officials, such as the EEO Director, OA, OGC, and USPS who can assist in determining appropriate and effective accommodations. Where the deciding official is not the Office Director, the deciding official shall coordinate with and keep the Office Director informed as appropriate. Deciding officials shall familiarize themselves with the resource materials available on EEOC's website, including EEOC's Enforcement Guidance: Disability-Related Injuries and Medical Examinations of Employees under the Americans with Disabilities Act (July 27, 2000) and EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (revised October 17, 2002). Deciding officials are responsible for timely decisions once a reasonable accommodation request is received. The deciding official may solicit subject matter experts - such as a medical officer, human resources officer, civil rights officer, or others, either individually or by committee, for guidance, information, and assistance in identifying appropriate and effective reasonable accommodation solutions. Conferring with appropriate subject matter experts does not relinquish the deciding official's responsibility to render a decision, notify the employee or applicant, or provide the accommodation solution within established timelines. Timelines are specified in the Reasonable Accommodation Policy and Procedures. Notwithstanding the timeframes prescribed in the procedures, some accommodations can be provided in less time. In instances where reasonable accommodations can be provided in less time than prescribed in the procedures, deciding officials must make every effort to do so. Care

must be taken to ensure preservation of confidentiality in processing requests for reasonable accommodation.

- D. OGC is also responsible for providing legal advice regarding: the Rehabilitation Act, including its prohibitions and requirements; EEOC regulations and enforcement guidance applicable to the Rehabilitation Act and to reasonable accommodation; what constitutes a qualified individual with a disability; requests for reasonable accommodation; and reasonable accommodation assessments and decisions.
- E. Employees and applicants for employment are responsible for bringing their requests for reasonable accommodation to the attention of the appropriate agency official, for timely providing appropriate supporting medical and/or other documentation upon request, and for participating in the interactive process. Employees and applicants may initiate a request for reasonable accommodation either orally or in writing at any time. Employees and applicants may use an alternate dispute resolution approach to working through their requests with deciding officials. USPS shall provide relevant ADR support to assist as needed throughout the reasonable accommodation process, including the reconsideration and appeal phases.

#### 6. Information Tracking and Reporting.

- A. The deciding official must complete the Decision Documentation (See Appendix, Reasonable Accommodation Policy and Procedures, Attachment 2) and submit it to OA and USPS within 10 business days of the decision.
  - 1. The deciding official must attach to the form copies of all information received as part of processing the request.
  - 2. Medical documents must be protected as required by the Privacy Act (PA) and the Health Insurance Portability and Accountability Act (HIPAA). Medical documents received as part of the reasonable accommodation request must be separated from other documents, placed in a sealed envelope marked "HZPMA Documents," and maintained by the OA and USPS in secure storage separate from official personnel files.
  - 3. OA must maintain these records in accordance with relevant records schedules, including any applicable General Records Schedules.
  - 4. Applicants and employees may request an update to track the processing of her request for accommodation(s) at any time from the deciding official or the EEO Director.
- B. Each deciding official shall maintain the following information for each request to provide OA and OGC for the annual report:
  - The specific reasonable accommodation.
  - Whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment.
  - Whether the request was granted or denied.
  - The identity of the deciding official.

C. OA and OGC will prepare an annual report, to be made available to the ACHP Executive Director. The report will contain the following information, presented in aggregate:

1. the number of reasonable accommodations, by type, that were requested in the application process and whether those requests were granted or denied;
2. the jobs (occupational series, grade level, and office) for which reasonable accommodations were requested;
3. the types of reasonable accommodations that were requested for each of those jobs;
4. the number of reasonable accommodations, by type, for each job that was granted, and the number of accommodations, by type, that was denied;
5. the number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests were granted or denied;
6. the reasons for denial of requests for reasonable accommodation;
7. the amount of time taken to process each request for reasonable accommodation;
8. the sources of technical assistance that were consulted to identify possible reasonable accommodations; and
9. a qualitative assessment of the ACHP's reasonable accommodation program, including any recommendations for program improvement or changes in the reasonable accommodation practices and procedures.

D. The Executive Director shall maintain this report in accordance with relevant records schedules. Upon request from Equal Employment Opportunity Commission (EEOC), the report will be used to provide information that tracks ACHP's performance with regard to the provision of reasonable accommodation to individuals with disabilities. The Executive Director shall also maintain this report to determine compliance with nondiscrimination and affirmative action requirements imposed under Section 501 of the Rehabilitation Act.

7. Any request for PAS as defined and described in the ACHP's PAS Policy shall utilize the decision-making process in the Appendix. Any employee may request PAS from the relevant deciding official in accordance with the steps below, and all deciding officials shall consider such a request for PAS utilizing the same criteria as that for assessing the availability of a reasonable accommodation. The evaluation of whether a requested PAS may pose an undue hardship to the agency shall follow the same consideration as that for a request for reasonable accommodation.

8. Point-of-Contact. The ACHP points of contact for this policy matter are the EEO Director (Blythe Semmer; bsemmer@achp.gov), OGC (Kelly Fanizzo; kfanizzo@achp.gov), and OA (Ismail Ahmed; iahmed@achp.gov).

## APPENDIX: Reasonable Accommodation Policy and Procedures

1. Purpose: The ACHP Reasonable Accommodation Policy and Procedures, Appendix, with Attachments 1-7, sets policy for all ACHP employees and applicants.

2. Goals: The goals of the ACHP's Reasonable Accommodation (RA) program are to ensure:

2.1. ACHP complies with federal law and regulation.

2.2. Eligible employees are assured an effective accommodation to the greatest extent possible preserving their expertise and contribution to the ACHP's mission.

2.3. Eligible employees are treated fairly throughout the RA process.

2.4. ACHP's RA program is fully transparent.

3. Definitions:

3.1. Essential functions of a job: 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 if it were assigned to them, or the function is specialized and the incumbent is hired based on his/her ability to perform it. Determination of the essential functions of a position must be conducted 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. The term "essential functions" does not include the marginal functions of the position.

3.2. Genetic Monitoring: the periodic medical examination of employees to determine whether any of their genes have been affected by the toxic substances they use or are exposed to in performing their jobs.

3.3. Genetic Test: the "analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations."

3.4. Genetic Service: a health service, including genetic tests, provided to obtain or interpret genetic information for diagnostic or therapeutic purposes, or for purposes of genetic education or counseling.

3.5. Individual with a disability: is a person who has a physical or intellectual impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. Individuals must fit either the "actual" or "record of" definition to be eligible for a reasonable accommodation. Individuals who only meet "regarded as" are not entitled to a reasonable accommodation. Mitigating measures other than "ordinary eyeglasses or contact lenses," shall not be considered in assessing whether an individual has a disability.

3.6. Interactive process: an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.

3.7. Physical or intellectual impairment:

3.7.1. is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one

or more body systems, such as, but not limited to, neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory (including speech organs), genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine, or any intellectual or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

3.7.2. An impairment that is episodic or in remission is a disability if it substantially limits a major life activity when active.

3.8. Reasonable accommodation: a modification or adjustment to a job or worksite that makes it possible for qualified employees with disabilities to perform the essential functions of the position in question. There are two other categories of reasonable accommodation.

Modifications or adjustments:

3.8.1. to a job application process that enable a qualified applicant with a disability to be considered for a job.

3.8.2. that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.

3.9. Major life activities: are functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, speaking, breathing, learning, working, sitting, standing, lifting, bending, and mental processes such as thinking, concentrating, and interacting with others and incorporates major bodily functions (e.g. functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions).

3.10. Qualified individual with a disability: is a person who satisfies the skill, experience, education and other job-related requirements of a position that the individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

3.11. Record of such an impairment: having a history of, or being classified (or misclassified) as having an intellectual or physical disability that substantially limits one or more major life activities.

3.12. Regarded as having such impairment: having an actual or perceived physical or intellectual impairment, whether or not that impairment substantially limits major life activities.

3.13. Undue hardship: a specific type of accommodation which causes significant difficulty or expense at the agency level (not staff office) to accomplish. Accommodations that are extensive, substantial or disruptive may fall within the realm of undue hardship. Alternatives will be explored to determine if there are other effective accommodations.

3.14. Protected Genetic Information: information about:

3.14.1. An individual genetic test.

3.14.2. The genetic tests of an individual's family members.

3.14.3. The occurrence of a disease, or medical condition or disorder in family members of the individual (family medical history).

4. Decision Making Authority:

4.1. First line supervisors shall serve as deciding officials on requests for reasonable accommodations. Deciding officials should consult with appropriate officials, such as Office Director(s), OA, USPS, and OGC that can assist in determining appropriate and effective accommodations.

4.2. Deciding officials must engage in the interactive process with the individual requesting the accommodation. A request for reasonable accommodation is the first step in an informal, interactive process between the individual and the supervisor. Resources, such as the USPS's ADR support, are available to help ensure a productive communication process.

4.3. Deciding officials are encouraged to contact OGC with questions and requests for legal advice regarding the Rehabilitation Act, including its prohibitions and requirements, and the EEOC's regulations and enforcement guidance. OGC is available to provide legal advice and guidance regarding, among other things, what constitutes a "qualified individual with a disability," and request for reasonable accommodation.

5. Responsibilities: Refer to Reasonable Accommodation Policy.

6. Process Description: There are five possible phases of the RA process: initiation of request, consideration, decision, reconsideration, and appeal. Table 1 summarizes the time limits associated with reasonable accommodation processing. The remainder of this section is an accompanying narrative.

6.1. Initiation of Request Phase:

6.1.1. In this phase, the employee or applicant, or someone on his/her behalf, submits a request for an accommodation. If, on behalf of an employee or applicant, an accommodation is requested by a family member, health professional, or other representative, a signed statement should be provided by the employee or applicant stating the name of the representative and authorizing him/her to speak with agency officials and engage in the interactive process. The individual need not have a particular accommodation in mind before making the request. Further, the individual does not need to use specific words or terms when making a request.

6.1.2. An individual with a disability may submit his/her request for accommodation to any of the following: his/her supervisor; a supervisor or manager in his/her immediate chain of command; USPS; or OA. Additional information, as appropriate, may be obtained through the interactive process which follows the request. Communication is a priority throughout the entire process; particularly when the specific effective accommodation is not obvious or the parties are considering different forms of reasonable accommodation. Alternative dispute resolution (ADR) can be utilized throughout the reasonable accommodation process, to include the reconsideration and appeal phases. In the event an employee opts for ADR, the timeframes specified in this appendix are suspended until the ADR process has concluded for the following:

6.1.2.1. Responding to requests for accommodation.

6.1.2.2. Processing requests for reconsideration of Reasonable Accommodation decisions.

6.1.2.3. Processing Reasonable Accommodation appeals.

6.1.3. A verbal request for accommodation is deemed received when made. The recipient of the verbal request must not wait until it is in writing to take action on the request.

6.1.4. If medical information is required and the employee or applicant is unable to provide sufficient information in support of the request, the deciding official may request that the individual be examined by a healthcare professional of the organization's choice and at the organization's expense. Any such medical examination must be limited to determining the existence of a disability and/or the functional limitations that require an accommodation. Where a medical examination is warranted, the deciding official must explain to the individual that failure to agree to take the medical examination could result in a denial of the accommodation.

6.1.5. If the employee/applicant fails to provide required documentation (medical or other) in a timely manner, the request for accommodation is returned to the employee with the explanation that the request could not be considered due to the lack of requested documentation. If medical information is required and the employee/applicant's healthcare professional submits information but such submission is insufficient, the ACHP has the right to request relevant supplemental medical information.

6.2. Consideration Phase: In this phase, the deciding official determines whether or not to provide the accommodation or whether to present an alternative accommodation. After a request from a qualified individual with a disability is received, the request is reviewed to determine if it is reasonable and effective. In the context of job performance, this means that the reasonable accommodation enables the individual to perform the essential functions of the position. Both the employee/applicant and the deciding official may consult the USPS, OGC, or EEOC's guidance and technical assistance documents to assist in identifying and evaluating possible accommodations.

6.3. Decision Phase: In this phase, the deciding official notifies the employee/applicant of the decision to provide the requested accommodation, not provide an accommodation or present an alternative accommodation. The decision memorandum shall be emailed, mailed or presented to the individual within fifteen business days or sooner. If not denied, then the accommodations must be provided within 20 business days or sooner. The employee/applicant may contact the deciding official; the deciding official is the relevant supervisor within the employee/applicant's immediate chain of command. For a full list of office director and supervisor contact information, see ACHP Staff List at <https://www.achp.gov/about/staff>. If medical documentation is required by the deciding official, the deciding official will issue a decision within fifteen business days from the date the official received the required medical documentation.

6.3.1. The time limit begins to run when the accommodation is first requested. If there is a delay in processing the request for reasonable accommodation, the deciding official must investigate whether there are temporary measures that can be taken to assist the individual. Additionally, the deciding official must notify the individual of the reason for the delay. To the extent possible, the individual must be kept informed of the expected completion date. The ACHP will not be expected to adhere to the time limits above if the employee/applicant's health professional fails to provide needed documentation in a timely manner.

6.3.1.a. When all the facts and circumstances known to the ACHP make it reasonably likely that the employee/applicant will be entitled to an accommodation, but the accommodation cannot be provided immediately, the ACHP will provide the employee/applicant with an interim accommodation that allows the individual to perform some or all of the essential functions of the job, absent undue hardship to the agency.

6.3.2. In instances that may require expedited processing of reasonable accommodation requests (i.e., enable an individual to apply for a job or to participate in a specific agency activity that is scheduled to occur shortly), the deciding official must make every effort to complete the process quickly. When a particular accommodation can be provided in less than the maximum amount of time permitted above,



failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act.

6.3.3 If the employee has requested a type of reasonable accommodation that he/she is likely to need on a repeated basis (i.e., sign language interpreting), he/she cannot be required to submit a formal written request each time the accommodation is needed. Once a reasonable accommodation is approved the first time, subsequently, the employee may obtain the accommodation by verbal notice to the appropriate official.

6.3.4. Denials of requests for reasonable accommodation must be in writing and specifically explain the reasons the request was denied (i.e., why the medical documentation is inadequate to establish that the individual has a disability or needs an accommodation; why the requested accommodation would not be effective; or why the accommodation would pose an undue hardship). Denials must include information about the individual's right to file an EEO complaint and to invoke other statutory processes as well as information about the availability of ADR.

6.4. Reconsideration Phase: In this phase, the employee/applicant who disagrees with the decision made may ask the deciding official to reconsider the decision. The employee/applicant may provide additional information/documents in support of the request for reconsideration. Response to the request for reconsideration should be provided in no more than ten business days from receipt of the request or receipt of additional information, if provided.

6.5. Appeal Phase: In this phase, if reconsideration did not result in a reversal of the initial decision, the employee/applicant may appeal the decision to the next level of management. The employee/applicant may provide additional information in support of the appeal. Response to the appeal should be provided in no more than ten business days from receipt of the appeal or receipt of additional information, if provided. There is no higher level of appeal after this phase.

TABLE 1 - TIME LIMITS

Action	Business Day Limit
Forwarding RA requests to the supervisor if received by any other employee/official	10
Decision memo provided to requestor when no medical documents are required	15
Providing an approved accommodation	20
Decision memo provided to requestor when medical documents are required	10 from date medical information received
Notification of delayed implementation of an RA	Every 10 until fully implemented
Decision of a request for reconsideration	10
Decision of an appeal of a reconsideration decision	10

Notwithstanding the timeframes prescribed by these procedures, some accommodations can be provided in less time. In instances where reasonable accommodations can be provided in less time than prescribed in these procedures, deciding officials should make every effort to do so.

## 7. Documentation:

### 7.1. Requests for RA must include (Initiation Phase):

#### 7.1.1. When the disability is clear and apparent: a written (email or memo) or verbal request from the

applicant or employee asking for the RA and how the requestor would like to be advised of the outcome of the request (mail, email, in-person; may not be by phone).

7.1.2. When the disability is not obvious, not already known or the employee has not already provided sufficient information to establish the existence of the disability, the employee/applicant must provide:

7.1.2.1. A written (email or memo) or verbal request specifying the reason for the RA and the specific form of RA desired, how the employee/applicant would like to be advised of the outcome of the request (mail, email, in-person; may not be by phone) and if there is an urgency associated with the request (and if so, what it is).

7.1.2.2. A signed statement from a medical professional (physician or an occupational health specialist such as an occupational health nurse or occupational nurse practitioner or occupational physician assistant). The statement must be on the provider's letterhead and must include the following elements:

7.1.2.2.1. Requestor's name;

7.1.2.2.2. The nature, severity, and duration of individual's impairment;

7.1.2.2.3. The activities that the impairment limits;

7.1.2.2.4. The extent to which the impairment limits the individual's ability to perform the activities; and

7.1.2.2.5. Why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the employee to perform the essential functions of his/her job or enjoy a benefit of the workforce, or, in the case of an applicant, assist him/her with the application process.

7.2. The deciding official may request medical documentation if it is not provided by the employee/applicant only when the disability is not known, when the disability is not apparent, or when the deciding official does not understand how the requested accommodation will enable the requestor to perform the essential functions of his/her job or, in the case of an applicant, assist in the job application process. Attachment 7 provides a sample "Request for Medical Information."

7.3. Documentation during the Consideration and Decision Phases:

7.3.1. During the Consideration Phase, the employee/applicant may request an update to track her request processing at any time from the relevant Office Director, Supervisor, or EEO Director.

7.3.2. Includes a decision memorandum signed by the deciding official.

7.3.2.a. The decision memorandum shall consider all the criteria in Attachment 2, and shall be in the format outlined in Attachment 3. Each item in paragraph A2.7 must be addressed in the decision memorandum.

7.3.3. All request denials shall include instructions on how to file an EEO Complaint and explain that the individual must initiate contact with an EEO Counselor within 45 days of the denial, regardless of whether the applicant/employee participates in an informal dispute resolution process (see Attachment 5).

7.3.4. The ACHP shall provide a job applicant who is denied a reasonable accommodation with a denial letter in an accessible format when requested.

#### 7.4. Documentation during the Reconsideration and Appeal Phases:

7.4.1. Reconsideration requests and appeals must include all previously submitted documents and decision memorandum.

7.4.2. Requests for reconsideration and appeals must include the reason for the request/appeal, any new information, and the specific form of RA requested.

7.4.3. A decision memorandum by the reconsideration decision authority is required using the format in Attachment 3.

7.4.4. A decision memorandum by the appeal authority is required using the format in Attachment 3.

#### 7.5. Special Considerations for Medical Documents.

7.5.1. Medical documents must be protected as required by the Privacy Act and the Health Insurance Portability and Accountability Act. It is expected that the immediate supervisor, OA, USPS, and OGC, will have access to medical documents necessary to consider the reasonable accommodation request. At the request of the deciding official, other individuals, such as USPS or OGC, may be granted access to medical information if those individuals need access to the information to provide guidance or consultative services to the deciding official.

7.5.2. Where medical information is disclosed, the disclosing official shall inform those individuals to whom the information was released that the information is confidential and covered by various federal laws and executive orders. Medical information is not disclosed except:

7.5.2.1. With consent of the individual, first aid and safety personnel may be told if the disability might require emergency treatment;

7.5.2.2. Government officials may be given information necessary to investigate ACHP compliance with the Rehabilitation Act;

7.5.2.3. To workers' compensation offices or insurance carriers when part of a workers' compensation claim;

7.5.2.4. To EEO officials to maintain records, evaluate, and report on ACHP's performance; or

7.5.2.5. To comply with a federal court order.

7.5.2.6. Protected genetic information and information about an employee's request for or receipt of genetic services may be provided in limited circumstances to:

7.5.2.6.1. The employee;

7.5.2.6.2. A person conducting research that complies with 45 CFR Part 46, which concerns research, involving human subjects;

7.5.2.6.3. Individuals or organizations if required by federal law;

7.5.2.6.4. The United States Congress or US Federal Court in response to a congressional subpoena or an

order from a court with competent jurisdiction; or

7.5.2.6.5. Executive branch officials investigating compliance with Executive Order 13145.

7.5.3. While medical documents, when necessary, are expected to be part of the process, once received, they must be separated from other documents, placed in a sealed envelope marked “HZPAARA Documents,” and maintained in secure storage separate from official personnel files by the servicing human resource office.

7.5.4. After the reasonable accommodation process is complete, medical documents are sealed in a separate envelope from other case documents and filed in a secure location, separate from official personnel files by the servicing human resource office.

7.6. All requests for, and provision of, reasonable accommodations and associated documents are confidential and must be appropriately protected from disclosure. For example, a manager or employee involved in the process must not disclose that an employee is receiving a reasonable accommodation.

## 8. Conditions Associated With, and Types of Reasonable Accommodation:

### 8.1. Conditions Associated with Reasonable Accommodation.

8.1.1. Accommodations shall not include changing the essential functions of a job.

8.1.2. The need for accommodation can be reduced if organizations implement practices that will reduce barriers to effective workplace practices and job design.

8.1.3. The ACHP may consider establishing a central pool of readers and interpreters, and implementing funding mechanisms that will avoid charging individual offices for the cost of accommodations.

8.1.4. Each office is expected to limit impediments that may cause unnecessary delay in providing reasonable accommodation, by reviewing and modifying, in advance of a specific request, policies that might affect the ACHP’s ability to respond promptly to requests for reasonable accommodation. For example: the purchasing or leasing of equipment; the hiring of, or contracting for, readers, interpreters, or other assistants; and the flexibility to approve leave or to restructure work schedules.

8.2. Accommodations are individualized to meet the needs of the requestor. The deciding official will consider a broad range of options to appropriately accommodate the requestor.

8.2.1. Expense may be a factor when considering reasonableness. For example, if both a special piece of hardware and a specialized software program can provide an appropriate and effective accommodation, the less expensive alternative may fall within the realms of being a reasonable accommodation and therefore should normally be provided. Employees/applicants are entitled to effective and reasonable accommodations, but not necessarily entitled to the accommodation of his/her choice.

8.2.2. Examples of the kinds of actions that may constitute reasonable accommodation are (not an exhaustive list):

8.2.2.1. Making facilities readily accessible to and usable by a person with a disability.

8.2.2.2. Job restructuring (does not include changing the essential duties of the position), including part-time or modified work schedules.

8.2.2.3. Acquisition or modification of equipment or devices.

8.2.2.4. Appropriate adjustment or modification of examinations (does not include changing examination questions).

8.2.2.5. Provision of readers and interpreters.

8.2.2.6. Accommodations for meetings, conferences, training and seminars (e.g. interpreters, specific seating arrangements, tables that accommodate wheel chairs).

8.2.2.7. As a last resort, reassignment. Reassignment is not available to job applicants - only current employees.

8.2.2.7.1. When no other form of accommodation is appropriate, reassignment must be provided, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position he/she holds, with or without reasonable accommodation.

8.2.2.7.2. Reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such a position, is a form of reasonable accommodation. Reassignments may be made only to a vacant position. The law does not require that agencies create new positions or move employees from their jobs in order to create a vacancy. The EEO Director, USPS, OGC, OA, and Human Resources will provide assistance with searching for available vacancies. The identified agency personnel who are responsible for conducting the search for a reassignment will consult with the affected employee as necessary to determine whether there are limits on the search the employee would like the agency to conduct; whether the employee is qualified for a particular job; or whether the employee would need a reasonable accommodation to perform the essential functions of a new position. The determination on qualifications will be made by the deciding official, in consultation with the EEO Director, USPS, OGC, OA, and Human Resources. If any such position(s) is identified, a determination will be made as to whether the employee would need an accommodation to perform in any such position.

8.2.2.7.3. Reassignment to a vacant funded position may occur first within the office where the employee is already employed. In the event a position cannot be found in the employee's current office, a suitable position may be identified in a different office within agency.

8.3. When considering whether an accommodation presents an undue hardship, the hardship must exist at the agency level, not office level, for the deciding official to deny providing the accommodation. If the deciding official believes an undue hardship exists at the agency level, the office shall coordinate with the USPS who is responsible for providing guidance on reasonable accommodation, including alternative accommodations.

8.4. Undue hardship occurs if a specific type of accommodation causes significant difficulty or expense by the agency to accomplish. In such a case, that particular accommodation does not have to be provided. Deciding officials shall make a determination of undue hardship on a case-by-case basis, considering the following factors:

8.4.1. Nature and cost of the accommodation;

8.4.2. Overall size of the program with respect to the number of employees, number and type of facilities, and size of budget, i.e., must consider all resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation; and

8.4.3. Type of operation, including composition and structure of the workforce. Deciding officials must know how to arrange for the use of agency resources to provide the accommodation, including any centralized fund the agency may have for that purpose.

8.5. Every attempt must be made to implement approved reasonable accommodations in as short of a time as possible. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. These may include, but are not limited to, situations in which equipment is on back order, the vendor typically used by the organization has unexpectedly gone out of business, or the accommodation requires restructuring facilities.

8.6. An important part of the process is monitoring accommodations after they are in place. Because changes occur, supervisors may need to periodically check the effectiveness of implemented accommodations. For example, an accommodation may stop being effective if there are changes in the employee's limitations, workplace equipment, or the work itself. The most effective way for supervisors to monitor accommodations is to maintain interactive communication with the employee.

## Attachment 1

### References

A1.1. Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791). Prohibits discrimination in employment within federal executive branch agencies in the hiring, placing, and advancing of individuals with disabilities.

A1.2. Americans with Disabilities Act (ADA) Amendments Act, 2008. Re-emphasizes the prohibition of discrimination against individuals with disabilities and further defines disability and other terms used in Section 501 of the Rehabilitation Act of 1973.

A1.3. U.S. Equal Employment Opportunity Commission (EEOC) Regulations at 29 CFR Part 1614 (Federal Sector Equal Employment Opportunity). Establishes the rules and procedures for federal executive branch agencies to create and maintain equal employment opportunity complaint processing procedures and affirmative employment programs.

A1.4. EEOC Management Directive 715. Provides policy guidance and standards for establishing and maintaining effective programs of equal employment opportunity and equal access for all employees.

A1.5. Genetic Information Non-discrimination Act (GINA), 2008. Prohibits employers and other entities covered by GINA from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law.

A1.6. Executive Order 13145, To Prohibit Discrimination in Federal Employment Based on Genetic Information. Prohibits federal executive branch agencies from discriminating against applicants and employees on the basis of genetic information.

A1.7. Privacy Act of 1974. Addresses confidentiality of medical documentation, to include collection and storage.

## Attachment 2

### Decision Making Guidelines

A2.1. Accommodations are determined on a case-by-case basis, taking into consideration the needs of the applicant or employee, his/her specific disability, the essential duties of the position in question, the work environment, and the reasonableness and effectiveness of the proposed accommodation. In all cases where the requested accommodation is not approved, the employee/applicant must be consulted before an alternative is provided.

A2.2. An accommodation must be work-related. ACHP does not provide personal use items needed in accomplishing daily activities both on and off the job as a reasonable accommodation. For example, ACHP does not provide an employee with a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job. Furthermore, ACHP does not provide personal use amenities, such as a coffee maker or refrigerator, if those items are not provided to employees without disabilities. However, items that might otherwise be considered personal may be required as reasonable accommodations where they are specifically designed or required to meet job-related requirements.

A2.3. Accommodation must be considered in training, merit staffing processes, and all aspects of employment that would be adversely affected if the agency failed to provide reasonable accommodation.

A2.4. When providing auxiliary aids (e.g., assistive technology, ergonomic equipment, TTY, interpreter), preference should be given to what was requested by the individual with the disability, unless the item requested is ineffective or unreasonable.

A2.5. Accommodations must be made to known physical and intellectual limitations. ACHP shall not make an accommodation for a job interview, or for an existing job, until the applicant or employee has communicated his/her needs.

A2.6. Human Resource officials shall ensure that vacancy announcements explain how applicants may apply for a reasonable accommodation if needed during the application process.

A2.7. Deciding officials shall consider the following criteria when deciding whether to approve a reasonable accommodation request:

A2.7.1. Is the accommodation necessary for the performance of essential duties?

A2.7.2. What effect will the accommodation have on the ACHP's operation and the employee's job performance?

A2.7.3. To what extent does the accommodation compensate for the abilities of an employee with a disability?

A2.7.4. Will the accommodation give the employee the opportunity to function, participate, or compete on an equal basis with co-workers?

A2.7.5. Are there alternatives that would accomplish the same purpose?

A2.7.6. The employee's or applicant's specific disability and existing abilities.



A2.7.7. The essential duties of the particular job.

A2.7.8. The work environment.

A2.7.9. Whether the requested accommodation would result in undue hardship for the agency (see paragraph 8.3.).

A2.8. Documentation requirements. Each deciding official shall maintain the following information for each request to provide OA and OGC for the annual report:

- The specific reasonable accommodation.
- Whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment.
- Whether the request was granted or denied.
- The identity of the deciding official.

A2.9. OA and OGC will prepare an annual report, to be made available to the ACHP Executive Director. The report will contain the following information, presented in aggregate:

- the number of reasonable accommodations, by type, that were requested in the application process and whether those requests were granted or denied;
- the jobs (occupational series, grade level, and office) for which reasonable accommodations were requested;
- the types of reasonable accommodations that were requested for each of those jobs;
- the number of reasonable accommodations, by type, for each job that was granted, and the number of accommodations, by type, that was denied;
- the number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests were granted or denied;
- the reasons for denial of requests for reasonable accommodation;
- the amount of time taken to process each request for reasonable accommodation;
- the sources of technical assistance that were consulted to identify possible reasonable accommodations; and
- a qualitative assessment of the ACHP's reasonable accommodation program, including any recommendations for program improvement or changes in the reasonable accommodation practices and procedures.

A2.10. The Executive Director shall maintain this report in accordance with relevant records schedules. Upon request from Equal Employment Opportunity Commission (EEOC), the report will be used to provide information that tracks ACHP's performance with regard to the provision of reasonable accommodation to individuals with disabilities. The Executive Director shall also maintain this report to determine compliance with nondiscrimination and affirmative action requirements imposed under Section 501 of the Rehabilitation Act.

### Attachment 3

#### Decision Documentation Template

1. Name of individual requesting reasonable accommodation:
2. Office of requesting individual:
3. Date reasonable accommodation request received:
4. Who received request:
5. Job held or desired by individual requesting reasonable accommodation (including occupational series, grade level, and office):
6. Reasonable accommodation needed for: (check one)
  - Application process
  - Performing job functions or accessing the work environment
  - Accessing benefit or privilege of employment (e.g., attending a training program or office event outside of the workplace)
7. Type(s) of reasonable accommodation requested (e.g., adaptive equipment, staff assistant and removal of architectural barrier):
8. Date reasonable accommodation request sent to Deciding Official:
9. Name of Deciding Official:
10. Reasonable accommodation: (check one)
  - Approved
  - Denied (If denied, attach a copy of the written denial)
  - Offered an alternative accommodation (attach a detailed explanation)
11. Date reasonable accommodation approved or denied:
12. Describe the reasonable accommodation provided:
13. Date reasonable accommodation provided:
14. If time frames outlined in the Reasonable Accommodation Procedures were not met, explain why.
15. Was medical information required to process this request? If yes, explain why. List the documents submitted on behalf of the individual.
16. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations (e.g., Job Accommodation Network, disability organization, Disability Program Manager):
17. Comments:

Deciding Official's Signature:

Date:

## Attachment 4

### Utilizing Sign Language Interpreters

A4.1. The individual or office scheduling a meeting or an event that will require interpreting services (staff meeting, training, office function, etc.) is responsible for arranging for the presence of interpreters.

A4.2. An ACHP employee who knows sign language or who is taking a sign language class is not an acceptable substitute for an interpreter; the individual must be certified as a sign language interpreter. ACHP offices may contract for such services.

A4.3. Offices will provide an interpreter for an employee who is hearing impaired and who, as part of his/her job, attends an ACHP meeting or event outside of the workplace. If the employee attends a conference or training program sponsored by an outside organization, the sponsoring organization is principally responsible for providing interpreters. ACHP will provide interpreters, however, if the sponsoring organization fails to do so.

Attachment 5

Sample Denial Letter

Memorandum

To: (Name, Title)

From: (Name, Title of Deciding Official)

Subject: Denial of Reasonable Accommodation Request

On (insert date) you requested the following type(s) of reasonable accommodation(s):

(List requested accommodations)

I am denying your request for reasonable accommodation because. (check all that are applicable)

- Accommodation Ineffective
- Accommodation would cause undue hardship
- Medical Documentation Inadequate
- Accommodation would require removal of essential function
- Accommodation would require lowering of performance or production standard
- Other (Please identify)

The detailed reason(s) for the denial of reasonable accommodation are (insert specific details, e.g., why accommodation is ineffective or causes undue hardship).

On (insert date) you were offered an alternative reasonable accommodation, which you rejected on (insert date). (explain both the reasons for denial of the requested accommodation and why you believe the chosen accommodation would be effective, if the individual proposed one type of reasonable accommodation that is being denied, but rejected an offer of a different type of reasonable accommodation). (Use only if this applies)

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

- First, ask the deciding official to consider his/her denial. (Additional information may be presented to support this request)
- If the deciding official does not reverse the denial, the individual may ask the next higher level of management to do so.

You may also request alternative dispute resolution (ADR) to help ensure a productive communication process. ADR can be utilized throughout the reasonable accommodation process, to include the reconsideration and appeal phases. To request ADR, contact the EEO Director or OA.

If you wish to file an EEO complaint, or pursue other grievance procedures, the following steps must be taken:

- For an EEO complaint pursuant to 29 CFR 1614, contact an EEO counselor in the United States Postal Service within 45 days from the date of this notice of denial of reasonable accommodation;

- or
- For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or
  - Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 CFR § 1201.3.

Signature of Deciding Official

Date reasonable accommodation denied

Attachment 6

Sample Offer of an Alternate Accommodation

Memorandum

To: (Name, Title)

From: (Name, Title of Deciding Official)

Subject: Alternative Reasonable Accommodation Offer

After careful consideration of your request for a reasonable accommodation, I have determined that the following alternative reasonable accommodation(s) provide will enable you to successfully perform the essential functions.

(List the alternative reasonable accommodations).

This decision is based on my discussions with you, a review of your medical documentation (if provided), and consultation with the [disability program manager]. The reasons for offering an alternative reasonable accommodation are:

(List the reasons)

Please initial the appropriate item below, if you accept the alternative accommodation your request will be considered approved and I will immediately arrange for the accommodation. If there are delays in providing you this accommodation, you will be notified.

- I accept the proposed alternative reasonable accommodation
- I reject the proposed alternative reasonable accommodation

Signature of Deciding Official

Date:

Attachment 7

Sample Request for Medical Information

Memorandum

To: (Name, Title)

From: (Name, Title)

Subject: Reasonable Accommodation Request

The purpose of reasonable accommodation is to enable qualified individuals with a disability to perform the essential functions of a particular job. You indicate that you requested an accommodation. However, the Agency is very unclear when you placed a request for accommodation. In addition, the Agency does not know what accommodation(s) you are requesting. To properly consider your request for accommodation, the Agency needs information relating to the nature of your impairment and your functional limitations within your job. You stated that you have [impairment]. At this time, the Agency needs further information to determine effective accommodation options.

It is your responsibility under 5 CFR 339.104 to provide acceptable medical documentation as to the nature of your medical condition(s) and to specify any accommodation(s) you and your medical provider have determined may be required in order for you to perform the essential functions of your job. Please have your medical practitioner supply to your immediate supervisor, NAME the following:

- The nature of your impairment (i.e., your mental impairment);
- The activity or activities that the impairment limits;
- An explanation of the extent to which the impairment limits your ability to perform the essential functions of your job;
- The need for an accommodation(s);
- An explanation how the requested accommodation(s) will assist you to perform the essential functions of your job.

Per 5 C.F.R. 339.104, "to be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must not be inconsistent with generally accepted professional standards." Please ensure that any psychiatric report meet the diagnostic criteria as outlined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Addition (DSM-IV). In addition, please provide the requested documentation on your medical practitioner's letterhead stationery and ensure your medical practitioner dates and signs the report.

Pursuant to 29 CFR 1635.8(b)(i)(B), "[t]he Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

Attached is a copy of your current Position Description. So that your medical practitioner has sufficient



information to respond to the above items concerning your ability to perform the essential functions of your position, and any accommodation(s) that might be requested, it is important that you provide him or her with your position description.

All information submitted in response to this letter will be handled as medically confidential and will only be used for the purpose of evaluating your request for accommodation. Please submit any medical documentation in a sealed envelope marked as "Medically Confidential." You remain responsible for any costs incurred in connection with obtaining this documentation. If you fail to provide this requested medical information, the Agency will make decisions on the basis of existing information. Please note that the Agency may submit the medical information for review by our [Agency medical expert].

Please provide the requested medical information to your immediate supervisor, NAME, by DATE. If you need additional time to gather the requested medical information, please provide your request to NAME.

If you have any questions concerning this request, please contact me at (###).

Attachment: Position Description