

U.S. Merit Systems Protection Board



REASONABLE ACCOMMODATION POLICY AND PROCEDURES

Reasonable Accommodation Policy

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1. PURPOSE

This policy implements Executive Order 13164, which requires each Federal agency to establish effective written procedures for processing requests for reasonable accommodation made by qualified job applicants and employees with disabilities. This directive further fulfills MSPB's obligation to provide reasonable accommodations pursuant to the Rehabilitation Act of 1973, as amended, where applicable, and in accordance with the provisions of Title I of the Americans with Disabilities Act of 1990¹. This policy replaces MSPB Directive No. 1600.2, Accommodation for Individuals with Disabilities, issued April 23, 2002.

2. SCOPE

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

3. AUTHORITIES

- A. The Rehabilitation Act of 1973 (29 U.S.C. Section 791), as amended
- B. The Rehabilitation Act Amendments of 1992 (29 U.S.C. Section 791(g))
- C. E.O. 13163, 3 C.F.R. 285 (2001): Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government
- D. E.O. 13164, 3 C.F.R. 286 (2001): Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation
- E. 29 C.F.R. Part 1614
- F. 29 C.F.R. Part 1630
- G. Privacy Act of 1974, as amended
- H. Equal Employment Opportunity Commission (EEOC) Policy guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, No. 915-003 (October 20, 2000)
- I. EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, No. 915.002 (October 17, 2002)
- J. EEOC Technical Assistance Manual on the Employment Provisions (Title 1) of the Americans with Disabilities Act (January 1992)
- K. Title I of the Americans with Disabilities Act of 1990
- L. Equal Employment Opportunity Management Directive 715 (October 1, 2003)

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

4. DEFINITIONS

- A. **Agency**. Merit Systems Protector Board (MSPB), including headquarters and any regional or field office.
- B. **Assistive Technology**. An item, piece of equipment, or system that is commonly used to increase, maintains or improves functional capabilities of individuals with disabilities. Assistive technology includes ergonomic keyboards, screen-enlarging software, TTYs/TDDs (text telephones), split screen reading software, etc. The term “assistive technology” is used interchangeably with “computer adaptive equipment.”
- C. **Day**. Calendar day, unless otherwise specified.
- D. **Disability Program Coordinator**. The Disability Program Coordinator (DPC) is the decision maker for reasonable accommodation requests under the guidance of the Office of General Counsel.
- E. **Direct Threat**. A significant risk of substantial harm to health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.
- F. **Disability**. An impairment that substantially limits one or more of the major life activities. This does not include temporary, short-term medical conditions such as those that are covered under Light Duty Assignment.
- G. **Essential Function**. A fundamental duty or task that is integral to the position or job to be performed.
- H. **Extenuating Circumstance**. Unforeseen or unavoidable events which prevent the prompt processing of a request for or delivery of an accommodation. For example, a delay caused by a sole supplier’s inability to deliver a product in a timely manner because of manufacturing delays. However, the unavailability of a particular staff member to process a request for reasonable accommodation is not an extenuating circumstance.
- I. **Individual with a Disability**. A person who has a physical or mental impairment that substantially limits one or more of that person’s major life activities, has a record of such impairment, or is regarded as having such impairment.
- J. **Interactive Process**. The process by which the individual requesting a reasonable accommodation, supervisors, managers and the DPC talk to each other about the request for reasonable accommodation and any issues related to such discussion including potential alternative accommodations and timeframes for providing an accommodation.
- K. **Major Life Activity**. Basic activities that the average person in the general population can perform with little or difficulty, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

- L. **Medical Review Officer (MRO)**. Medical professional(s) acting on behalf of the MSPB who reviews medical documentation, when necessary, and provides a medical opinion as it relates to requests for reasonable accommodation.
- M. **Organizational Element**. Any headquarters, regional or field office of the MSPB.
- N. **Physical or Mental Impairment**. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting (1) one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- O. **Qualified Individual With a Disability**. An individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such a position.
- P. **Reasonable Accommodation**. An adjustment or alteration that enables a qualified individual with a disability an equal opportunity to apply for a job, perform job duties, or enjoy benefits and privileges of employment. There are three categories of reasonable accommodation:
- (1) Modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job (such as providing application forms in alternative formats like large print or Braille).
 - (2) Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job, such as providing assistive technology to allow a sight-impaired employee to use a computer.
 - (3) Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment, such as removing physical barriers in an organization's office space or facilities.
- Q. **Request for Reasonable Accommodation**. An oral statement or a written statement indicating that an individual needs an adjustment or a change at work, or modification in the application process, for a reason related to a medical condition.
- R. **Requester**. An employee or applicant or representative acting on the employee's or applicant's behalf, who requests reasonable accommodation.
- S. **Substantially Limits**. The inability of an individual to perform a major life activity that the average person in the general population can perform; or being significantly restricted

as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity.

- T. **Undue Hardship**. The significant difficulty or expense to the agency that would result, or is likely to result, from a proposed arrangement or modification. If a requested accommodation would cause undue hardship, the MSPB is not required to provide that particular accommodation. Determination of undue hardship must always be made on a case-by-case basis, considering factors that include the nature and cost of the accommodation, the impact of the accommodation on the operation of the agency, and other relevant considerations.

5. RESPONSIBILITIES

- A. **Chief of Staff**, or his or her designee, will ensure that an effective process for handling a request for reasonable accommodation is established.

- B. **Director of the Office of Equal Employment Opportunity (OEEEO)** will:

- (1) Establish procedures to facilitate the provision of reasonable accommodation to qualified employees or applicants with disabilities.
- (2) Analyze and evaluate the effectiveness of the process for responding to requests for accommodation.
- (3) Ensure that sufficient resources are provided by the MSPB to guarantee effective implementation and management of a process for responding to request for reasonable accommodation.
- (4) Coordinate with managers and supervisors to ensure they receive reasonable accommodation training as designated by MSPB in accordance with EO 13164 and MD-715.
- (5) Refer all incoming reasonable accommodation requests and inquiries to the Disability Program Coordinator within five (5) calendar days of receipt.
- (6) Monitor the status of EEO complaints alleging unlawful discrimination on the basis of disability as they move through the process.
- (7) Coordinate with the DPC to facilitate and ensure accurate tracking and reporting of the provision of reasonable accommodation of disabilities throughout MSPB.
- (8) Provide an annual report on all reasonable accommodation and disability program activities to the Chairman of the MSPB and the Chair of the EEOC in accordance with MD-715 on or before December 31 of each year.

C. Disability Program Coordinator (DPC) will:

- (1) Be appointed by the Director of OEEEO. Generally, the DPC will be assigned to the Procurement Branch of the Office of Financial and Administrative Management as the agency point of contact and the decision-maker for reasonable accommodation matters.
- (2) Engage in interactive process with supervisors, managers, applicants and employees on determinations of all reasonable accommodation requests, whether the accommodation requests are received from agency officials or directly from the employee.
- (3) Collect, prepare and report, on an annual basis, the MSPB Reasonable Accommodation data to the Director of the Office Equal Employment Opportunity, for purposes of barrier identification and elimination, and trend analysis, as required by MD-715.

D. Office of the General Counsel will:

Conduct research and provide legal and technical advice and guidance to HR, OEEEO, DPC and MSPB managers regarding reasonable accommodation requests, policies and procedures.

E. Managers and Supervisors will:

- (1) Actively participate in the reasonable accommodation process.
- (2) Engage in an interactive process with employees who request reasonable accommodation and the DPC to ensure that appropriate consideration of each request is made.
- (3) Forward requests for reasonable accommodation to the DPC within five (5) calendar days.
- (4) Ensure implementation of approved accommodations within the time specified within this policy, or the time frame agreed upon by the concerned parties.
- (5) Request and ensure, when necessary, that appropriate training is provided for MSPB employees who are granted reasonable accommodations.

F. MSPB Employees will:²

² MSPB employees who fail to comply with this section of the policy will forfeit their rights to an accommodation until all requirements are fulfilled.

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

G. **MSPB Applicants** will:

- (1) Communicate requests for reasonable accommodation to any agency official involved in the application and hiring process.
- (2) Participate in an interactive process with agency officials concerning a request for reasonable accommodation.
- (3) Upon receipt of a job offer, provide relevant and recent medical and other relevant documentation in support of a request for reasonable accommodation to authorized agency officials in a timely manner.

6. POLICIES AND PROCEDURES

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

A. **Request.**

- (1) An **employee** may request a reasonable accommodation orally or in writing from his or her immediate supervisor, another supervisor or manager in his or her chain of command, or the DPC. MSPB's reasonable accommodation process begins as soon

as the request for accommodation is made either orally or in writing. The MSPB **Reasonable Accommodation Request Form**³ can be accessed through the MSPB Intranet Document page. A qualified individual with a disability may request a reasonable accommodation whenever he or she chooses, even if he or she has not previously disclosed the existence of a disability to agency officials.

- (2) An **applicant** may request a reasonable accommodation telephonically or in writing from any MSPB official with whom the applicant has had contact in connection with the application process or from the MSPB Disability Program Coordinator. Applicants who wish to request a reasonable accommodation may request a copy of the appropriate forms by calling the MSPB's Disability Program Coordinator.⁴
- (3) If authorized by the affected employee or applicant, a representative may request a reasonable accommodation on behalf of an employee or applicant with a disability. The initial request must be made in writing to the appropriate agency official.

B. Written Confirmation.

- (1) An employee who makes an oral request for reasonable accommodation should file a written request for accommodation within five (5) calendar days of making the oral request. While the written request is not mandatory, it will assist in keeping accurate records of accommodation requests.
- (2) The written request should be submitted to a manager or supervisor in the employee's chain of command and/or the DPC.
- (3) Any official receiving a request for reasonable accommodation must forward the request to the DPC, as soon as possible, but not more than five (5) calendar days after receipt of the request. Processing of the request should begin as soon as the oral request for accommodation is made, whether or not the written request has been provided.
- (4) For recurring requests of the same type (e.g. the assistance of sign language interpreters or readers), the written form is required only for the first request, although appropriate notice must be given each time the accommodation is needed.

C. Interactive Process.

- (1) Communication is a priority throughout the reasonable accommodation process. MSPB officials involved in the provision of reasonable accommodation for disabilities should take a proactive approach in searching for and considering

³ The MSPB Reasonable Accommodation Request form can be found at Attachment 2.

⁴ All MSPB forms associated with the request for a reasonable accommodation will be posted on the Agency's Internet to be accessible to both applicants and employees.

possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation should also participate, to the extent possible, in helping to identify an effective accommodation. The DPC serves as the point of contact for such matters.

- (2) 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 that should be provided are clear, extensive discussions may not be necessary. Even so, the DPC will interact with appropriate agency officials and the requesting individual to ensure that there is a full exchange of relevant information.

D. Reassignment as an Accommodation.

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

- (1) Existing vacant positions within MSPB for which the employee may be qualified, with or without reasonable accommodation; and,
- (2) Positions within MSPB that will become vacant within sixty (60) days of the request and for which the employee may be qualified.

Note: The first focus will be to identify positions that are equivalent to the employee's current job in terms of pay, status and other relevant factors. If there is no vacant equivalent position, the DPC will consider vacant lower level positions for which the individual is qualified. **Reassignment cannot be made to a position with greater promotion potential than the original position held by the employee.**

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

E. Request for Medical Information.

- (1) The DPC may request medical information or documentation that verifies that an employee or applicant has a specific physical or mental impairment or condition. In some cases the impairment or condition will be obvious. In these cases, further

medical information may not be necessary. However, when a medical or physical impairment or condition is not obvious or otherwise already known, the DPC or other appropriate official may require that the individual provide relevant and recent documentation about the disability and his or her functional limitations to enable management to make a determination regarding a request for reasonable accommodation.

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

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

- (5) Once the requested medical information is received, the DPC, in consultation with the MRO, will evaluate the documentation and, if appropriate, may consult with any other agency official such as the Director of Human Resources or OGC. If the requested information is insufficient to enable MSPB to determine whether an accommodation is appropriate, MSPB may seek further information from the requesting individual explaining why the information provided is insufficient, what

additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.

- (6) The DPC may ask the requesting individual to sign a limited release for the MSPB or other authorized official (MRO) to obtain additional information directly from the healthcare professional. This medical information may be needed to answer questions about the nature of the disability or the effectiveness of the accommodation under consideration. **MSPB Medical Consent Form**⁵ can be accessed through the MSPB Intranet Document page.
- (7) If the DPC determines that the medical information submitted must be reviewed by other medical experts, MSPB will make arrangements for such medical review. Such medical review will be performed at MSPB's expense.
- (8) Failure by the individual to provide appropriate medical documentation or to cooperate with MSPB's efforts to obtain such documentation may result in a denial of the request for reasonable accommodation. Such notification will be presented to the requester in writing. Notification shall indicate the allotted additional time the requester will have (usually no more than 15 calendar days), to present the necessary documentation to substantiate the request.

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

The time frame necessary to process a request for reasonable accommodation will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting medical information. Generally, a request shall be processed as follows:

- (1) **Request Not Involving Extenuating Circumstances.** If the request for reasonable accommodation is approved and the supporting documentation provided is sufficient, the request accommodation generally should be provided within twenty (20) business days from the date the request was initially made either orally or in writing. If the DPC needs the full twenty (20) days to engage in the interactive process and collect all relevant information about possible accommodations, the provision of the accommodation may take longer. If the request requires that additional supporting medical or other information be obtained, the following will apply:
 - (a) The DPC will make such a request to the employee as soon as possible, but before the expiration of the 20-day period.
 - (b) If the DPC determines that the medical or other documentation is sufficient, he or she shall determine whether the requested accommodation can be

⁵ The MSPB Medical Consent Form can be found at Attachment 3 and the Request for Reasonable Accommodation Fax Cover Sheet can be found at Attachment 4.

granted or whether an effective alternative accommodation should be provided.

- (c) If the medical or other documentation is sufficient, the accommodation or alternative accommodation will be provided as soon as possible after receipt of the documentation. If the documentation is insufficient, see Section 6E of this policy.
- (d) The DPC will inform the supervisor or management official responsible for compliance of the action required to be taken.

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

- (a) When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as necessary. All MSPB officials are expected to act as quickly as is reasonably possible in processing requests and providing reasonable accommodation.
- (b) Where extenuating circumstances are present, the DPC should notify the requester in writing of the reason for the delay, and the approximate date on which a decision regarding provision of the requested reasonable accommodation or provision of the agreed upon accommodation may be expected. The DPC should inform the requester about any further development or changes.
- (c) If there is a delay in providing an accommodation that has been approved, the DPC must decide whether temporary measures can be taken to assist the individual. This could include providing an alternative form of accommodation. In addition, the DPC may suggest measures that do not qualify as reasonable accommodation within the meaning of the law (e.g. temporary removal of an essential function) if:
 - They do not reasonably interfere with MSPB's operations; and,
 - The employee is clearly informed that they are being provided only on a temporary, interim basis until a more permanent accommodation can be arranged.
- (d) If a delay is attributed to the need to obtain or evaluate necessary medical information and the MSPB has not yet determined that the individual is entitled to an accommodation, the MSPB may also provide an accommodation on a temporary basis. In such a case, the DPC will notify the individual in writing that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.

- (e) If temporary measures are taken, the DPC and the appropriate manager or supervisor is responsible for ensuring that the modifications do not take the place of an approved accommodation and that all necessary steps are taken to provide the approved accommodation as quickly as possible.

G. Expedited Process.

(1) In certain circumstances, a request for reasonable accommodation may require an expedited review and decision in a time frame that is shorter than twenty (20) days. This includes situations where a reasonable accommodation is needed:

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

H. Granting or Denying a Reasonable Accommodation Request.

- (1) If a request for reasonable accommodation is granted, the DPC will issue a written decision stating the date the accommodation will be provided and, where there will be delay in providing the accommodation, the projected time frame for providing the accommodation and the reason for the delay. If a temporary accommodation can be arranged, the employee should be informed in writing.
- (2) Employees and applicants may decline an accommodation offered by the agency. If this occurs, the manager, supervisor or other agency official should document the declination and inform the DPC.
- (3) If a request for accommodation is denied, the DPC, after consultation with appropriate legal counsel, will issue a written decision that will be forwarded to the individual who requested the accommodation. The written decision should include the specific reasons for the denial. Factors supporting the denial of a request for accommodation include, but are not limited to:
 - (a) A determination that the requested accommodation would result in undue hardship. This requires the MSPB to find that a specific accommodation

would result in significant difficulty or expense, or would have a significant negative impact on the MSPB's operations or procedures. When evaluating reasonable accommodation requests to determine if undue hardship exists, the DPC should refer to the EEOC's "Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act." EEOC Notice No. 915.002 (October 17, 2002);

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

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

- (6) The written notice of denial must also inform the individual that he or she has the right to file an EEO complaint with the MSPB Office of Equal Employment

Opportunity. This notice must also contain the MSPB's procedures for seeking reconsideration of a denial decision.

I. Reconsideration of Denial.

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

J. Re-evaluation of Granted Accommodation.

The re-evaluation process is intended to allow the agency to ensure that an accommodation, previously granted, is effective, still appropriate, and not causing an undue burden to the overall operation of the agency and operating components. The DPC is responsible for conducting re-evaluations of granted accommodations. Re-evaluations, whether requested by the employee, the DPC, or another MSPB official, will follow the policy and procedures set forth within this MSPB policy for requesting reasonable accommodation. In cases where managers or supervisors are requesting a re-evaluation of an employee's accommodation, the employee will be notified, in writing, within ten (10) days of the request for re-evaluation. A re-evaluation of a granted accommodation may occur in the following circumstances:

- (1) An employee previously granted a reasonable accommodation, a manager within the employee's supervisory chain, or the employee's supervisor may request a re-evaluation of the existing accommodation at any time.
- (2) The DPC may initiate a re-evaluation of an existing accommodation at any time, with or without cause, and without the consent of the employee being accommodated.
- (3) Re-evaluation of an existing accommodation will not be initiated as a form of disciplinary action, retaliation or reprisal. Such actions are a violation of the Rehabilitation Act and the Americans with Disabilities Act.

K. Confidentiality and Disclosure.

- (1) All medical information, including information about functional limitations and reasonable accommodation needs, obtained in connection with a request for reasonable accommodation **must be kept confidential**. The information shall be kept in a file separate from the individual's personnel file. No one shall have access to this file other than the DPC or the Director of Human Resources. Individuals who have access to information necessary to make a decision about whether to grant a requested accommodation **may not disclose this information except as follows:**
 - (a) **supervisors and managers who need to know may be told about the necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);**
 - (b) **first aid and safety personnel may be told if the disability requires emergency treatment;**
 - (c) **government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;**
 - (d) **the information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers; and,**
 - (e) **agency EEO officials may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation requests.**
- (2) Whenever medical information is disclosed, the individual disclosing the information must inform the recipients about the confidentiality that attaches to the disclosed information.

L. Information Tracking and Reporting.

- (1) The Director of Human Resources, in conjunction with the DPC, will maintain records relating to reasonable accommodation requests for the duration of the employee's tenure with the MSPB, or five (5) years, whichever is longer.
- (2) The DPC will provide an annual report to the Director of OEEO on or about November 1 of each fiscal year in accordance with section 5 C (3) above.
- (3) The Director of OEEO, or his or her designee, will provide an annual report to the MSPB for review and approval in accordance with MD-715 on or before December 31 of each fiscal year. The report shall be maintained for at least three (3) years and contain the following information:

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

7. DISTRIBUTION

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

8. EFFECTIVE DATE AND IMPLEMENTATION

This policy is effective immediately upon signature.

Neil A. G. McPhie, Chairman

Date

Attachments

ATTACHMENT 1

CHANGES HISTORY

Changes

January 2007

Issuance of New Policy



Attachment 2

Date: _____

ACCOMMODATION REQUEST FORM

Full Name: _____
Last *First* *Middle Initial*

Mailing Address:

Street

City *State* *Zip Code*

Email Address: _____ **Fax:** _____

Phone: _____
Day Evening Cell

Social Security Number (last four): _ _ _ _ **Region:** _____

Disability Claimed:

How Disability Affects Your Major Life Activity:

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

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

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

Your failure to provide this information may result in the inability of the MSPB to grant your request. *Fax the completed form and documentation to the Disability Program Coordinator, at fax number (202) 653-7831. A fax cover sheet is attached for your convenience. For questions you may phone the Office of Human Resources at: (202) 653-6772 ext. 1207 or (202) 653-6180. You could email your request to: [Disability Program](#)*

Coordinator@MSPB.gov. Requests may also be mailed (or hand-delivered) to the attention of the Disability Program Coordinator at Merit Systems Protection Board, Suite 500, 1615 M Street, NW, Washington, DC 20036.

Attachment 3



MEDICAL CONSENT FORM

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

I hereby authorize the Merit Systems Protection Board Disability Program Coordinator to request and receive materials and information about me pertinent to my request for accommodation based

on an asserted disability. I authorize MSPB officials to contact the medical professionals I have listed in my requests and supporting materials to gather further information about my medical condition as it may pertain to my request. I understand that it may be necessary to reveal to others my identity and medical information regarding my request to MSPB officials.

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

Please check one of the following blocks and sign below:

_____ **Consent.** I have read and understand the above notice and authorize the Merit Systems Protection Board to request and receive medical material and information about me pertinent to my request for accommodation.

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

SIGNATURE: _____ **DATE:** _____

NAME: _____ **PHONE:** _____

ADDRESS: _____

SOCIAL SECURITY NUMBER (last four): _ _ _ _

Attachment 4

Fax



**U.S. Merit Systems
Protection Board**

Request for Reasonable Accommodation
Disability Program Coordinator
1615 M Street, NW, Suite 500
Washington, DC 20036
Tel: 202-653-6180

To: MSPB Disability Program Coordinator

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

From: _____

Phone: _____

Date: _____

No. of pages (including cover sheet): _____

Subject: _____

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

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

Signed _____

Comments:

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