# United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

FEB 20 2014

CIVIL RIGHTS DIRECTIVE 2014-02

PERSONNEL BULLETIN 14-01

To: Bureau Equal Employment Opportunity Officers
Bureau Human Resources Officers

From: Sharon D. Eller
Director, Office of Civil Rights

Thomas Mulhern
Director, Office of Human Resources

Subject: U.S. Department of the Interior Policy and Procedures on Reasonable Accommodation for Individuals with Disabilities

The attached U.S. Department of the Interior Policy and Procedures on Reasonable Accommodation for Individuals with Disabilities are effective immediately. In accordance with the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act Amendment Act of 2008; 29 Code of Federal Regulations, Part 1630; Code of Federal Regulations, Part 1614.203(b); and the Genetic Information Non-discrimination Act of 2008, the Department will provide reasonable accommodation for the known physical and intellectual limitations of qualified employees and applicants with a disability unless the accommodation imposes an undue hardship on the Department. The policy and procedures described in this document apply to all employees of the Department and applicants for employment with the Department who have a disability as defined by law. This document remains in effect until either rescinded or superseded by the new Departmental Manual Chapter 15 (DM 373 15). The reasonable accommodation procedures, previously released on September 7, 2005, are rescinded.

The policy and procedures on reasonable accommodation are on the Office of Civil Rights website http://www.doi.gov/eeo and the Office of Human Resources ACCESS Center website http://www.doi.gov/accesscenter/index.cfm. For more information on Departmental policy and procedures on reasonable accommodation, contact the Office of Civil Rights, (202) 208-5693 and the Office of Human Resources, (202) 208-5694.

Attachments

cc: Bureau/Office Heads
Office of the Solicitor
Human Capital Officers
Office of Emergency Management
Office of Occupational Health and Safety

United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

TAKE PRIDE IN AMERICA

**CIVIL RIGHTS DIRECTIVE NO. 2014-02** FEB 20 2014

**PERSONNEL BULLETIN NO. 14-01**

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

## 1. Purpose.

In compliance with the authorities listed below, the Department of the Interior has established policy and procedures for processing reasonable accommodation requests. This Civil Rights Directive (CRD) 2014-02 and Personnel Bulletin (PB) 14-01 supersede Departmental Manual, Part 373, Chapter 15 (373 DM 15), Reasonable Accommodation for Individuals with Disabilities, dated September 7, 2005. This document outlines the requirements and instructions by which Departmental employees will act on requests for reasonable accommodation from employees and applicants for employment. This document remains in effect until either rescinded or superseded by the new Departmental Manual Chapter 15.

## 2. Authority.

A. Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791)
B. Americans with Disabilities Act Amendments Act of 2008 (42 U.S.C. 12101)
C. 29 CFR Part 1630 (Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act); 29 CFR 1614.203(b) (applying ADA regulations to Rehabilitation Act)
D. Genetic Information Non-discrimination Act of 2008
E. Equal Employment Opportunity Commission Management Directive 715

## 3. Policy.

The Department of the Interior (DOI) 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 DOI.

## 4. Scope.

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

## 5. Responsibilities.

A. ***The Director, Office of Civil Rights*** is designated as the DOI management official responsible for ensuring there is DOI-wide policy on reasonable accommodation and

that reasonable accommodations are made for qualified employees or applicants with a disability in accordance with applicable laws, regulations, and bargaining unit agreements.

B. ***The Disability Program Manager (DPM)*** is responsible for the development, implementation, and operation of the bureau/office's disability program– including providing guidance on reasonable accommodation matters related to employees and applicants. The DPM is responsible for promoting equal opportunity and equal access for individuals with disabilities.

C. The servicing ***Human Resources Officer (HRO)*** is responsible for providing operational human resources services to the bureau/office. The HRO, or designated staff, is 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 HRO is responsible for training human resources specialists who are involved in the application process to recognize requests for reasonable accommodation and handle them in accordance with DOI Reasonable Accommodation Policy and Procedures.

D. ***Supervisors, managers, and office directors, or designated staff***, shall serve as deciding officials on requests for reasonable accommodations. Deciding officials should consult with appropriate officials, such as the servicing Human Resources Office, Departmental or bureau Disability Program Manager (DPM), facilities managers, information resource management specialists, employment attorneys in the Solicitor's (SOL) Office, or other individuals that can assist in determining appropriate and effective accommodations.

E. ***SOL employment attorneys*** are 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.

F. ***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 use an alternate dispute resolution approach to working through their requests with deciding officials. The DOI Office of Collaborative Action and Dispute Resolution is available to provide assistance throughout the reasonable accommodation process, including the reconsideration and appeal phases.

G. Each ***bureau/office*** will designate a DPM who has the responsibilities outlined in paragraph 5.B above.

H. ***Management*** is 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 DPM – 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, bureaus must make every effort to do so. Care must be taken to ensure preservation of confidentiality in processing requests for reasonable accommodation.

**6. Information Tracking and Reporting.**

A. ***Decision Maker:*** The deciding official must complete the Decision Documentation (See Appendix, Reasonable Accommodation Policy and Procedures, Attachment 2) and submit it to the bureau/office Servicing Human Resources Office 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 "HIPAA/PA Documents," and maintained by the servicing Human Resources Office in secure storage separate from official personnel files.***

(3) The bureau/office servicing Human Resources Office must maintain these records for the length of the employee's tenure with DOI or for five (5) years, whichever is longer.

B. ***The bureau/office EEO Office*** will prepare an annual report, to be made available to the DOI, Office of Civil Rights. The report will contain the following information, presented in aggregate:

(1) the number of reasonable accommodations, by type, that was 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 bureau/office's reasonable accommodation program, including any recommendations for program improvement or changes in the reasonable accommodation practices and procedures.

C. The DOI, Office of Civil Rights shall prepare an aggregate report making such information available to all bureau/office EEO Offices and Human Resources Offices. The report shall be retained for at least three (3) years. Upon request from EEOC, the report will be used to provide information that tracks DOI's performance with regards to the provision of reasonable accommodation to individuals with disabilities.

7. **Point-of-Contact(s).** The Departmental point of contacts for this policy matter are the Department of the Interior, Office of Civil Rights, (202) 208-5693 and the Department of the Interior, Office of Human Resources, (202) 208-5694.

Sharon D. Eller, Director
Office of Civil Rights

2/20/2014
Date

Thomas Mulhern, Director
Office of Human Resources

2/20/2014
Date

Attachment: Appendix: Reasonable Accommodation Policy and Procedures

## APPENDIX: Reasonable Accommodation Policy and Procedures

**1. Purpose:**

1.1. The Department of the Interior (DOI) Reasonable Accommodation Policy and Procedures, Appendix, with Attachments 1-9, supplements the Civil Rights Directive (CRD) 2014-02 and Personnel Bulletin (PB) 14-01, Reasonable Accommodation for Individuals with Disabilities and sets policy for DOI bureaus and offices (collectively referred to as Bureaus throughout this appendix).

1.2. Bureau supplements shall be consistent with the policy and intent of CRD 2014-02 and PB 14-01, including this appendix in its entirety.

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

2.1. DOI 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 Department's mission

2.3. Eligible employees are treated fairly throughout the RA process

2.4. DOI'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. ***Physical or intellectual impairment***:

3.6.1. 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.

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

3.7. ***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:

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

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

3.8. ***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).

3.9. ***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.

3.10. ***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.

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

3.12. ***Undue hardship***: a specific type of accommodation which causes significant difficulty or expense at the Department level (not bureau or 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.

3.13. ***Protected Genetic Information***: information about:

3.13.1. An individual genetic test

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

3.13.3. 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. Supervisors, managers, and office directors, or designated staff, shall serve as deciding officials on requests for reasonable accommodations. Deciding officials should consult with appropriate officials, such as the servicing human resources office, Departmental or bureau Disability Program Manager (DPM), facilities managers, information resource management specialists, employment attorneys in the Solicitor's (SOL) Office, or other individuals 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 DPM and the Office of Collaborative Action and Dispute Resolution, are available to help ensure a productive communication process.

4.3. Deciding officials are encouraged to contact SOL employment attorneys with questions and requests for legal advice regarding the Rehabilitation Act, including its prohibitions and requirements, and the EEOC's regulations and enforcement guidance. SOL employment attorneys are 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 Civil Rights Directive 2014-02 and Personnel Bulletin 14-01.

**6. Process Description:** There are five possible phases of the RA process: initiation of request, consideration, decision, reconsideration, and appeal. Attachment 4 is a flow chart of the RA process and 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.

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; the Equal Employment Opportunity Officer, the Human Resources Officer, or the Disability Program Manager. An applicant with a disability may submit his/her request to any agency employee with whom he/she has contact or the Human Resources Officer. 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 accepted when made. The recipient of the verbal request must not wait until it is in writing to action 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 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.

6.2. ***Consideration Phase***: In this phase, management 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.

6.3. ***Decision Phase***: In this phase, management 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 15 business days or sooner. If medical documentation is required by the

deciding official, the deciding official will issue a decision within 15 business days from the date the official received the required medical documentation.

6.3.1. 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.

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.

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 | 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, bureaus 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 9 provides a sample "Request for Medical Information."

7.3. Documentation during the Consideration and Decision Phases:

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

7.3.2. 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.

7.4. 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 and human resources, will have access to medical documents necessary to consider the reasonable accommodation request. At the request of the deciding official, other individuals, such as the DPM and SOL, 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 DOI 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 bureau'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 C.F.R. 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 "HIPAA/PA 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.

7.7. Organizations are required to maintain information and provide reports as outlined in CRD 2014-02 and PB 14-01.

**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. Organizations (bureaus and staff offices) should 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. Organizations are 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 bureau'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 which may include reassignment out of the home bureau if the Department has an appropriate placement. 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. 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.

8.2.2.7.3. Detailed guidance for implementing this accommodation is included in Personnel Bulletin 08-09, May 2008. The deciding official should be aware of several key policies associated with a reassignment which include:

8.2.2.7.4. If the deciding official determines that no reasonable accommodation will enable the employee to perform the essential functions of his/her position, the deciding official must, in consultation with the employee, consider reassignment of the employee to a vacant funded position for which he/she is qualified. The determination on qualifications will be made by the deciding official, in consultation with the Servicing Human Resources Officer and DPM. 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.

8.2.2.7.5. Reassignment to a vacant funded position may occur first within the bureau and geographical area where the employee is already employed. In the event a position cannot be found in the employee's current bureau and geographical area, a suitable position may be identified in a different bureau within the employee's current geographical area. In the event a position cannot be found within the employee's current geographical area, a suitable position may be identified in a different geographical area, regardless of bureau. This may constitute a last resort accommodation.

8.2.2.7.6. If the employee is willing to be reassigned to a different geographical area, the Office Director, or designee, shall confer with the Servicing Human Resources Officer for that geographical area to determine whether the employee is qualified for any particular position(s) available in that area. 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. If a needed accommodation is found to be reasonable, such position must be offered to the employee.

8.2.2.7.7. If an employee is reassigned to a different geographical area, the employee must pay for any relocation expenses unless the transferring bureau routinely pays such expenses when granting voluntary transfers to other employees.

8.3. When considering whether an accommodation presents an undue hardship, the hardship must exist at the Department level, not bureau level, for the deciding official to deny providing

the accommodation. If the deciding official believes an undue hardship exists at the Department level, the bureau shall coordinate with the Department's DPM 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 Department to accomplish. In such a case, that particular accommodation does not have to be provided. Determination of undue hardship is always made on a case-by-case basis, considering such 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; and

8.4.3. Type of operation, including composition and structure of the workforce.

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 affirmative 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. DOI Personnel Bulletin 08-09, Procedures for Conducting a Department-wide Search and Position Reassignment for Cases Involving Reasonable Accommodation.** This PB, issued May 5, 2008, provides detailed guidance on when an employee must be reassigned as a reasonable accommodation. Reassignment is not available to applicants - only current employees.

**A1.8. 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. DOI does not provide personal use items needed in accomplishing daily activities both on and off the job as a reasonable accommodation. For example, DOI 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, DOI 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 bureau 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. DOI bureaus/ 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 bureau'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 organization (see paragraph 8.3.).

**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: _____

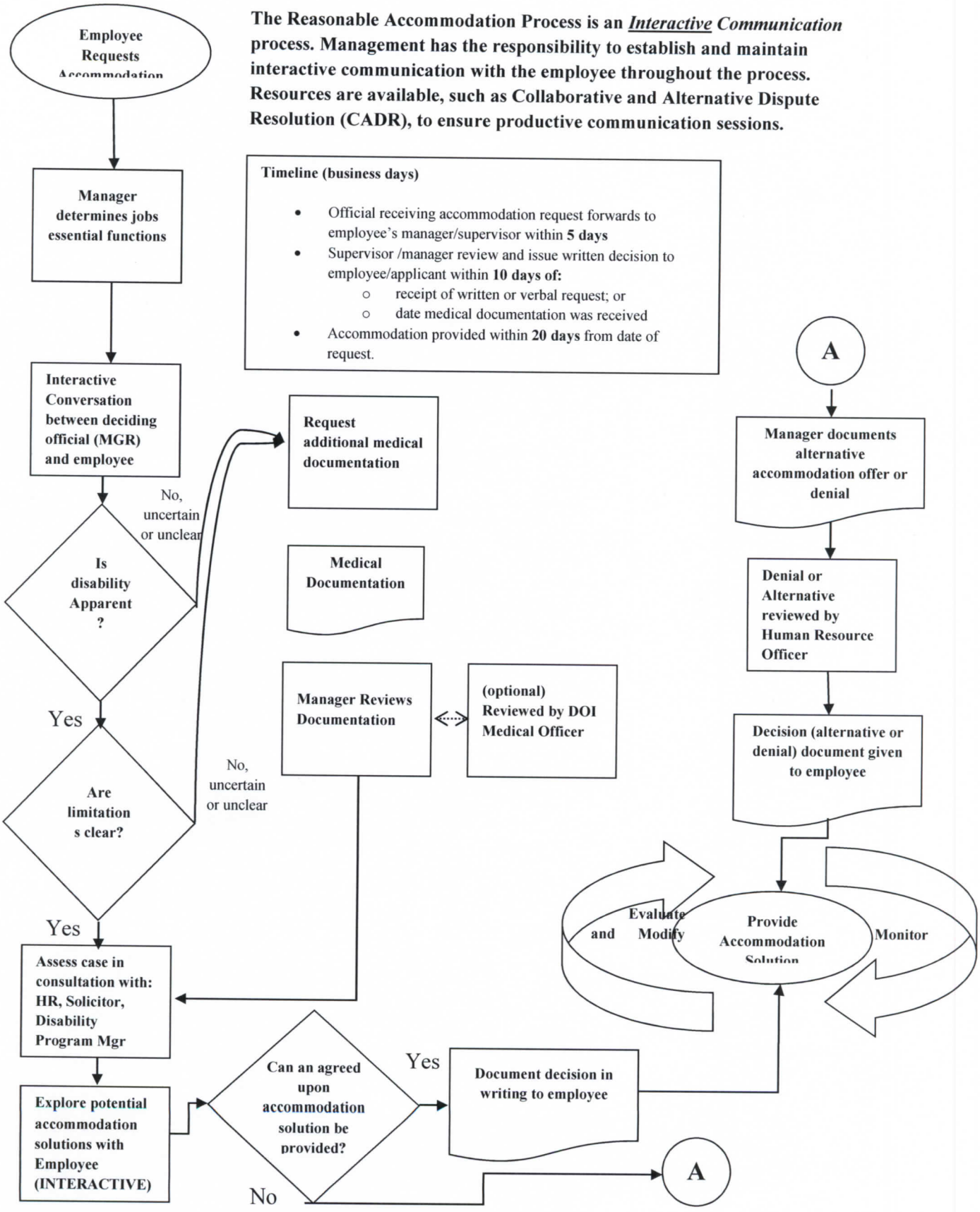
Date: _____

Phone Number: (___)_____

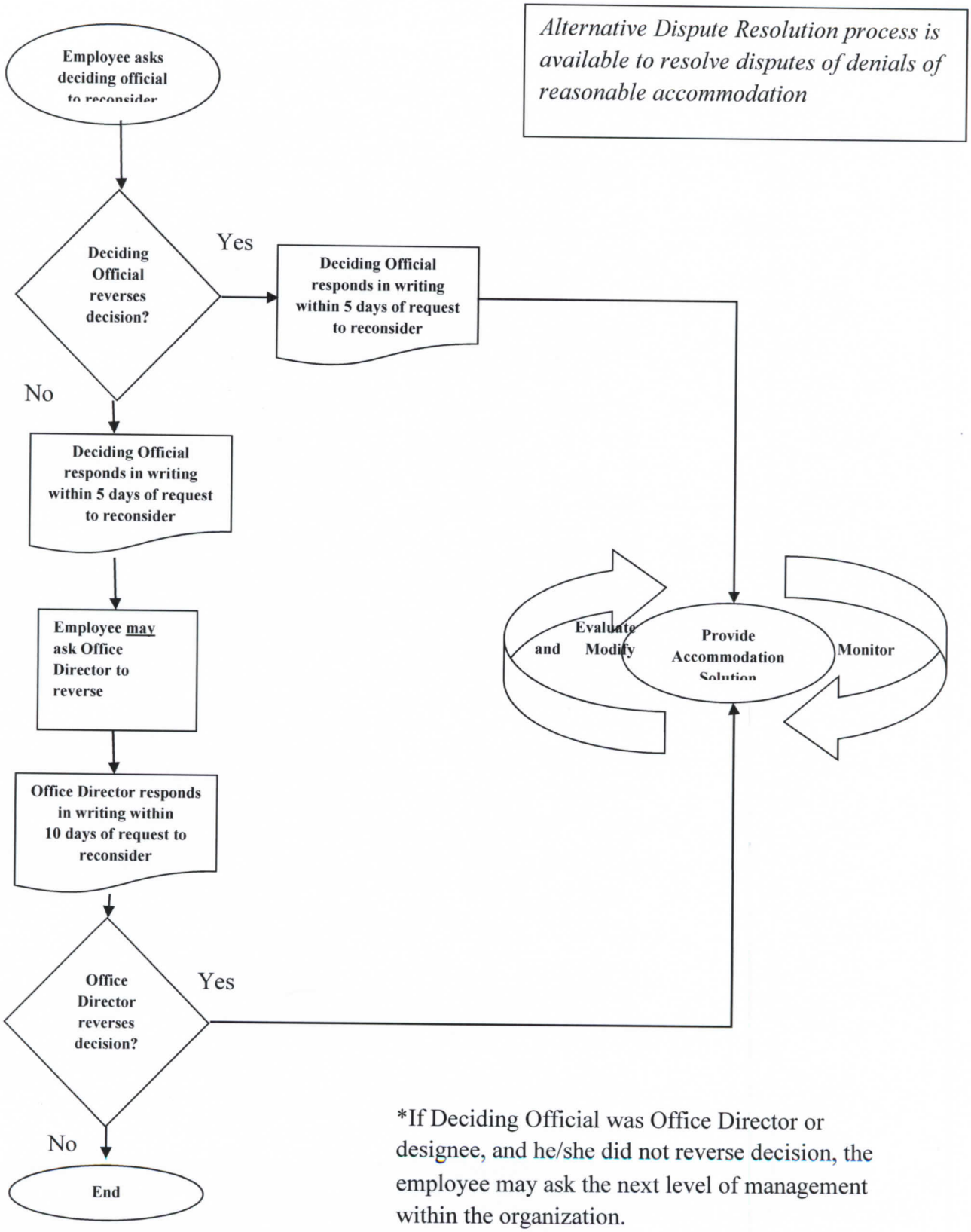
# Attachment 4
## Process Flow Chart

### A 4.1- Reasonable Accommodation Process

**The Reasonable Accommodation Process is an *Interactive Communication* process. Management has the responsibility to establish and maintain interactive communication with the employee throughout the process. Resources are available, such as Collaborative and Alternative Dispute Resolution (CADR), to ensure productive communication sessions.**



## A 4.2- Reconsideration Process




*If Deciding Official was Office Director or designee, and he/she did not reverse decision, the employee may ask the next level of management within the organization.

## Attachment 5

## Selected Reasonable Accommodation Resources

**A5.1. U.S. Equal Employment Opportunity Commission.** 1-800-669-3362 (Voice), 1-800-800-3302 (TTY), Web: http://www.eeoc.gov/

A5.1.1. The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. 12101 et seq., and the regulations, 29 C.F.R. 1630. In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The three main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title 1 regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. 1630.2(o), (p), 1630.9; (2) Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, and (3) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act. The Technical Assistance Manual includes a 200-page Resource Directory, including federal and state agencies and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

A5.1.2. The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents: (1) Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations; (2) Enforcement Guidance: Workers' Compensation and the ADA; (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities; (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964; and (5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act.

A5.1.3. All of the above-listed documents, with the exception of the Technical Assistance Manual is also available through the Internet at http://www.eeoc.gov/policy/guidance.html/. All of these documents provide guidance that applies to federal agencies through the Rehabilitation Act of 1973, 29 U.S.C. 791.

A5.1.4. The EEOC website also provides guidance on Executive Order 13145: To Prohibit Discrimination in Federal Employment Based on Genetic Information.

**A5.2. Job Accommodation Network (JAN).** 1-800-232-9675 (Voice/TTY), Web: http://askjan.org.JAN is a free consulting service that provides information about job accommodations, the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), and the employability of people with disabilities.

**A5.3. Computer/Electronic Accommodations Program (CAP).** (703) 681-8813 (Voice/TTY), Fax: (703) 681-9075, Web: http://www.cap.mil.CAP has a memorandum of understanding with the DOI to provide assistive technology and accommodation services for employees with disabilities.

**A5.4. ADA Disability and Business Technical Assistance Centers (DBTACs).** 1-800-949-4232 (Voice/TTY), Web: http://www.adainfo.org.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, and places special emphasis on

meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

**A5.5. Registry of Interpreters for the Deaf.** (703) 838-0030 (Voice), (703) 838-0459 (TTY), Web: http://www.rid.org. The Registry offers information on locating and using interpreters and transliteration services.

**A5.6. RESNA Technical Assistance Project.** (703) 524-6686 (Voice), (703) 524-6639 (TTY), Web: 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.

**A5.7. Department of the Interior Access Center.** (202) 208-5481 (Voice), (202) 208-6248 (TTY), Web: http://www.doi.gov/access. The DOI Access Center opened in October 2000 to support employees with disabilities by determining the appropriate assistive technology and ergonomic solutions for the individual. These accommodations are surprisingly affordable ways to enable employees with a disability to have equal access to information technology that is essential in today's workplace.

## Attachment 6

## Utilizing Sign Language Interpreters

**A6.1**. 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.

**A6.2**. A DOI 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. DOI bureaus may contract for such services.

**A6.3**. Bureaus will provide an interpreter for an employee who is hearing impaired and who, as part of his/her job, attends a DOI 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. DOI will provide interpreters, however, if the sponsoring organization fails to do so.

**Attachment 7**

**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).* ***(Used 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 your servicing Disability Program Manager, Human Resources Officer, Equal Employment Opportunity Officer, or the DOI Office of Collaborative Action and Dispute Resolution.

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

- For an EEO complaint pursuant to 29 CFR 1614, contact an EEO counselor in your Equal Employment Opportunity office 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 8**

**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 9**

**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 bipolar disorder. At this time, the Agency needs further information to determine effective accommodation options.

It is your responsibility under 5 C.F.R. 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 C.F.R. 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 place your request to NAME

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

Attachment: Position Description