

U.S. Merit Systems Protection Board



REASONABLE ACCOMMODATION POLICY AND PROCEDURES

(Revised June 2022)

Reasonable Accommodation Policy and Procedures

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1. PURPOSE

This policy implements the Equal Employment Opportunity Commission's (EEOC) Guidance on Executive Order 13164, which requires each Federal agency to establish procedures to facilitate the provision of reasonable accommodations, including establishing effective written procedures for processing requests for reasonable accommodation made by qualified job applicants and employees with disabilities. This directive further fulfills the U.S. Merit Systems Protection Board's obligation to provide reasonable accommodation pursuant to the Rehabilitation Act of 1973, as amended, where applicable, and in accordance with the provisions of Title I of the Americans with Disabilities Act (ADA) of 1990.¹ This policy supersedes the previous MSPB Reasonable Accommodation Policy and Procedures of August 2011.

2. SCOPE

This policy applies to all MSPB employees and applicants for employment.

3. AUTHORITIES

- A. [The Rehabilitation Act of 1973 \(29 U.S.C. Section 791\)](#), as amended.
- B. [The Rehabilitation Act of 1992 \(29 U.S.C. Section 701\(f\)\)](#).
- C. [Americans with Disabilities Act Amendments Act of 2008](#).
- D. [Equal Employment Opportunity Commission Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act, As Amended](#) (March 25, 2011).
- E. [Title I of the Americans with Disabilities Act of 1990](#).
- F. [Executive Order 13548 of July 26, 2010](#): Increasing Federal Employment of Individuals With Disabilities.
- G. [Executive Order 13163 of July 28, 2000](#): Increasing the Opportunity for Individuals With Disabilities To Be Employed in the Federal Employment.
- H. [Executive Order 13164 of July 26, 2000](#): Requiring Federal Agencies to establish Procedures to Facilitate the Provision of Reasonable Accommodation.
- I. [29 C.F.R. Part 1614](#): Federal Sector Equal Employment Opportunity.
- J. [29 C.F.R. Part 1630](#): Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act.
- K. [Privacy Act of 1974](#), as amended.

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

- L. [Equal Employment Opportunity Commission Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation](#), No. 915-003 (October 20, 2000).
- M. Equal Employment Opportunity Commission final rule implementing the [Genetic Information Nondiscrimination Act](#) (November 9, 2010).
- N. [Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, No. 915.002](#) (October 17, 2002).
- O. [Equal Employment Opportunity Management Directive 715](#) (October 1, 2003).

4. DEFINITIONS

- A. **Agency.** The U.S. Merit Systems Protection Board (MSPB), including headquarters, regional, and field offices.
- B. **Assistive Technology.** An item, piece of equipment, software, or system, that is commonly used to increase, maintain, or improve the functional capabilities of individuals with disabilities. Assistive technology includes ergonomic keyboards, screen-enlarging software, split screen reading software, etc. The term “assistive technology” can be used interchangeably with “computer adaptive equipment.”
- C. **Day.** Calendar day, unless otherwise specified.
- D. **Decision-maker.** The individual who is responsible for determining whether to grant or deny a request for reasonable accommodation. This person is typically the requester’s first line supervisor. Some types of requests (those involving significant changes to terms and conditions of employment) may require approval by a second or third-line supervisor. The name(s) of the decision-maker will be a matter of record and specifically identified for every request.
- E. **Disability Reasonable Accommodation Coordinator (RAC).** An MSPB employee who, on a collateral duty basis, assembles and organizes information relating to a request for reasonable accommodation, and assists and advises management on issues relating to disability accommodations. The RAC works under the guidance of the Office of Equal Employment Opportunity and, when necessary, may consult with the Office of General Counsel (OGC) to obtain advice on pertinent legal questions.
- F. **Direct Threat.** A significant risk of substantial harm to the health or safety of the individual with a disability or others that cannot be eliminated or reduced by reasonable accommodation.
- G. **Disability.** An impairment that substantially limits one or more major life activities.
- H. **Electronic and Information Technology (EIT).** Information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term includes

telecommunications products (such as telephones), information kiosks and transaction machines, websites, multimedia, and office equipment (such as copiers and fax machines).

- I. **Essential Function**. A core, fundamental duty or task that is integral to the position or job to be performed. Determination of the essential job functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description. A function can be essential if, among other things, the position exists specifically to perform that function; there are a limited number of other employees who could perform the job function; or the function is specialized, and the individual is hired based on their ability to perform it.
- J. **Extenuating Circumstances**. Unforeseen or unavoidable events which prevent the prompt processing of a request for or delivery of an accommodation. For example, a delay caused by a supplier's inability to deliver a product in a timely manner because of manufacturing delays.
- K. **Individual with a Disability**. A person who (1) has a physical impairment or mental impairment (psychiatric disability) that substantially limits one or more of such person's major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.
- L. **Interactive Process**. The process by which the individual requesting a reasonable accommodation, supervisors, managers, and the RAC talk to each other about the request for reasonable accommodation and related issues including potential alternative accommodations and timeframes for providing an accommodation.
- M. **Major Life Activity**. Basic activities that most people in the general population can perform with little or no difficulty. Major life activities generally include, but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Major life activities also include the operation of major bodily functions, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, circulatory, respiratory, endocrine, and reproductive functions.
- N. **Medical Review Officer (MRO)**. Medical professional(s) acting on behalf of MSPB who review medical documentation, when necessary, and provide medical opinions as they relate to requests for reasonable accommodation.
- O. **Non-obvious disability**. This term refers to disabilities that cannot be seen and are not obviously apparent. Non-obvious disabilities include partial sensory impairments such as low vision or hearing loss; chronic health conditions like arthritis, asthma, or diabetes; mental health conditions; learning disabilities; and serious illnesses, such as cancer.

- P. **Organizational Element**. Headquarters offices or any regional or field office of MSPB.
- Q. **Physical or Mental Impairment**. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting (1) one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or (2) any mental or psychological disorder, such as severe intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- R. **Qualified Individual with a Disability**. An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such a position.
- S. **Reasonable Accommodation**. An adjustment or alteration that enables a qualified individual with a disability an equal opportunity to apply for a job, perform job duties, or enjoy benefits and privileges of employment. There are three categories of reasonable accommodation:
- (1) Modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job, such as providing application forms in alternative formats like large print or Braille.
 - (2) Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job, such as providing assistive technology to allow a sight-impaired employee to use a computer.
 - (3) Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment, such as removing physical barriers in an organization's office space or facilities, to include perks to which other employees have free access—like cafeterias, exercise areas, vending machines, or commissaries.
- T. **Request for Reasonable Accommodation**. An oral statement or a written statement indicating that an individual needs an adjustment, change at work, or modification in the application process, for a reason related to a medical condition.
- U. **Requester**. An employee, applicant, or representative acting on the employee's or applicant's behalf, who requests a reasonable accommodation. Examples may include: a family member or health professional.
- V. **Substantially Limits**. The inability of an individual to perform a major life activity that most people in the general population can perform, or being restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which most people in the general population can perform that same major life activity. Consistent with the

EEOC's regulations found at 29 C.F.R. part 1630, the term "substantially limits" shall be construed broadly in favor of expansive coverage.

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

5. RESPONSIBILITIES

- A. **Chairman**, or their designee, will ensure that an effective process for handling a request for reasonable accommodation is established.
- B. **Director of the Office of Equal Employment Opportunity (OEEO)** will:
- (1) Establish procedures to facilitate the provision of reasonable accommodation to qualified employees or applicants with disabilities.
 - (2) Analyze and evaluate the effectiveness of the reasonable accommodation process.
 - (3) Coordinate with the Chairman and/or their designee to ensure that sufficient resources are provided by MSPB for effective implementation and management of a process for responding to requests for reasonable accommodation.
 - (4) Coordinate with managers and supervisors to ensure they receive reasonable accommodation training as designated by MSPB in accordance with Executive Order 13164 and EEOC Management Directive 715 (MD-715).
 - (5) Refer reasonable accommodation requests and inquiries to the RAC within five (5) calendar days of receipt.
 - (6) Monitor the status of EEO complaints alleging unlawful discrimination based on disability, including those complaints that include an issue relating to reasonable accommodation or disability-based harassment.
 - (7) Provide guidance to and coordinate with the RAC on processing requests and facilitating and ensuring accurate tracking and reporting of reasonable accommodations to employees with disabilities at MSPB.
 - (8) Provide an annual report and Affirmative Action Plan (AAP) on reasonable accommodation and disability program activities to the MSPB Chairman and EEOC, in accordance with MD-715.
 - (9) Facilitate the recruitment of persons with disabilities as follows:

- a. Advise managers about candidates available for placement in jobs under the Schedule A hiring authority (as set forth in EEOC's guidelines, [The ABCs of Schedule A](#), and OPM's guidelines for employing people with disabilities noncompetitively through the Schedule A hiring authority); and provide managers with information on reasonable accommodations and needs assessments for applicants and employees.
- b. In consultation with the Director of Human Resources (HR), assist managers in determining essential duties of vacant positions and possible modifications that will allow people with disabilities to perform essential duties, as well as assist persons with disabilities obtain information about current job opportunities at MSPB, the general application process including types of jobs and how these jobs are filled, and available reasonable accommodations.
- c. Work with other Federal agencies, private organizations, and the general public involved with the employment of persons with disabilities to foster a wide network to keep abreast of trends and leading practices.
- d. Monitor and evaluate selective placement program efforts and activities for people with disabilities to determine their effectiveness and make changes to the program as necessary and work with agency managers to remove any potential barriers.

C. **Disability Reasonable Accommodation Coordinators (RACs)** will:

- (1) In consultation with the Chairman, be appointed by the EEO Director to manage employment matters affecting people with disabilities and serve as technical advisor to the MSPB workforce on disability issues. The RAC's responsibilities include providing general guidance on disability accommodation, delivering disability accommodation-related training, coordinating reasonable accommodation requests, requesting and reviewing medical documentation, and advising managers about whether to approve or deny requests for reasonable accommodation.
- (2) Engage in an interactive process with supervisors, managers, applicants, and employees on determinations of reasonable accommodation requests, whether the accommodation requests are received from agency officials or from the employee.
- (3) Answer questions from the requester regarding the process, rules, and regulations governing reasonable accommodation.
- (4) Provide guidance to managers and supervisors on statutory and regulatory requirements of reasonable accommodation and related issues.
- (5) Provide advice, guidance, and recommendations on determining effective accommodations; whether additional information is needed from requester, and whether a disability is a covered disability; whether the requester is a qualified

individual with a disability requiring reasonable accommodation; and whether a request for reasonable accommodation presents an undue hardship to the agency.

- (6) Determine the need for medical documentation; review submitted medical documentation; and advise decision-makers regarding approval of requests for reasonable accommodations based on medical documentation.
- (7) Maintain confidentiality of all medical documentation submitted or obtained for the purpose of determining whether a reasonable accommodation should be granted.
- (8) Provide guidance to employees with disabilities and their supervisors to assist with identifying internal and external resources available to help facilitate the selection of an effective accommodation, including the resource materials available on EEOC's public website, including [*EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act*](#) (July 27, 2000), and [*EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act*](#) (revised October 17, 2002).
- (9) Collect, prepare, and report MSPB reasonable accommodation data (used for barrier and trend analysis) to the EEO Director monthly to identify and eliminate barriers as required by MD-715.

D. **Accessibility Program Manager** will:

- (1) Oversee MSPB's Rehabilitation Act (i.e., Section 508) and Accessibility Program activities, ensuring that MSPB abides by established standards in implementing relevant laws, regulations, policies, procedures, and guidance.
- (2) Serve as the Section 508 Coordinator within the agency, developing and disseminating information on MSPB's Section 508 policies, procedures, and guidance.
- (3) Collaborate with the EEO Director to promote Section 508-related education and activities as part of the agency's annual EEOC MD-715 Report and AAP.
- (4) For reasonable accommodation requests involving EIT, engage in the interactive process with supervisors, managers, employees, and applicants, , and provide technical guidance to employees regarding the use of EIT.
- (5) Provide summaries of Section 508 accomplishments, narratives, and data to the EEO Director for inclusion in the agency's annual EEOC MD-715 Report and AAP.

E. **Office of General Counsel** will conduct research and provide legal and technical advice and guidance to HR, OEEO, the RAC, and MSPB managers regarding reasonable accommodation requests, policies, and procedures, as needed.

E. **Managers and Supervisors** will:

- (1) Actively participate in the reasonable accommodation process.
- (2) Engage in an interactive process with employees who request reasonable accommodation and the RAC to keep informed of steps in the process, and actively consult the following resource materials available on EEOC's public website: [*EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act*](#) (July 27, 2000), and [*EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act*](#) (revised October 17, 2002).
- (3) Establish, in writing, the essential functions of the requester's job, if necessary.
- (4) Upon receipt of a request for reasonable accommodation forward the request to the RAC, as soon as possible, but not later than five (5) calendar days after receipt of the request, absent extenuating circumstances.
- (5) Ensure the request is reviewed and evaluated expeditiously and within the timelines and procedures established by this policy (30 days).
- (6) Upon receiving advice from the RAC for reasonable accommodation, respond to the requesting employee in writing within 30 days unless extenuating circumstances prevent such correspondence.
- (7) Ensure implementation of approved accommodations within the time specified within this policy or the timeframe agreed upon by RAC and the requesting employee.
- (8) Request and ensure, when necessary, that appropriate training for the use of a reasonable accommodation is provided for MSPB employees who are granted reasonable accommodations.
- (9) Notify the RAC upon the selection of an individual with an obvious or known disability to ensure reasonable accommodations are in place, if necessary or required, before such new hires report to work.

F. **Director of Human Resources** will:

- (1) Ensure vacancy announcements contain a statement that MSPB provides reasonable accommodation to applicants with disabilities.
- (2) Ensure a point of contact is included on all vacancy announcements so that applicants have a direct resource to which they can make a request for reasonable accommodation.
- (3) Receive applicant requests for reasonable accommodation and forward to the EEO Director for processing.

- (4) Assist in identifying vacancies and anticipated vacancies when reassignment is being considered as a reasonable accommodation.
- (5) Answer public inquiries from applicants under the Schedule A noncompetitive hiring authority.

G. **MSPB Employees** will:²

- (1) Communicate requests for reasonable accommodation for a disability to their supervisor and/or the RAC. The requester need not have a particular accommodation in mind before making a request. The request may be made to a supervisor or manager in the individual's chain of command, the RAC designated by the agency to oversee the reasonable accommodation process, or any other individual designated by the agency to accept such requests. 29 C.F.R. § 1614.203(d)(3)(i)(D).
- (2) Where the disability or the need for an accommodation is not obvious, provide relevant and recent medical and other relevant documentation in support of each request for reasonable accommodation to authorized agency officials in a timely manner.
- (3) Engage in an interactive process with agency officials concerning a request for reasonable accommodation.
- (4) Participate in needs assessments for assistive technology when recommended by the Accessibility Program Manager, supervisors, or the reviewing medical practitioner.
- (5) Learn to use and maintain skills required for using any assistive technology provided as a reasonable accommodation, including upgraded versions of assistive technology, if applicable.

H. **MSPB Applicants** will:

- (1) Communicate requests for reasonable accommodation to a supervisor or manager involved in the application process, OEEO, any agency employee connected with the application process, or any other individual designated by MSPB to accept such requests. 29 C.F.R. § 1614.203(d)(3)(i)(D).
- (2) Participate in an interactive process with agency officials concerning a request for reasonable accommodation.
- (3) Upon receipt of a job offer, provide recent medical and other relevant documentation to support a request for reasonable accommodation to agency officials, including the RAC, in a timely manner.

² MSPB employees who fail to comply with this section of the policy may delay their entitlement to an accommodation until all requirements are fulfilled.

6. POLICIES AND PROCEDURES

It is the policy of MSPB to review each request for reasonable accommodation in a timely manner. It is also the policy of MSPB to grant reasonable and effective accommodations to qualified individuals with disabilities unless such an accommodation would cause an undue hardship or burden on MSPB's operations.

- A. **Request.** A request for reasonable accommodation is a statement that an individual needs an adjustment at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition. The requester need not have a particular accommodation in mind before making a request and does not have to use any special words such as "reasonable accommodation," "disability," or "Rehabilitation Act." The request may be made to: (1) a supervisor or manager in the individual's chain of command; (2) OEEO, the office designated by the agency to oversee the reasonable accommodation process; (3) the RAC designated by the agency to coordinate the reasonable accommodation process; or (4) any other individual designated by the agency to accept such requests. 29 C.F.R. § 1614.203(d)(3)(i)(D).
- (1) An **employee** may request a reasonable accommodation orally or in writing. The MSPB reasonable accommodation process begins as soon as the request for accommodation is made either orally or in writing. The reasonable accommodation request form is included in this policy and is also located on the EEO page on the Portal (for employees only). A qualified individual with a disability may request a reasonable accommodation whenever they choose, even if they have not previously disclosed a disability to agency officials.
 - (2) An **applicant** may request a reasonable accommodation by telephone or in writing from the RAC or any MSPB official with whom the applicant has had contact in connection with the application process, such as an MSPB HR representative or its servicing personnel office. The reasonable accommodation request form is included in this policy and is also located on the MSPB public website (for applicants). A form may also be obtained by contacting the EEO Director. To track the status of your request, you may contact the EEO Director by email at Disability.Program.Coordinator@mspb.gov or at (202) 254-4405.
 - (3) If authorized by the requester, a representative such as a family member or medical care provider may request a reasonable accommodation on behalf of an employee or applicant. A written request to the agency is preferred, but it is not mandatory.
 - (4) For recurring requests of the same type (e.g., the assistance of sign language interpreters or readers), the written form is suggested only for the first request, although appropriate notice must be given each time the accommodation is needed.

B. Written Confirmation.

Any employee or applicant who makes a request for reasonable accommodation can, absent extenuating circumstances, expect to receive a written confirmation of receipt from their supervisor (for an MSPB employee), the RAC, or the EEO Director within five (5) calendar days of making the request.

C. Interactive Process.

Communication is a priority throughout the reasonable accommodation process. MSPB officials involved in the reasonable accommodation process should take a proactive approach in searching for and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation should also participate in helping to identify an effective accommodation. The RAC and the employee's supervisor(s) will use reasonable accommodation resources to determine the appropriate, effective accommodation. The [Job Accommodation Network \(JAN\)](#) is an example of a resource to consult for accommodation options. Connect with JAN at (800) 526-7234 (voice) or (877) 781-9403 (TTY). JAN is the leading source of free, expert, and confidential guidance on workplace accommodations and disability issues.

Ongoing communication is particularly important when (a) the specific limitation, problem or barrier associated with the disability is unclear; (b) when an effective accommodation is not obvious; or (c) when the parties are considering different possible reasonable accommodations. In cases when the RAC knows the disability, the need for accommodation, and the type of accommodation, extensive discussions may not be necessary. Even so, the RAC will interact with appropriate agency officials and the requesting individual to ensure that there is a full exchange of relevant information.

D. Request for Medical Information.

The RAC may request medical information or documentation that verifies that an employee or applicant has a specific physical or mental impairment or condition, or to supplement medical information that has already been provided. In some cases the impairment or condition will be obvious and further medical information may not be necessary. However, when a medical or physical impairment or condition is not obvious, the RAC may require that the individual provide relevant and recent documentation about the disability and their functional limitations to enable management to respond to a request for reasonable accommodation. A supervisor may not request medical documentation from the employee or the employee's physician for the purpose of processing a request for reasonable accommodation.

In making the request for medical documentation, the RAC will be guided by principles set forth in the ADA Amendments Act of 2008 (ADAA) and EEOC's final rule implementing the ADAAA in March 2011. Specifically, the ADAAA directs that the definition of disability be construed broadly and that the determination of whether an

individual has a “disability” generally should not require extensive analysis. The RAC may require medical information to determine that the requester meets the requirements for accommodation and in designing an appropriate and effective accommodation.

If the RAC believes that medical information is necessary to evaluate a request for reasonable accommodation, or that medical information already provided needs to be supplemented to evaluate the request, and the individual requesting the accommodation fails to provide the information, the RAC shall notify the requester in writing that failure to provide the necessary medical documentation may result in a denial of the request.

The RAC may request a consultation with a Medical Review Officer (MRO) at the agency’s expense, and/or as necessary, MSPB’s OGC to aid in the determination of whether medical documentation is necessary and, if so, the type and extent of the documentation required.

If medical documentation is necessary, it should address at a minimum:

- (1) the nature, severity, and duration of the individual’s impairment;
- (2) the activity or activities that the impairment limits;
- (3) the extent to which the impairment limits the individual’s ability to perform the activity or activities; and/or,
- (4) why the individual requires a reasonable accommodation, or the particular reasonable accommodation requested, and how the reasonable accommodation will assist the individual applying for a job, performing the essential functions of the job, or enjoying a benefit of the workplace.

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

Once the requested medical information is received, the RAC will evaluate the documentation and, if appropriate, may consult with the EEO Director. If the requested information is insufficient to enable the RAC to determine whether an accommodation is appropriate, the RAC may seek further information from the requester. The RAC must explain why the information provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.

If the RAC determines that the medical information submitted must be reviewed by other medical experts, MSPB will make arrangements and inform the employee of such medical reviews. Additional medical reviews will be performed at the expense of MSPB.

Failure by the individual to provide appropriate medical documentation or to cooperate with MSPB's efforts to obtain such documentation may result in a denial of the request for reasonable accommodation. Such notification will be presented to the requester in writing. Notification shall indicate the allotted additional time the requester will have (usually no more than 15 calendar days) to present the necessary documentation to substantiate the request. The agency will not be expected to adhere to its usual timelines if an individual's health professional fails to provide needed documentation in a timely manner. 29 C.F.R. § 1614.203(d)(3)(i)(N). MSPB may toll the timeframes once it has requested medical documentation. However, the processing timeframe must resume as soon as medical documentation is received and will run while the agency is determining the sufficiency of medical documents. The agency cannot toll the timeframes until completion of the sufficiency review. See [*EEOC's Practical Advice for Drafting and Implementing Reasonable Accommodation Procedures Under Executive Order 13164, Section III \(2005\)*](#).

E. Timeframe for Processing a Request and Providing Reasonable Accommodation.

The length of time to process a request for reasonable accommodation may vary depending upon the nature of the accommodation requested and whether it is necessary to obtain supporting medical information. When a particular accommodation can be provided in less than the maximum amount of time permitted under 29 C.F.R. § 1614.203(d)(3)(i)(M), failing to process the accommodation in a prompt manner may result in a violation of the Rehabilitation Act. 29 C.F.R. § 1614.203(d)(3)(i)(O). Generally, a request shall be processed as follows:

(1) Request Not Involving Extenuating Circumstances.

The process from date of initial request to decision to provide the accommodation should take approximately 30 days when all the requisite information is available to the RAC to process the request. Upon receipt of the RAC's recommendation to grant the accommodation, the supervisor, working in consultation with the RAC, will provide the accommodation as soon as possible. The RAC will inform the decision-maker (the supervisor or responsible management official) about the specific steps necessary to fulfill the request immediately.

(2) Request Involving Extenuating Circumstances.

When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as necessary. All MSPB officials are expected to act as quickly as is reasonably possible in processing requests and providing reasonable accommodation.

If the request requires additional supporting medical or other information, the process may take longer. When medical documentation is required, the following will apply:

- a. The RAC will make such a request for medical documentation from the employee immediately and before the expiration of the 30-day period.
- b. If the requested documentation is insufficient, see Section D above in this policy. If the RAC determines that the medical or other documentation is sufficient, the decision to grant or deny the request will be conveyed to the supervisor. The decision will describe the reasons for granting the request and will include the accommodation to be provided. In some cases, an effective alternative accommodation(s) may be recommended.
- c. When extenuating circumstances are present, the RAC, in consultation with the supervisor, will notify the requester in writing of the reason for the delay, and the approximate date on which a decision regarding the request for reasonable accommodation will be provided or when the agreed upon accommodation may be expected. The RAC should inform the requester about any further developments or changes.
- d. If there is a delay in providing an accommodation that has been approved by the manager, the RAC will help the manager decide whether temporary measures can be taken to assist the individual if:
 - It does not unreasonably interfere with MSPB's operations; and,
 - The employee is clearly informed that this measure is being provided only on a temporary, interim basis until a more permanent accommodation can be arranged.
- e. If a delay is attributed to the need to obtain or evaluate necessary medical information and the RAC has not yet determined that the individual is entitled to an accommodation, the RAC may also suggest temporary measures. In such cases, the supervisor will notify the individual in writing that measures are being taken on a temporary basis pending a decision on the accommodation request.
- f. If temporary measures are taken, the RAC and appropriate manager or supervisor are responsible for ensuring that the modifications do not take the place of an approved accommodation and that all necessary steps are taken to provide the approved accommodation as quickly as possible.

F. **Expedited Process.**

In certain circumstances, a request for reasonable accommodation may require an expedited review and decision in a timeframe that is shorter than 30 days. This includes, for example, situations where reasonable accommodation is needed:

- a. To enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, performing assessments, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has equal opportunity to apply for a job.
- b. To enable an employee to participate in an agency activity that is scheduled to occur shortly, such as attending a meeting scheduled on short notice.

Where the expedited process is necessary, the supervisor is authorized to take the necessary steps to provide the accommodation without consulting with the RAC, but they are required to notify the RAC of the actions taken or proposed, and to provide adequate reporting data to support summary analyses of the agency's annual reasonable accommodation activities.

G. Granting or Denying a Reasonable Accommodation Request.

- (1) The RAC will process requests and determine disability status, and the potential need for the agency to grant an accommodation. The RAC will advise the decision-maker accordingly.
- (2) If there is a delay in providing the accommodation, the RAC will inform the requester of the projected timeframe for providing the accommodation and the reason for the delay. If a temporary accommodation can be arranged, the supervisor will inform the employee in writing.
- (3) Employees and applicants may decline an accommodation offered by the agency. If this occurs, the RAC should document the declination.
- (4) If the RAC decides to advise a supervisor to deny a request for accommodation, they must first consult with the EEO Director, then the decision-maker, who will notify the requester in writing (and in an accessible format), specifying why the request was denied. The supervisor should seek the RAC's assistance drafting the decision and include the specific reasons for the denial. Factors supporting the modification or denial of a request for accommodation include, but are not limited to:
 - a. A determination that the requested accommodation would result in undue hardship. This requires MSPB to find that a specific accommodation would result in significant difficulty or expense, or would have a significant negative impact on MSPB's operations or procedures.³ When evaluating reasonable

³ MSPB will take the following steps to ensure that requests for reasonable accommodation are not denied because of cost. MSPB will ensure that managers and hiring officials authorized to grant or deny requests for reasonable accommodation are informed that they must consider all resources available to the agency as a whole when determining whether reasonable accommodation can be provided without undue hardship. MSPB will also

accommodation requests to determine if undue hardship exists, the RAC should follow the standards in 5 C.F.R. part 1614 and refer to EEOC's [Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act](#), EEOC Notice No. 915.002 (October 17, 2002);

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

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

- (7) The written notice of denial must also inform the individual that they may file an EEO complaint with MSPB's OEEA, and of the timeframe for initiating such a

ensure that the decision-makers are aware of, and know how to arrange for the use of, agency resources available to provide the accommodation, including any centralized fund the agency may have for that purpose.

complaint (45 days). This notice must also contain MSPB's procedures for seeking reconsideration of a denial decision, as well as other potential options for redress, such as the bargaining unit grievance process, if the requester is a member of a bargaining unit, and other potential appeal rights.

H. Reconsideration of a Denial.

Individuals can request prompt reconsideration of an accommodation decision.

- (1) Upon written denial of an accommodation, the individual may, within five (5) business days, ask the EEO Director in writing to reconsider the decision. The individual may present additional information or documentation in support of their request. The EEO Director will consult with the individual's second-line supervisor, or other agency official, who must respond to the request for reconsideration within **15 calendar days of receipt of the reconsideration request.**
- (2) Pursuing reconsideration of a denial of reasonable accommodation does not affect the time limits for initiating EEO counseling in accordance with 29 C.F.R. § 1614.105. If an individual chooses to file an EEO complaint, they must contact OEEEO within **45 calendar days** from the date of receipt of the written notice of the initial denial. Failure to file a timely EEO complaint may result in a loss of rights to participate in the EEO complaint process.
- (3) As MSPB encourages the use of voluntary informal dispute resolution processes, an individual who has received a denial may also contact the EEO Director, and request alternative dispute resolution (ADR). However, as in H.(2) above, a request for ADR does not affect the time limits for initiating an EEO complaint, filing an appeal with MSPB, or filing a grievance under the collective bargaining agreement.

I. Re-evaluation of Granted Accommodation.

- (1) The re-evaluation process is intended to allow the agency to ensure that an accommodation previously granted is effective, still appropriate, and/or required.
- (2) A supervisor, manager, the RAC, or other agency official within the employee's supervisory chain, may request a re-evaluation of an existing accommodation if it is believed that the reasonable accommodation is no longer required. The request for a re-evaluation should be submitted to the RAC.
- (3) The RAC or supervisor may initiate a re-evaluation of an existing accommodation if it is no longer necessary based upon a change of medical condition, a change in work conditions, or within a reasonable period of time after the original decision at the request of the supervisor, manager, or other designated agency official.
- (4) The RAC is responsible for coordinating all re-evaluations and advising the decision-maker whether re-evaluation is appropriate. If the RAC determines that a re-evaluation is appropriate, then the supervisor will notify the employee.

- (5) In determining whether a change is necessary, the RAC will follow the policy and procedures (including timeframes) set forth within this MSPB policy for requesting reasonable accommodation. The re-evaluation will be conducted in consultation with the employee's supervisor and the employee.
- (6) The decision-maker will then notify the employee of the outcome of the re-evaluation and will advise them of the next steps and their right for reconsideration and/or other rights.

J. Reassignment as an Accommodation.

Reassignment will be considered as a reasonable accommodation of last resort and only if a determination is made that no other reasonable accommodations are available to enable the individual to perform the essential job functions of their current job or if the only other effective accommodation would cause undue hardship.⁴ As part of the interactive reasonable accommodation process, if reassignment is contemplated, the individual shall be asked to identify qualifications, interests, and willingness to accept a reassignment outside the local commuting area and to accept a downgrade if no vacant positions are identified at the same grade. The RAC should work with the HR Director and the individual requesting the accommodation to identify:

- (1) Existing vacant positions within MSPB for which the employee may be qualified, with or without reasonable accommodation, excluding essential functions that the employee has not been able to perform with accommodation; and
- (2) Positions within MSPB that the employee qualifies for that will become vacant within 60 calendar days of the request or shortly after that period if extenuating circumstances prevent meeting the 60-day requirement.

Note: The focus will be identification of positions in the employee's current commuting area and equivalent to the employee's current job in terms of pay, status, and other relevant factors, such as skills, responsibilities and credentials, and that do not include essential functions the employee has not been able to perform successfully. If there is not an equivalent vacant position, the RAC will consider vacant lower-level positions for which the individual is qualified. Reassignment cannot be made to a position with greater promotion potential than the original position held by the employee.

⁴ Reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such a position, is a reasonable accommodation that must be considered if no other reasonable accommodation will enable an employee with a disability to perform the essential job functions of their current position. 5 C.F.R. § 1614.203(d)(3)(i)(B). As stated in the EEOC's *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*, the employee does not need to be the best qualified individual for the position. See <https://www.eeoc.gov/policy/docs/accommodation.html#reassignment>.

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

K. **Confidentiality and Disclosure.**

(1) All medical information, including information about functional limitations and reasonable accommodation needs, obtained in connection with a request for reasonable accommodation must be kept confidential. The information shall be kept in a file separate from the individual's personnel file. No one shall have access to this file other than the RAC, the EEO Director, the HR Director, and, if a legal opinion regarding sufficiency is required, OGC. Individuals who have access to information necessary to decide about whether to grant a requested accommodation may not disclose this information except as, [86 Fed. Reg. 73001 \(Dec. 23, 2021\) \(MSPB – 3\)](#). Specifically, individuals with access to this information may disclose the information as follows:

- a. Supervisors and managers who have a need to know will be told about the necessary limitations on the work or duties of the employee and about the necessary accommodation(s);
- b. First aid and safety personnel may be told if the disability requires emergency treatment;
- c. Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;
- d. Agency EEO officials may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation requests; and
- e. To respond to challenges involving the processing of and decisions made related to requests for reasonable accommodation pursuant to this policy and/or the agency's compliance with the Rehabilitation Act.

(2) Whenever medical information is disclosed, the individual disclosing the information must inform the recipients about the confidentiality responsibility attached to the disclosed information.

(3) The information collected and maintained as a part of the reasonable accommodations process is maintained in an MSPB system of records protected by the Privacy Act. In accordance with the Privacy Act, MSPB has established a system of records for this information and has published a system of records notice, [MSPB – 3](#).

L. Information Tracking and Reporting.

- (1) MSPB will keep records that the agency may use to determine whether it is complying with the nondiscrimination and affirmative action requirements under Section 501, and to make such records available to the EEOC upon request. 29 C.F.R. § 1614.203(d)(8). The RAC will maintain records relating to reasonable accommodation requests for the duration of the employee's tenure with MSPB, or five (5) years, whichever is longer. Pursuant to 29 C.F.R. § 1614.203(d)(8)(vi), the records will include details about each request for reasonable accommodation:
 - The specific reasonable accommodation requested, if any;
 - The job (occupational series, grade level, and agency component) sought by the requesting applicant or held by the requesting employee;
 - Whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment;
 - Whether the request was granted (which may include an accommodation different from the one requested) or denied;
 - The identity of the deciding official; and
 - The number of days taken to process the request.
- (2) When an individual files an EEO complaint alleging denial of reasonable accommodation, all records shall be maintained in compliance with Federal records management policy.
- (3) The RAC will provide a monthly report to the EEO Director describing current reasonable accommodation activity.
- (4) The EEO Director, or their designee, will provide an annual report to the MSPB Chairman for review in accordance with the annual EEOC MD-715 Report, including:
 - The number, type, and cost of accommodations that have been requested in the application process or relate to benefits and privileges of employment, and whether those requests have been granted or denied.
 - The jobs (occupational series, pay grade, and organizational element) for which reasonable accommodations were requested, unless it would be possible to personally identify individuals.
 - The categories of reasonable accommodation that have been requested.

- The number and types of reasonable accommodation requests by employees, and how many have been approved or denied.
- The reasons for denial of requests for reasonable accommodation.
- The average number of days for processing requests for reasonable accommodation.
- The sources of technical assistance that have been consulted in working to identify possible reasonable accommodations.
- A qualitative assessment of MSPB's reasonable accommodation program, including any recommendations for improvement of policies and procedures.

7. DISTRIBUTION

This policy shall be made readily available to all MSPB employees. All new MSPB employees will be provided with a copy of this policy as part of the new employee orientation process. In accordance with 29 C.F.R. § 1614.102(b)(5), notification about this policy will be prominently posted on the agency website. A summary will also be posted in designated areas at headquarters. Regional and field offices will have a designated area solely for EEO purposes to post notification about this policy, and to publicize the names, business telephone numbers, and business addresses of EEO counselors, a notice of the time limits and necessity for contacting a counselor before filing a complaint, and the telephone number and address of the EEO Director. Additionally, this policy will be posted on MSPB's public website and the MSPB intranet Portal to provide guidance to applicants for employment with MSPB and MSPB employees, respectively.

8. EFFECTIVE DATE AND IMPLEMENTATION

This policy is effective immediately upon signature.


Cathy A. Harris, Acting Chairman


Date



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of Equal Employment Opportunity

1615 M Street, NW, 6th Floor
Washington, DC 20419

ACCOMMODATION REQUEST FORM

Name:

Office:

Supervisor:

Briefly describe your medical condition, and how your condition affects your ability to perform your job or participate in an interview:

What accommodation are you requesting to perform your job or participate in an interview?

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

Your medical information will be handled and evaluated by the reasonable accommodation coordinator, who determine whether there is sufficient documentation to proceed with your request. If you are unsure of accommodation options, the coordinator will work with you to determine the most appropriate reasonable accommodation for your condition. You will be contacted via email. Any documentation you submit will become part of your record of request for an accommodation, or part of your application package if you are an applicant for employment with our agency.

Your failure to provide this information may result in the inability of MSPB to grant your request.

Privacy Act Statement

Authority: The authority for this collection is derived from the Rehabilitation Act of 1973, 29 U.S.C. 701, 791, 794; 29 C.F.R. 1614 (Federal Sector Equal Employment Opportunity); 29 C.F.R. 1630 (Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act); Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000); and Executive Order 13548, Increasing Federal Employment of Individuals with Disabilities (July 26, 2010). The authority for the system of records notice (SORN) associated with this collection of information is [MSPB-3 Reasonable Accommodations SORN, 86 Fed. Reg. 73001 \(Dec. 23, 2021\)](#).

Purpose: The purpose of this system of records is to allow the U.S. Merit Systems Protection Board (MSPB) to collect and maintain records on applicants for employment and employees who request or receive reasonable accommodations or other appropriate modifications from MSPB for medical reasons; to process, evaluate, and make decisions on individual requests; to track and report the processing of such requests to comply with applicable requirements in law, regulation, and policy; and to maintain the confidentiality of the information provided in support of the accommodation.

Routine Uses: While the information requested is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to adjudicative bodies, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties regarding Federal employment; to other agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. A complete list of the routine uses can be found in MSPB's system of records notice, [MSPB – 3, Reasonable Accommodations, 86 Fed. Reg. 73001 \(Dec. 23, 2021\)](#).

Consequence of Failure to Provide Information: Providing this information is voluntary. Failure to provide this information may delay or impede the processing of your reasonable accommodation request.

Burden Statement

Public reporting burden for this data collection is estimated to vary from 5 to 20 minutes, with an average of 10 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting this form. You are not required to respond to this collection of information unless a valid Office of Management and Budget (OMB) control number is displayed on this form. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419; by fax to 202-653-7130; or by e-mail to mspb@mspb.gov.