



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

1200 New Jersey Avenue, SE  
Washington, DC 20590

**ACTION MEMORANDUM TO THE SECRETARY**

**From:**

*for Mary N. Whigham Jones*  
Camille M. Hazeur, Director  
Departmental Office of Civil Rights, S-30  
X64648

**Through:**

Mary N. Whigham Jones, Deputy Director  
Departmental Office of Civil Rights, S-30  
X64648

**Prepared by:**

Yvette Rivera  
Equal Employment Opportunity Programs Division, S-32  
X65131

**Subject:**

DOT Order 1011.1A - Procedures for Processing Reasonable  
Accommodation Requests from Job Applicants and DOT Employees with  
Disabilities

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**ACTION REQUIRED**

I request that you sign the attached U.S. Department of Transportation (DOT) Order 1011.1A, Procedures for Processing Reasonable Accommodation Requests from DOT Job Applicants and Employees with Disabilities.

**SUMMARY**

The Departmental Office of Civil Rights has prepared the attached revised policy, which updates and replaces DOT Order 1011.1, signed by then Secretary of Transportation Norman Y. Mineta on September 16, 2002. This updated Order includes the requirements contained in the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), as well as the Genetic Information Nondiscrimination Act of 2008 (GINA).

**BACKGROUND**

Executive Order 13164, "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation," signed in July 2000, requires each Federal agency to establish written procedures for processing reasonable accommodation requests for its employees

and job applicants with disabilities. These written procedures also assist DOT in fulfilling its obligation under the Rehabilitation Act of 1973, as amended.

The DOT instituted Order 1011.1, signed by then Secretary of Transportation Norman Y. Mineta, on September 16, 2002. The implementation of ADAAA and GINA necessitated updates to the DOT policy. Specifically, the ADAAA broadened the definition of the term "disability" and, therefore, the number and types of persons who are protected under the ADA and other Federal disability nondiscrimination laws and the number of persons eligible for reasonable accommodation. The GINA prohibits employers from using individuals' genetic information when making employment decisions and restricts the type of medical information that can be sought, received, and shared regarding DOT employees and applicants.

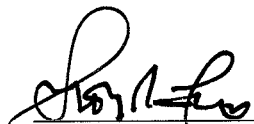
## RECOMMENDATION

I recommend that you sign the attached DOT Order 1011.1A, Procedures for Processing Reasonable Accommodation Requests from DOT Job Applicants and Employees with Disabilities.

Attachments

The Secretary

APPROVED:

  
\_\_\_\_\_

DISAPPROVED:

\_\_\_\_\_

COMMENTS:

\_\_\_\_\_

DATE:

1-19-14

**Note for reviewers (vetting offices):**

In brief, here is a summary comparison of the existing DOT Order 1011.1 and the draft revisions attached below:

<b>Current Order 1011.1</b>	<b>Proposed Order 1011.1A</b>
Information about related laws and regulations are listed in the final chapter, “References.”	Information about the laws and regulations (with links) from which the policy is derived are in the first chapter of the draft Order.
Definitions of terms, such as “major life activities,” reflected laws, regulations, and related guidance that existed at the time of publication.	Definitions of terms, such as “major life activities,” reflect the expansion of the terms under the ADAAA. In addition, the definition of reasonable accommodation explains that accommodations cover all work activities, including office functions held off-site.
The term “Qualified Individual with a Disability” was used in the existing Order.	The term “Qualified Individual” is used in the draft Order to highlight the focus on whether a person is qualified for the job they have or are applying for.
There was an entire chapter (Chapter 3) on “U.S. Department of Transportation Officials Authorized to Handle Requests for Reasonable Accommodation.”	Much of the information from the old Chapter 3 is blended into the roles/responsibilities outlined in Chapter 1.
The “Decision-Maker” is defined as the first level supervisor or the senior HR manager servicing a vacancy announcement.	There is an added note under the same definition, strongly encouraging Decision-Makers to seek help from Civil Rights, Human Resource Management, Counsel Offices, and/or Disability Program Managers.
The written request policy is included in Chapter 2.	The written request policy is included in Chapter 1, with the same information reiterated in Chapter 2, to highlight the requirement, as well as the 25-business-day deadline.
There is no mention of the Genetic Information Nondiscrimination Act (GINA), or how it applies to reasonable accommodation processing.	There is recommended language to be used in every request for medical information, based upon GINA regulations. In addition, the policy states, “...it is important that each OA maintain records in a manner that allows medical documentation to be readily available and retrievable” given that the records must be maintained for the tenure of DOT employment, and should be remitted to the employee or destroyed 6 years after separation per General Records Schedule.
There is no clear assignment of financial responsibility for accommodations not provided by the DOT Disability Resource	A section (6.2) has been added to clearly define financial responsibility for accommodations not provided by the DOT

Center.	Disability Resource Center.
Information regarding Alternative Dispute resolution (ADR) was included in a standalone chapter (Chapter 8).	Information regarding ADR is included in Chapter 6 ("Decisions, Appeals, and Dispute Resolution").
Chapter 9 ("Information and Reporting") stated that information on reasonable accommodation requests would be maintained by Operating Administrations, Disability Program Managers, and the Disability Resource Center.	Chapter 7 ("Information and Reports") includes information on the automated accommodation request tracking system maintained by the Departmental Office of Civil Rights (DOCR), including a link to the DOCR web site that has a link to the system. Operating Administrations are required to ensure that all accommodation requests are tracked in the system.
The decision making process was embedded within the policy but not outlined clearly.	There is a one-page flowchart of the decision making process.



## THE SECRETARY OF TRANSPORTATION

WASHINGTON, DC 20590

September 19, 2014

I am pleased to announce the U.S. Department of Transportation's (DOT) recently revised and updated *Procedures for Processing Reasonable Accommodation Requests from DOT Job Applicants and Employees with Disabilities* (DOT Order 1011.1A), effective immediately. In order for DOT to be a model employer of people with disabilities, it is vital to the Department's mission to implement Order 1011.1A.

This updated Order includes the requirements of the Americans with Disabilities Act Amendments Act of 2008, as well as the Genetic Information Nondiscrimination Act of 2008. This ensures compliance with Executive Order 13164, which requires each Federal agency to develop effective written procedures for the processing of reasonable accommodation requests, and supports the Department's obligation to meet the reasonable accommodation requirements prescribed under the Rehabilitation Act of 1973, as amended.

This Order serves our objective of increasing employment opportunities for people with disabilities at the Department. For that reason, I expect every manager and employee to be knowledgeable of, and to comply with, the requirements of this Order.

A handwritten signature in black ink, appearing to read 'Anthony R. Foxx', is written over a horizontal line.

Anthony R. Foxx  
Secretary of Transportation

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## CHAPTER 1 – INTRODUCTION

The U.S. Department of Transportation (DOT or Department) Order 1011.1A implements Executive Order 13164, requiring each Federal agency to establish written procedures for processing reasonable accommodation requests for its employees and job applicants with disabilities. Implementation of this updated Order also assists DOT's compliance with the Rehabilitation Act of 1973, as amended.

The Order provides a framework under which DOT processes reasonable accommodation requests. It does not include or restate, for example, any applicable laws, regulations, or Executive Orders. It should be implemented in a manner consistent with the applicable authorities. See CHAPTER 9 – REFERENCES for more information.

### 1.1 SCOPE

Effective immediately, these written procedures apply to all DOT organizations including Operating Administrations, the Office of the Secretary, and the Office of Inspector General (hereafter referred to collectively as the "OAs"). The OAs are encouraged to create and document their own, OA-specific procedures. Each OA's procedures must be consistent with the requirements in this Order and comply with guidance from the U.S. Equal Employment Opportunity Commission (EEOC).

Reasonable accommodation applies to all aspects of employment, including the application process, recruitment, training, promotion, reassignment, rotational assignments, developmental assignments, as well as the benefits and privileges of employment. This Order covers all requests for reasonable accommodation made by, or on behalf of, job applicants with disabilities and DOT employees with disabilities.

### 1.2 LEGAL CONTEXT OF VARIOUS TERMS

This section defines the terms critical to understanding DOT's responsibilities. The definitions are based upon Federal laws and regulations as prescribed by the EEOC. *See also:*

- The **Rehabilitation Act of 1973, as amended**: Sections 501, 503, and 504 of the Rehabilitation Act of 1973, as amended, prohibit discrimination based on disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors. The standards for determining employment discrimination under the Rehabilitation Act are the same as those used in Title I of the Americans with Disabilities Act.

**NOTE:** This Order speaks specifically to DOT's responsibilities to provide reasonable accommodation, pursuant to Section 501 and other provisions in the Rehabilitation Act, as amended. The Rehabilitation Act, as amended, also prescribes other requirements for accessibility within the Federal government and its Federally-funded programs as described below:



**Section 504** of the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 794) requires DOT to ensure that no otherwise qualified individuals with disabilities are excluded from or discriminated against under any DOT-conducted or DOT-funded program or activity solely by reason of their disabilities. DOT-conducted and DOT-funded programs and activities must be accessible and usable to qualified individuals with disabilities, including any aid, benefit, or service.

DOT-conducted programs and activities might include, but are not limited to:

- DOT sponsored events in and outside of DOT property, such as management-sponsored meetings;
- special emphasis observances;
- announcements of reports or major initiatives; and
- training programs, conferences, receptions, and office social functions, such as retirement celebrations, employee funerals or memorial services, and holiday parties. This includes meetings sponsored by DOT employee associations established and recognized under the Departmental Personnel Manual, Chapter 1000-4.

When announcing an event or meeting, program offices are required to include an accessibility statement explaining how individuals with disabilities may request a reasonable accommodation or program modification. The following statement is recommended as standard language to use for inclusion in all event announcements:

“The U.S. Department of Transportation (or name of the Operating Administration or office) is committed to providing equal access to this meeting (or event) for all participants. If you need alternative formats or services because of a disability, please contact (name of person) at (telephone number) or via email (email address) with your request by close of business (deadline).”

While individuals with disabilities are responsible for notifying event planners of required accommodations, event coordinators must consider the scope of their audience and take proactive steps to ensure events and programs are accessible to persons with disabilities. These steps often involve requisition deadlines, and may include but are not limited to:

- captioning videos (Web-based streaming videos, and DVDs);
- hosting events in locations that are close to public transportation and accessible to people who use wheelchairs;
- scheduling sign language interpreters when the Secretary or Deputy Secretary is speaking to all DOT employees, and upon request;
- providing meeting handouts in alternate formats; and
- ensuring all voice mail broadcast announcements is distributed via e-mail or other written means of communications.

If an employee requests a reasonable accommodation that the Disability Resource Center (DRC) is unable to provide, the event sponsor is responsible for providing the accommodation. Otherwise, the event should be postponed until the accommodation is made available to ensure equal access for all participants and guests.

**Section 508** of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 (d)) requires the DOT to ensure that electronic and information technology (EIT) procured, purchased, developed, maintained or used by DOT meets the provisions of Section 508, unless an undue burden would be imposed on the agency. The U.S. Access Board standards apply to the following:

- software applications and operating systems;
- Web-based intranet and internet information and systems;
- telecommunication products, video and multimedia products;
- self-contained/closed products;
- desktop and portable computers; and
- other information technology, including support activities.

Helpful information regarding technological accessibility can be found at <http://www.section508.gov>. Section 508 standards must be met regardless of whether agencies have employees with disabilities. Section 508 requirements are not satisfied by providing reasonable accommodation for individual employees.

The use of appropriated funds to provide for accessibility expenditures is a proper use of funds when acting under the authority of the Rehabilitation Act of 1973 (29 U.S.C. §§ 791, 794 and 794 (d)) and its regulatory requirements. Each Secretarial or Departmental Office and OA is responsible for making provision in its budget to cover services, assistive technology or work productivity tools that are not available through the DRC; employee and public access to DOT-conducted programs and activities; and accessible EIT. Services may include Communication Access Realtime Translation (CART), and assistive technology tools may include screen readers and speech recognition software.

- **The Americans with Disabilities Act of 1990, as amended (ADA)**: The ADA and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), prohibit private employers, State and local governments, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in, among other things, job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and the right to enjoy any benefits or privileges of employment. The ADA's nondiscrimination standards also apply to Federal sector employees under Section 501 of the Rehabilitation Act, as amended, and its implementing regulations.
- **29 CFR part 1614**: Federal Sector Equal Employment Opportunity Regulations as prescribed by the EEOC. These regulations outline the roles and responsibilities for agencies, employees, and applicants in the equal employment opportunity (EEO) complaint process. Complaints of discrimination on the basis of disability are processed under these regulations.
- **The EEOC Title I Technical Assistance Manual and Addendum**: EEOC Guidance documents that educate employers, other covered entities, and persons with disabilities on their obligations and rights under the employment provisions of the Americans with Disabilities Act (Title I of the ADA).

- **The EEOC Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, as Amended**: EEOC regulations and accompanying interpretive guidance for implementation of the ADAAA.

### 1.3 DEFINITIONS

#### **Disability**

A disability means, with respect to an individual:

- A physical or mental impairment that substantially limits one or more major life activities;
- A record of such physical or mental impairment; or
- Is “regarded as” a person with a disability, meaning that he or she was subjected to discriminatory action because he or she was perceived to have an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

#### **Major Life Activities**

Major life activities are those activities that are of central importance to daily life. These activities include, but are not limited to:

- Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working, and
- Major bodily functions, including functions of the immune system, special sense organs, and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

#### **Physical or Mental Impairment**

A physical or mental impairment is:

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological; musculoskeletal; special sense organs; respiratory (including speech organs); cardiovascular; reproductive; digestive; genitourinary; immune; circulatory; hemic; lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, drug addiction, and alcoholism. See the EEOC nine rules of construction at Section 1630.3(j)(1)(i)-(ix).

## **Substantially Limits**

The term “substantially limits” broadly means the impairment substantially limits a major life activity in comparison to most people in the general population. It does not require scientific, medical, or statistical analysis in most cases. The focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. “Substantially limits” has a lower threshold than “prevents” or “severely or significantly restricts.”

**NOTE:** While pregnancy itself is not a disability, pregnant job applicants and employees are not excluded from the protections of the ADA. Please see the EEOC’s “Enforcement Guidance: Pregnancy Discrimination and Related Issues.”

## **Disability Discrimination**

“Disability discrimination” occurs when:

- An employer, or other entity covered by the American with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual with a disability, who is an applicant or employee, unfavorably because he or she has a disability;
- A covered employer or other entity treats an applicant or employee less favorably because he or she has a history of a disability or because he or she is perceived to have a physical or mental impairment that is not transitory and minor (even if he or she does not have such an impairment); or
- A covered employer or other entity fails to make a reasonable accommodation and cannot demonstrate that the request is an undue hardship on the employer.

## **Extenuating Circumstances**

Extenuating circumstances are situations that could not reasonably have been anticipated or avoided, or are beyond DOT’s ability to control. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation is extended as necessary. Extensions are limited to circumstances where they are absolutely necessary, and only for as long as required to deal with the extenuating circumstance. Please see **4.3 USING TEMPORARY MEASURES**.

For example, if a health professional fails to provide the requested documentation in a timely manner, the decision-maker is not expected to adhere to the usual timeframe. However, extenuating circumstances do not include situations in which a DOT medical expert creates the delay, because the medical expert is generally considered under the control of DOT, even if the services are provided through a contract. For more information, see the EEOC publication *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act* (<http://www.eeoc.gov/policy/docs/accommodation.html>).

Please see **4.2 EXTENUATING CIRCUMSTANCES** for more information and examples.

## **Reasonable Accommodation**

A reasonable accommodation is any work environment change or any change to the way things are usually done that results in equal employment opportunity for an individual with a disability. Reasonable accommodations include:

- Modifications or adjustments to a job application process that enable an applicant with a disability to be considered for the position he or she desires, provided he or she is qualified for the position;
- Modifications or adjustments to the work environment, or the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified for a given position to perform the essential functions of that position; and
- Modifications or adjustments that enable a covered entity's employee with a disability to enjoy benefits and privileges of employment equal to those available to an employee without a disability.

Reasonable accommodations cover all work activities, including office-sponsored functions held off-site. For example, an employee can request a reasonable accommodation for a retirement party to which the whole office is invited. Some specific examples of reasonable accommodations can include:

- Providing qualified readers or interpreters.
- Providing screen reader or voice activated software.
- Making existing facilities readily accessible and usable by employees and job applicants. For example, installing a ramp, widening a doorway, or reconfiguring a workspace.
- Modifying work schedules.
- Acquiring or modifying equipment or devices.
- Adjusting or modifying examinations, training materials, or policies.
- Granting telework.
- Restructuring a job, for example, by removing a marginal function.
- Providing materials in alternative formats (e.g., Braille, large print).
- Reassigning to a vacant position.

**NOTE:** A reasonable accommodation is not required for an individual who meets the definition of disability solely under the "regarded as" portion of the definition of disability (Section 1630.2(o)(4)).

## **Qualified Individual**

An individual is considered qualified if the individual:

- Satisfies the requisite skill, experience, education, and other job-related requirements of the position; and
- Can perform the essential functions of the position, with or without reasonable accommodation.

## **Essential Functions**

Essential functions are the fundamental job duties of the position. The job cannot be completed without performing the functions. A function is "essential" if:

- The position exists specifically to perform that function;
- There are a limited number of other employees who could perform the function; and/or
- The function is highly specialized and the individual is hired for his or her expertise or ability to perform the function.

A determination of the essential functions of a position is made on a case-by-case basis and reflects the job as actually performed. It is not simply the components of a generic position description.

### **Undue Hardship**

An undue hardship is any action that requires significant difficulty or expense for DOT. Determinations of undue hardship must always be made on a case-by-case basis, considering factors that include the nature and cost of the accommodation and the impact of the accommodation on the operations of the agency. Specifically, undue hardship means that the entirety of DOT cannot absorb the costs or impact on operations of the proposed accommodation. The Secretary or his or her designee must make the final determination that an undue hardship exists. If the Secretary determines that an undue hardship exists, DOT will not provide the accommodation. Please see **6.3 DENYING REQUESTS** for more information.

### **Vacant Position**

For the purposes of reassignment as a reasonable accommodation, a vacant position is an employment position within a DOT agency that has no current occupant and the organization intends to fill, or will fill within 60 calendar days of the job search initiated by the decision to reassign an employee with disabilities as a reasonable accommodation (see **3.4 REASSIGNMENT AS A REASONABLE ACCOMMODATION**).

## **1.4 ROLES AND RESPONSIBILITIES OF OFFICES AND INDIVIDUALS**

### **Departmental Office of Civil Rights (DOCR)**

The DOCR provides policy guidance and oversees compliance with the Order and relevant Federal laws and regulations. The DOCR and civil rights offices within each OA provide expert advice and consultant services on matters related to reasonable accommodations, and conduct training sessions for the OAs. The DOCR will outline the required learning objectives for reasonable accommodation training to be delivered to DOT managers and employees by DOCR and OA civil rights offices.

### **Operating Administrations, Office of the Secretary, and the Office of the Inspector General (OAs)**

Decisions must always be made in the OA (including DOT organizations OST and OIG) where the requesting employee works and by the individual or individuals designated to do so by the head of that OA. Each OA must:

- Ensure that employees and managers are aware of this Order and all other applicable policies and procedures, and understand the obligations as indicated.
- Decide who the decision-makers are for the OA.

Such actions must be made in conformity with this Order including applicable deadlines. The OAs are responsible for training managers and supervisors to recognize and respond to reasonable accommodation requests in accordance with the requirements set forth in this Order.

Decisions should be made at the lowest possible organizational level within the OA. If the OA has not designated a decision-maker, the immediate supervisor or the lowest-level supervisor in the chain of command with the authority to approve the accommodation must be the decision-maker.

The Secretary of Transportation, or his/her designee, must approve any decision to deny an accommodation request when the basis of the denial is undue hardship (see **6.3 DENYING REQUESTS**).

### **Civil Rights (CR) Offices**

The CR Offices within each OA provide policy guidance, expert advice, and consultant services to OA staff, supervisors, employees, and employment applicants. The CR Directors must ensure that all staff members in the OA are trained how to recognize and respond to reasonable accommodation requests in accordance with the requirements set forth in this Order.

Training is recommended for all staff. At a minimum, due to the timeframes required by this Order and reported on to the EEOC, all managers should participate in DOT reasonable accommodation policy training every two years, provided by DOCR or OA CR offices. New supervisors and managers should receive training on this Order within 6 months of starting in their new positions. The OAs are strongly encouraged to use online training management systems (TMS/eLMS) to track completion of this required training.

Civil Rights Offices are also responsible for tracking requests for reasonable accommodation within their respective OAs (see **CHAPTER 7 – INFORMATION AND REPORTS**).

### **Human Resources (HR) Offices**

The Departmental Office of Human Resource Management (DOHRM) and HR offices within each OA provide advice and guidance to supervisors, managers, and employees about HR policies and procedures related to reasonable accommodation, such as leave, telework, and performance management. The HR Office assists decision-makers in locating appropriate vacant positions for employees with disabilities for whom reassignment will be the most effective reasonable accommodation.

HR addresses, along with selecting officials, if appropriate, reasonable accommodation requests related to recruitment actions.

If a job applicant with a disability makes a reasonable accommodation request, unless otherwise provided in applicable OA procedures, the senior HR Manager responsible for filling the vacancy makes the decision. The HR Specialist responsible for the job vacancy must guide job applicants through the reasonable accommodation process.

## **Counsel Offices**

The DOT Office of the General Counsel as well as Chief Counsel Offices within each OA provide advice and guidance to supervisors, managers, and entities within each OA on legal aspects of the accommodation process.

## **Disability Resource Center (DRC)**

The DRC, operated by DOHRM, is a reasonable accommodation service provider that assists job applicants, employees, supervisors, and managers with issues related to reasonable accommodation requests, including, but not limited to:

- Facilitating the interactive process to assess job needs.
- Identifying potential solutions or products and/or services.
- Acquiring agreed upon products and/or services that are within the scope of the DRC.
- Identifying and securing resources for assistive technology and other disability-related trainings.
- Finding assistive technology and computer equipment.
- Finding sign-language interpreting services.
- Providing information and referral to resources within DOT and the community, as appropriate, to meet the requester's needs.

Facility modification and the purchase of ergonomic furniture are beyond the scope of DRC services. Furniture requests are managed by each OA and/or Facilities offices. For more information on the scope of the DRC, please see the *DRC Disability Services Handbook*, found at <http://www.dot.gov/drc/handbook>.

In many cases, DRC provides training related to products it provides as accommodations. For example, DRC can provide training on how to use voice recognition software it purchased and provided.

The DRC does not provide legal advice. The DRC is not authorized to grant or deny a reasonable accommodation request. Please see **3.1 USING DRC SERVICES** for more information.

## **Disability Program Managers (DPMs)**

The DPMs provide advice and assistance to supervisors, managers, and others on disability employment matters; maintain and submit completed reports in a timely manner; facilitate management training in consultation with the respective OA Office of Civil Rights or DOCR, as appropriate; and ensure that reasonable accommodation request information is entered into the DOT reasonable accommodation request tracking system [See **CHAPTER 7 – INFORMATION AND REPORTS**]. The DPMs may be in OA offices of CR or HR.

A list of DOT DPMs can be found here: <https://www.civilrights.dot.gov/civil-rights-awareness-enforcement/employment-related/affirmative-employment/special-emphasis>.

The DPMs are not involved in statutory or collective bargaining remedies for denial of reasonable accommodation. Please see **6.4 APPEALING DECISIONS** for more information.



## **Decision-Makers**

Decision-makers accept, process, and determine whether to grant or deny reasonable accommodation requests from DOT employees. Decision-makers are responsible for participating in the interactive process described in **3.2 DISCUSSING THE REQUESTS USING THE INTERACTIVE PROCESS**.

The entire reasonable accommodation decision making process is the responsibility of the decision-maker. Given the importance of the determinations and the fact that a correct decision can require the application of complex legal concepts, all decision-makers are strongly encouraged seek help from CR, HR, and Counsel Offices, and/or Disability Program Managers (DPMs). This ensures that the process used and decisions made comply with the Order and all statutes, regulations, agency guidance documents, and case law.

All requests for and provision of reasonable accommodation must be kept confidential. Disclosure of medical information is prohibited except in certain limited situations, which do not include disclosure to coworkers.

The EEOC provides guidance on how to determine the responsible decision-maker for contingent workers (contractor employees), which are available here:  
<http://www.eeoc.gov/policy/docs/guidance-contingent.html>.

### **Decision-Makers for Job Applicants**

Decisions regarding reasonable accommodations for job applicants must be made by the individual or individuals designated to do so by the head of that OA. If the OA has not designated a decision-maker, the senior HR Manager responsible for filling the vacancy must be the decision-maker.

### **Decision-Makers for Employees**

Decision-makers are the individuals responsible for making decisions regarding reasonable accommodation requests. Decision-makers have the ultimate responsibility for accepting, processing, and determining whether to grant or deny requests for reasonable accommodations from employees and job applicants. The responsibilities include, but are not limited to:

- Determining and documenting that the requesting job applicant or employee is a qualified individual with a disability.
- Identifying and documenting the essential functions of the job.
- Determining and documenting if the employee is qualified for the position he or she holds.
- Determining whether an accommodation is necessary to enable the employee to perform the essential functions of the job.
- Ensuring that an employee can enjoy equal benefits and privileges of employment.
- Identifying, locating, and purchasing effective accommodations.
- Arranging for installation, training, and follow up as needed.
- Requesting and maintaining necessary documentation.

- Seeking guidance from the OA Offices of Human Resources (HR), Civil Rights (CR), and Counsel, as appropriate.
- Fulfilling all reporting requirements, including following designated OA procedures to ensure entry or reasonable accommodation request information into the DOT reasonable accommodation tracking system [See **CHAPTER 7 – INFORMATION AND REPORTS**].

The immediate supervisor or the lowest-level supervisor in the chain of command with the authority to approve the accommodation is the decision-maker unless otherwise designated by OA policy or procedure. When a decision-maker is unavailable to process reasonable accommodation requests within the applicable timeframes, an appropriate replacement must be designated by the decision-maker and communicated to the requesting applicant or employee. Established timeframes are not suspended due to the unavailability of a principal decision-maker.

### **Supervisors**

A supervisor must participate in the interactive process described in **3.2 DISCUSSING THE REQUESTS USING THE INTERACTIVE PROCESS**, to provide information on the essential functions of the position and discuss potential effective reasonable accommodations. This is true even if an OA has designated a decision-maker other than the first-line supervisor.

### **Job Applicants and Employees**

A job applicant with a disability (including job applicants who are current Federal employees) must notify the staffing office for whom contact information is provided in every competitive job vacancy announcement, servicing HR Specialist, or hiring manager of the accommodation request. An employee with a disability must notify the decision-maker of the accommodation request. Job applicants and employees are required to follow up oral requests in writing. [See **1.6 WRITTEN REQUEST POLICY**]

Job applicants and employees have a responsibility to participate in the interactive process to identify functional limitations at work and potential effective reasonable accommodations. An individual with a disability may be required to demonstrate through medical or other documentation that there is a disability and how that disability affects essential job functions for the purpose of reasonable accommodation decision making. The applicant or employee requesting reasonable accommodation is responsible for providing appropriate medical information related to the functional impairment and the requested accommodation where the disability and/or need for accommodation is not obvious or already known.

### **1.5 NOTICE OF THIS ORDER**

All current DOT employees must be given notice of the Order and any substantive revisions. The notice must include where copies of the Order can be found or obtained. The OA must provide a brief written summary of the Order and any related procedures that have been developed by the OA to all new DOT employees as part of the orientation process.

Complete copies of this Order must be posted on the DOT and OA intranet and internet sites, and must be available upon request from DOCR, DRC, and each OA CR and HR office. The DOCR must also make copies in alternate formats available, upon request.

## **1.6 WRITTEN REQUEST POLICY**

Oral and written requests for reasonable accommodation are considered received when made to the decision-maker, any manager in the employee's chain of command, their OA office of HR or CR, DOHRM, or DOCR. Oral and written requests for reasonable accommodation from job applicants are considered received when made to any DOT employee with an official connection to the application process. Oral or written requests start the 25-business-day reasonable accommodation processing timeline (See **CHAPTER 4 – TIMEFRAMES**).

To enable DOT to keep accurate records of requests, employees and job applicants seeking reasonable accommodation are required to follow an oral request with a written request. Unless otherwise instructed, employees should direct written requests to their designated decision-maker.

Staff members who are responsible for processing requests must not wait for written confirmation before considering a request. Decision-makers are required to record oral requests in writing as well.

If an individual with a disability requires assistance making a written request, the staff receiving the request must provide or arrange for assistance. If a reasonable accommodation is required repeatedly (for example, sign-language interpreters, readers, or live or remote Communication Access Realtime Translation (CART)), a written request to the decision-maker is required only for the first request.

## **1.7 LABOR RELATIONS OBLIGATIONS**

If an employee is in a bargaining unit, the decision-maker must contact the appropriate OA labor relations office or specialist to determine what, if any, labor relations obligations must be met prior to implementing a reasonable accommodation agreed upon by the decision-maker and the requesting applicant or employee. The requesting applicant's or employee's confidential medical information must not be disclosed to the OA labor relations office or specialist unless an agreed upon reasonable accommodation would impact the working conditions of other bargaining unit employees.

## **1.8 CONFLICTS OF INTEREST**

To avoid conflicts of interest, any staff member who processes a reasonable accommodation request must be removed from investigating or making a decision about a complaint challenging the Agency's handling of the accommodation request.

## CHAPTER 2 - REASONABLE ACCOMMODATION INITIATION

A reasonable accommodation request is a statement, oral or written, made by an individual who requests an adjustment or change at work, in the application process, or in any benefit or privilege of employment because of a physical or mental impairment. The request does not have to include special words, such as “reasonable accommodation,” “disability,” or “Rehabilitation Act,” nor can such a requirement be imposed by the decision-maker.

### 2.1 INITIATING REQUESTS

An employee or job applicant can make a reasonable accommodation request orally or in writing. For purposes of this Order, oral communication includes communication through a sign-language interpreter, telephone, TTY, or relay services. Written communication includes communication by email. As required in **CHAPTER 1.5 – WRITTEN REQUEST POLICY**, any initial oral request must be followed up with a written request.

An employee or job applicant can also request the reasonable accommodation through a family member, health professional, or other designated representative. Oral and written requests from job applicants are considered received when made to any DOT employee with an official connection with the application process. Oral and written requests from employees are considered received when made to the decision-maker, any manager in the employee’s chain of command, their OA office of HR or CR, DOHRM, or DOOCR.

### 2.2 DIRECTING REQUESTS

#### Job Applicants

During the hiring process, job applicants can direct requests for accommodation to any DOT employee with an official connection with the application process. This includes directing reasonable accommodation requests to contact information provided in vacancy announcements. If requests are made to DOT employees who are not part of the staff responsible for the vacancy, the request must be forwarded to the designated decision-maker after the applicant is informed of the need to forward the request to another person within DOT.

#### Employees

To minimize delays, employees should direct the reasonable accommodation requests to, in order of descending priority:

- The OA decision-maker designated to process and decide on the request pursuant to the OA section in **CHAPTER 1 – INTRODUCTION**.
- Immediate supervisor, if no decision-maker has been designated.
- Another supervisor in the chain of command of the requesting employee.
- Other designated DOT official.

The DRC is not a designated decision-maker and has no authority to determine whether a reasonable accommodation request should be granted or denied (see **3.1 USING DRC SERVICES**). Requests made to anyone other than the designated decision-maker must be referred to the OA decision-maker.

### **2.3 NOTIFICATIONS BY DECISION-MAKER**

The decision-maker must contact the requesting party within 3 business days of receiving the reasonable accommodation request. The decision-maker must inform the requesting party about the decision making process and must begin the interactive process (See **3.2 DISCUSSING THE REQUESTS USING THE INTERACTIVE PROCESS**). Every effort should be made to prevent any delay during this part of the process.

The decision-maker may contact the DRC regarding accommodation services and equipment at any time during the process. If the decision-maker anticipates that DRC will provide equipment and services, DRC should be contacted as soon as possible, preferably within 2 business days from the date the request was received.

### **2.4 REFERRING INITIAL REQUESTS**

If an employee gives a reasonable accommodation request to someone other than the designated decision-maker, the recipient of such a request should refer the employee to the appropriate decision-maker within 3 business days from the date that the individual receives the request. Every effort must be made to prevent any delay during this stage of the request process. The DOCR, DPMs, DRC and OA offices of CR, HR, and/or Counsel can provide assistance in identifying the appropriate decision-maker.

### **2.5 TIMING OF REQUESTS**

An individual with a disability can request a reasonable accommodation at any time during the application process or during the period of employment, even if no disclosure was made previously regarding the existence of a disability.

### **2.6 BEGINNING THE REQUEST PROCESS**

The processing of the reasonable accommodation request and all time limitations begin when a request is received by the decision-maker, any manager in the employee's chain of command, their OA office of HR or CR, DOHRM, or DOCR. It does not matter if the request was initially made orally or in writing, and it must not be delayed pending written confirmation.

If a request is made to someone other than the individuals designated in **2.2 DIRECTING REQUESTS**, the time limit begins as soon as one of those designated individual receives the request. The decision-maker will provide a written notice documenting the receipt of request and the initiation of the reasonable accommodation process.

## CHAPTER 3 – REASONABLE ACCOMMODATION PROCESSING

Upon receiving a request for reasonable accommodation, the decision-maker and individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation. This should be a cooperative, interactive process and involve the individual requesting the accommodation, the decision-maker, and any other appropriate personnel, such as representatives from Civil Rights, Human Resources, Counsel, or Facilities.

Decisions on accommodation requests must be made on a case-by-case basis and must not be based on stereotypes regarding disabilities. For example, a decision-maker must discuss communication preference with an employee who is deaf and not assume that a sign-language interpreter is the correct accommodation. Not all persons who are deaf or hard of hearing know sign language. Employees may also have hidden disabilities requiring accommodation. Communication is the key to this process and necessary to determine the most effective accommodation.

### 3.1 USING DOT'S DISABILITY RESOURCE CENTER (DRC) SERVICES

To assist OAs with providing reasonable accommodations to employees and job applicants, DRC provides services to the entire DOT. This ensures fair and consistent outcomes throughout DOT.

Individuals requesting reasonable accommodation may contact the DRC directly. The DRC conducts an intake interview upon receipt of a request for an accommodation to determine if the supervisor or designated decision-maker can be contacted as required to begin the interactive process. The DRC cannot provide services to an employee without permission to contact the employee's supervisor or designated decision-maker.

The DRC provides services related to reasonable accommodation such as –

- Facilitates the interactive process to assess job needs and determine what type of reasonable accommodation is most effective and efficient with helping the employee perform the essential functions of the job.
- Purchases assistive technology products, such as screen readers, screen enlargement software, videophone equipment, adaptive input devices, assistive listening devices, braille displays, or voice recognition software.
- Facilitates training on assistive technology.
- Provides contract services, such as sign language interpreting, Communication Access Real-Time Translation (CART), reader services, and personal assistant services. (Please see **6.2 FINANCIAL RESPONSIBILITY** for more information on personal assistant services on official travel.)

The most effective accommodation identified through the DRC process may be different from that already approved by the decision-maker and/or fall outside of the scope of DRC services. In such instances, the decision-maker, the requester, and the DRC should use the interactive process to come to a resolution (See **6.2 FINANCIAL RESPONSIBILITY**).

**NOTE:** The DRC does not have the authority to make disability or accommodation decisions, or to provide legal advice. Legal advice must be obtained through Counsel the applicable OA Chief Counsel office or the DOT Office of the General. The DRC can provide information related to types of possible accommodations and the accommodation process, but the responsibility for accommodation request decisions rests with the applicable decision-maker.

### **3.2 DISCUSSING THE REQUESTS USING THE INTERACTIVE PROCESS**

The individual requesting the accommodation, the decision-maker, supervisor (if the supervisor is not the decision-maker), and the individual making the request must engage in an interactive process to determine what, if any, accommodation is necessary. An otherwise qualified individual with a disability is entitled to an effective accommodation, which may or may not be the accommodation of first choice. The interactive process may also include appropriate representatives from CR, HR, and Counsel.

The interactive process between the individual requesting the accommodation, the supervisor, and the decision-maker should involve a discussion of all relevant issues, including but not limited to:

- Is the requesting individual a person with a disability?
- What are the essential functions of the job?
- Would an accommodation enable the employee to perform the essential functions of the job?
- What accommodation(s) would be most effective and would not pose an undue hardship?

An employee with a disability who is qualified for his or her position is entitled to an effective accommodation, which may or may not be the accommodation of first choice. The goal is to ensure all parties understand how the request to be processed, all relevant information is exchanged, and the requesting party gets an opportunity to propose and discuss potential accommodations. Care should be taken to manage privacy concerns sensitively. If the employee is in a bargaining unit, the employee may request union representation throughout the interactive process.

### **3.3 PROCESSING THIRD-PARTY REQUESTS ON BEHALF OF A JOB APPLICANT OR EMPLOYEE**

When a request for accommodation is made by a third party on behalf of a job applicant or employee, the decision-maker should confirm the request with the job applicant or employee before proceeding. If the employee or job applicant cannot be reached to confirm, the decision-maker should begin processing the third-party request before obtaining confirmation (for example, if leave is requested to accommodate emergent treatment for an employee). However, as soon as reasonably possible and prior to the actual delivery of an accommodation, the decision-maker must obtain confirmation from the job applicant or employee. In general, when dealing with third-party requests, decision-makers must ensure that the privacy rights of DOT job applicants and employees are not violated. For assistance, please contact your CR, HR, or Counsel's Office.

### 3.4 REASSIGNMENT AS A REASONABLE ACCOMMODATION

When an individual with a disability is qualified for his or her existing position but cannot perform the essential functions required by the current position and no effective accommodation is possible in that position, a reassignment to a vacant position for which the employee is qualified should be considered, unless it would cause an undue hardship for DOT. Reassignment will only be considered if there is no other effective reasonable accommodation for the employee's current position. Reassignment should be considered the accommodation of last resort.

For this purpose, the phrase "vacant positions" includes positions that are actually vacant and that the OA intends to fill. It also includes any positions that the decision-maker or HR knows will become vacant in the next 60 calendar days [See 1.3 DEFINITIONS]. The DOT is not required to create jobs for individuals.

Union bargaining agreements may contain provisions that may preclude offering a vacant, funded position as a reasonable accommodation. For example, seniority provisions may prevail. When bargaining agreements cover employees or vacant positions, it is important to consult with the appropriate OA labor relations office.

The reassignment search should focus on vacant positions that are equivalent to the current job in terms of pay, grade, promotion potential, status, benefits, geographical location, and other relevant factors. If an equivalent position is found for which the employee is minimally qualified, per analysis by an HR Specialist, and can perform the essential functions, with or without reasonable accommodation, the employee must be offered that position. The employee cannot be required to compete for that position.

If there are multiple vacancies equivalent to the current job in terms of pay, grade, promotion potential, status, benefits, geographical location, and other relevant factors, DOT is only obligated to offer one reassignment opportunity as a form of accommodation. The DOT may offer several reassignment opportunities if available and in the interest of the DOT. An employee must be qualified for the new position, with or without reasonable accommodation.

The decision-maker must work with the employee and HR personnel to identify all equivalent vacant, funded positions for which the employee may be qualified with or without reasonable accommodation.

The vacancy search should include parameters identified by the employee regarding: pay; grade; promotion potential; status; benefits; geographical location; and other relevant factors such as his or her willingness to accept a position outside of his or her current OA. In general, as with other transfers not required by management, DOT does not pay relocation expenses. Prior to assigning the employee to a non-equivalent position, the decision-maker must consult with the employee to determine which factors are most significant to the employee.

For assistance with reassignment as a reasonable accommodation, decision-makers should contact their respective OA's offices of HR, CR, and Counsel.

**NOTE:** Reassignment is not available as an accommodation to job applicants.



## CHAPTER 4 –TIMEFRAMES

Requests for accommodations must be processed, and accommodation(s) provided, in as short a timeframe as reasonably possible. The timeframe necessary to process a request varies depending upon the nature of the accommodation requested and the need for supporting medical information. However, absent the need for supporting medical information and/or the existence of other extenuating circumstances, a request for reasonable accommodation must be processed and the accommodation, if granted, provided within 25 business days from the date the request is received by the individuals designated in **2.2 DIRECTING REQUESTS**.

The maximum limit of 25 business days for processing does not mean that the decision-maker should take the full length of time allotted in each case. Failure to process a request that can be processed in fewer than 25 business days may constitute an undue delay, in violation of the Rehabilitation Act of 1973, as amended, and potential grounds for an EEO complaint. Therefore, whenever possible, requests for reasonable accommodations must be processed in less time than the limit allows. Each party involved in the processing must document the time used to complete each step of the process.

**NOTE:** When a decision maker requests appropriate medical documentation, all timeframes freeze until the requester provides the documentation requested by the agency.

### 4.1 EXPEDITING REQUESTS

Circumstances can warrant expedited decision making in certain cases. Examples of situations that may require reasonable accommodation in a shorter time period include:

- **Job Applicants:** The need to expedite a request in order to ensure that applicants with disabilities have an equal opportunity to apply for a job is critical based on the timetable for receiving applications, conducting interviews, taking tests, making hiring decisions, and onboarding new employees. If the OA has not designated a decision-maker, the senior HR Manager responsible for filling the vacancy must be the decision-maker and must act promptly to make a determination, so that, if appropriate, the agency can provide reasonable accommodation.
- **Employees:** Based on the nature of the request, an employee can require a reasonable accommodation for a job-related activity that occurs within a short timeframe. For example, an employee may need a sign language interpreter for a meeting scheduled within 5 calendar days.

In addition, a request can include both simple, easy to obtain items, and accommodations that are more complex. For example, an employee with limited dexterity may need both a simple trackball and complex computer-related accommodations, such as speech-recognition software. Easily obtained items and/or services that are necessary to enhance productivity and effectiveness should be provided to the employee as soon as reasonably possible and should not be delayed pending completion of the entire request.

## **4.2 EXTENUATING CIRCUMSTANCES**

If circumstances preclude a decision-maker from making a decision or implementing the accommodation within the required timeframe, the total processing time can be extended. Please see **1.3 DEFINITIONS** for the definition of extenuating circumstances. Processing time can only be extended when strictly necessary due to circumstances beyond the control of the decision-maker.

Failure to complete property transfer requirements may result in delays. In many cases, these delays are not beyond the control of DOT and are, therefore, not extenuating circumstances. The following are examples of extenuating circumstances:

- Outstanding initial or follow-up request(s) for medical information.
- Longer timeframe to purchase equipment because of Federal Acquisition Regulation requirements.
- Back-ordered equipment or other vendor-related delays that are not within the control of DOT.
- An employee with a disability needs to work with equipment on a trial basis to ensure that it is effective before it is purchased.
- Union negotiation is required.
- The Secretary or his/her designee needs to approve an undue hardship claim raised by the decision-maker.

**NOTE:** When extenuating circumstances exist, the decision-maker must notify the requesting individual in writing of the reason for the delay and the approximate date on which a decision or the provision of the reasonable accommodation is expected. Additional developments should also be communicated promptly to the individual in writing. The decision-maker must provide the reasonable accommodation as soon as practicable.

## **4.3 USING TEMPORARY MEASURES**

The decision-maker must consider whether temporary measures can be taken to assist the employee if there is a delay in providing an approved accommodation. Any accommodation offered on a temporary basis must be presented to the employee with an explanation, in writing, of the temporary nature of the solution and the anticipated date of the more permanent accommodation.

Temporary measures are by definition expected to end at some time in the future, and are pending a more permanent accommodation. The decision-maker and employee should each be clear on the expected timeframe or conditions when temporary measures will no longer be provided. For example, telework may be provided temporarily while workstation or facility

modifications are completed. The decision-maker and employee need to agree that when the more permanent accommodation is in place, the temporary measure will no longer be provided.

Temporary measures are not a valid reason for indefinitely postponing decisions or implementation of a more permanent accommodation. A temporary measure may be provided as a reasonable accommodation only if agreed upon by the decision-maker and the employee.

## CHAPTER 5 - MEDICAL INFORMATION

When a job applicant or employee requests a reasonable accommodation, the decision-maker is entitled to sufficient information and documentation to determine whether the individual has a disability as defined in the Rehabilitation Act, as amended, and what reasonable accommodation(s) would be most effective. When the disability and the need for accommodation is not obvious and is not otherwise known, the decision-maker may request reasonable medical documentation about the individual's physical or mental impairment and related functional limitations. Reasonable documentation is documentation needed to establish that a person has a disability and that the disability requires a reasonable accommodation.

In addition to requesting medical documentation, the decision-maker should seek more information from the individual requesting the accommodation, when the:

- Specific limitation(s) for which the issue or barrier is unclear,
- Effective accommodation is not obvious, and/or
- Parties are comparing the effectiveness of several potential accommodations.

**NOTE:** When a decision maker requests appropriate medical documentation, all timeframes freeze until the requester provides the documentation requested by the agency.

### 5.1 REQUESTING SPECIFIC MEDICAL INFORMATION

When the medical impairment(s) necessitating a reasonable accommodation is not obvious, or when the decision-maker needs more information to determine what accommodation(s) would be most effective, the decision-maker can, with guidance from his or her HR and CR offices, request information and documentation that is relevant to the reasonable accommodation decision, such as –

- Nature, severity, and duration of the impairment relevant to the request.
- One or more of the major life activities that the impairment limits.
- Extent or degree to which the impairment limits a major life activity.
- Reason an individual requires a reasonable accommodation or the particular reasonable accommodation requested.

The information request should be focused on determining how the impairment affects the applicant's ability to participate in the application and interview process or the employee's ability to perform the essential functions of the job, and what types of accommodations may be effective. For example, a request for limited duty could be followed up with a set of questions to determine which of the job duties need to be limited, by how much, and for how long.

The decision-maker may obtain information regarding the nature and extent of the disability and the functional limitations directly from the individual. Alternatively, the decision-maker may require that information and documentation come from an appropriate professional, such as a physician, vocational counselor, physical therapist, or another individual with recognized expertise regarding the disability.

When appropriate, the decision-maker should provide the professional, through the requesting job applicant or employee, with information describing the nature of the job, the essential functions, and other relevant information. An OA may have the medical information reviewed by a medical expert of its choice at its sole expense.

Decision-makers are strongly encouraged to seek guidance from their OA offices of CR, HR, and Counsel when drafting a request for medical information. Every request for medical information/documentation should include the following language in order to avoid the inadvertent receipt of genetic information:

“The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by Title II of GINA 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.”

## **5.2 REQUESTING MORE INFORMATION DUE TO INSUFFICIENCY**

If the medical information submitted is insufficient to establish if the individual has a disability as defined in the Rehabilitation Act, as amended, and/or what accommodation(s) is necessary and would be most effective, the decision-maker may request supplemental information and documentation. When requesting additional information, decision-makers are encouraged to explain to the requester why the information already provided is insufficient and to identify the information needed to complete the documentation requirement. Decision-makers are strongly encouraged to seek guidance from offices of CR, HR, and Counsel before submitting a request for additional information.

The decision-maker must:

- Explain the insufficiency;
- Identify the information and documentation needed;
- Place the individual on notice that failure to provide the identified documentation can result in denial of the accommodation request; and
- Allow the individual the opportunity to provide the identified information and documentation.

## **5.3 USING MEDICAL RELEASE FORMS**

Alternatively, the decision-maker can coordinate with his or her respective HR and Counsel offices to ask the individual to sign a limited medical release permitting HR to submit a list of specific questions directly to the applicant’s or employee’s physician, health-care professional,

or certified vocational rehabilitation counselor addressing the insufficiency. The limited medical release form can also enable the DOT decision-maker, a physician, or health-care professional to choose to make the initial contact and/or inquiry. The decision-maker, through his or her OA HR office, can offer, and in certain circumstances require, that the individual submit to an independent examination by a health-care professional chosen by the OA and at the OA's expense.

When decision-makers request medical information and documentation, they must not inadvertently ask for more information and/or documentation than is necessary to make the assessment. Do not use a medical release form that constitutes a general release for all medical records.

#### **5.4 KEEPING RECORDS CONFIDENTIAL**

Federal law requires that medical information and documentation related to the reasonable accommodation process be treated as confidential medical information. For these purposes, confidentiality means that this information and documentation must be kept in files separate and apart from the personnel files of the applicant or employee. These files should be maintained in a locked and secure location.

The DRC must maintain the records for all interactions it has with employees involving reasonable accommodation requests.

In general, persons entitled to and having access to such information and documentation in order to make an accommodation decision (including decision-makers and supervisors, and appropriate CR, HR, Counsel, Disability Program Managers, and OA medical personnel) must not disclose it, with the following exceptions:

- Information about necessary accommodations and/or work restrictions can be provided to supervisors or managers who need to know.
- Information about emergency treatment that could be required can be disclosed to first aid and safety personnel.
- Investigatory information can be disclosed to government officials conducting compliance activities under the Rehabilitation Act, as amended.
- Under limited circumstances, information can be disclosed to Workers Compensation Offices or insurance carriers, See 29 C.F.R. Part 1630 Appendix section 1630.16(f).
- HR, CR, or other personnel dealing with equal employment opportunity matters can be given information to maintain records, and to evaluate and report on how DOT processes requests for reasonable accommodation.
- Information about assistance needed during an emergency evacuation may be required and can be provided to safety personnel.

Any properly made disclosures must also include information about the confidentiality requirements that apply to the information, such as:

“This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law.”

Medical records should be maintained for the duration of the tenure of the DOT employee (See **7.1 RETAINING RECORDS**). Once a DOT employee has left the agency, his or her medical documentation should be remitted to the DOT employee or destroyed 3 years after employee separation from the agency or all appeals are concluded, whichever is later (per General Records Schedules, Schedule 1, item 24; found here: <http://www.archives.gov/records-mgmt/grs/index.pdf>).

## **CHAPTER 6 – DECISIONS, APPEALS, AND DISPUTE RESOLUTION**

This chapter describes the procedures for granting or denying reasonable accommodation requests, appealing reasonable accommodation decisions, and the dispute resolution process.

### **6.1 GRANTING REQUESTS**

The decision-maker should communicate his or her decision to grant a reasonable accommodation to the individual, in writing, as soon as practicable. If the granted accommodation is not the one specifically requested, it is still considered a decision to grant an accommodation.

If there was a specific accommodation requested and an alternative accommodation is granted, the determination should also specify the reason(s) why the specifically requested accommodation was not provided, and why the decision-maker believes that the alternate accommodation granted is the most appropriate effective accommodation. If the request is approved but the accommodation cannot be provided immediately, the decision-maker must provide a projected timeframe for providing the accommodation and use the interactive process to determine what, if any, temporary accommodations may be put in place (See **4.3 USING TEMPORARY MEASURES**).

Absent extenuating circumstances (See **4.2 EXTENUATING CIRCUMSTANCES**), the decision-maker must provide the requesting party a decision and accommodation within 25 business days. Failure to complete property transfer requirements may result in delays. If there is a delay or anticipation of a delay in the processing of a request for reasonable accommodation, or the provision of a reasonable accommodation, a written notice must be provided to the employee giving the reasons for the delay. Such notice should include the projected timeframe for providing the accommodation.

**NOTE:** The EEOC has issued Federal sector decisions holding that in some circumstances where an individual has a recurring, predictable need for accommodation (for example, sign language interpreters or large print documents), the agency may be obligated to provide the accommodation as needed, whether or not the individual has requested it.

#### **Updating Granted Accommodations**

Over time, the effectiveness of a granted accommodation may decrease due to circumstances such as software updates and the progressive nature of the individual's disability. Employees may request that their accommodation(s) be reviewed and updated. A request for review and update shall be treated as a new request for reasonable accommodation, adhering to the 25-business-day timeframe and reporting requirements (See **CHAPTER 4 – TIMEFRAMES** and **CHAPTER 7 – INFORMATION AND REPORTS**).

### **6.2 FINANCIAL RESPONSIBILITY**

#### **Disability Resource Center (DRC)**

The DRC is centrally funded through the DOT Working Capital Fund (WCF). By consolidating resources in this Department-wide program, the DRC is able to provide reasonable



accommodations without an additional impact to an individual OA's program budget. Each OA contributes to the WCF for the purpose of having access to a variety of centralized Departmental services, of which the DRC is one of those services.

As stated in **1.4 ROLES AND RESPONSIBILITIES OF OFFICES AND INDIVIDUALS**, if it has been decided that provision of a reasonable accommodation is appropriate, but the item or service being requested falls outside the scope of DRC services, DOT is still obligated to fulfill the request. The responsibility for fulfilling the request falls to the office in which the employee works or the appropriate servicing HR office.

#### **Personal Assistance Services (PAS) as a Reasonable Accommodation on Official Travel**

In accordance with 5 U.S.C. § 3102, "Employment of Personal Assistants for Handicapped Employees, Including Blind and Deaf Employees," DOT, in its discretion, may authorize the payment of salary and other necessary expenses for a personal assistant (PA) who accompanies a qualifying employee with a disability on official travel as a reasonable accommodation. The Federal Travel Regulations, 41 CFR Part 301-13, "Travel of an Employee with Special Needs," authorizes the payment of additional travel expenses deemed necessary by an agency to accommodate an employee with a special need including, but not limited to transportation and per diem expenses incurred by a family member or other attendant who must travel with the employee to make the trip possible, and services of an attendant, when necessary, to accommodate the employee's special need. The determination of possible agency payment of a salary to a PA who accompanies an employee with a disability on official travel will be made by the employee's first-line supervisor who should consult with the OA legal office, Office of Civil Rights, and DRC as needed in making this determination.

While payment of a salary to a PA accompanying an employee on official travel will not be appropriate in every instance, the agency should remain flexible and responsive to the needs of the employee and the employee's own estimation of his or her level of need for services should be given primary consideration in deciding how to provide and fund these services. The decision-maker, first-line supervisor and others involved in the process should be sensitive to the, at times, personal nature of the care an individual might need. The employee should not be required to disclose personal details in specific terms, unless determining a specific disability is necessary because the employee's disability is not readily apparent. For example, if an employee with an obvious physical impairment states that his or her own PA is needed because that person is trained to perform the necessary personal care, the inquiry should end. No details on the type of personal care are necessary in this instance, and in the rare case they would be, the Office of Civil Rights or Counsel office should be consulted for guidance on how such information should be properly requested and maintained. Please see the May 19, 2014, memorandum from the DOT Assistant Secretary for Administration and the Director of DOCR regarding, "Funding of Personal Assistance Services (PAS) as a Reasonable Accommodation on Official Travel" for more information (see <http://www.dot.gov/individuals/disability/funding-personal-assistance-services-pas-reasonable-accommodation-official>).

### **6.3 DENYING REQUESTS**

When a decision-maker denies a reasonable accommodation request, the decision must be in writing and specify the reason(s) for denying the request. Reasons for denying a request can include, but are not limited to:

- Medical documentation provided by job applicant or employee is inadequate to establish that the individual meets the definition of having a disability under the Rehabilitation Act, as amended, and/or needs a reasonable accommodation.
- Individual making the request fails to participate in the interactive process, including failing to provide requested medical documentation to establish that the individual has a disability and needs a reasonable accommodation.
- Requested accommodation would require the removal of an essential job function.
- Requested accommodation would require the lowering of a performance or production standard.
- Requested accommodation would be in violation of the terms and conditions of a collective bargaining agreement.

In addition, the written notice of denial must also inform the requesting party that he or she has the right to request reconsideration of the decision, to file an EEO complaint, and may have rights under administrative and/or union grievance procedures. The written notice should also explain the OA procedures for informal dispute resolution.

Absent extenuating circumstances, the decision-maker must give the requesting party the written denial decision within 25 business days of the date the request was received by an individual designated in **2.2 DIRECTING REQUESTS**.

**NOTE:** When an individual with a disability is qualified for his or her existing position but cannot perform the essential functions required by the current position and no effective accommodation is possible in that position, a reassignment to a vacant position for which the employee is qualified should be considered, unless it would cause an undue hardship for DOT. Reassignment will only be considered if there is no other effective reasonable accommodation for the employee's current position. Reassignment should be considered the accommodation of last resort. Please see **3.4 REASSIGNMENT AS A REASONABLE ACCOMMODATION**.

#### **Undue Hardship for DOT**

Before reaching an undue hardship determination, the decision-maker must have explored whether other effective reasonable accommodations exist that would not impose an undue hardship.

In making an undue hardship determination, the decision-maker must consult with appropriate OA CR, HR, Budget, and Counsel Offices. The Secretary of Transportation, or his or her designee, must approve all decisions that an accommodation would result in an undue hardship.

### **6.4 APPEALING DECISIONS**

Applicants and employees have the right to request a decision-maker reconsider the provision of an accommodation other than one specifically requested or a denial of a request for

accommodation. A request for reconsideration shall be treated as a new request for reasonable accommodation, adhering to the process and requirements outlined in this Order. All decision-makers are strongly encouraged seek help from CR, HR, and Counsel Offices, and/or Disability Program Managers (DPMs) when responding to a request for reconsideration.

**NOTE:** This Order creates no new enforceable rights under section 501 of the Rehabilitation Act, as amended, any other law, or collective bargaining agreement. Executive Order 13164 explains that the procedures are “intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, [or] its agencies.”

This Order does not limit or supplant statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory and collective bargaining claims remain unchanged, including the time frames for filing such claims.

An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation must:

- For an EEO complaint: Contact an EEO counselor within the respective OA Office of Civil Rights within 45 calendar days from the date of the matter alleged to be discriminatory or in the case of a personnel action, 45 calendar days of the effective date of the action.
- For a collective bargaining claim: File a written grievance in accordance with the provisions of the Collective Bargaining Agreement.
- For adverse actions over which the Merit Systems Protection Board has jurisdiction: Initiate an appeal to the MSPB within 30 days of the appealable adverse action as defined in 5 CFR. § 1201.3.

## **6.5 USING ALTERNATIVE DISPUTE RESOLUTION**

While some disputes arising out of a denial of a request can escalate into formal administrative and legal forums, DOT supervisors and employees are encouraged to use Alternative Dispute Resolution (ADR) or other appropriate mechanisms to resolve the disputes at the lowest possible level. The DOT policy on Alternative Dispute Resolution can be found here: <https://www.civilrights.dot.gov/civil-rights-library/policies>.

Decision-makers, DOT supervisors, and employees are encouraged to resolve disagreements and disputes informally whenever possible and regardless of whether the person has filed an EEO complaint. A DOT employee must be able to access the informal dispute resolution process without having to contact an EEO Counselor or file an EEO complaint. The informal dispute resolution process must be in addition to and must not modify or replace the EEO complaint process.

**NOTE:** For those DOT OAs that maintain OA-specific policies or procedures related to the processing of reasonable accommodation requests from job applicants and employees, those policies and procedures must identify the dispute resolution mechanisms to use when informal resolution disputes are not possible.

## **CHAPTER 7 - INFORMATION AND REPORTS**

The DOT will provide to the EEOC, upon request, information on any cumulative records used to track the agency's performance with regard to reasonable accommodation. To enable the reporting on and evaluation of DOT's effectiveness in responding to reasonable accommodation requests, each OA and the DRC must collect, compile, and report the information set forth in this chapter. The DOCR can provide guidance concerning the content of the information collected and the methodology for data collection and reporting.

### **7.1 RETAINING RECORDS**

During the time the request for reasonable accommodation is pending, and during the time period for reconsideration for requests that have been denied, the decision-maker must maintain all records related to the reasonable accommodation determination, including medical records obtained as outlined in this chapter.

All records related to the reasonable accommodation determination, especially medical records, must be maintained separate and apart from the personnel files of the employee. The OAs are strongly encouraged to designate an office to maintain such files following an uncontested determination or the resolution of a contested determination, separate and apart from the personnel files of the employee. These records should be maintained for the duration of the tenure of the DOT employee. Once a DOT employee has left the agency, their medical documentation should be remitted to the DOT employee or destroyed 3 years after employee separation or all appeals are concluded, whichever is later (per General Records Schedules, Schedule 1, item 24; found here: <http://www.archives.gov/records-mgmt/grs/index.pdf>).

For this reason, it is important that each OA maintain records in a locked and secure manner that allows medical documentation to be readily available and retrievable by appropriate personnel. Per EEOC regulations, agencies are required to track the following elements:

- The number of reasonable accommodations, by type, that have been requested in the application process and whether those requests have been granted or denied;
- The jobs (occupational series, grade level, and agency component) for which reasonable accommodations have been requested;
- The types of reasonable accommodations that have been requested for each of those jobs;
- The number of reasonable accommodations, by type, for each job that have been approved, and the number of accommodations, by type, that have been denied;
- The number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests have been granted or denied; and
- The amount of time taken to process each request for reasonable accommodation.

### **7.2 SUBMITTING INFORMATION AND REPORTS**

Each OA CR office must ensure that the required information regarding the provision of reasonable accommodation is entered into the Departmental reasonable accommodation request

tracking system (a link to which can be found on this website: <https://www.civilrights.dot.gov>; scroll down to “Popular Pages & Resources”) within 8 business days of a decision, unless another office has been designated to maintain such information by the applicable OA.

The DRC must maintain the records for all interactions it has with employees receiving its services.

### **7.3 USING THE DATA TRACKING SYSTEM**

The EEOC’s Management Directive 715 requires DOT to report on the timeliness of reasonable accommodation request processing in the Annual EEO Program Status Report and Plan. The OAs, including OST and OIG, must maintain the data listed below in an aggregate format, and must be able to transmit the aggregate information electronically to third parties, through the Departmental reasonable accommodation request tracking system (Found here: <https://www.civilrights.dot.gov>; scroll down to “Popular Pages & Resources”).

The OAs will input into the following data into the tracking system:

- A description of the reasonable accommodation requested and the date it was requested.
- The names of the requester and the decision maker, as well as the contact information for the decision-maker.
- Whether medical documentation was requested and, if so, dates specifying when it was requested and when it was received.
- Whether or not the reasonable accommodation request was approved and, if not, a brief justification of the denial.
- Sources of technical assistance consulted by the decision maker during the process.

### **7.4 SUBMITTING OA POLICIES AND PROCEDURES TO THE EEOC**

In accordance with Executive Order 13164, each Agency and component that adopts reasonable accommodation procedures must submit the procedures to the EEOC. Agencies and components must also submit any modification to reasonable accommodation procedures at the time of adoption. Prior to transmittal to the EEOC, any OA planning to develop procedures to supplement the Executive Order must submit such documents and any subsequent modifications to DOCR for review. The DOCR will transmit the documentation to EEOC.

## CHAPTER 8 - ADDITIONAL INFORMATION

Any person interested in receiving further information regarding these procedures may contact:

U.S. Department of Transportation  
Office of the Secretary  
Departmental Office of Civil Rights  
Disability Program Manager  
1200 New Jersey Avenue, SE.  
Room W78-307  
Washington, DC 20590

In addition, DOT employees and job applicants may contact the Departmental Office of Civil Rights (DOCR) at (202) 366-4648 or refer to the DOCR page on the Department's Web site at <https://www.civilrights.dot.gov/>.

A list of all DOT Disability Program Managers can be found here:

<https://www.civilrights.dot.gov/civil-rights-awareness-enforcement/employment-related/affirmative-employment/special-emphasis>.

## CHAPTER 9 – REFERENCES

All actions taken pursuant to this Order must be consistent with the standards contained in:

### 9.1 STATUTES

- 5 U.S.C. § 552a, and 49 C.F.R. Part 10, The Privacy Act of 1974, (found at <http://www.gpo.gov/fdsys/granule/USCODE-2010-title5/USCODE-2010-title5-partI-chap5-subchapII-sec552a/content-detail.html>)
- 5 U.S.C. § 3301, 3302; and 5 C.F.R. Part 339, Office of Personnel Management's Medical Qualification Determinations (found at <http://www.gpo.gov/fdsys/pkg/CFR-2011-title5-vol1/xml/CFR-2011-title5-vol1-part339.xml>)
- 29 U.S.C. § 701, et seq., The Rehabilitation Act of 1973, as amended (providing for reasonable accommodation and prohibiting disability-based discrimination against federal employees and applicants for federal employment)
- 29 U.S.C. § 791(g): Rehabilitation Act Amendments of 1992 (incorporating the employment standards of Title I of the Americans with Disabilities Act (ADA) into the Rehabilitation Act)
- 42 U.S.C. § 2000ff: The Genetic Information Nondiscrimination Act of 2008 (found at <http://www.gpo.gov/fdsys/granule/USCODE-2008-title42/USCODE-2008-title42-chap21F-sec2000ff-1/content-detail.html>)

### 9.2 REGULATIONS

- 5 C.F.R. § 339.301, et seq. (OPM: Medical Qualification Determinations)
- 29 C.F.R. § 1630 (EEOC: Regulations to implement the equal employment opportunity provisions of the ADA)
- 29 C.F.R. § 1614 (EEOC: Federal Sector Equal Employment Opportunity)
- 29 C.F.R. § 1614.203 (EEOC: Federal Sector EEO - Disability)
- 29 C.F.R. § 1635.8 and 1635.9, (EEOC: Regulations Implementing Title II of GINA) (found at <http://www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol4/xml/CFR-2011-title29-vol4-part1635.xml>)
- 41 C.F.R. § 301-13 (GSA: Travel of an Employee with Special Needs)

### 9.3 EXECUTIVE ORDERS

- Executive Order 13548, “Increasing Federal Employment of Individuals with Disabilities” (July 26, 2010)
- Executive Order 13164, “Establishing Procedures to Facilitate the Provision of Reasonable Accommodation” (July 26, 2000)
- Executive Order 13163, “Increasing Opportunity for Individuals with Disabilities to be Employed in the Federal Sector” (July 26, 2000)

### 9.4 POLICY AND ENFORCEMENT GUIDANCE

- EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (found at [http://www.eeoc.gov/policy/docs/accommodation\\_procedures.html](http://www.eeoc.gov/policy/docs/accommodation_procedures.html))
- Questions and Answers: Policy Guidance on Executive Order 13164 (found at [http://www.eeoc.gov/policy/docs/qanda-accommodation\\_procedures.html](http://www.eeoc.gov/policy/docs/qanda-accommodation_procedures.html))

- EEOC Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (found at 8 FEP Manual (BNA) 405:7601 (1999) or <http://www.eeoc.gov/policy/docs/accommodation.html>)
- EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act, found at 8 FEP Manual (BNA) 405: 7701 (2000) or [http://www.eeoc.gov/policy/docs/accommodation\\_procedures.html](http://www.eeoc.gov/policy/docs/accommodation_procedures.html)
- EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues (found at [http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm))
- EEOC Enforcement Guidance on Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms (found at <http://www.eeoc.gov/policy/docs/conting.html>)
- Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (found at <http://www.eeoc.gov/policy/docs/qanda-inquiries.html>)

## 9.5 USEFUL RESOURCES

- DOT Disability Resource Center (DRC) (found at: <http://www.dot.gov/drc/>)
- Department of Defense Computer and Electronic Accommodations Program (CAP) (found at: <http://www.cap.mil/>)
- Job Accommodation Network (JAN) (found at: <http://askjan.org/>)
- Employer Assistance and Resource Network (found at: <http://askearn.org/>)
- DOT Headquarters Parking Policy (<http://transerve.dot.gov/participants.html#dot-transit-benefits>)



## APPENDIX – REASONABLE ACCOMMODATION FLOWCHART

