

**DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION**

CBP DIRECTIVE NO. 51713-007B

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ORIGINATING OFFICE: OC: PDO

SUPERCEDES: 51713-007A

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**SUBJECT: REASONABLE ACCOMMODATION PROCEDURES FOR APPLICANTS
AND EMPLOYEES WITH DISABILITIES**

1. PURPOSE

This Directive establishes U.S. Customs and Border Protection (CBP) policy and procedures to comply with the requirements of the Rehabilitation Act of 1973, as amended, to provide reasonable accommodation to qualified employees and applicants with disabilities. Any earlier versions of this policy and any local office policies are hereby rendered void. Local offices are not authorized to issue any policy related to the subject directive and thereby must be governed by the procedures set herein.

2. AUTHORITIES

Rehabilitation Act of 1973, as amended; Americans with Disabilities Act (ADA) of 1990; Americans with Disabilities Act Amendments Act (ADAAA) of 2008; 29 C.F.R. § 1614.203; 29 C.F.R. § 1630.2; Equal Employment Opportunity Commission Management Directive 715; Uniform Federal Accessibility Standards; Department of Homeland Security (DHS) Directive 259-01, “Providing Reasonable Accommodations for Employees and Applicants with Disabilities”; DHS Instruction 259-01-001 (2013), “Instruction on Providing Reasonable Accommodations for Employees and Applicants with Disabilities”; and DHS Instruction 259-01-002 (2016), “Procedures for Conducting a Department-wide Search for a Reassignment as a Reasonable Accommodation of Last Resort.”

3. BACKGROUND

The Rehabilitation Act of 1973 (29 U.S.C § 701), as amended, requires Federal employers to provide reasonable accommodation to qualified individuals with disabilities except when such accommodation would cause undue hardship or would cause a direct threat to the individual him/herself or to others. Absent an undue hardship, or a direct threat, the Agency must provide a reasonable accommodation:

- When an applicant with a disability requires a reasonable accommodation to enable him or her to apply for a job;
- When a qualified employee with a disability requires a reasonable accommodation to enable him or her to perform the essential functions of the job; and,

- When a qualified employee with a disability requires a reasonable accommodation to enjoy equal benefits and privileges of employment.

CBP also has an obligation to provide personal assistance services for employees with targeted disabilities to allow employees to participate in the workplace, except when such accommodation would cause undue hardship or would cause a direct threat to the individual him/herself or to others. Personal assistance services are available to employees, not applicants, and will be provided during work hours and job-related travel if:

- The employee requires such services because of a targeted disability;
- Provision of such services would, together with any reasonable accommodation required under the standards, enable the employee to perform the essential functions of his or her position; and,
- Provision of such services would not impose undue hardship on CBP.

4. SCOPE

The procedures contained herein shall apply exclusively to all CBP employees and applicants. Employees represented by the National Border Patrol Council (NBPC) and the National Treasury Employees Union (NTEU) should refer to their Collective Bargaining Agreement for additional guidance.

5. DEFINITIONS

All terms in this Directive shall be interpreted according to the Rehabilitation Act and its implementing regulations. To the extent that the definitions listed herein conflict with those in the Rehabilitation Act and its implementing regulations, the definitions found in the Rehabilitation Act and its implementing regulations shall be deemed to control.

5.1 Decision-Maker: A management official in the employee's chain of command with the authority to determine, based on the facts presented, whether a requested accommodation will be provided. For applicants, the decision-maker will be an appropriate human resources management official based on the nature of the request.

5.2 Department: U.S. Department of Homeland Security, including its subordinate organizational elements (Components) and offices.

5.3 Disability: Disability means, with respect to an individual

5.3.1 A physical or mental impairment that substantially limits one or more of the major life activities;

5.3.2 A record of such an impairment; or

5.3.3 Being regarded as having such an impairment, which means that the individual has been subjected to an action prohibited by the Rehabilitation Act because of an actual or perceived impairment that is not both transitory (lasting or expected to last for six months or less) and minor.

5.4 Direct Threat: A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a “direct threat” shall be based on an individualized assessment of the individual’s present ability to safely perform the essential functions of the job.

5.5 Dispute Resolution Process: Any voluntary mechanism through which an individual can seek reconsideration of, or appeal, the decision reached on his or her request for reasonable accommodation.

5.6 Essential Function: The fundamental job duties of the employment position the individual with a disability holds or desires, based upon the job duties which must actually be performed, not necessarily the job duties listed on the position description.

5.6.1 Factors to consider in determining whether a function is essential include: Whether the reason the position exists is to perform that function; the number of other employees available to perform the function or among whom the performance of the function can be distributed; and whether the function is specialized, and the individual is hired based upon his or her ability to perform it.

5.6.2 Evidence of whether a particular function is essential includes, but is not limited to: the employer's judgment as to which functions are essential; written job descriptions prepared before advertising or interviewing applicants for the job; the amount of time spent on the job performing the function; the consequences of not requiring the incumbent to perform the function; the terms of a collective bargaining agreement; the work experience of past incumbents in the job; and/or the current work experience of incumbents in similar jobs.

5.7 Functional limitation: Any way, mentally or physically, in which an individual’s condition affects one’s ability to function on a day to day basis. A restriction in the ability to perform an action or activity in the condition, manner or duration within the range considered 'normal' and which is attributable to impairment. Functional limitations could include ambulatory limitations, which restrict an individual’s ability to walk, sit or stand, or any reduced capacity to reach, pull, lift or carry objects, an individual’s ability to complete a full day's work, maintain a weekly work schedule, get along with co-workers, pay attention, concentrate, focus, etc.

5.8 Interactive Process: The process by which the individual requesting an accommodation and the agency talk to each other about the request, the process for determining whether an accommodation will be provided, and potential accommodations. A Privacy and Diversity Office (PDO) Reasonable Accommodation Coordinator may participate in the discussion.

5.9 Major Bodily Function: These functions include, 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.

5.10 Major Life Activities: Basic activities that the average person in the general population can perform with little or no difficulty, such as caring for oneself, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The operation of a major bodily function is also considered a major life activity.

5.11 Personal Assistance Services: Services, not otherwise required as reasonable accommodations that allow employees with targeted disabilities to fully participate in the workplace by providing assistance with the basic activities of daily living that an individual would typically perform if the employee did not have a disability. Examples of personal assistance services that may be provided on a case-by-case basis, as needed, include assistance with eating, drinking, dressing, and using the restroom. Personal assistance services do not help employees with targeted disabilities to perform their specific job functions such as reviewing documents, making decisions, or answering questions that come through a call-in center. Furthermore, personal assistance services do not include medical services, such as administering shots or monitoring blood pressure, and do not have to be provided by someone with medical training or qualifications. Requests for personal assistance services during work hours and job-related travel, in addition to professional services required as a reasonable accommodation, are processed under the same procedures as a request for reasonable accommodation.

5.12 Personal Assistance Provider: An employee or independent contractor whose primary job functions include provision of personal assistance services. If the individual providing personal assistance services is an employee, such responsibilities must already be a part of the individual's regular job (i.e., the employee's job is to provide personal assistance services for an employee, or employees, within a specific duty location). It is not appropriate to require someone who does not provide personal assistance services or similar services as part of his or her job to assist another employee with tasks such as eating and using the restroom.

5.13 Physical or Mental Impairment: 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 an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

5.14 Qualified Individual with a Disability: An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the position he or she holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of the position.

5.15 Reasonable Accommodation: An adjustment, alteration or modification that enables a qualified person with a disability to apply for a job, perform job duties or enjoy the benefits and privileges of employment. There are three categories of reasonable accommodations:

5.15.1 Modifications or adjustments to a **job application process** to permit an individual with a disability to be considered for a job;

5.15.2 Modifications or adjustments to enable a qualified individual with a disability to **perform the essential functions** of the job; and,

5.15.3 Modifications or adjustments that enable employees with disabilities to enjoy equal **benefits and privileges of employment**.

5.16 Reasonable Accommodation Coordinator: The Reasonable Accommodation Coordinator (RAC) is a PDO staff member assigned to provide assistance, as needed, to employees, human resources officials, and Decision-Makers in processing requests for reasonable accommodation. The RAC is available to participate in the required interactive process with the requester and the Decision-Maker.

5.17 Reassignment: A form of reasonable accommodation that, absent undue hardship, may be provided as a last resort to employees (not to 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 funded positions within the Department of Homeland Security and to employees who are qualified for the new position. Reassignment searches, which are performed in accordance with DHS Instruction 259-01-002 (“DHS Procedures for Conducting a Department-Wide Search for a Reassignment as a Reasonable Accommodation of Last Resort”), are conducted by the Office of Human Resources Management (HRM), who first considers vacancies within CBP. If no vacancy is identified within CBP, the search may be extended throughout DHS. If the employee is qualified for the position and accepts the reassignment, the employee will be reassigned to the job and does not have to compete for it.

5.18 Receiving Official: A CBP supervisor, manager, HRM staff member, or PDO staff member who initially receives the request for accommodation.

5.19 Requester: The employee or applicant, or someone acting on his or her behalf, who is requesting a reasonable accommodation based on a disability. The requester could be a family member, friend, health care professional or other representative.

5.20 Request for Reasonable Accommodation: An oral or written statement that an employee or applicant needs an adjustment, change, or other modification in the job application process or the manner in which work is performed, or to access the benefits and/or privileges of employment, for a reason related to a specific mental or physical condition.

5.21 Substantially Limits: The term “substantially limits” is to be construed broadly and is not meant to be a demanding standard. This means that an impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to

be considered substantially limiting.

5.22 Targeted Disability: A subset of conditions that would be considered disabilities under the Rehabilitation Act and for which qualified individuals with certain disabilities (i.e., blindness, deafness, paralysis, convulsive disorders, and mental illnesses, among others) have faced significant barriers to employment that are above and beyond the barriers faced by people with the broader range of disabilities. A complete list of targeted disabilities is identified on the Office of Personnel Management's [Standard Form 256](#).

5.23 Undue Hardship: Significant difficulty or expense when considered in light of factors such as the nature and structure of the employee's position; the nature and net cost of the requested accommodation; the overall financial resources and size of the facility involved and the effect on the facility's expenses and resources; the overall financial resources and size of the Agency involved and the effect on the Agency's expenses and resources; and the impact of the accommodation upon the Agency's operations. The determination whether an accommodation will cause undue hardship is made on a case-by-case basis, taking into consideration the mission impact and operational realities at the employee's particular duty location. It includes specific factors demonstrating how the requested accommodation would impact the Agency's day-to-day operations and overall mission.

5.24 Vacant Position: A position that is available or that the Agency knows will become available within a reasonable amount of time to receive an employee for whom the Agency is seeking reassignment. A "reasonable amount of time" should be determined on a case-by-case basis, considering relevant factors, such as whether the Agency, based on experience, can anticipate that an appropriate position becomes vacant within a short period of time. In most cases a reasonable amount of time is 30 calendar days, absent extraordinary circumstances. A position is considered vacant until an offer has been made and has been accepted by a prospective candidate.

6. RESPONSIBILITIES

6.1 Executive Assistant Commissioners and Assistant Commissioners. Each Executive Assistant Commissioner, Assistant Commissioner, independent Executive Director Office, or independent Office Director is responsible for taking reasonable steps to ensure that: (1) employees within their respective organizations are made aware of the process for requesting reasonable accommodations; and (2) managers are aware of their obligation to respond in a timely manner to a request for reasonable accommodation.

6.2 Office of Human Resources Management (HRM). HRM shall ensure that all vacancy announcements and hiring and promotion procedures include language describing how applicants may submit reasonable accommodation requests, including accommodations for promotions testing. HRM shall also process requests for accommodation from applicants for employment and shall perform personnel reassignment functions for qualified individuals with a disability as required by law. When an employee has been deemed in need of a reassignment as an accommodation of last resort, HRM will determine if an employee is qualified for the position in both skill and functional limitations. HRM, Medical and Fitness Branch (MFB) is available to

review medical documentation requests for a reasonable accommodation.

6.3 Office of the Chief Counsel (OCC). Attorneys in OCC are available to provide legal advice to management officials on issues associated with requests for reasonable accommodation.

6.4 Office of Information and Technology (OIT). OIT shall ensure that employees with disabilities have access to electronic and information technology, such as computers, software, telephones, information kiosks, Internet and intranet sites, multimedia materials, and office equipment, that is comparable to the access available to people without disabilities unless an undue hardship would be imposed. When development, procurement, maintenance, or use of electronic and information technology meeting accessibility standards would impose an undue hardship, access to allow individuals with disabilities to use the information and data will be provided by an alternative means. OIT will ensure that information is available in accessible format to applicants with disabilities who are applying for employment through means such as telephones, information kiosks, and Internet and intranet sites.

6.5 Privacy and Diversity Office (PDO). PDO shall facilitate the provision of reasonable accommodation process and may participate in the interactive dialogue with the requester and the Decision-Maker in the employee's chain of command. PDO will also ensure the confidentiality of medical information and maintain systems to track and report on the provision of reasonable accommodation. PDO will provide guidance to supervisors, managers, and Agency officials regarding their roles and obligations with respect to facilitating, considering, and/or providing a reasonable accommodation. PDO is also responsible for collaborating with HRM to ensure that appropriate actions are implemented, in accordance with the requirements of the Rehabilitation Act of 1973, as amended, to reassign qualified individuals with disabilities to any available, vacant funded position within any DHS Component for which the employee qualifies, as a form of reasonable accommodation of last resort.

6.6 Processing and Servicing Center (PSC). An HRM, PSC, staff member will serve as a liaison between CBP and any applicant requesting a reasonable accommodation, and provide assistance to CBP supervisors needing information or guidance about this program. The PSC staff member will provide information and assistance to applicants and review application packages to ensure all documentation required to make an informed decision is submitted to management.

6.7 Local Managers and Supervisors from CBP Operating Offices. Local senior management officials (e.g., Sector Chief; Director, Field Operations; Director, Air and Marine Branch, Trade, Operations Support, Enterprise Services, etc.) are the Decision-Makers authorized to determine whether a requested accommodation will be granted or denied. This authority may be delegated at their discretion to lower-level management officials or supervisors.

7. POLICY AND PROCEDURES

CBP is committed to providing reasonable accommodation(s) to accommodate employees and applicants' disabilities as required by law. CBP will provide reasonable accommodation(s) for

an employee or applicant's disability unless accommodation would impose an undue hardship upon CBP.

7.1 Initiating the Reasonable Accommodation Process

The reasonable accommodation process begins when an applicant, an employee, or someone acting on the applicant or employee's behalf requests an accommodation from a CBP Receiving Official. Employees or job applicants (or their representatives) can initiate a request for reasonable accommodation orally or in writing at any time. A request for reasonable accommodation does not need to be formal, does not need to use the words "reasonable accommodation," and does not need to identify a particular accommodation. A reference to a medical condition which limits the applicant's ability to apply or the employee's ability to work may be considered a request for reasonable accommodation.

7.2 Handling a Request for Reasonable Accommodation

If a request is received from an employee, the Receiving Official shall forward the employee's request for reasonable accommodation to the appropriate Decision-Maker and to PDO at CBPReasonableAccommodation@cbp.dhs.gov upon receipt of the request.

7.2.1 Written Confirmation: To ensure that CBP maintains accurate records regarding requests for accommodation, the Decision-Maker may ask the employee or applicant to follow-up an oral request for accommodation with a written confirmation of the request by completing the "CBP Request for Reasonable Accommodation Form" (*See* Attachment B; Note: An accessible version of this request form is also available at <https://www.cbp.gov/about/eo-diversity/reasonable-accommodation>). However, failure to complete this form shall not delay consideration of an employee or applicant's request for accommodation. The request for reasonable accommodation will be considered to have been initiated on the day when the request was first made, whether written or oral.

7.2.2 Applicant's Request: If a request is received from an applicant, the Receiving Official shall forward the applicant's request for reasonable accommodation to the appropriate Decision-Maker as soon as possible, but not more than one (1) business day after receipt.

7.2.3 Applicant's Requests for Testing Accommodations: Entry-level applicants are provided with an opportunity to request testing accommodations during the online application process. Requests for testing accommodations will be adjudicated by an appropriate HRM official. HRM shall track applicant requests for testing accommodations and provide a report to PDO at the end of each fiscal year.

7.2.4 Applicant's Requests for Fitness Test Accommodations: Entry-level applicants for positions with medical and/or fitness requirements may request accommodations related to fitness testing. However, accommodation requests for fitness tests will be processed after the applicant has been found medically qualified for the position applied.

7.2.5 Uniform Wear and Personal Appearance Standards: All uniform wear and personal appearance standard waiver requests by employees covered by the National Treasury Employees Union (NTEU) will be processed in accordance with the NTEU Contract Article 44, Section 1.

7.2.6 Processing Requests That Will Be Needed on a Repeated Basis: For reasonable accommodation requests that will likely be needed on a repeated basis (e.g., sign language interpreter, readers), the requester does not need to submit a request for each time the accommodation is needed. Once the initial reasonable accommodation is approved, the employee may obtain the accommodation by notifying the appropriate individual or office (e.g., supervisor, approving program office).

7.3 Considering a Request for Reasonable Accommodation

7.3.1 Interactive Dialogue: Once a request for reasonable accommodation has been received, the Decision-Maker (or a delegated management official) shall conduct an interactive dialogue with the employee or the applicant. The interactive dialogue is a dialogue between CBP and employee/applicant about the request for an accommodation. It is designed to clarify the scope of the accommodation that the employee/applicant is requesting, as well as the essential functions of the employee's position, and to discuss the process for determining whether the requested accommodation can be provided, as well as a time to explore alternative accommodation solutions. The interactive process should be engaged in early in the request and periodically re-engaged, as needed, should the nature of the request change.

7.3.1.1 While the Interactive Dialogue is by nature informal, it is an important step in determining which reasonable accommodations, if any, are appropriate and necessary for the employee or applicant to successfully perform the essential duties of the position. The Decision-Maker should consult with PDO and the HRM, HR Policy and Programs Division (HRPPD), if necessary, to ensure that the following issues are addressed in the Interactive Dialogue:

7.3.1.2 Medical Documentation: Decision-Makers should define the medical condition causing the employee or applicant to request a reasonable accommodation. The Agency may, if necessary, ask the requester to authorize access to medical information in connection with the request to CBP officials with a need to know to consider and address the request. Medical documentation is not needed when: (1) a condition and/or need for accommodation is obvious (e.g., individual is blind, uses a wheelchair, etc.) or (2) the individual has already provided the Agency with sufficient information to document the existence of the disability and his or her functional limitations.

If a disability and/or need for the accommodation is not obvious or sufficient information documenting a disability and function limitations has not been previously provided, Decision-Makers may request medical information showing that the requester has a covered disability that requires accommodation. Requests for medical

information should be limited to information that is sufficient to explain the nature of the disability, the individual's need for reasonable accommodation, and how the requested accommodation will assist the individual to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace. CBP has a right to have medical information reviewed by a medical expert of CBP's choice at the Agency's expense; Decision-Makers may ask HRM HRPPD, specifically the MFB, for assistance in the process of reviewing medical information.

If there is no medical documentation provided or if the Decision-Maker believes that the information initially provided by the requester during the interactive process is insufficient to determine whether the requester's identified impairment meets the definition of a disability under the law, or additional information is required to determine an effective accommodation, the Decision-Maker will request in writing that the individual seeking an accommodation provide reasonable accommodation medical documentation from his or her health care professional regarding his or her impairment(s) and functional limitations. The Decision-Maker may not request additional medical information where the impairment and need for accommodation is obvious.

If the information provided by the health professional is insufficient to enable the Decision-Maker to determine whether an accommodation is appropriate, relevant supplemental medical information may be requested. In such cases, the Decision-Maker will provide a written explanation to the individual seeking the accommodation that sets forth in specific terms why the information provided is insufficient, what additional information is needed, and why it is necessary for a determination of a reasonable accommodation request.

If the employee requesting an accommodation fails to provide appropriate medical documentation or to cooperate in CBP's efforts to obtain such documentation, his or her request for accommodation may be denied at the Decision-Maker's discretion.

7.3.1.3 Scope of Accommodation: Decision-Makers should define the parameters of the request for accommodation and the nexus between the requested accommodation and the medical condition for which accommodation is being sought. For employees, this should include a discussion of what job functions the employee is having difficulty with and how the requested accommodation would enable the employee to perform the essential functions of the position. For applicants, this should include a discussion of what parts of the application process the applicant is facing difficulty with and how the requested accommodation would enable the applicant to complete the application process. This should also include a discussion of whether there are any alternative accommodations available.

7.3.1.4 Essential Functions of the Position: Decision-Makers should define the essential functions of the position at issue. Decision-Makers should focus on the tasks which must actually be performed by the incumbents in the position, not simply the tasks listed on the position description. Requiring the ability to perform essential

functions assures that an individual will not be considered unqualified simply because of an inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation.

7.3.1.4.1 When considering requests for modified work schedules or requests to not work overtime or rotating shifts, Decision-Makers should be aware that recent case law from the U.S. Merit Systems Protection Board and U.S. Equal Employment Opportunity Commission held that working overtime, overnight and/or rotating shifts are not essential functions of the CBPO position. Therefore, in identifying the essential functions of employees' positions, management should concentrate on describing the tasks that employees must perform on the job while at the worksite. It is not enough for management to summarily state, without further explanation, that the employee's physical presence at the worksite is an essential function of the employee's position. Nor should management rely solely on statements in vacancy announcements, position descriptions, or medical standards to support this assertion. If management believes that it is necessary for an employee to work a particular schedule or to be physically present at a certain time in the workplace, management should explain the specific tasks performed by the employee and why those tasks must be performed in the workplace and/or at a particular time.

7.3.2 Merits of the Request: When considering the merits of a request for reasonable accommodation, the Decision-Maker must decide: (1) whether the employee requesting accommodation is a qualified individual with a disability; (2) whether such accommodation would cause undue hardship or would cause a direct threat to the individual him/herself or to others; and (3) if the requested accommodation would impose undue hardship on the Agency, whether the Agency can grant an alternate accommodation that is effective for the employee.

7.3.2.1 Qualified Individual with a Disability: The Decision-Maker must first determine whether the employee requesting accommodation is a qualified individual with a disability entitled to accommodation under the Rehabilitation Act. A 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 who, with or without accommodation, can perform the essential functions of the position.

The analysis of whether an employee is entitled to accommodation will rely heavily on the essential functions of the position identified in the employee's position description and discussions in the Interactive Dialogue. Therefore, it is important that the record developed in the Interactive Dialogue support the Agency's determination of the duties that constitute essential functions of the position.

7.3.2.2 Undue Hardship: Once the Decision-Maker has determined that the

individual requesting the accommodation is a qualified individual with a disability, the Decision-Maker must then determine whether the Agency can grant the requested accommodation without suffering undue hardship. If the Agency will not suffer undue hardship, a reasonable accommodation must be granted.

Undue hardship is an individualized assessment that a specific reasonable accommodation would cause significant difficulty or expense to Agency operations. Determining whether granting an accommodation would result in undue hardship is a fact-specific analysis that should be decided on a case-by-case basis, taking into consideration the mission impact and operational realities at the employee's particular port and duty station. If the Decision-Maker believes that a requested accommodation would cause undue hardship, the Decision-Maker should work with PDO and OCC to articulate specific factors demonstrating how the requested accommodation would impact the Agency's day-to-day operations and overall mission.

The Decision-Maker should also consider whether other employees have already been granted accommodations similar to that which is being requested. Depending on the circumstances, if other employees have already been similarly accommodated, this may weaken the Agency's argument that granting the requested accommodation would be an undue hardship.

7.3.2.3 Alternative Accommodations: Employees are entitled to an "effective" accommodation (an accommodation that enables them to perform the essential functions of the job), but not necessarily the accommodation of their choice. However, consideration will be given to the accommodation preference of the employee. If management determines that granting the requested accommodation would result in undue hardship or would cause a direct threat to the individual him/herself or to others, management should consider whether any alternative accommodations may meet the employee's needs without posing an undue hardship on the Agency's operations or posing a direct threat to the individual him/herself or to others. If such alternative accommodations exist, management must offer them to the employee.

7.3.2.4 Reassignment: Reassignment is the reasonable accommodation of last resort, is only available to employees, and is required only after it has been determined that: (1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position, or (2) all other accommodations would impose an undue hardship. Reassignments are processed in accordance with guidance set forth in DHS Instruction Number 259-01-002 "DHS Procedures for Conducting a Department-Wide Search for a Reassignment as a Reasonable Accommodation of Last Resort." All approved reassignments as a reasonable accommodation will be forwarded to PDO at CBPReasonableAccommodation@cbp.dhs.gov which will coordinate a reassignment job search with HRM.

To be eligible for a reassignment, an employee must be "qualified" for the new position. An employee is "qualified" for a position if s/he: (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the new position, with or without reasonable accommodation. The employee does not need to be the best qualified individual for the position in order to obtain it as a reassignment and there is no obligation for the Agency to assist the individual to become qualified. Thus, the Agency does not have to provide training so that the employee acquires necessary skills to take a job. However, the Agency would have to provide an employee with a disability, who is being reassigned, with any training that is normally provided to anyone hired for or transferred to the position.

Reassignment is made to a vacant position, as defined in 5.26, that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position. If there is no vacant equivalent position, the Agency must offer the employee reassignment to a vacant lower level position for which the individual is qualified. If there is more than one vacancy for which the employee is qualified, the Agency will place the individual in the position that comes closest to the employee's current position in terms of pay, status, etc. If it is unclear which position comes closest, the Agency should consult with the employee about his/her preference before determining the position to which the employee will be reassigned. Reassignment does not include giving an employee a promotion. Thus, an employee must compete for any vacant position that would constitute a promotion.

7.4 Timeframes for Processing Reasonable Accommodations Requests

7.4.1 The time necessary to process a request will depend on the nature of the identified impairment, the accommodation requested, and whether it is necessary to obtain supporting medical documentation. A decision to provide or deny a reasonable accommodation request must be made within 30 business days, absent extenuating circumstances, of the date the request was initially made.

7.4.1.1 Requests Not Involving Medical Documentation: If the request does not require supporting medical documentation, it shall be processed and the accommodation, if granted, provided as soon as possible but not more than 30 business days, from the date the request was initially made. Since the Decision-Maker may need the full timeframe to engage in the interactive process and collect all relevant information about possible accommodations, the Decision-Maker should not delay the processing of a request. Failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act.

7.4.1.2 Requests Requiring Medical Documentation: If the request requires that medical documentation be obtained to determine whether the individual requesting a reasonable accommodation has a disability and/or to identify the functional limitations, the time period for processing will be stayed until the requested documentation is received. For requests requiring medical documentation, the

decision shall be made and the accommodation, if granted, shall be provided within 30 business days from the date the Decision-Maker receives the required documentation. The Agency will not be expected to adhere to its usual timelines if an individual's healthcare professional fails to provide needed documentation in a timely manner.

7.4.1.3 Requests Involving Extenuating Circumstances: The time for processing a request and providing an accommodation will be extended as reasonably necessary. Examples of extenuating circumstances include, but are not limited to, the purchase of equipment may take longer than 30 business days because of requirements under the Federal Acquisition Regulation or equipment is back-ordered.

Where extenuating circumstances are present, the Decision-Maker must notify the individual, in writing, of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes should also be communicated promptly to the requester.

7.4.2 Interim Accommodations: During the processing or implementation of a reasonable accommodation request, Decision-Makers may grant accommodations on a temporary basis. Decision-Makers who approve such temporary measures are responsible for ensuring that they do not take the place of a permanent accommodation and that all necessary steps are being taken to either render a decision on an accommodation request or to secure the permanent accommodation.

7.4.2.1 Approved Accommodations: When all the facts and circumstances known to the Agency make it reasonably likely that an employee will be entitled to a reasonable accommodation, but the accommodation cannot be provided immediately, the Agency shall provide an interim accommodation that allows the employee to perform some or all of the essential functions of the individual's position, if it is possible to do so without imposing undue hardship on the Agency.

7.4.2.2 Accommodation Requests Pending a Decision: If a delay is attributable to the need to obtain or evaluate medical documentation and the Agency has not yet determined that the employee is entitled to an accommodation, the Agency may choose to provide an accommodation on a temporary basis. In such a case, the Decision-maker will notify the individual in writing that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.

7.4.3 Expedited Processing: In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a timeframe that is shorter than previously identified timeframes. Examples of such circumstances include accommodations to enable an applicant to apply for a job or to enable an employee to attend a meeting scheduled to occur shortly. Requests requiring expedited processing will be reviewed on a case-by-case basis. Where a particular reasonable accommodation can be provided in less than the maximum amount of time permitted, failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation

Act.

7.4.4 Communication and Delays in Processing: Decision-Makers are required to communicate with individuals who have requested a reasonable accommodation early on in the interactive process and regularly throughout the processing of a reasonable accommodation request. When there is a delay in either the processing of a request or providing a reasonable accommodation, the Agency must notify the requester of the reason for the delay, including any extenuating circumstances that justify the delay.

7.4.5 Employees requesting a reasonable accommodation may track the processing of their request by contacting the Decision-Maker, their RAC, or the CBP Reasonable Accommodation e-mail box at CBPReasonableAccommodation@cbp.dhs.gov. Applicants requesting reasonable accommodation may track the processing of their request by contacting their HRM PSC point of contact.

7.5 Responding to a Request for Reasonable Accommodation

7.5.1 Granting a Reasonable Accommodation Request: Upon determining that the employee is entitled to a reasonable accommodation, the Decision-Maker will issue a written decision to the employee granting the request. The approval notice shall also inform the employee of the right to request reconsideration of the decision if he or she is dissatisfied with any aspect of the decision, the right to pursue an applicable grievance process, the right to appeal to the Merit Systems Protection Board (if applicable) or to the Executive Director, PDO (if applicable), and the right to file an informal EEO complaint with the PDO if he or she wishes to pursue a claim of employment discrimination.

7.5.2 Denial of Reasonable Accommodation Request: If the Decision-Maker determines that an employee or applicant is not entitled to an accommodation, the written decision will specify the reason(s) for the denial. The denial notice will also inform the employee of the right to request reconsideration of the decision if he or she is dissatisfied with any aspect of the decision, the right to pursue an applicable grievance process, the right to appeal to the Merit Systems Protection Board (if applicable), the right to appeal to the Executive Director, PDO (if applicable), and the right to file an informal EEO complaint if he or she wishes to pursue a claim of employment discrimination (see Section 7.6 “Informal Resolution Process” and Section 7.7 “Formal Resolution Process”). Denial notices will be available in an accessible format, when requested.

7.6 Informal Resolution Process

7.6.1 Request for Reconsideration: If an employee or applicant is dissatisfied with the Decision-Maker’s decision about their request for reasonable accommodation, he or she may file a request for reconsideration to the Decision-Maker within **ten (10) calendar days** of receipt of the Decision-Maker’s decision. The request for reconsideration should include the reason(s) for seeking reconsideration and be submitted with any additional medical documentation supporting such a request. The Decision-Maker will respond to the request for reconsideration as soon as possible, but no later than five (5) business days.

7.6.2 Appeal: For employees, if the Decision-Maker denies the employee's request for reconsideration, the employee may appeal the denial of the request to the Executive Director, PDO. The appeal must be in writing. The Executive Director, PDO, must acknowledge receipt of the appeal request in writing as soon as possible, but no later than **ten (10) business days** of receipt.

7.7 Formal Resolution Processes: Depending upon the employee's particular circumstances, the employee may be entitled to file a grievance under an applicable negotiated grievance process, to file an appeal to the Merit Systems Protection Board (if applicable), or to file an informal EEO complaint with the PDO.

7.7.1 Filing an Informal EEO Complaint: All denial notices will include instructions on how to file an EEO complaint and explain that pursuant to 29 C.F.R. § 1614.105, an employee or applicant may file an informal complaint with the PDO **within 45 calendar days** from the date he or she received the Decision-Maker's initial decision by calling (1-877) MY-EEO-HELP (1-877-693-3643), or by sending an email to cbpeecomplaintfiling@cbp.dhs.gov with a brief statement on why the individual believes that the decision was discriminatory. Additional instructions for filing an informal EEO complaint can be found at the following web-address: <http://www.cbp.gov/employees/eo-diversity/complaint-process>. **(Please note the Reasonable Accommodation Coordinator member who facilitated the processing of the reasonable accommodation request is strictly prohibited from processing a request for informal EEO counseling on the same matter).**

An employee or applicant may file an informal EEO complaint regardless of whether the applicant or employee participates in an informal dispute resolution process.

Note: Requesting reconsideration or filing an appeal with either the Decision-maker or the Executive Director, PDO, does not toll the 45-calendar day time period allowable to file an informal EEO complaint, the time limit set by the MSPB for filing an appeal, or any contractually established time limit allowed for the filing of a grievance.

7.8 Funding Requests for Accommodation: Funding of accommodations, such as office furniture, hardware, software, interpreters, readers, personal assistants, and job coaches, is the responsibility of the office where the individual making the request is employed. All requests for assistive technology shall be coordinated with the Section 508 Program Manager assigned to the OIT. Questions about Section 508 can be submitted to 508CBP@cbp.dhs.gov.

7.9 Monitoring Accommodations

7.9.1 The Agency's obligation to accommodate qualified individuals with a disability is on-going. As such, the employee's chain of command has a responsibility of monitoring accommodations to ensure they are implemented and effective.

7.9.2 If an accommodation is granted and it appears that a medical condition may be

subject to change in the future, the Decision-Maker may set a time period to review the accommodation with the employee to ensure that an approved accommodation is effective and continues to be appropriate. If such a time period is set, it should be listed in the decision letter granting the accommodation.

7.9.3 If issues arise with the implementation of an approved accommodation, or the accommodation proves to be ineffective, management or the employee should contact the CBP Reasonable Accommodation e-mail box at CBPReasonableAccommodation@cbp.dhs.gov for assistance in resolving the issue.

7.10 Confidentiality and Disclosure

7.10.1 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, and shall be kept in files separate from the individual's personnel file.

7.10.2 Management must make every effort to make sure that the employee's participation in the reasonable accommodation process is kept confidential. Management must not treat an employee differently because the employee participated in the reasonable accommodation process.

7.10.3 PDO will maintain the medical information received during the interactive process.

7.10.4 This information can be disclosed for official use only. Supervisors and managers (including the Decision-Maker) who need to know may be told about necessary work restrictions or limitations, and necessary accommodations, but medical information should be disclosed only if absolutely necessary.

7.10.5 Other limited circumstances in which medical information may be disclosed: first aid and safety personnel may be told if the disability might require emergency treatment; government officials to investigate the Agency's compliance with the Rehabilitation Act; workers' compensation offices or insurance carriers; and Agency EEO officials may be given the information to maintain records. Where medical information is disclosed to any of the foregoing officials, the Agency must inform those individuals about the confidentiality requirements that attach to the information.

7.10.6 All applicable Federal confidentiality laws, regulations, and policies apply with regard to the disclosure of information obtained or received in the processing of a request for reasonable accommodation.

7.11 Intersection of Reasonable Accommodation and Fitness for Duty Examinations (FFDE)¹

There is a relationship between the reasonable accommodation process and fitness for duty examinations. Failure to meet established medical (which may include psychological) standards and/or physical requirements means that the employee is not qualified for the position, unless a reasonable accommodation or waiver is appropriate in accordance with 5 CFR § 339.103 and 5 CFR § 339.204. For CBP employees in positions with medical or physical requirements, if the results of a fitness for duty examination concludes that the employee can no longer safely and efficiently perform the essential job functions of the position, the employee must be given the option to request a reassignment under these procedures. Upon request for this consideration, the request will be forwarded to PDO at CBPReasonableAccommodation@cbp.dhs.gov which will coordinate a reassignment job search with HRM.

7.12 Intersection of Reasonable Accommodation and Workers' Compensation

The reasonable accommodation process is separate from CBP's Workers' Compensation program, although both may involve special accommodation for employees. Generally, employees recovering from on-the-job injuries are compensated and accommodated through the Workers' Compensation program, which has different standards and procedures than the reasonable accommodation process. However, employees who experience on-the-job injuries may always request reasonable accommodation(s) under the Rehabilitation Act. If an employee who is receiving services through CBP's Workers' Compensation program requests a reasonable accommodation, it will be processed in accordance with this Directive.

7.13 Record Keeping

The Privacy and Diversity Office (PDO) is the official record keeper of reasonable accommodation requests within CBP. Records related to reasonable accommodation requests will be maintained to determine whether the Agency is complying with applicable nondiscrimination and affirmative action requirements. Such records will be made available to the EEOC, upon request, and will include, at a minimum, the following:

- 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;

¹ If an employee is in a position with established medical and/or physical standards requests a reasonable accommodation, the Agency is obligated to consider the reasonable accommodation request and should refrain from initiating a Fitness for Duty Examination until the reasonable accommodation request has been processed.

- The identity of the deciding official;
- If denied, the basis for such denial; and
- The number of days taken to process the request.

8. ADDITIONAL RESOURCES

The following resources are provided for additional information on reasonable accommodation.

CBP Reasonable Accommodation: <https://www.cbp.gov/about/eo-diversity/reasonable-accommodation>.

EEOC *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*: <https://www.eeoc.gov/policy/docs/accommodation.html>.

EEOC Disability Related Enforcement Guidance and Related Documents: https://www.eeoc.gov/laws/types/disability_guidance.cfm.

Job Accommodation Network (JAN): <http://askjan.org>.

9. CONTACTS

Address any questions or concerns regarding this Directive with the PDO, Diversity and EEO Division. For more information, contact CBPReasonableAccommodation@cbp.dhs.gov or 202-344-1610.

10. NO PRIVATE RIGHTS CREATED

This document is an internal policy statement of U.S. Customs and Border Protection and does not create or confer any rights, privileges, or benefits for any person or party.

Consistent with Federal law, nothing in this Directive shall prevent any Federal employee, former Federal employee, or applicant for Federal employment from exercising any right otherwise available under the laws of the United States. In addition, this guidance does not create any greater protection than otherwise is currently available under Federal law.

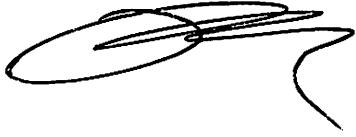
ATTACHMENTS

Attachment A – Removed

Attachment B – CBP Request for Reasonable Accommodation Form (Note: An accessible version of this request form is also available at <https://www.cbp.gov/about/eo->

diversity/reasonable-accommodation)

Attachment C – Personal Assistance Services

A handwritten signature in black ink, consisting of several overlapping loops and a trailing line that extends downwards and to the right.

Troy A. Miller
Deputy Commissioner



Section I. Employee Information

Name (First MI Last):

Position Title, Series and Grade:

Office Location and Address:

Work Phone Number: Ext.:

Home or Mobile Phone Number: Ext.:

Home Address:

Section II. Supervisor's Information

Name and Title of Immediate Supervisor:

Work Phone Number: Ext.: **E-Mail:**

Section III. Request for Disability Workplace Accommodation

Briefly describe the medical condition requiring accommodation.

Briefly describe the specific accommodation being requested.

Explain how the requested accommodation would assist you in (1) performing the essential duties of your position, (2) using the job application process, or (3) taking advantage of a benefit or privilege offered by the office/bureau.

(IF NECESSARY, PLEASE USE ADDITIONAL SHEETS FOR ANY OF THE INFORMATION REQUESTED ABOVE)

Section IV. Applicant/ Employee Acknowledgement

I verify that the above information is complete and accurate to the best of my knowledge and I understand that any intentional misrepresentation contained in this request may result in revocation of any approved accommodation and/or disciplinary action.

Employee's Signature: **Date:**

Attachment C: Personal Assistance Services

CBP will provide Personal Assistance Services (PAS) to employees who need them because of a targeted disability during work hours and job-related travel as an affirmative action obligation; if the employee requires such assistance in order to fully participate in the workplace, including an alternate work space (e.g., while teleworking), or to participate in work-related travel. PAS are services that help individuals who, because of a targeted disability, require assistance to perform basic activities of daily living such as eating and using the restroom. PAS differ from services that help an individual to perform job-related tasks, such as sign language interpreters who enable individuals who are deaf to communicate with coworkers, and readers who enable individuals who are blind or have learning disabilities to read printed text. PAS do not include medical services, such as administering shots or monitoring blood pressure, and do not have to be provided by someone with medical training or qualifications.

CBP processes PAS requests under the same procedures as a request for reasonable accommodation. Accordingly, the process for requesting PAS, the process for determining whether such services are required, and CBP's right to deny such requests when the provision of the services would pose an undue hardship, are the same as for reasonable accommodations. PAS will be provided to an individual if:

1. The individual is a CBP employee;
2. The individual has a targeted disability;
3. The individual requires the services because of his or her targeted disability;
4. The individual will be able to perform the essential functions of the job, without posing a direct threat to the safety of themselves or others, once PAS and any required reasonable accommodations, have been provided; and
5. Providing PAS will not impose undue hardship on CBP.

Not everyone with a targeted disability will be entitled to PAS; only those individuals with a targeted disability who request, and require, assistance with activities of daily living may receive PAS. Examples of medical conditions that are more likely to result in the need for PAS are missing limbs or paralysis due to spinal cord injury. CBP is only required to provide PAS, while the employee is working or on work-related travel, if the requesting employee is entitled to them under the regulations. Therefore, CBP may deny a request for PAS if:

- The requestor is not a CBP employee;
- The requestor does not have a targeted disability;
- The targeted disability does not create a need for PAS;
- The requestor is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations;
- The requestor would create a direct threat to safety on the job, even with PAS and any reasonable accommodations; or
- Providing PAS would impose undue hardship on the agency.

PAS Resources

1. *Questions and Answers: Federal Agencies' Obligation to Provide Personal Assistance Services (PAS) under Section 501 of the Rehabilitation Act*, <https://www.eeoc.gov/federal/directives/personal-assistance-services.cfm>
2. *Questions and Answers: The EEOC's Final Rule on Affirmative Action for People with Disabilities in Federal Employment*, <https://www.eeoc.gov/laws/regulations/qanda-ada-disabilities-final-rule.cfm>
3. *Accommodation and Compliance: Personal Assistance Services (PAS) in the Workplace*, <https://askjan.org/topics/persassist.cfm>
4. *U.S. Department of Labor Office of Disability Employment Policy's Personal Assistance Services in the Workplace*, <https://www.dol.gov/odep/topics/PersonalAssistanceServices.htm>
5. *Federal Exchange on Employment and Disability (FEED) PAS Roundtable Meeting Recap*, <http://www.askearn.org/topics/federal-state-government-employment/federal-government-employment/section-501/federal-exchange-employment-disability-feed/federal-exchange-on-employment-disability-feed-meeting-pas-round-table-july-20th-2017/>
6. *Independent Living Research Utilization Resources on Personal Assistance Services*, <http://www.ilru.org/resources-personal-assistance-services>
7. Federal Travel Regulation Part 301-13 – Travel of an Employee with Special Needs; Authority: 5 U.S.C. 5707, <https://www.gsa.gov/policy-regulations/regulations/federal-travel-regulation-fttr?asset=107374>
8. 5 CFR 315.711 - Readers, interpreters, and personal assistants serving under Schedule A appointments, <https://www.gpo.gov/fdsys/pkg/CFR-2011-title5-vol1/pdf/CFR-2011-title5-vol1-sec315-711.pdf>
9. 5 U.S.C. 3102 Employment of Personal Assistants for Employees with Disabilities, including Blind and Deaf Employees, <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title5/pdf/USCODE-2011-title5-partIII-subpartB-chap31-subchapI-sec3102.pdf>