



| CSOSA

# GUIDANCE STATEMENT

Providing Reasonable Accommodation For  
Individuals With Disabilities

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PROVIDING REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES

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## AUTHORITIES

- Rehabilitation Act of 1973 (29 U.S.C. §§ 791 *et seq.*), as amended
- Americans with Disabilities Act (ADA) of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*)
- Architectural Barriers Act of 1968, as amended (42 U.S.C. §§ 4151 *et seq.*)
- Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. §§ 2000ff *et Seq.*)
- Code of Federal Regulations, Title 5, Part 339 (Medical Qualification Determinations)
- Code of Federal Regulations, Title 29, Part 1614 (Federal Sector Equal Employment Opportunity)
- Code of Federal Regulations, Title 29, Part 1630 (Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act)
- Executive Order 13163, Increasing the Opportunity for Individuals with Disabilities to be employed in the Federal Government (July 26, 2000)
- Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000)
- Executive Order 13548, Increasing Federal Employment of Individuals with Disabilities (July 26, 2010)
- EEOC Enforcement Guidance, Disability-Related Inquiries and Medical Examinations of Employees under the ADA, No. 915.002 (July 27, 2000)
- EEOC Policy Guidance on Executive Order 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, No. 915.003 (October 20, 2000)
- Equal Employment Opportunity (EEO) Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, No. 915.002 (revised October 17, 2002)
- Equal Employment Opportunity Commission (EEOC) Regulations to Implement the ADA Amendment Act (March 24, 2011)

## GUIDANCE DISCLAIMER

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

## SUMMARY

By Executive Order 13164 (Order) issued on July 26, 2000, each Federal agency is required to establish written procedures for processing requests for reasonable accommodation. The Order helps to implement the requirement of the Rehabilitation Act of 1973 that agencies provide reasonable accommodation to qualified employees and applicants with disabilities. This Directive sets forth the policy and procedures of the Court Services and Offender Supervision Agency (including Pretrial Services Agency) (hereinafter "Agency") for implementing the Order and for processing requests for reasonable accommodation.

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## POLICY

Under the law, Federal agencies must provide reasonable accommodation to qualified employees or applicants for employment with disabilities, unless to do so would cause undue hardship. The Agency's policy is to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973. The Agency is committed to providing reasonable accommodations to its employees and applicants for employment in order to assure that individuals with disabilities enjoy full access to equal employment opportunity. The Agency provides reasonable accommodations:

- When an applicant with a disability needs an accommodation in order to be considered for a job;
- When an employee with a disability needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace; and
- When an employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment.

The Agency will process requests for reasonable accommodations and, where appropriate, provide reasonable accommodations in a prompt, fair and efficient manner.

## PURPOSE

This section sets forth policy regarding requests for reasonable accommodation and the procedures to be followed when an employee or an applicant for employment requests reasonable accommodation.

## DEFINITIONS OF KEY TERMS

**Essential Functions** are job duties that are so fundamental to the position that the individual holds or desires that s/he cannot do the job without performing them. A function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential 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.

**Qualified Individual with a Disability** is an individual with a disability who 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.

**Reasonable Accommodation** is any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.

**Reassignment** is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to vacant positions and to employees who are qualified for the new position. EEOC enforcement guidance specifies that if

the employee is qualified for the position, s/he will be reassigned to the job and should not have to compete for it.

**Request for Reasonable Accommodation** is a statement that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition.

**Undue Hardship:** If a specific type of reasonable accommodation causes *significant* difficulty or expense, then the Agency does not have to provide that particular accommodation. Determination of undue hardship is made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the Agency.

## HOW TO REQUEST A REASONABLE ACCOMMODATION

An **employee** may request a reasonable accommodation **orally or in writing** from his/her supervisor; another supervisor or manager in his chain of command; an Employee/Labor Relations employee in the CSOSA or PSA Office of Human Resources (OHR); or an employee in the Office of Equal Employment Opportunity, Diversity and Special Programs (OEEO).

An **applicant** may request a reasonable accommodation **orally or in writing** from the Personnel Staff Specialist or Assistant with whom the applicant has contact in connection with the application process. The Offices of Human Resources are responsible for training their staff that are involved in the application process to recognize requests for reasonable accommodation and to handle them appropriately.

A request does not have to use any special words, such as "reasonable accommodation," "disability" or "Rehabilitation Act." An individual with a disability may request a reasonable accommodation whenever s/he chooses, even if s/he has not previously disclosed the existence of a disability.

For additional information or assistance, an employee or applicant may consult the OEEO in connection with requesting or processing a request for reasonable accommodation.

## WRITTEN CONFIRMATION OF REASONABLE ACCOMMODATION REQUESTS

**Employees.** To enable the Agency to keep accurate records regarding requests for accommodation, employees seeking a reasonable accommodation **must** follow up an oral request by completing the attached *Confirmation of Request Form*. Within **five (5) days** of the oral request, the *Confirmation of Request Form* should be submitted to the appropriate Agency official or office in accordance with Section 7-6 below.

**Applicants.** For applicants seeking a reasonable accommodation, the Personnel Management Specialist or Assistant handling the request must give them the *Confirmation of Request Form* to complete.

**Oral Request Begins the Process.** While the written confirmation should be made as soon as possible following an oral request for a reasonable accommodation, it is not required to begin the process. EEOC's enforcement guidance requires that the Agency begin processing the request as soon as it is made, whether or not the written confirmation has been provided.

**Where to Obtain the Confirmation Form.** The *Confirmation of Request* Form can be obtained from the OEEO, CSOSA or PSA OHR and from the Agency Intranet and Internet under the EEO Homepage.

## DETERMINING WHICH AGENCY OFFICIAL WILL HANDLE THE REQUEST FOR REASONABLE ACCOMMODATION

**Decision Maker.** As the first step in processing a request for reasonable accommodation, the Agency staff person who receives the request must determine in accordance with this section who will be responsible for handling it and forward it, if necessary. The request should be forwarded to the appropriate person as soon as possible, but in no event later than five days from receipt. **The OEEO must be notified regarding all requests for accommodation and must receive copies of all written requests.** If the OEEO initially receives the request, it will promptly notify the employee's supervisor that a request for reasonable accommodation has been received and forward the request to the appropriate Agency official for processing.

**Requests from Applicants.** Requests for reasonable accommodation from applicants will be handled by the Personnel Management Specialist responsible for the recruitment and/or selection process.

**Requests from Employees.** Requests for reasonable accommodation from employees will be handled by the requesting employee's immediate supervisor unless the request is one which should be handled by another Agency component, as explained below. If the request is handled by an official other than the requestor's immediate supervisor, the decision-maker should consult with the requestor's supervisor prior to rendering a decision on the request. All staff receiving requests for reasonable accommodation should promptly provide a copy of the request to the OEEO.

- **Personnel Actions.** Requests from employees involving personnel actions (including reassignments) will be handled by the appropriate Associate Director, Director, or Office Head or Manager, in consultation with the responsible OHR.
- **Accessible Parking.** All requests for accessible (handicapped) parking will be handled by the Office of Facilities for CSOSA employees and by the Office of Finance and Administration for PSA employees.
- **Adaptive Equipment, including information technology and communications equipment.** Requests for adaptive equipment, including technology and communications equipment will be handled by the Office of Information Technology for CSOSA employees and by the Information Technology Division for PSA employees. Assistance in this area should be sought through Computer/Electronic Accommodations Program (CAP), a component of the Department of Defense with which the Agency has entered into an inter-Agency agreement to provide assistive technology, devices and services to Agency employees with disabilities. Information regarding the agreement with CAP can be obtained from OEEO.

- **Readers, Sign Language Interpreters, etc.** Requests for a reader, sign language interpreter, or other staff assistant to enable employees to perform their job functions, where the accommodation cannot be provided by current staff will be handled by the appropriate Agency Office of Human Resources.
- **Removal of Architectural Barriers.** Requests to remove architectural barriers, including reconfigured work spaces, will be handled by the Office of Management and Administration for CSOSA employees and by the Office of Finance and Administration for PSA employees. These offices will, as necessary, coordinate these requests with the General Services Administration or the owner of the building in which the employee making the request works.
- **Alternative Format Material.** Requests for materials in alternative formats (e.g., Braille, large print) which cannot be handled by the supervisor, will be handled by the appropriate Agency Office of Human Resources.

**Assistance from OEEO.** The OEEO staff will be available to provide assistance to employees and decision-makers in processing requests. All decision-makers must have designated back-ups to continue receiving, processing, and providing reasonable accommodation when the decision-maker is unavailable.

## PROCESSING REQUEST FOR REASONABLE ACCOMMODATION

**Communication is a priority** throughout the entire process. The Agency decision maker who has principal responsibility for processing the request and for identifying possible accommodations must initiate discussion as soon as possible with the individual making the request to ensure that an effective accommodation is considered. The decision-maker should take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation should also participate to the extent possible in helping to identify an effective accommodation. Resources which are available to assist both the decision-maker and the individual requesting the accommodation to identify possible accommodations are listed in the Appendix. The OEEO staff is also available to provide assistance.

**Explanation of process.** As early as possible in the process, the Agency decision-maker must explain how the Agency will process his/her request and from whom the individual will receive a final decision.

**Sharing of information.** The decision-maker or any other Agency official who receives information in connection with a request for reasonable accommodation may share the information connected with that request with other Agency officials only when the Agency official(s) needs to know the information in order to make determinations on a reasonable accommodation request. See Section 7-10 for specific rules governing the confidentiality of medical information.

**Requests for Reassignment.** There are specific considerations in the process when responding to a request for reassignment.

- Reassignment will only be considered if no accommodations are available to enable the individual to perform his or her current job, or if the only effective accommodation would cause undue hardship.
- In considering whether there are positions available for reassignment, the appropriate Associate Director, Director, Office Head or Manager should consult with the Office of Human Resources and with the individual requesting the accommodation to identify:
  - All vacant positions within the Agency for which the employee may be qualified, with or without reasonable accommodation; and
  - All positions which the Agency official and the OHRs have reason to believe will become vacant over the next sixty (60) days and for which the employee may be qualified.

The Agency will first focus on positions which are equivalent to the employee's current job in terms of grade, pay, status, and other relevant factors. If there is no vacant equivalent position, the Agency will consider vacant lower level positions for which the individual is qualified.

- The Agency will not be required to create a new position for the employee, or reassign or bump another employee to accommodate the requestor. In addition, if the employee is qualified for a vacant position, s/he will not have to compete for it, but should be reassigned to the position.

## DETERMINING WHETHER THE INDIVIDUAL REQUESTING ACCOMMODATION HAS A QUALIFYING DISABILITY

**General.** The Agency is entitled to know that an employee or applicant who is requesting a reasonable accommodation has a covered disability. In those cases where the disability and the need for the accommodation is obvious (e.g., missing limb), to the decision maker, the Agency need not seek any further medical information. However, where the disability and/or need for reasonable accommodation is not obvious, the Agency may require that the individual provide reasonable accommodation documentation about the disability and his/her functional limitations. **The failure to provide appropriate documentation or to cooperate in the Agency's efforts to obtain such documentation can result in a denial of the reasonable accommodation.**

**Requesting Medical Information.** If a supervisor or other decision-maker believes that medical information is necessary in order to evaluate a request for reasonable accommodation, s/he will contact the OEE0 to obtain such information. The supervisor, if not the decision maker, should complete the *Supervisor's Statement of Reasonable Accommodation* attached to these procedures and submit it along with a copy of the employee's request for accommodation.

- The OEE0, in consultation with the decision-maker, will make a determination as to whether medical documentation is necessary. If OEE0 determines that medical documentation is

necessary, it will request the necessary medical information. If it is not necessary, the request for accommodation will be returned promptly to the decision maker to complete the processing.

- If a determination is made to seek medical information, OEEO will request information sufficient to substantiate that the individual has a Rehabilitation Act disability and needs the reasonable accommodation requested.
- The OEEO will seek information or documentation about the disability and/or functional limitations from the individual, and/or ask the individual to obtain such information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. All requests for information should describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information. The OEEO will work with the supervisor and, if necessary, with OHR in seeking the appropriate information.
- Once the medical documentation is received, the OEEO will evaluate it, in consultation with the Agency contract physician, if necessary.
- If the information provided by the health professional (or volunteered by the individual requesting the accommodation) is insufficient to enable the Agency to determine whether an accommodation is appropriate, the OEEO may ask for further information. The following steps should be followed:
  - 1) First, the individual must be notified that it is her/his responsibility to obtain and submit the medical documentation and that if sufficient documentation is not provided, the request for accommodation will be denied.
  - 2) The OEEO must also explain to the individual seeking the accommodation, in specific terms, why the information which has been provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.
  - 3) The individual may then ask the health care or other appropriate professional to provide the missing information.
  - 4) Alternatively, the OEEO and the individual requesting the accommodation may agree that the individual will sign a medical release, and OEEO may thereafter submit a list of specific questions to the individual's health care professional or may otherwise contact the individual's doctor.
- If the individual does not provide the requested information within **thirty (30) days** (or any agreed upon extension of time) and there is still not sufficient documentation to demonstrate that the individual has a disability and needs a reasonable accommodation, the OEEO may request that the individual be examined by an agency contract physician, or by another physician chosen by the Agency.
- OEEO will let the decision-maker know whether the documentation demonstrates that a reasonable accommodation is appropriate and provide, if necessary, additional relevant information about the individual's functional limitations.



**Submission of Medical Information by Individual.** If the individual requesting the information submits medical information directly to the decision-maker without being asked, the decision-maker will work with OEEO to determine if additional documentation is necessary.

## TIME FRAMES FOR PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION

**General.** The Agency will make its best efforts to process requests for reasonable accommodation as expeditiously as possible. The Agency recognizes, however, that the time required to process a request will depend on the requestor's ability to provide the necessary documentation to support his/her disability and requested accommodation. Absent extenuating circumstances, the Agency will process most requests for reasonable accommodation within **sixty (60) calendar days** and provide accommodations, where deemed appropriate, as promptly as reasonably possible.

**Expedited Process -- Exceptions to General Time Frames.** There are certain circumstances in which a request for reasonable accommodation may warrant an expedited review and decision. The following are **examples** of situations in which the full sixty (60) days would be, not only unnecessary but also, ineffective:

- To enable an applicant requiring special adaptive equipment to apply for a job; and
- To enable an employee requiring a sign language interpreter to attend an Agency meeting or activity.

### **Extenuating Circumstances.**

Extenuating Circumstances has been defined by EEOC to include factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. Extensions based on extenuating circumstances should be limited to circumstances where they are **strictly** necessary. The following are **examples** of extenuating circumstances:

- There is an outstanding request for medical information, or the medical information received is being evaluated;
- The purchase of equipment may take longer than 60 days because of procurement requirements;
- Equipment must be back-ordered, the vendor used by the Agency for goods or services cannot promptly supply the needed goods or services and another vendor is not immediately available;
- The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before the Agency buys it; and
- New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.

Where extenuating circumstances are present, the decision-maker should notify the individual of the reason for the delay, and the proximate date on which a decision, or provision of the reasonable accommodation, is expected.

## CONFIDENTIALITY REQUIREMENTS

**General.** Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. All medical information, including information about functional limitations and reasonable accommodation needs, that the Agency obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. Any Agency employee who obtains or receives such information is strictly bound by these confidentiality requirements.

**Maintenance of Medical Documents.** The OEEO will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of records. All records will be maintained in accordance with the Agency's Privacy Act procedures. Medical information may be disclosed **only** as follows:

- Supervisors and managers who need to know (including the decision-maker who requested that OEEO obtain the medical information) may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s), but medical information should only be disclosed if strictly necessary;
- First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
- Government officials may be given information necessary to investigate the Agency's compliance with the Rehabilitation Act.

**Disclosure Requirements.** Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that attach to it.

## GRANTING A REASONABLE ACCOMMODATION REQUEST

When a determination is made that the individual qualifies for a reasonable accommodation and that the Agency will grant his/her request, the decision-maker should notify the individual promptly. If the accommodation cannot be provided immediately -- as in a change of work hours -- the decision-maker should inform the individual of the projected time frame for providing the accommodation.

## DENIAL OF A REQUEST FOR REASONABLE ACCOMMODATION

**Review by OEEO.** Upon a determination by the decision-maker that a request for a reasonable accommodation will be denied, the decision-maker must complete the attached *Denial of Reasonable Accommodation Request* and submit a copy of the form to the OEEO for review. The decision-maker shall not notify the requestor of his/her determination until **after** the OEEO has reviewed the Denial form. If the OEEO concurs, the OEEO will advise the decision maker to deliver the Denial Notice to the individual who requested the accommodation. If OEEO does not concur, OEEO will advise the decision-maker of the justification for its Non-concurrence.

**Denial Must Contain Specific Reasons.** The explanation for the denial should clearly state the specific reasons for the denial. Where the decision-maker has denied a specific requested accommodation, but offered to make a different one in its place which was not agreed to by the individual, the Denial Notice should explain both the reasons for the denial of the requested accommodation and the reasons that the decision-maker believes that the chosen accommodation will be effective. Reasons for the denial of a request for reasonable accommodation may include the following (keeping in mind that the actual notice to the individual must contain specific reasons for the denial. For example, *why* the accommodation would not be effective or *why* it would result in undue hardship):

- The requested accommodation would not be effective;
- Providing the requested accommodation would result in undue hardship. A determination of undue hardship means the Agency finds that a particular accommodation would result in **significant** difficulty or expense, or would **fundamentally alter** the nature of the Agency's operations;
- Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation;
- The requested accommodation would require the removal of an essential function; and
- The requested accommodation would require the lowering of a performance or production standard.

**Notice Must Include an Individual's Appeal Rights.** The written notice of denial must also inform the individual that s/he has the right to file an EEO complaint and may have rights to pursue Merit Systems Protection Board (MSPB) and union grievance procedures.

**Reconsideration of Denial.** Individuals who desire to have denials of requests for reasonable accommodation reconsidered should first ask the decision-maker to reconsider the decision within **five (5) business days**. The individual may present additional information in support of his/her request. If this instance, the decision-maker has **15 business days** in which to respond. If the individual submits additional medical documentation which must be reviewed by OEEA and/or the Agency contract physician, the Agency will provide a response as promptly as possible.

- If the decision-maker was the employee's supervisor and s/he does not reverse the decision, the individual can request reconsideration from the next person in the chain of command, generally:
  - CSOSA Headquarters' Staff-- the Associate Director or Office Head for that component
  - PSA Headquarters' Staff--- the Director of the appropriate component
  - CSS treatment teams – the Branch Chief
  - PSA treatment teams – the Branch Manager
- If the initial decision-maker was the Associate Director, Office Director, Office Head, the Branch Chief or Branch Manager, the request for reconsideration should be directed to the Deputy Director of CSOSA or PSA, as appropriate.
- After the second level reconsideration, no further reconsideration is permissible under these procedures. The employee or applicant will be advised of the right to exercise his/her statutory or collective bargaining claims.

- Requesting reconsideration of a denial of a request for reasonable accommodation does **not** affect the time limits and does not satisfy the requirements for filing an EEO complaint, an appeal with MSPB, or a grievance under the Agency's collective bargaining agreement. Thus, the time limits for initiating statutory and collective bargaining claims are **not** waived while an individual pursues a reconsideration of a denial of a request for reasonable accommodation.

## INFORMATION TRACKING AND REPORTING

The decision-maker will complete the attached *Information Reporting* Form and submit it to the OEEO within **15 business days** of the decision. If not already submitted, the decision maker should attach to the form copies of all information, including medical information, s/he received as part of processing the request.

The OEEO will maintain these records for the longer of the employee's tenure with the Agency or five (5) years.

## STATUTORY AND COLLECTING BARGAINING CLAIMS

This policy is in **addition** to statutory and collective bargaining protections and remedies for persons with disabilities. Requirements, including time frames for filing discrimination (EEO) claims, MSPB appeals and collective bargaining claims, are not effected or changed by these procedures.

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

- For an EEO complaint, contact an EEO Counselor through the OEEO **within 45 days** from the date of receipt of the written notice of denial;
- For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or
- Initiate an appeal to the Merit Systems Protection Board **within 30 days** of an appealable adverse action as defined in 5 C.F.R. § 1202.3.

If an individual who has been denied a request for a reasonable accommodation files an EEO complaint with OEEO, the Director of OEEO shall determine whether the OEEO has been involved in the processing of the request for reasonable accommodation to such an extent that the processing of the EEO complaint should be contracted out or handled by another Federal Agency.

## INQUIRIES

Persons desiring further information concerning these procedures should contact the Agency's Office of Equal Employment Opportunity, Diversity and Special Programs (OEEO) at (202) 220-5467.