



STB  
ADMINISTRATIVE  
ISSUANCE

Issuance No. 5-827

Effective Date: Feb. 14, 2019

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Subject: REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH  
DISABILITIES

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## 1.0 PURPOSE

The purpose of this Issuance is to set forth the policies and procedures of the Surface Transportation Board (STB or Board) for providing reasonable accommodation, including personal assistance services (PAS), to employees, Board Members, and applicants for employment with disabilities. This Issuance is in accordance with Executive Order 13164, which requires each Federal agency to develop effective written procedures for the processing of reasonable accommodation requests and meets the reasonable accommodation requirement prescribed under the Rehabilitation Act of 1973, as amended.

## 1.1 AUTHORITY

- 29 U.S.C. § 701, et seq., The Rehabilitation Act of 1973, as amended
- 29 U.S.C. § 791(g), Rehabilitation Act Amendments of 1992
- 42 U.S.C. § 2000ff, The Genetic Information Nondiscrimination Act of 2008
- 29 C.F.R. part 1614
- 29 C.F.R. § 1635
- Executive Order 13548, “Increasing Federal Employment of Individuals with Disabilities” (July 26, 2010)
- Executive Order 13163, “Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government” (July 26, 2000)
- Executive Order 13164, “Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation” (July 26, 2000)

## 1.2 SCOPE

This policy applies to all STB employees and Board Members, regardless of the nature of appointment status or position, as well as applicants for employment.

Unless otherwise stated, reasonable accommodation requests from Board Members will be processed in the same manner as STB employees.

### 1.3 DEFINITIONS

The following definitions are provided pursuant to 29 C.F.R. § 1614.203(d)(3)(i)(A).

- A. *Applicant*—An individual seeking employment with the STB.
- B. *Days*—All timeframes referenced in days are business days, unless otherwise indicated
- C. *Deciding Official*—The Deciding Official for employees requesting reasonable accommodation including Personal Assistance Services (PAS), is the employee’s Office Director or Office Director’s designee. For applicants requesting reasonable accommodation, the Deciding Official for accommodation requests is the point of contact listed in the job announcement on USAJOBS, or the Human Resources (HR) Director as applicable (see II.1.D). The HR Director will serve as the Deciding Official for Board Members requesting accommodation.
- D. *Disability*—Physical or mental impairment that substantially limits one or more of an individual’s major life activities as compared to most people in the general population or has a record of such impairment.
- E. *Essential Functions*—Those job duties that are so fundamental to the position that the individual holds or desires that he or she cannot do the job without performing them. A function may 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 or her ability to perform it. A determination of the essential functions of a position is made on a case-by-case basis so each function will reflect the specific job as actually performed, and not simply reflect components of a general position description.
- F. *Interactive Process*—Communication with the applicant or employee pursuant to 29 C.F.R. § 1630.2(o)(3), which provides: “To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.”
- G. *Major Life Activity*—Functions that include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- H. *Mental Impairment*—Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- I. *Personal Assistance Services (PAS)*—Services that provide assistance with performing activities of daily living that an individual would typically perform if he or she did not have a targeted disability, and that is not otherwise required as a reasonable accommodation or PAS, including, for example, assistance with removing and putting on clothing, eating, and using the restroom.

- J. *Physical Impairment*—Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.
- K. *Qualified*—An individual is qualified for a position if: (1) he or she satisfies the requisite skill, experience, education, and other job-related requirements of the position; and (2) he or she can perform the essential functions of the position, with or without reasonable accommodation.
- L. *Reasonable Accommodation*—Any change in the work environment or in the way things are usually done that results in equal employment opportunity in all activities of the Board including off-site functions for an individual with a disability, that results in equal employment opportunity for an individual with a disability.
- M. *Undue Hardship*—A specific accommodation would require significant difficulty or expense. This determination, which must be made on a case-by-case basis, considers factors such as the nature and cost of the accommodation needed and the impact of the accommodation on the operations of the agency.

## **I. Policy**

Reasonable accommodation applies to all aspects of employment, including the application process, recruitment, training, promotion, reassignment, as well as the benefits and privileges of employment. By law, the STB must provide reasonable accommodation to qualified employees or applicants with disabilities, unless doing so would cause undue hardship. This Issuance covers all requests for reasonable accommodation made by, or on behalf of, employees, Board Members, and applicants for employment. The STB provides reasonable accommodations:

- When an applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
- When an employee with a disability needs an accommodation to perform the essential functions of the job or to gain access to the workplace; and
- When an employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., details, trainings, office-sponsored events).

Reasonable accommodation can cover most things that enable an individual to apply for a job, perform a job, or have equal access to the workplace and employee benefits. There are some things that are not considered reasonable accommodations (e.g., removal of an essential job function or personal use items such as a hearing aid that is needed on and off the job).

Common types of accommodations include:

- Modifying work schedules or supervisory methods
- Granting breaks or providing leave
- Altering how or when job duties are performed
- Moving to different office space

- Providing assistive technology, including information technology (IT) and communications equipment or specially designed furniture
- Providing materials in alternative formats (e.g., Braille, large print)
- Providing a reader or other assistant to enable employees to perform their job functions, where the accommodation cannot be provided by current staff (see Appendix A for information on PAS)

## II. Roles and Responsibilities

### 1. HR

The HR Director, or an HR employee designated by the HR Director, will:

- provide advice and guidance to supervisors, managers, and employees about policies and procedures related to reasonable accommodation, such as leave, telework, and performance management;
- assist with locating appropriate vacant positions for employees with disabilities for whom reassignment will be the most effective reasonable accommodation;
- serve as the Deciding Official for reasonable accommodation requests from applicants during the interview stage of the hiring process and up to selection for employment; and
- serve as the Deciding Official for reasonable accommodation request from Board Members.

### 2. Office of General Counsel

The Office of General Counsel will:

- provide advice and guidance to STB management on complying with the legal requirements of the reasonable accommodations process; and
- represent the STB in complaints arising from the reasonable accommodations process.

### 3. Reasonable Accommodation Advisory Panel

The Reasonable Accommodation Advisory Panel (Panel) will manage the reasonable accommodation program at the STB. The Panel will consist of three members, designated by the Chairman, to include at least one member from HR and one member from the Office of General Counsel. To ensure that there is no actual or perceived conflict of interest, the Panel member from the Office of General Counsel will not serve as the agency legal representative for complaints arising out of the processing of reasonable accommodation requests. Likewise, the Panel member from HR will not serve as the Deciding Official for applicant and Board Member reasonable accommodation requests.

All requests for reasonable accommodation will be handled by the Panel, including requests from applicants who have reached the interview stage of the hiring process. If a request for accommodation is received by a manager or supervisor, that individual must forward the request to the Panel within two (2) days. The Panel will:

- A. oversee the reasonable accommodations process;
- B. provide assistance to supervisors, managers, and employees on reasonable accommodation matters;
- C. facilitate the interactive process;
- D. identify and recommend potential accommodations using guidance found in Appendix B;
- E. identify and recommend potential solutions, products, or services;
- F. assist with identifying and securing resources for assistive technology and computer equipment, and disability related trainings;
- G. track reasonable accommodations requests (including the number of days taken to process each request and the Deciding Official);
- H. maintain all documentation related to the accommodations process in a manner consistent with applicable laws and regulations;
- I. make determinations on whether medical information is needed;
- J. serve as the sole requestor and recipient of medical information;
- K. provide a recommendation to the Deciding Official on whether to grant or deny a request for reasonable accommodation; and
- L. communicate the status of the request to the requester when asked.

#### 4. Supervisors

Supervisors will:

- A. forward requests for accommodation as soon as possible, but no later than within two (2) days of receipt;
- B. participate in the interactive process;
- C. provide information on the essential functions of the position; and
- D. participate in evaluating effective accommodations.

#### 5. Office Directors

Office Directors will:

- A. serve as the Deciding Official for reasonable accommodation requests from employees in their office;
- B. consult with supervisors as needed when deciding on reasonable accommodations requests;
- C. participate in the interactive process; and

- D. serve as a higher-level reviewer on reasonable accommodation request appeals.

#### 6. Individuals Requesting Accommodations

Applicants and employees have a responsibility to participate in the reasonable accommodations process in order to identify functional limitations and potential effective reasonable accommodations. Individuals requesting accommodations will:

- A. participate in the interactive process;
- B. provide appropriate medical information related to the functional impairment and the requested accommodation (where the disability and/or need for accommodation is not obvious or already known); and
- C. provide timely responses to requests for information.

#### 7. Equal Employment Opportunity (EEO) Office

The EEO Office will:

- A. provide reasonable accommodation training to STB staff every two years and as needed; and
- B. receive and process complaints arising from the reasonable accommodation process.

### **III. Requesting Reasonable Accommodation**

1. A reasonable accommodation request is a statement, oral or written, made by an individual who requests an adjustment or change at work, in the application process, or in any benefit or privilege of employment because of a physical or mental impairment. The request does not have to include the words “reasonable accommodation,” “disability,” or “Rehabilitation Act,” or any other special words. The request may be a statement in “plain English” that an individual needs an adjustment or change in the application process or at work for a reason related to a medical condition.
2. An individual with a disability may request a reasonable accommodation whenever he or she chooses, even if the existence of a disability has not been previously disclosed. The request may be made, orally or in writing, at any time during the application process or during the period of employment, even if no disclosure was previously made regarding the existence of a disability. An individual need not have a particular accommodation in mind before making a request. See 29 C.F.R. § 1614.203(d)(3)(i)(D).
3. A request is any communication in which an individual asks or states that they need something provided or changed in the workplace because of a medical condition. The individual should be asked whether they are requesting a reasonable accommodation if the nature of the initial communication is unclear.

4. An employee may make a reasonable accommodation request to their first-line supervisor, another supervisor or manager in their immediate chain of supervision; the Office Director; the EEO Director; or the Panel. Board Members may make requests to HR, the Panel, the EEO Director or the Chairman. Requests for reasonable accommodation, oral or written, by STB employees are considered received when made to: a supervisor or manager in the employee's chain of command, the Office Director in the employee's chain of command, HR, the EEO Director, or the Panel
5. Requests for reasonable accommodation may be made through a third party, such as a family member, health professional, or other representative. For example, a doctor's note indicating that an employee can work "with restrictions" is a request for reasonable accommodation. The request should go to one of the same persons to whom the employee, Board Member, or applicant would make the request. Third party requests made on behalf of applicants or employees must be confirmed with the applicant or employee as soon as possible. The Panel may proceed with processing a request made by a third party absent confirmation of the request. However, confirmation of the request must be obtained from the applicant or employee prior to delivery of the accommodation.
6. Applicants who need an accommodation in order to apply to a USAJOBS job announcement should refer to the job announcement under which they are applying. Depending on the announcement, the office listed under the section "Questions about this Job" or other information in the announcement that discusses reasonable accommodations will direct the applicant to the point of contact for USAJOBS accommodation requests. Applicants who need a reasonable accommodation in order to interview may direct the request to HR.
7. To enable the STB to keep accurate records about requests for accommodation, employees seeking a reasonable accommodation are asked to follow up a verbal or written request by submitting to the supervisor, Office Director, or Panel a completed "Confirmation of Request" Form. If a reasonable accommodation request is made by a job applicant, at the interview stage, the HR Director will provide the "Confirmation of Request" Form. This written confirmation request is solely for the STB's recordkeeping purposes. The STB will begin the reasonable accommodation process when it receives a verbal or written request regardless of whether the form has been completed. If an employee requires a reasonable accommodation on a repeated basis (for example, the assistance of sign language interpreters), that employee will only be asked to submit the written request for recordkeeping purposes the first time the accommodation is requested.
8. An individual does not need to submit a written request or any specific form in order for the interactive process to begin. See 29 C.F.R. § 1614.203(d)(3)(i)(D). When an oral request is received, the STB official (e.g., supervisor, Office Director, Panel) who receives the request must ensure that a "Confirmation of Request" form is completed. The STB official must fill out the form if the requestor does not. Once the form is complete the STB official will ask the requestor to sign the form for concurrence of request information.

9. The interactive processing of a reasonable accommodation request, and all associated time limits, begins as soon as the request has been made to any of the individuals and/or offices identified in III.4 above.
10. Applicants, employees, and third parties may contact the Panel at [RAAP@stb.gov](mailto:RAAP@stb.gov) to request an update on the status of the reasonable accommodation request.

#### **IV. Processing a Request for Reasonable Accommodation**

The Panel is responsible for processing requests for reasonable accommodation. The Panel will work closely with an employee's supervisor or Office Director in responding to a request, especially those requests involving performance of the job. From time to time, the Panel may need to consult with other STB officials (e.g., IT, Facilities) or subject matter experts (internal or external) in order to gather relevant information necessary to process a request and/or to assess whether a particular accommodation will be effective. All STB personnel are expected to respond quickly to Panel requests for information or assistance.

Information regarding the individual seeking reasonable accommodation, and the accommodation request, will only be shared on a need-to-know basis. For more information on confidentiality, see section IV.3.

##### The Interactive Process

After a request for accommodation has been made, the Panel will initiate the interactive process to determine what, if any, accommodation should be provided. The Panel will initiate the interactive process as soon as possible, but no later than within five (5) days after the request is made.

The Panel and the individual requesting the accommodation must communicate regarding the request, the nature of the need that is generating the request, and alternative accommodations that may be effective in meeting the individual's needs. The interactive process may also include appropriate members of the supervisory chain, HR, and the Office of General Counsel.

The Panel and the Deciding Official will take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The individual requesting the accommodation should also participate to the extent possible in helping to identify an effective accommodation. Appendix B identifies resources available to help both the Deciding Official and the individual requesting the accommodation to identify possible accommodations.

To begin the interactive process, the Panel will describe the process and provide the name of the Deciding Official to the individual requesting accommodation.

The Panel will follow a three-part analysis when evaluating a reasonable accommodation

request:

- a) Determine if the requester is a qualified individual with a disability.
- b) Determine if the accommodation is needed to enable a qualified employee with a disability to perform the essential functions of his or her position; enable an employee with a disability to enjoy equal benefits and privileges of employment as a similarly situated employee without a disability; or enable a qualified applicant with a disability to be considered for the position he or she desires.
- c) Determine what effect the accommodation will have on the employee's ability to perform the essential functions of his or her position and any undue hardship the accommodation may impose on the STB.

Communication is a priority throughout the interactive process. Ongoing communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. In those cases, where the disability, the need for accommodation, and the type of accommodation to be provided are clear, extensive discussion may not be necessary. Even so, the Deciding Official and the requesting individual should talk to each other to make sure there is a full exchange of relevant information. The Deciding Official may also participate in this process as needed.

STB employees, or applicants, may contact the Panel with questions about the reasonable accommodation process or for reasonable accommodation request status updates by emailing the RAAP@stb.gov.

#### 1. Reassignment

Reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such position, is a reasonable accommodation. See 29 C.F.R. § 1614.203.(d)(3)(i)(B) & (C). The STB must consider providing reassignment to a vacant position as a reasonable accommodation when it determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his/her current position. Generally, reassignment will only be considered if no accommodations are available to enable the individual to perform the essential functions of his or her current job, or if the only effective accommodation would cause undue hardship. Reassignments are made only to vacant positions for which employees are qualified and that have no greater promotion potential than the position to which currently assigned. In considering a reassignment, the Panel will work with HR and the employee to determine:

- A. whether there are vacant positions within STB for which the employee may be qualified, with or without reasonable accommodation; and

- B. the positions which HR has reason to believe will become vacant within 60 days from the date the search is initiated and for which the employee may be qualified, with or without reasonable accommodation.

The Panel, Deciding Official, supervisor/manager, or employee may contact HR by email for a list of available vacancies when considering reassignment as a reasonable accommodation. See 29 C.F.R. § 1614.203(d)(3)(i)(C).

## 2. Requests for Medical Information

If an employee or applicant's disability and/or need for accommodation is not obvious or already known, the Panel may request and receive medical information showing that the individual has a covered disability that requires accommodation. A disability is obvious or already known when it is clearly visible, or the individual previously provided medical information showing that the condition met the Rehabilitation Act definition. It is the responsibility of the employee or applicant to provide the appropriate medical information.

- A. Only the Panel may determine whether medical information is needed and receive the medical information.
- B. The Panel may request supplemental medical information when the information already submitted is insufficient to document the disability and/or the functional limitations it causes.
- C. The Panel will only request medical information that is job-related and consistent with business necessity.
- D. The Panel may ask the employee or applicant to sign a limited release permitting the Panel to contact the individual's healthcare provider, if sufficient medical information is not provided by the individual.
- E. The regulations implementing the Genetic Information Nondiscrimination Act of 2008 (GINA) require employers that make a request for health-related information to warn the employee and/or health care provider from whom it requested the information not to provide genetic information. The Panel will not request medical information that is prohibited under GINA.
- F. The Panel may have the medical information reviewed by a medical expert of its choosing at the STB's expense.

## 3. Confidentiality

Under the Rehabilitation Act, medical information related to the reasonable

accommodation process must be kept confidential. All medical information obtained in connection with a request for reasonable accommodation will be kept in separate files from the individual's personnel file. This includes the fact that an accommodation has been requested or approved and information about functional limitations. Files related to the reasonable accommodation process will be kept in a locked and secure location.

The Panel and any STB employee who obtains or receives information connected with the reasonable accommodation process is strictly bound by these confidentiality requirements.

Individuals who have access to information necessary to make a decision about whether to grant a requested accommodation **may not disclose this information except as follows:**

- supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);
- first aid and safety personnel may be told *if* the disability might require emergency treatment;
- government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;
- the information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers; and
- agency EEO officials may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation requests, per Section G of "EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation."

Where medical information is disclosed to any of the foregoing officials, the STB must inform those individuals about the confidentiality requirements that attach to the information.

#### 4. Time Frame for Processing Requests

The time frame for processing a request (including providing the accommodation, if approved) is as soon as possible but no later than 30 days from the date the request is received. STB will make every effort to process requests in as short a period as reasonably possible. Where a particular reasonable accommodation can be provided in less than 30 days, failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act. See 29 C.F.R. § 1614.203(d)(3)(i)(O).

- A. The time frame begins when an oral or written request for reasonable accommodation is received (see III.2 and III.3).
- B. If medical information is required, the time frame will stop on the day that the request for information is made and will resume on the day that the information is received by the Panel.
- C. Easily obtained items or services that are necessary to enhance productivity and effectiveness should be provided as soon as reasonably possible and will not be delayed pending completion of the entire request.
- D. The Panel will provide a disposition recommendation to the Deciding Official within 20 days of the date the request was received. The disposition recommendation is advisory, and the Deciding Official may decide to accept or reject the Panel's recommendation.
- E. The Deciding Official will issue a final decision on whether to grant or deny a request for accommodation within 10 days of receipt of the recommendation from the Panel. The Deciding Official must consider all resources available to the STB as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, when determining whether a denial of reasonable accommodation based on cost is lawful. See 29 C.F.R. § 1614.203(d)(3)(ii).
- F. In some circumstances, a request for reasonable accommodation may require an expedited review and decision. Examples of circumstances that may require expedited processing include:
- to enable an applicant to apply for a job, where the time for receiving applications and conducting interviews may be short
  - to enable an employee to attend a meeting, where the meeting is scheduled to occur in a short period of time
- G. Extenuating circumstances may occur during the processing of a request for reasonable accommodation that could not have been anticipated or avoided in advance, or that are beyond the control of STB. In such circumstances the time for processing a request and providing an accommodation will be extended as reasonably necessary and the Deciding Official will provide notice to the individual seeking accommodation of any delay. Examples of extenuating circumstances include:
- outstanding initial or follow-up requests for medical information
  - back-ordered equipment or other vendor-related delays, which are

- not within the control of STB
- longer time frames to purchase equipment due to Federal Acquisition Regulation requirements.

## **V. Disposition of a Request for Reasonable Accommodation**

The Deciding Official will render a decision within 10 days of receipt of the disposition recommendation from the Panel. All decisions regarding a request for reasonable accommodation will be communicated in writing to the employee or applicant by the Deciding Official.

### **1. Decision to Grant Request**

The decision to grant a request will be communicated to the individual requesting accommodation as soon as possible. Where practicable, the decision will be communicated orally and in writing.

- A. A decision to provide an accommodation other than the one specifically requested will be considered a decision to grant an accommodation and the written documentation granting the accommodation will explain why the chosen accommodation is believed to be effective.
- B. The Deciding Official will inform the employee or applicant if a reasonable accommodation request has been granted but the accommodation cannot be provided immediately. The notification will include the projected time frame for providing the accommodation. Temporary measures can be provided to assist an employee, or applicant, if there is a delay in providing an approved accommodation. Any accommodation offered on a temporary basis must be presented in writing and note the temporary nature of the solution and the anticipated date of a permanent accommodation.
- C. Employees may request that their granted accommodation be reviewed and updated. A request for review and update will be treated as a new request.

### **2. Decision to Deny Request**

The decision to deny a request will be communicated to the individual requesting accommodation in writing, in an accessible format when requested, at the time of the denial. See 29 C.F.R. § 1614.203(d)(3)(iii). Where practicable, the decision will be communicated orally and in writing.

- A. The denial will clearly state the specific reason(s) for the denial.
- B. The denial will state any available rights, such as the right to appeal or file an EEO complaint, and the instructions for each. The denial will also explain that, pursuant to 29 C.F.R. § 1614.105, the right to file a complaint

will be lost unless the applicant or employee initiates contact with an EEO Counselor within 45 calendar days of the denial, regardless of whether the applicant or employee participates in an informal dispute resolution process.

- C. If there is a legitimate reason to deny the specific reasonable accommodation requested (e.g., the accommodation poses an undue hardship or is not required by the Rehabilitation Act), the Deciding Official and the Panel will explore whether another accommodation would be possible.
- D. If an accommodation is offered other than the one requested, but the alternative accommodation is not accepted, it will be recorded as a rejection of the alternative accommodation.

### 3. Appeals

An employee or applicant who is dissatisfied with the disposition of a reasonable accommodation request may appeal the decision. An appeal must be filed within 10 days of receiving the decision.

- A. The appeal must be in writing and state the specific reason(s) the decision is being appealed and the relief requested.
- B. Appeals will be handled by a panel of three STB Office Directors, designated by the Chairman, and not involved in the initial decision.
- C. Appeals should be sent to the Panel. Specific contact information for where, and to whom, appeals should be sent will be detailed in the decision.
- D. The Panel will inform the Chairman of receipt of an appeal and the Chairman will designate the three Office Directors to review the appeal.
- E. Appeals will be treated as a new request for accommodation and will adhere to the process in this Issuance to the extent practicable.
- F. Filing an appeal will not extend the time limits for initiating administrative or statutory claims (e.g., filing an EEO complaint).
- G. A decision will be issued in writing within 20 days of the appeal being filed.

## **VI: Tracking and Reporting**

Within 10 days of a final decision on a reasonable accommodation request, the Deciding Official must complete the Reasonable Accommodation/PAS Reporting Form and provide it to the Panel.

The Panel will maintain accommodation records for the duration of an employee's STB tenure, and for 5 years after the employee separates from the agency. The Panel will maintain accommodation records for applicants for 5 years.

The Panel will prepare an annual report for the Managing Director. The report will contain the following information

- (a) The number of reasonable accommodations, by type, and by job (occupational series, grade level, organization location) that have been requested by applicants and whether those requests have been approved or denied;
- (b) The number of reasonable accommodations, by type, and by job (occupational series, grade level, organization location) that have been requested by employees to enable performance of the essential functions of their job and whether those requests have been approved or denied;
- (c) The number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether requests have been granted or denied;
- (d) The reasons for denial of requests for reasonable accommodation;
- (e) The amount of time taken to process each request for reasonable accommodation; and
- (f) The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

In addition, the report will provide a qualitative assessment of the STB's reasonable accommodation program, including any recommendations for improvement of the STB's reasonable accommodation policies and procedures.

**These procedures create no new enforceable rights under section 501 of the Rehabilitation Act, or any other law. Executive Order 13164, which requires all Federal agencies to adopt reasonable accommodation procedures, explains in sections 5(b) that the procedures are "intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, [or] its agencies."**

Approved: \_\_\_\_\_  
Rachel D. Campbell  
Managing Director

## Appendix A

### **PERSONAL ASSISTANCE SERVICES**

Personal Assistance Services (PAS) are services that aid with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing or putting on clothing, eating, and using the restroom during work hours and job-related travel. Other examples of PAS could include pushing a wheelchair or helping an employee get into or out of a vehicle at the worksite.

PAS may be provided to employees with a targeted disability. A targeted disability is a subcategory of disabilities that includes deafness, blindness, missing extremities, partial paralysis, complete paralysis, epilepsy, severe intellectual disability, psychiatric disability, and dwarfism.

STB is required to provide an employee with PAS, provided by a PAS provider (as discussed below), during work hours and job-related travel if:

- (a) The employee requires such services because of a targeted disability;
- (b) The employee will be able to perform the essential functions of the job once PAS and any required reasonable accommodations have been provided; and
- (c) Provision of such services would not impose undue hardship on the STB. The STB is not required to provide PAS to help employees commute to work. The STB is required to provide PAS only when an employee is working or is on work-related travel.

PAS do not help employees with disabilities perform their specific job functions, such as reviewing documents or answering questions that come through a call-in center. PAS differ from services that help an employee to perform job-related tasks, such as sign language interpreters who enable individuals who are deaf to communicate with coworkers, and readers who enable individuals who are blind or have learning disabilities to read printed text. Those services are required as reasonable accommodations, if the individual needs them because of a disability and providing them does not impose undue hardship on the agency.

PAS differ from medical services and services that are typically performed by someone who often has the job title of “personal assistant.” PAS are non-medical services, such as helping an individual take off and put on a coat, eat, and use the restroom.

#### Selection and Use of PAS Providers

##### *A. Finding PAS Providers*

Applicants for PAS provider positions may be found in the same way that applicants for other positions are located—by advertising the opening on USAJOBS and other job posting boards. Additional resources include local vocational rehabilitation offices, American Job

Centers, centers for independent living, home care agencies, and the individual who requested PAS. Additionally, some contractors are available through GSA Advantage.

### *B. Choice of PAS Providers*

If the STB hires (or contracts with) a PAS provider who will be assigned to a single employee, and if that employee prefers a provider (for example, because the provider has worked with him or her in the past), the STB must give primary consideration to that choice to the extent permitted by law. However, it may not be possible to honor the employee's preferences in all cases. The STB may choose a different provider if, for example, the employee's preferred provider is not qualified or less qualified than another applicant; if the STB decides to utilize a pool of shared providers instead of dedicated providers; for reasons of cost or convenience; or if the STB decides to have appropriate existing employees provide PAS.

An employee may request permission to bring his or her own PAS provider to work as a reasonable accommodation (not as a PAS) if the employee does not request that the STB assume the cost of providing the services. However, if the employee wants the STB to assume the cost of providing the services, the STB may have reasons to choose a different provider, as discussed above.

### *C. Terms of PAS Provider Employment*

The STB may require PAS providers to provide PAS to more than one employee, as long as each employee entitled to PAS receives PAS in a timely manner. The STB may assign non-PAS job functions to PAS providers, as long as these other duties do not interfere with provision of PAS and all employees who are entitled to PAS continue to receive them in a timely manner. These other duties could include work-related tasks that are required as a reasonable accommodation or work-related tasks that any assistant would provide.

The STB will not require a non-PAS provider employee to provide PAS to another employee.

### Requesting PAS

PAS is provided on a case-by-case basis to qualified employees with targeted disabilities.

PAS as a reasonable accommodation may be requested by informing any supervisor in the employee's chain of command that they need assistance with daily life activities because of a targeted disability. PAS requests will be processed in accordance with the procedures in STB Administrative Issuance 5-827, *Procedures for Processing Reasonable Accommodation by Employees and Applicants with Disabilities*. Very personal information, including explicit details related to personal care such as toileting and bathing, is handled in the most discreet manner and is not shared or discussed with the employee's supervisor.

### Denial of PAS Request

STB is required to provide PAS only if the requesting employee is entitled to them under the regulations. Therefore, STB may deny a request for PAS if:

- the requester is not an STB employee;
- the requester does not have a targeted disability;
- the targeted disability does not create a need for PAS;
- the requester is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations;
- the requester would create a direct threat to safety on the job, even with PAS and any reasonable accommodations; or
- providing PAS would impose undue hardship on STB.

The process for denying a PAS request is the same as that set forth in STB Administrative Issuance 5-827.

### Request for Reconsideration

The reconsideration process for denials of requests for PAS is the same as that set forth in STB Administrative Issuance 5-827 except that “reasonable accommodation” is replaced with PAS and the specific time frames in that section do not apply.

## Appendix B

### Reasonable Accommodation Resources pursuant to 29 C.F.R. § 1614.203(d)(3)(i)(W)

#### U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

EEOC has published many ADA and Rehabilitation Act-related documents that may assist both individuals requesting accommodations as well as those involved in the decision-making process. Most of these documents are available at [www.eeoc.gov](http://www.eeoc.gov).

#### Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TT)

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

A service of the Office of Disability Employment Policy, JAN can provide information, free-of-charge, about many types of reasonable accommodations and provide referrals to other organizations that may have particular information about accommodations for persons with different disabilities.

#### ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance. The DBTACs can provide information on reasonable accommodation and make referrals to local sources of expertise in reasonable accommodations.

#### Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

#### RESNA Technical Assistance Project

(703) 524-6686 (Voice) (703) 524-6639 (TT)

<http://www.resna.org>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing

information on thousands of commercially available assistive technology products),

- centers where individuals can try out devices and equipment,
- assistance in obtaining funding for and repairing devices, and
- equipment exchange and recycling programs.

### **Computer/Electronic Accommodations Program (CAP)**

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

The Computer/Electronic Accommodations Program (CAP) provides assistive technology, devices, and services free of charge to Federal agencies that have a partnership agreement with CAP, to enable the agencies to provide reasonable accommodation to employees with disabilities. CAP's mission is to ensure that people with disabilities have equal access to the information environment and opportunities throughout the Federal government. Form 479 should be completed to request assistive technology and services.