



Defense Health Agency

ADMINISTRATIVE INSTRUCTION

NUMBER 1020.01

November 2, 2020

EODM

SUBJECT: Reasonable Accommodation (RA)

References: See Enclosure 1.

1. PURPOSE. This Defense Health Agency-Administrative Instruction (DHA-AI), based on the authority of References (a) through (c), and in accordance with the guidance of References (d) through (s), establishes the Defense Health Agency's (DHA) procedures to:

a. Set procedures, responsibilities, and implement guidance for administering the DHA RA Program in accordance with federal guidelines.

b. Provide, submit, and respond to requests for RAs of qualified individuals with disabilities who are employees or applicants for employment.

c. Process RA requests for DHA employees and applicants with disabilities to ensure an appropriate response in a timely manner. Further, these procedures establish criteria for collecting and annually reporting data on the numbers and types of request for RA considered.

2. APPLICABILITY. This DHA-AI applies to:

a. DHA personnel, to include federal civilians and other personnel assigned temporary or permanent duties or prospective personnel at DHA to include regional and field Assigned Activities (remote locations).

b. DHA civilian employees who have a physical or mental impairment that substantially limits one or more of an employee's major life activities. Substantial limitations are evaluated in terms of the severity of the limitation and the length of time it restricts a major life activity. Major life activities include, among other activities, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, concentrating, interacting with others, and working.

c. DHA civilian employees who have a record or history of such an impairment or have been classified or misclassified as having a mental or physical impairment that substantially limits one or more major life activity.

d. DHA civilian employees who are regarded as having such an impairment which does not substantially limit major life activities, but is treated by an employer as constituting such limitation, have a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer, or are treated by an employer as having such impairment.

e. DHA civilians providing RAs of a service animal or assistance animal due to a disability.

f. Does not apply to Active Component and Reserve Component members or contractor personnel.

3. POLICY IMPLEMENTATION. It is DHA's policy, pursuant to References (d) through (x), that:

a. The DHA is committed to providing RAs to all DoD-supported employees and applicants for employment in order to assure that qualified individuals with disabilities, permanent or temporary, as required by Federal law, have full access to equal employment opportunities.

b. The use of RA removes workplace barriers that would otherwise prevent qualified individuals with disabilities from competing for jobs or gaining access to the benefit of employment. The use of RAs will help increase the number of individuals with disabilities, especially targeted disabilities and veterans with disabilities, employed at the DHA.

c. Identifying the most appropriate accommodation begins when an individual meets with his or her supervisor. The supervisor will then consult with the individual to determine what accommodation needs are necessary, with an assessment of effectiveness to follow.

4. CANCELLED DOCUMENT. This DHA-AI cancels DHA-AI 053, "Reasonable Accommodation," June 13, 2017.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosures 3 through 10.

7. **RELEASABILITY.** **Cleared for public release.** This DHA-AI is available on the Internet from the Health.mil site at: www.health.mil/DHAPublications and is also available to authorized users from the DHA SharePoint site on the SECURE Internet Protocol Router Network at: <https://info.health.mil/cos/admin/pubs/SitePages/Home.aspx>.

8. **EFFECTIVE DATE.** This DHA-AI:

a. Is effective upon signature.

b. Will expire 10 years from the date of signature if it has not been reissued or cancelled before this date in accordance with Reference (c).

9. **FORMS.**

a. The following DHA Forms is available at:

https://info.health.mil/cos/admin/DHA_Forms_Management/SitePages/Home.aspx.

(1) DHA Form 31 Accommodation Request.

(2) DHA Form 46 Sign Language Interpreter Request.

b. The Federal Occupational Health (FOH) Services, Medical Employability (ME) Program, Authorization For Disclosure Form, FOH6 ME is available at

<https://www.hrsa.gov/sites/default/files/hr/nofearact/forms/authorizationdisclosureinfo.pdf>.

/S/
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Director

Enclosures

1. References
2. Responsibilities
3. Procedures
4. Personal Assistance Services
5. Guidance on Service Animals and Assistance Animals for Persons with Disabilities
6. Instruction for Defense Health Agency Form 31, Accommodation Request
7. Instruction for Federal Occupational Health 6, Medical Employability Form

8. Instruction for Defense Health Agency Form 46, Sign Language Interpreter Request
 9. Personal Assistance Services Action Plan
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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5136.01, “Assistant Secretary of Defense for Health Affairs (ASD (HA)),” September 30, 2013, as amended
- (b) DoD Directive 5136.13, “Defense Health Agency (DHA),” September 30, 2013
- (c) DHA-Procedural Instruction 5025.01, “Publication System,” August 24, 2018
- (d) United States Code, Title 29, Section 501
- (e) Executive Order 13164, “Establishes Procedures to Facilitate the Provision of Reasonable Accommodation,” October 20, 2000
- (f) DoD Directive 1020.1, “Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense,” March 31, 1982, as amended
- (g) Code of Federal Regulation, Title 5
- (h) United States Code, Title 5, Section 552a
- (i) DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007
- (j) Equal Employment Opportunity Commission: “Equal Employment Opportunity Management Directive 715,” October 1, 2003
- (k) Code of Federal Regulation, Title 29, Part 1614
- (l) Code of Federal Regulation, Title 29, Part 1630
- (m) EEOC Enforcement Guidance: “Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act,” October 17, 2002
- (n) United States General Accounting Office (GAO), Office of the General Counsel (OGC), Principles of Federal Appropriations Law, January 2004
- (o) Title II, “Americans with Disabilities Act, Nondiscrimination on the Basis of Disability in State and Local Government Services,” October 11, 2016¹
- (p) Title III, “Americans with Disabilities Act, Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities,” January 17, 2017²
- (q) The Genetic Information Nondiscrimination Act of 2008
- (r) EEOC Questions and Answers: Federal Agencies’ Obligation to Provide Personal Assistance Services under Section 501 of the Rehabilitation Act, September 18, 2017³
- (s) Under Secretary of Defense, Office of Diversity Management and Equal Opportunity, “Frequently Asked Questions and Answers-Service Animals and Assistance Animals for Persons with Disabilities,” August 15, 2016, ⁴
- (t) United States Code, Title 20, Section 701
- (u) Code of Federal Regulation, Title 29, Section 1919.1020
- (v) Code of Federal Regulation, Title 42, Part 2
- (w) Code of Federal Regulation, Title 5, Section 1201.3
- (x) United States Code, Title 42

¹ This reference can be found at: www.ada.gov

² This reference can be found at: www.ada.gov

³ This reference can be found at: www.eeoc.gov

⁴ This reference can be found at: www.dodpolicy.com

ENCLOSURE 2
RESPONSIBILITIES

1. DIRECTOR, DHA. The Director, DHA, will:
 - a. Implement and administer the RA provisions of References (d) and (e).
 - b. Maintain centralized control over the processing of RA requests and for the tracking and internal reporting to the Director, DHA, Equal Opportunity and Diversity Management (EODM) Division on RA efforts and activities.
 - c. Provide source of funding for RA requests, in accordance with the Equal Employment Opportunity Commission (EEOC) policy guidance (Reference (e)) that requires the DHA to establish central funds for accommodations within their own budgets. Although some accommodations (e.g., equipment, hardware, software) may cost money, many others (e.g., alternative work schedules, leave, modifying policy or procedures, relocating an office) cost little or nothing to implement. DHA Directorates should anticipate the expenses of RA and should include those expenses in their budget planning and requests for funds each fiscal year, in accordance with Reference (e)).

2. DIRECTOR, EODM DIVISION. The Director, EODM Division, must ensure the DHA complies with Section 501 of Reference (d), and the nondiscriminatory requirements of References (e) and (f), by establishing and maintaining an effective mechanism for processing and responding to RA requests.

3. DHA DISABILITY PROGRAM MANAGER (DPM). The DHA DPM must:
 - a. Establish procedures for processing RA requests and ensure managers and supervisors receive annual RA training.
 - b. Serve as a resource to managers, supervisors, and employees, regarding the statutory and regulatory requirements relating to RAs.
 - c. Serve as liaison to managers and supervisors in coordinating and monitoring a variety of administrative functions such as training, tracking, and consultation on Rehabilitation Act requirements covering RAs.
 - d. Establish, and provide RA training to managers, supervisors, and employees via on-line training or workshops.
 - e. Serve as a member of the RA Committee.

- f. Maintain records and confidentiality on RA requests.
 - g. Review and assign log numbers on all RA requests.
 - h. Meet with managers/supervisors and review proposed accommodation(s) before approval/disapproval action is completed.
 - i. Forward a FOH ME package and advise supervisors and managers during the RA process.
 - j. Conduct follow-up of RA action with manager/supervisor within 30 business days of approval.
 - k. Perform close-out actions once RA has been implemented.
 - l. Set up interpreting services for DHA-sponsored events or training and coordinate this service(s) with DHA and Assigned Activities for the procurement of service(s).
 - m. Approve interpreting services using DHA Form 46, Sign Language Interpreter Request.
 - n. Prepare the annual Disability Report on RA requests for reporting to the EEOC.
4. OFFICE OF GENERAL COUNSEL, DHA. The Office of General Counsel, DHA, must:
- a. Provide guidance only and not make decisions to approve/disapprove of requests.
 - b. Review disapproved RAs.
5. CHIEF, HUMAN RESOURCES (HR) DIVISION, DHA. The Chief, HR Division, DHA, must:
- a. Ensure applicants for employment receive the RAs necessary to apply for positions at DHA.
 - b. Provide accommodation(s) to applicant if needed during the interview process for employment.
 - c. Compile data for the DHA DPM on requests for RA from applicants for employment.
6. INSPECTOR GENERAL (IG), DHA. The IG, DHA, must:
- a. Serve as liaison to EODM on administrative grievances and Equal Employment Opportunity (EEO) complaints to support RA inquiries.

b. Actively support and promote the procedures and remain informed of, and sensitive to, the RA process.

7. SUPERVISORS AND MANAGERS, OR PRINCIPAL ORGANIZATION HEAD (POH).

Supervisors and Managers, or POH, have overall responsibility for expeditious management review of the requests and for final approval of requests for RAs in their respective program offices.

8. IMMEDIATE SUPERVISOR. The Immediate Supervisor must:

a. Be responsible for receiving and reviewing requests for RAs, engaging in interactive communication, assessing essential job functions, and requesting pertinent medical documentation, if appropriate. The maximum timeframe for processing an RA request is 30 business days from date of request, absent any *extenuating circumstances*. *Extenuating circumstances* are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. For example, further clarification needed on medical condition(s) to better accommodate the employee.

b. Complete the DHA Form 31, if employee fails to do so, the immediate supervisor must do so on behalf of the employee.

c. Notify the individual of the status of his/her request for RA.

d. Approve the RAs whenever possible, with emphasis on those requests at no cost, and when the supervisor and employee are in agreement as to the type of accommodation.

e. Request medical information as necessary from individuals.

f. Draft and forward a FOH 6 ME package to DHA DPM if additional medical analysis is needed.

g. Forward to second-line supervisor, if unable to approve.

h. Sign RA request, DHA Form 31 for approval or disapproval of request(s).

i. Implement approved RA request(s).

j. Notify DHA DPM when RA action is completed or disapproved and provide documentation to support the action.

9. SECOND-LINE SUPERVISOR. The second-line supervisor must:

a. Be responsible for receiving and reviewing requests for RAs.

- b. Engage in interactive communication with the requester of the accommodation.
- c. Assess essential job functions of the position the requester occupies to ensure the employee can perform these functions (with or without an accommodation) or they need to be modified.
- d. Request pertinent medical documentation, if appropriate.
- e. Approve RA requests for his/her immediate staff and, if necessary, requests from staff in the organization if human and financial resources are involved.
- f. Review request(s) for approval/disapproval, if immediate Supervisor cannot.
- g. Operate within the allotted 7 business days to review and approve the request(s).

10. POH. The POH must:

- a. Review and approve the request 7 business days from the date of receipt, if the POH is the second-line supervisor.
- b. Document, in writing, his/her reason(s) for denying the accommodation and forward to DHA DPM.

11. DHA EMPLOYEE. The DHA Employee must:

- a. Complete and submit DHA Form 31 to his/her supervisor to request an RA(s), unless *extenuating circumstances* prevent submitting. In this instance, a representative or the supervisor may fill out the form and submit to the servicing EEO office.
- b. Articulate the accommodation needed and participate in the interactive process with his/her supervisor. Employee must be as specific as possible on accommodation(s) needed (e.g., adaptive equipment, reader, or interpreter, etc.).
- c. Provide medical documentation, which may be required if disability is not visible or known to management. NOTE: Employees' and applicants' rights and responsibilities under Reference (d) are such that:

(1) Reference (d) confers upon individuals a number of rights and responsibilities. Employees and applicants for employment have the following rights to:

- (a) Have requests for RAs handled in a prompt, fair, and efficient manner.
- (b) Be given substantial leeway in the way requests for RAs may be made.

(c) Have medical records and information kept confidential in accordance with applicable law and regulations.

(d) File EEO complaints.

(e) Be provided with a written explanation for any denial of RA.

(2) Employees and applicants have the following responsibilities to:

(a) Make known to relevant persons their need for RA.

(b) Provide reasonable medical documentation to support a request for RA, where one's disability is not obvious.

ENCLOSURE 3

PROCEDURES

1. OVERVIEW

a. The DHA employee, or job applicant, seeking employment at DHA may initiate a request for RAs orally, in writing, or via any other mode of communication to his or her supervisor, any supervisor or manager in his/her chain of command, or the EODM Division. A third-party may make an RA request on behalf of the individual with a disability.

b. If the individual requires an accommodation in the application process or interview process of employment, he/she must make the request for the accommodation through the agency or the individual scheduling or conducting the employment interview. The agency or individual scheduling or conducting the interview must complete the DHA Form 31, on behalf of the requesting individual for employment.

c. Although requests may be made orally, in writing, or via any other mode of communication, managers, supervisors, or HR Specialists receiving such requests must ensure the DHA Form 31 is completed for record keeping and reporting purposes. If the requesting individual fails to complete DHA Form 31, the person who receives the request must complete the form on behalf of the requesting individual.

d. If the RA request is for computer or an assistive electronic technology accommodation, the requesting individual must complete an online application through the Computer/Electronic Accommodations Program (CAP) Office at: <http://www.cap.mil>. An approved DHA Form 31 must be completed and forwarded to the CAP Office and to the EODM Division for record keeping.

e. If the RA request is for workplace assessments, the requesting individual must complete an online application through the CAP Office at: <http://www.cap.mil>. An approved DHA Form 31 must be completed and forwarded to the DHA DPM or EODM Division for record keeping.

f. All computer, electronic, or other assistive equipment, including chairs requested or purchased, will be maintained and kept with the requesting individuals' organization for inventory or reuse purposes. All equipment procured belongs to the agency and will be maintained and managed by DHA Facilities and the requesting organization property book officer.

g. If the RA request is for interpreting services, the requesting organization must complete DHA Form 46, for interpreting services, and forward the request to the DHA DPM or EODM Division for action.

2. SERVICING LOCATIONS. Servicing EODM office will use DHA Form 31 to initiate all RA requests. Each request will be forwarded from the servicing EODM Office to the DHA DMP for assignment of log number and tracking purposes. Requests will be processed at the following servicing EODM office locations:

- a. Defense Health Headquarters, Falls Church, Virginia;
- b. Fort Belvoir Community Hospital, Fort Belvoir, Virginia;
- c. Walter Reed National Military Medical Center, Bethesda, Maryland;
- d. Assigned Activities at San Antonio, TX; and
- e. Other activities as assigned.

3. INITIATING A REQUEST FOR RAS

a. Decision maker must make the contact information for RAs readily available in the workplace by posting it on bulletin boards and Websites or providing it as a handout.

b. Applicants and employees must generally inform the decision maker of their need for an adjustment or change to some aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition.

c. An applicant or employee may request a RA at any time, orally or in writing. The request does not require the individual to mention Reference (d) or use the phrase “RA” or “disability.”

d. If the nature of the initial communication is unclear, a decision maker must confirm whether an individual is requesting an RA.

e. The RA process begins as soon as an individual makes an oral or written request for accommodation to the immediate supervisor, a supervisor or manager in the individual’s chain of command, the HR office, or the organization’s EEO office or DPM.

f. For applicants, the HR office, decision maker, or a DHA employee the applicant has had official contact with, in connection with the application process.

g. Individuals requesting an accommodation must confirm their request to their supervisor. The decision maker must document that the request was made and provide a copy of the documentation to the DPM within 2 business days of receipt. The DPM will assign a log number to the document for tracking purposes.

h. The decision maker must begin processing an oral request immediately upon receipt of the request and should not wait for written confirmation.

i. A family member, health professional, or other representative may request a RA on behalf of an individual seeking an RA. The decision maker should confirm with the employee that the employee wants the accommodation.

4. PROCESSING REQUESTS FOR RAS

a. The request for accommodation begins with an interactive and flexible discussion between the requester and the supervisor. This process may include communicating with the requester to clarify the request, obtaining and exchanging information with the requester to the extent necessary regarding needs and alternatives, searching for solutions, consulting DHA and outside resources, and evaluating possible accommodations and additional information, if necessary.

b. If the person receiving the request for RA does not have authority to approve the request, he/she must forward the request within 2 business days to the appropriate official, with a copy to the DPM.

c. The decision maker may ask the requester relevant questions that will assist in making an informed decision about the request. The decision maker is entitled to know that the requester has a disability covered by Reference (d), for which an accommodation is needed. When the disability and/or need for accommodation is not obvious, the decision maker must contact the DPM for assistance in obtaining medical documentation about the employee's disability and functional limitations.

d. RAs are meant to eliminate barriers in the work environment only, not barriers outside the work environment. Common types of RAs include modifying work schedules or supervisory methods, granting breaks or providing leave, altering how or when job duties are performed, removing and/or substituting a nonessential function, moving to different office space, providing telework, changing workplace policies, reconfiguring workspaces, providing accessible parking, and providing materials in alternative formats (such as Braille or Teletype).

e. RAs may include personnel assistance services (PAS) in the form of work-related assistance, but generally do not include personal attendant care at the worksite. Work-related PAS may include task-related assistance such as readers, interpreters, help lifting or reaching, page turners, or a travel attendant to act as a sighted guide for a blind or mobility-impaired employee while on occasional official travel (Reference (g)). When an employee is on official travel and incurs personal attendant care expenses beyond what his/her usual expenses would be when not on official travel, the organization should consider reimbursement for the added travel expense.

f. A request by an employee with a disability to use a service animal at work is also a request for RA. Federal law defines a service animal as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work or tasks performed by a service animal must be directly related to the individual's disability. Employers are not required to automatically allow employees to bring their service animal to work. An employer can propose

alternative accommodations that are equally reasonable and effective, or the employer must show undue hardship for denying a request for the use of a service animal as a RA.

g. If a decision maker does not immediately grant the requested accommodation, he/she must consult directly with the DPM. The DPM will coordinate, as needed, with the servicing labor counselor/agency attorney before providing the decision maker with any recommendations. Legal reviews must be conducted for all proposed denials of a RA or the particular accommodation requested.

h. As soon as the decision maker determines that an accommodation will be provided, he/she must immediately communicate the decision orally or in writing to the requester. If the decision maker initially communicates the decision orally, he/she must follow up in writing. For recordkeeping purposes, the decision maker will give a copy of the written decision to the DPM.

i. As part of the interactive process, the decision maker may offer alternative suggestions for RAs and discuss their effectiveness in addressing the need for an RA. A decision to provide an accommodation other than the one specifically requested is considered a decision to grant an accommodation. If more than one accommodation is effective, the preference of the individual with a disability should be given primary consideration; however, the decision maker has the ultimate discretion to choose between effective accommodations. The written decision will explain both the reasons for the denial of the individual's specific requested accommodation and why it has been determined the chosen accommodation will be effective. If the request is approved but the accommodation cannot be provided immediately, the written decision must include a projected timeframe for providing the accommodation.

j. A decision maker granting a request is responsible for following through and making any necessary arrangements to ensure the accommodation is provided within the applicable time limit. Absent *extenuating circumstances*, the requested accommodation should be granted, modified, or denied within 30 business days from the date the decision maker receives the initial request. Each DHA Assigned Activity or organization will determine how funding will be provided to support the provision of a RA not covered through CAP.

5. TIME LIMITS

a. The DHA and Assigned Activity or organization will process requests for RAs and provide accommodations, within 30 business days from the date of request, absent any *extenuating circumstances*. The process begins when an applicant or employee makes an oral or written request for a RA and not necessarily when the decision maker receives the written confirmation of the request. All parties, however, should recognize that the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information and medical documentation. The decision maker should have designated backups to continue receiving and processing requests and providing RAs when the decision makers are unavailable. Decision makers should ensure the individuals know who has been designated as a backup.

b. A decision maker receiving a request for a RA may be able to grant the request immediately. Absent *extenuating circumstances*, the requested accommodation should be granted or denied within 30 business days from the date the decision maker receives the initial request; however, the 30-business day timeline is paused pending receipt of requested medical information or supporting documentation from the requester or a healthcare provider. Once the information has been received, the timeline resumes.

c. *Extenuating circumstances* are situations that could not reasonably have been anticipated or avoided in advance of the request for accommodation, or are beyond the requester's or decision maker's ability to control. When *extenuating circumstances* are present, the time for processing a request for a RA and providing the accommodation will be extended as reasonably necessary. Extensions will be limited to circumstances in which they are reasonably necessary and only for as long as required to deal with the *extenuating circumstance*.

d. When a delay occurs in processing a request for or providing a RA, the decision maker must notify the requester of the reason for the delay. Upon becoming aware of the need for a delay, the decision maker must contact the DPM to determine whether a provisional accommodation can be provided. A decision maker could consider a temporary job restructuring or the use of equipment that might permit the individual to perform some of the functions of the job.

e. The processing of RA requests may be expedited in appropriate cases. Expedited processing might be necessary where the RA is needed to enable an individual to apply for a job, or the RA is needed for a specific activity that is scheduled to occur shortly.

6. MEDICAL INFORMATION

a. When the disability and/or need for accommodation is not obvious, the employee or applicant seeking accommodation may be asked to provide appropriate medical information related to the functional impairment and/or limitations at issue and the requested accommodation. Supplemental documentation may be requested when the information already submitted is insufficient to document the disability and/or the functional limitations. The decision maker should consider providing an interim accommodation until medical documentation is received and a final decision is made on a RA. Failure to provide necessary documentation when it has been properly requested could result in a denial of RA.

b. Medical documentation contains personally identifiable information and is sensitive information about an individual's medical condition and must be handled in a confidential manner. The decision maker must seek the assistance of the DPM before obtaining any medical documentation. The DPM, in coordination with the servicing labor counselor/agency attorney (as needed), will assist in obtaining appropriate medical documentation.

c. Medical information will be requested only to the extent reasonably necessary to establish that the requester is an individual with a disability and/or needs the requested accommodation and provide information on the nature, severity, and expected duration of the impairment (for

example, functional limitations, symptoms, side effects of any treatments, and so forth), activity or activities of the impairment limits, extent to which the impairment limits the individual's ability to perform the activity or activities, and/or why the individual requires the particular accommodation requested and how the accommodation will assist the individual to apply for a job, perform the essential functions of the job, or have the benefits of the workplace.

d. Based on the medical documentation provided, the decision maker may elect to approve the request for RA. On a case-by-case basis, the decision maker may submit medical documentation to the occupational medicine physician or other medical expert for assistance in assessing functional abilities regarding that individual's ability to perform a job, in order to help the decision maker, choose an effective RA. The information should inform the medical authority of the nature of the job, the essential functions the individual will be expected to perform, and any other information relevant to evaluating the request.

e. The medical authority may request supplemental medical documentation when the submitted information is insufficient to document the existence of a disability and the need for RA.

f. If the supplemental medical documentation does not result in sufficient information, the activity may require the employee requesting the accommodation to be examined by a healthcare professional of the activity's choice at the activity's expense.

7. REASSIGNMENTS

a. Reassignment is the accommodation of last resort and is available only to employees, not applicants. The decision maker will consider a reassignment only if no RAs are available to enable the individual to perform the essential functions of his/her current position, or if the only effective accommodation would cause undue hardship. Reassignment may be made only to a vacant position of the same grade. A reassignment cannot result in a non-competitive promotion, i.e., developmental and/or ladder positions cannot be utilized. The DHA and Assigned Activity or organization(s) will not create new positions or displace employees from their jobs.

b. The vacant position is considered available as long as a selection to fill the position has not been made and no DoD Priority Placement Program matches are pending. An employee is qualified for the identified reassignment if he/she 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 RA. If the employee is qualified for the position, he/she should be reassigned to it as a RA and not have to compete for the position.

c. If a reassignment is under consideration, the decision maker must consult with the servicing HR and Labor Counselor. The servicing HR will conduct a vacancy search based on the employee's expressed preference and qualifications. The decision maker should explain to the employee why he/she cannot be accommodated in the current position and that a reassignment is under consideration. The decision maker should determine the employee's preferences with respect to the reassignment, such as whether the employee is willing to be

reassigned outside the facility or outside the commuting area, including outside the geographical area and, if so, to what locations; be reassigned to a different type of position he/she may be qualified for and, if so, to what type(s); be reassigned to a different subcomponent of the department and, if so, to which one(s); and be reassigned to a lower grade or pay band position if no position is available at the current grade or pay band and, if so, down to what grade or pay band.

d. The reassignment should not create an adverse personnel action or adversely impact the employee's career.

e. If an employee is reassigned outside the local commuting area or to a different geographical area, the employee must pay any relocation expenses unless the activity routinely pays such expenses when granting voluntary transfers to other employees.

8. DENIAL OF REQUESTED ACCOMMODATION

a. Decision maker(s) must inform the DPM before denying a request for accommodation or the particular accommodation requested. The decision maker must provide documentation that demonstrates the effort made to explore, with the requester, other options for accommodation. The Assigned Activity or organization must obtain legal reviews for all proposed denials of a RA or the particular accommodation requested before informing the requester of the denial.

b. When the decision maker denies an individual's request for an accommodation, he/she must notify the requester of the denial in writing. The notification must be written in plain language and state the specific reason(s) for the denial (for example, why the medical documentation is inadequate to establish the individual has a disability or needs RA, why the requested accommodation would be ineffective, the reasons the decision maker believes the offered accommodation would be effective, or why the requested accommodation would pose an undue hardship). The written denial must identify the supervisor/manager and the office that made the decision and provide information about the individual's right to file an EEO Complaint and invoke other applicable statutory or regulatory processes, including the availability of the informal dispute resolution process.

c. The decision maker must complete the memorandum for the record (Enclosure 10), documenting the denial of accommodation request and submit it to the DPM along with a copy of the written notification of denial.

d. In determining whether a proposed RA poses an undue hardship, the decision maker, in consultation with the DPM and the labor counselor/agency attorney, must consider the overall resources and options available to the DHA not just the budget or resources of an individual segment, subcomponent, or division within the DHA.

9. CONFIDENTIALITY

a. The decision maker or any other official who receives information in connection with a request for RA may share information that is confidential and connected with that request with other DHA officials only when those DHA official(s) demonstrate a need to know and the information will be used solely to make determinations on an accommodation request, or to help the decision maker make a determination.

b. Reference (d), requires all medical information be kept confidential. DPMs, decision makers, and other persons who have access to information necessary to make a decision on a request for RA must maintain this information in a secure location separate from the employee's personnel file and may not further disclose this information except with his or her consent or as otherwise authorized by References (h) and (i).

c. Officials must be informed about the confidentiality requirements whenever medical information is disclosed to them.

d. Decision makers who need to know will be informed about necessary restrictions on the work or duties of the employee and about necessary accommodation(s).

e. Building managers and others planning for emergency evacuations may be informed to include special provisions in emergency evacuation planning and procedures.

f. First aid and safety personnel may be informed if the disability might require emergency treatment.

g. Other government officials may be provided information necessary to investigate the DHA's compliance with the Reference (r).

h. The information may be disclosed to workers' compensation offices or insurance carriers in certain circumstances.

i. Information may be shared with other agency officials who have an official need to know to execute their mission, such as labor counselors, agency attorneys, HR, the occupational medicine physician or the medical advisor, and EEO specialists.

j. Other information that must be kept confidential includes the fact that an employee or applicant is receiving an accommodation or has a disability. Decision makers should explain the policy of assisting any employee who encounters difficulties in the workplace if coworkers question what they perceive as different or special treatment of an accommodated employee.

k. The decision maker will also point out that many of the workplace issues employees' encounter are personal and it is the agency's policy to respect employee privacy. An employee may, however, authorize release of information that may facilitate a requested accommodation. The authorization should be addressed and confirmed in writing before it is released.

10. INFORMATION TRACKING

a. The DHA-EODM Division will establish a system of recordkeeping to track the processing of requests for RAs. The decision maker who processed the accommodation request must complete and submit the DHA Form 31 to the DPM.

b. Records that contain medical information about a particular individual with a disability are subject to the confidentiality restrictions and the activity's recordkeeping systems must contain safeguards to ensure that those restrictions are observed.

c. At a minimum, the records related to an employee who requested a RA will be maintained for the duration of the employee's tenure to ensure the employee is not asked to provide medical information previously submitted. After the employee's tenure, the records will be maintained in accordance with the DHA, OSMD Records and Information Management Program, DCMO-AI-015.

d. The DHA-EODM office will retain information or any cumulative records used to track the activity's performance with regard to RA for at least 5 years. Tracking performance over a 5-year period is critical to enable the activity to assess whether it has adequately processed and provided RAs.

e. Information will be summarized in the Reference (j) and reported to the EEOC through the DHA and Assigned Activity channels. On an annual basis, activities will report the following information as part of the reporting process:

(1) The number of RAs, by type, that have been requested for the application process and whether those requests have been approved or denied.

(2) The types of RAs that have been requested by job series.

(3) The number of RAs, by type, for each job series that have been approved and denied.

(4) The number of requests for RAs, by type, that relate to the benefits or privileges of employment and whether those requests have been approved or denied.

(5) The reasons for denial of requests for RAs.

(6) The amount of time taken to process each request for RAs.

(7) The sources of technical assistance that were consulted in trying to identify possible RAs.

(8) The relevant information that will be examined during DHA's and Assigned Activities onsite EEO Program reviews. The DHA review will evaluate the activity's performance in responding to requests for RA. Reviews will include:

- (a) The length of time it takes the activity to respond to requests for different types of RAs.
- (b) Whether the activity has been unable to provide any particular types of RAs.
- (c) Whether any Assigned Activity are not consistently granting RAs, and the various reasons activities denied a request for RA.

11. INFORMATION DISPUTE RESOLUTION AND EEO COMPLAINTS

a. An informal dispute resolution process is a voluntary mechanism through which an employee can request reconsideration of a denial of RA, regardless of whether the person has started the EEO Complaint Process. An informal dispute resolution process begins when an employee asks the decision maker to reconsider his or her decision. Employees may also request reconsideration of the denial from officials higher in the decision maker's chain of command.

b. The DHA's preferred method of informal dispute resolution is Alternative Dispute Resolution (ADR). An individual whose request for accommodation has been denied has the option to initiate ADR through any applicable ADR process DHA has established that covers such disputes.

c. An individual whose request for accommodation has been denied may file an EEO Complaint in accordance with DHA EEO Complaints of Discrimination processes. An employee whose request for accommodation has been denied and who is covered by a collective bargaining agreement may elect to file a claim of discrimination under a negotiated grievance procedure that covers such claims or through the EEO Complaint Process, but not both. An employee filing an EEO Complaint may also request the use of ADR at any stage of the complaint process.

d. The informal dispute resolution process does not affect the time limits governing the EEO Complaint Process. An individual's participation in ADR does not satisfy the requirements for bringing a claim under the EEO, Merit Systems Protection Board, or negotiated grievance procedures. When a request for RA is denied, the individual wishing to pursue the EEO Complaint Process must do so within 45 days of the denial, even if he/she has already requested participation in ADR.

e. Contact information for the DHA and Assigned Activity servicing EEO office should be available on the DHA and Assigned Activity's website, posted in the local HR office, or at the end of these procedures.

ENCLOSURE 4

PERSONAL ASSISTANCE SERVICES

1. BACKGROUND

a. Overview. On January 3, 2017, the EEOC amended the regulations implementing Reference (d). Reference (d) prohibits the Federal government from discriminating in employment on the basis of disability and requires the Federal government to engage in affirmative action for people with disabilities. As part of its obligation to engage in affirmative action, Federal agencies are required by the new rule to provide PAS to persons who need them because of certain disabilities (Reference (k)). PAS are services that provide assistance to persons with targeted disabilities to perform basic activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a RA. The rule requires Federal agencies to provide PAS and RAs to certain employees who have targeted disabilities unless doing so would impose an undue hardship on the agency. Federal agencies cannot discriminate against an individual based on the need for PAS. Some individuals with disabilities cannot work because PAS are not provided to them in the workplace. PAS will allow those individuals to enjoy the opportunity and independence offered by paid employment.

b. Requirement to Provide PAS. The DHA is required to provide RAs to persons with disabilities if doing so would enable them to apply for a job, perform job functions, or enjoy the benefits and privileges of employment, absent undue hardship. For example, DHA and Assigned Activities may be required to provide sign language interpreters, readers, and assistance with note taking or photocopying as a RA. Reference (d) requires DHA and Assigned Activities to provide PAS to persons with targeted disabilities, assistance to perform basic activities of daily living. For example, DHA and Assigned Activities may be required to provide persons with targeted disabilities assistance with removing and putting on clothing, eating, or using the restroom. These procedures will be used to process requests for PAS from DHA employees and applicants with targeted disabilities to ensure an appropriate response in a timely manner. Furthermore, these procedures establish criteria for collecting and annually reporting data on the numbers of requests for PAS DHA-wide.

c. Cost of PAS. The number of persons with the types of disabilities requiring assistance in activities of daily living and who will apply for federal employment is very low. In the event resources available to DHA, as a whole, are insufficient to grant a particular individual's request for PAS, DHA may deny the request on the grounds it would impose an undue hardship. The process of determining whether providing PAS is an undue hardship is the same as the process used to determine whether a RA poses an undue hardship.

d. Affirmative Action Plan. Reference (d) requires DHA and Assigned Activities to prepare and submit to the EEOC for approval, an affirmative action plan that includes a copy of its PAS procedures and information on its efforts to implement them. The affirmative action plan must be submitted every year to EEOC.

e. Purpose and Organization. The purpose of these procedures is to assist DHA and Assigned Activities in meeting its obligations under Reference (d), to develop standard policies, practices, and procedures that ensure the provision of PAS be provided to DHA employees and applicants who are seeking and being considered for employment.

2. DEFINITION OF PAS. The term “personal assistance services” means assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a RA. For example, assistance in removing and putting on clothing, eating, and using the restroom (Reference (k)). PAS does not include doing the person’s job.

a. Reference (d) does not attempt to list every activity that might constitute PAS. DHA and Assigned Activities decision makers are only required to provide PAS when the individual is working at their duty station and while he or she is on work-related travel if:

- (1) Needed because the employee has a targeted disability;
- (2) It enables performance of essential job functions; and
- (3) It does not impose undue hardship (Reference (k)).

b. Reference (d) requires that DHA provides PAS as a form of affirmative action that goes beyond nondiscrimination obligations. DHA and Assigned Activities are required to have written procedures to implement DHA’s PAS. DHA’s PAS procedures are part of this DHA-AI, DHA, and Assigned Activities cannot take adverse personnel actions based on the need for PAS.

c. PAS does not include; for example, performing medical procedures (e.g., administering shots), or medical monitoring (e.g., monitoring blood pressure). Assigned Activities are not required to provide additional services to employees with disabilities, including services with getting to and from work, identifying transportation options and accessing transportation, assistance with becoming familiar with surroundings, and informational and navigational awareness as well as lightweight communication.

3. SCOPE OF LEGAL OBLIGATION

a. In General. Under Reference (d), Federal Agencies that fail to meet any of the regulation’s requirements risk having their affirmative action plans disapproved. The Chair of the EEOC may issue a notice to the agency head of any noncompliant agency and publicly identify the agency (Reference (k)).

b. Eligibility of Individual. Targeted disabilities are a subset of conditions that would be considered disabilities under Reference (d). The Federal government has recognized that qualified individuals with targeted disabilities face significant barriers to employment that are above and beyond the barriers faced by people with a broader range of disabilities. However, not everyone with a targeted disability will be entitled to PAS under the new regulations, because only some individuals with targeted disabilities require assistance with basic activities like eating and using the restroom. Impairments that are more likely to result in the need for PAS include, missing limbs or paralysis due to spinal cord injury.

(1) DHA and Assigned Activities are only required to provide PAS to an individual if:

- (a) The individual is an employee of the agency;
- (b) The individual has a targeted disability;
- (c) The individual requires the services because of his or her targeted disability;
- (d) The individual will be able to perform the essential functions of the job without posing a direct threat to safety; and
- (e) Once PAS and any RAs have been provided; and providing PAS will not impose undue hardship on the agency.

(2) Targeted disabilities include the following:

- (a) Developmental disability, for example, autism spectrum disorder; traumatic brain injury;
- (b) Deaf or serious difficulty hearing, benefiting from, for example, American Sign Language, Communication Access Real-time Translation, hearing aids, a cochlear implant and/or other supports;
- (c) Blind or serious difficulty seeing even when wearing glasses;
- (d) Missing extremities (arm, leg, hand and/or foot);
- (e) Significant mobility impairment, benefiting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other supports;
- (f) Partial or complete paralysis (any cause);
- (g) Epilepsy or other seizure disorders;
- (h) Intellectual disability;

(i) Significant psychiatric disorder, for example, bipolar disorder, schizophrenia, posttraumatic stress disorder, or major depression;

(j) Dwarfism; and

(k) Significant disfigurement, for example, disfigurements caused by burns, wounds, accidents, or congenital disorders.

c. Prohibition against taking adverse action. Under Reference (d), DHA and Assigned Activities are prohibited from taking adverse actions against job applicants or employees based on their need for, or perceived need for PAS (Reference (k)).

d. Scope of Obligation. Reference (d) requires DHA to provide PAS to employees and applicants who, because of a targeted disability, require such assistance in order to work, or participate in work-related travel. This includes providing PAS for employees to participate in employer-sponsored events, to the same extent as they must provide RAs. Reference (d) requires RAs that enable employees with disabilities to enjoy benefits and privileges of employment equal to those enjoyed by similarly situated employees without disabilities. Benefits and privileges of employment include physical access to spaces available to all employees (such as cafeterias or break rooms), employer-sponsored training, and employer-sponsored social events. Reference (d) requires DHA and Assigned Activities to provide PAS providers who will assist the employee with removing and putting on clothing, eating, using the restroom, and similar activities to individuals who need them because of a targeted disability; the rule does not require DHA and Assigned Activities to provide services the individual does not need in order to participate in the workplace, or services that are needed for reasons other than disability. Further, the rule does not require DHA and Assigned Activities to hire an assistant to perform essential functions of the individual's job, or to perform tasks that the individual can perform on his or her own.

e. Undue Hardship. Under Reference (d), the term "undue hardship" has the same meaning it has in the RA context as set forth in Reference (l). Undue hardship considers the nature, extent, and cost of an accommodation or of providing PAS in relation to the impact of the accommodation or the requirement to provide PAS on the operation of DHA's and Assigned Activities' business. The rule emphasizes that, as with RA, the determination of whether granting an individual's request for PAS would impose "significant" difficulty or expense must consider all resources available to DHA as a whole. DHA's written RA procedures explain the term's meaning and application.

4. RELATIONSHIP BETWEEN RAs AND PAS

a. RAs

(1) RAs include services that assist an individual to perform job-related tasks, such as sign language interpreters who enable deaf individuals to communicate with coworkers, readers who enable blind individuals, and/or individuals who have learning disabilities to read printed text.

(2) Other examples of RAs include assistance in filing or manipulating paper documents and retrieving work materials that are out of reach. DHA's and Assigned Activities' obligation to provide RAs is unchanged by Reference (d).

b. PAS

(1) PAS allows individuals to perform activities of daily living an individual would typically perform if he or she did not have a targeted disability such as assistance in removing and putting on clothing, eating, and using the restroom.

(2) PAS does not assist persons with disabilities with performing their specific job functions.

(3) PAS does not require DHA and Assigned Activities to assist employees in reviewing documents, answering questions that come through a call-in center, typing, or reading work materials because those types of job-related services are already required as RAs (absent undue hardship). DHA and Assigned Activities would not be required to provide these specific accommodations if an alternative would be both less expensive and equally effective.

c. RAs During Work Related Travel.

(1) A DHA and Assigned Activity has the obligation to pay the cost of a travel attendant to travel with an employee as a RA. Reference (1) states, "It may be a RA for an employer to provide for the reimbursement of travel expenses for family members or other attendants (a travel attendant), needed by an employee with a disability to make work-related travel possible." When a DHA and Assigned Activity assignment of work-related travel results in an employee's inability to rely on his or her usual source of PAS during both work and off-work hours. As an RA, DHA and Assigned Activities are required to provide a travel attendant at all times during that work-related travel Reference (1).

(2) Even if an employee's usual PAS provider is available during work-related travel, Assigned Activities are required to pay any additional costs related to providing a travel attendant while on travel, such as transportation costs for the PAS provider as a RA.

(3) DHA and Assigned Activities always have the option of exploring, with the employee, an alternative to arranging for a travel attendant at the destination site, rather than paying for the employee's travel attendant to travel with him/her. DHA and Assigned Activities can explore this option even if the employee's PAS attendant is prepared to travel with the employee. If an employee insists on taking his or her PAS attendant on work-related travel,

(4) RAs include services that assist an individual to perform job-related tasks, such as sign language interpreters who enable deaf individuals to communicate with coworkers, readers DHA and Assigned Activities should recognize the delicate and intimate work of a PAS attendant and not automatically assume that anyone will suffice.

d. Teleworking. Reference (d) specifies that PAS must be provided during work hours. The term work hours includes time an employee is teleworking, whether the telework is part of the DHS and Assigned Activities telework program available to all employees or is being provided as a RA. There is no legal reason to treat the provision of PAS for workers who are teleworking any differently from the provision of other services by individuals as a RA, such as sign language interpreters and readers. Determination of whether PAS can be provided to an employee who is teleworking should be made on a case-by-case basis as are decisions about RAs. DHA and Assigned Activities are cautioned not to revoke an individual's permission to telework because he/she is entitled to PAS under Reference (d).

5. PROCESS FOR REQUESTING PAS

a. Adoption of Written Policies and Procedures. Reference (d) specifies that the affirmative action plan requires DHA and Assigned Activities to adopt, post on its public website, and make available to all job applicants and employees in written and other accessible formats, procedures for processing requests for PAS (Reference (k)).

b. Requesting PAS. As with RA, an individual may request PAS by informing a supervisor, HR professional, DPM or other appropriate individual that he/she needs assistance with daily life activities because of a targeted disability. The individual does not need to mention Section 501 (Reference (d)), or the EEOC's regulations (Reference (m)), explicitly or use terms such as "PAS" or "affirmative action" to trigger an obligation to consider the request.

c. Role of Decision Maker (Supervisor/Manager)/EEO/DPM. The responsibility for processing requests for PAS and arranging for PAS falls to the designated decision maker, who is usually the supervisor. However, the rule provides that the process for DHA and Assigned Activity's right to deny such requests when provision of the services would pose an undue hardship, are the same as for RAs (Reference (k)).

d. Determining or Documenting Need. To determine whether an individual is entitled to PAS, and, if so, the nature of the required services, DHA and Assigned Activity should use the same type of interactive process used for providing a RA. The DHA and Assigned Activity should expect the process to be brief in most cases. An employee is not likely to request assistance with activities such as removing or putting on clothing, eating, or using the restroom unless it is truly necessary, and, in general, such assistance is only necessary for persons who have targeted disabilities. For further information on the interactive process refer to Reference (m).

e. Interactive Process (Reference (m)). When an employee with a targeted disability makes a request for PAS in the workplace, the interactive process is initiated. If required, a disability determination must be made, an analysis completed, and an “Action Plan” developed. If an Action Plan exists for a different type of PAS service, such plan should be updated with an addendum describing the new PAS service.

(1) The PAS Action Plan (Enclosure 9), will include frequency, duration, and type of tasks to be performed in the most general terms. Both the employee and his/her decision maker must sign the PAS Action Plan/Action Plan Addendum and return it to the DPM or responsible staff officials prior to the start of PAS.

(2) The DHA and Assigned Activity will provide the employee and decision maker with information instructing them on scheduling and canceling services as needed. The PAS provider will be provided with:

- (a) Employee’s name and contact information;
- (b) Work site location-name and address;
- (c) Start date;
- (d) End date if applicable;
- (e) General schedule of services; and
- (f) General description of tasks to be provided, as agreed upon in the Action Plan/Action Plan Addendum.

(3) The PAS provider will meet with the employee to review the details of the individual’s needs, tasks to be performed, and the manner in which tasks are to be performed. The PAS provider will document specific needs for their own information and recordkeeping but will not share such personal information with the employee’s supervisor/decision maker. The PAS provider needs to provide a delivery report.

(4) In the event that the PAS provider believes that services requested by the employee with a disability falls outside of the DHA and Assigned Activity’s written contract/agreement or the employee with a disability believes that he or she is not receiving appropriate services, both parties should immediately contact the individual(s) responsible for approving requests for PAS to resolve the situation. The supervisor/decision maker may need to be involved in some situations to assist with the resolution.

(5) The employee must notify the DHA and Assigned Activity’s PAS coordinator immediately if there are any changes needed to the services currently in place. The DHA and Assigned Activity PAS coordinator will work with the employee and his/her supervisor/decision maker to address these changes. Changes in the type, manner, or frequency of service cannot be made without consultation with and approval of the supervisor/decision maker.

(6) The employee will be asked to acknowledge receipt of the PAS by signing paperwork from the PAS provider describing services provided. The schedule for PAS could be daily, weekly, or monthly, as established in the contract between the DHA and Assigned Activity and the PAS provider. If the employee believes that there is a discrepancy between what is listed on the paperwork and actual services received, he or she should notify the decision maker immediately.

f. Self-Identification (Office of Personnel Management's Standard Form (SF) 256). DHA and Assigned Activities cannot require an employee to complete a self-identification form regarding whether he or she is an individual with a disability, such as Office of Personnel Management's voluntary "Self-Identification of Disability" SF 256, or any other self-identification form. The DHA and Assigned Activity cannot require the completion of the SF 256 as a condition of receiving PAS. However, the DHA and Assigned Activity may be able to count a person who is receiving PAS in its annual disability workforce analysis, even if the individual does not self-identify as having a disability (Reference (k)).

g. Confidentiality and Privacy. Reference (d) prohibits the disclosure of medical information except in certain limited situations. Information that is otherwise confidential under Reference (d), may be shared only with individuals involved in the PAS process who need to know the information to consider PAS for a specific individual.

6. SELECTION AND EVALUATION OF PAS PROVIDERS

a. Definition of PAS Service Provider. The term "personal assistance service provider" means an employee or independent contractor whose primary job functions include provision of PAS (Reference (k)). Under Reference (d), the affirmative action plan must state that PAS must be performed by a PAS provider.

(1) PAS providers are permitted to provide PAS services to more than one individual.

(2) PAS providers are permitted to perform tasks unrelated to PAS services if it does not result in failure to provide required PAS in a timely manner.

(3) PAS providers may be federal employees or contractors.

b. Qualifications of PAS Providers. The DHA and Assigned Activities will establish qualifications for PAS providers in accordance with their mission and needs. PAS need not be provided by a person who has medical training or qualifications.

c. Selection of PAS Providers (Use of Federal Employees or Contractors)

(1) General. DHA and Assigned Activities may use Federal employees, independent contractors, or a combination of employees and contractors. Commands also have discretion as to how to classify their PAS providers concerning pay grade, benefits, and leave.

(2) Use of Federal Employees. DHA and Assigned Activities can use Schedule A (Reference (g)), to fill positions on a full time, part-time, or temporary basis, as needed. The EEOC has issued a guide for Federal agencies implementing RA procedures. Attachment B to Reference (m), includes sample language regarding the creation of staff assistance positions, including requesting staff assistant slots, use of staff assistants, hiring authority, and release of positions. It is not appropriate to require a person who does not provide PAS or similar services as part of his or her job, to assist another employee with tasks such as eating and using the restroom. However, Reference (d) does not prohibit DHA and Assigned Activity from assigning the responsibility to perform PAS to an existing employee who already performs a similar service as part of his or her regular job. DHA and Assigned Activities utilizing this strategy should ensure the resulting number of providers is sufficient to provide PAS in a timely manner.

d. Use of Independent Contractor to Provide PAS. Although DHA and Assigned Activity is generally prohibited from expending appropriated funds on personal expenses for employees, those restrictions do not apply to services DHA and Assigned Activities are legally required to provide in order to comply with Reference (d). See Reference (n), explaining that “agencies may expend appropriated funds to accomplish the purposes of Reference (d), when acting under the Act's authority and the regulatory standards that govern its application.” DHA and Assigned Activities may contract or make other arrangements to use independent contractors to provide PAS.

e. Use of Pool of PAS Providers/Assigning Providers One PAS Provider to each Employee. It is permissible to use a pool of PAS providers as long as each individual who is entitled to PAS under Reference (d) receives them in a timely manner. If utilizing a pool of PAS providers would foreseeably result in some individuals not receiving services when they are needed, the Command should increase the number of available providers or arrange for dedicated PAS providers.

f. Consideration of Employee's Choice of a Particular PAS Provider. If a DHA and Assigned Activity is hiring a PAS provider who will be exclusively assigned to an individual employee, or if that individual employee prefers a particular provider (e.g., because the provider has worked with him/her in the past), the DHA and Assigned Activity must give primary consideration to the employee's choice, to the extent permitted by law. It may not be possible to honor the individual's preferences in all cases and DHA and Assigned Activity may choose a different provider.

g. Use of Own PAS Provider/Family Member. An individual may request permission to bring his or her own PAS provider to work as a RA if the individual does not request DHA and Assigned Activity assume the cost of providing the services. If the individual wants the DHA and Assigned Activity to assume the cost of providing the services, the Assigned Activity may have reasons to choose a different provider. If the individual's own PAS provider or family member is hired as a professional PAS provider at DHA and Assigned Activity, the DHA and Assigned Activity must compensate the PAS provider as either a contractor or Federal employee.

h. Security Clearance for PAS Provider. If a PAS provider would have access to classified information, the DHA and Assigned Activity should find a provider who has, or who likely could obtain, the appropriate security clearance. Under some circumstances, finding such a provider may be sufficiently difficult as to constitute an undue hardship.

i. Use of Volunteers or Co-Workers. If a current employee volunteers to provide PAS for his/her co-worker, the supervisor should seek advice from legal counsel before agreeing to such an arrangement, otherwise, the DHA and Assigned Activity could be subject to undue liability (Reference (m)). EEOC recommends that the decision maker take a case-by-case approach and only consider allowing co-workers to voluntarily assist employees with disabilities when the DHA and Assigned Activity does not face potential liability and the assistance does not substantially disrupt the workplace. Assistance with taking off and putting on a coat, as well as putting items in or taking items out of a bag or purse, are examples of services that could be provided by a co-worker. Before allowing a co-worker to assist with tasks such as chair transfers or assistance in using the restroom, the DHA and Assigned Activity should ensure that proper training is provided.

j. Unavailability of PAS Provider. DHA and Assigned Activities should instruct PAS providers to provide notification of any absences as soon as possible, so it can make alternative arrangements. Such arrangements could include, for example, contracting with different providers on a short-term basis, adjusting the schedules of shared PAS providers, or allowing the individual to telework if the employee can work at home without the need for PAS provided by the DHA and Assigned Activity.

k. Assignment of non-PAS Job Function to PAS Providers. DHA and Assigned Activities may employ PAS providers who also perform other work-related tasks. Sometimes these work-related tasks are those required as a RA. Other times, the work-related tasks are the type any assistant would provide. If the DHA and Assigned Activity does assign additional duties to its PAS providers, it should ensure those duties do not interfere with provision of existing PAS, and all individuals who are entitled to PAS continue to receive them in a timely manner.

l. Finding PAS Providers. Applicants for PAS provider positions may be found by advertising the opening on USAJOBS.gov and other job posting boards. Other resources include local vocational rehabilitation offices, American Job Centers, centers for independent living, home care agencies, and referrals from the employee who requested PAS. Contractors are available through GSA Advantage.

7. FUNDING PAS

a. Budgeting for PAS. Although Federal agencies are generally not permitted to expend appropriated funds on personal expenses for employees, those restrictions do not apply to services DHA and Assigned Activities are legally required to provide in order to comply with Reference (d). See Reference (n), explaining that "agencies may expend appropriated funds to accomplish the purposes of Reference (d), when acting under the referenced authority and the regulatory standards governing its application." DHA and Assigned Activities may structure

their own budgets as necessary. However, the resources available to DHA as a whole are considered when determining whether a DHA and Assigned Activity can provide PAS without undue hardship. It may be easier for the DHA and Assigned Activity to determine whether it has sufficient resources to cover a disability-related expense, such as the cost of RA, if such funds are drawn from a centralized account. The EEOC has produced several resources explaining the undue hardship standard (Reference (m)).

b. Reliance on Outside Sources to Pay for PAS. DHA and Assigned Activities may consider all available resources when arranging for PAS, such as a State or veterans' rehabilitation agency. However, the DHA and Assigned Activities are ultimately responsible for ensuring the services are provided in a timely manner and cannot rely on external availability of PAS as a reason for denying an employee's request.

8. COMPLAINT RESOLUTION PROCESS FOR EMPLOYEES AND PROVIDERS

a. General. In the event the PAS provider believes the services requested falls outside of the DHA and Assigned Activity's written contract/agreement or the employee believes he or she is not receiving appropriate services, both parties should immediately contact the individual(s) responsible for approving requests for PAS to resolve the situation. The decision maker may need to be involved in some situations to assist with the resolution.

b. Employee Complaint Resolution Process. If a complaint by an employee is not resolved on an informal basis, the formal complaint resolution process applicable to resolving RA requests will apply.

c. Contractor Complaint Resolution Process. If the complaint by a PAS provider is not resolved on an informal basis, the formal complaint resolution process applicable to the contractor will apply.

d. Enforcement. If a Federal agency fails to meet the requirements of Section 501 (Reference (r)), it risks having its disability affirmative action plans disapproved by the EEOC. EEOC will work with the agency to achieve compliance with all such requirements. However, where such efforts are not successful, the Chair of the EEOC may issue a notice to the head of any such noncompliant Federal agency (Reference (k)). As set forth in the preamble, the regulation takes no position on the availability of a private remedy for affirmative action obligations. The EEOC states its procedural regulations governing complaints of discrimination in the Federal sector, found in Reference (k), are the most appropriate to address this question.

ENCLOSURE 5

GUIDANCE ON SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PERSONS
WITH DISABILITIES

1. DHA GUIDANCE. The DHA is committed to providing RAs to its employees with disabilities who require the use of service animals and assistance animals in order to perform essential duties of their job.

a. This DHA-AI:

(1) Provides guidance on the terms “service animal” and “assistance animal,” and the procedures for requesting use of service animals and assistance animals.

(2) Defines where service animals are allowed and the care of service animals.

(3) Provides instructions on inquiries, exclusions, charges, and other specific rules related to service animals.

b. With respect to employment, the DHA and Assigned Activity will treat requests for assistance, including service animals and assistance animals, in a manner comparable to the general policies and procedures applicable to requests for any other RAs.

c. Under References (o) and (p), Titles II and III; State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. In a hospital environment, it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal’s presence may compromise a sterile environment.

d. Service animals must be under control. Under Reference (u), service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal’s work or the individual’s disability prevents the use of these devices. Handlers must control the animal through voice, signal, or other effective controls. Handlers are responsible for caring for and supervising their service animal or assistance animal, to include toileting, feeding, grooming, and veterinary care. A handler may be asked to remove a service animal or assistance animal from the premises if the animal is out of control and the animal’s handler does not take effective action to control it or if the animal is not housebroken, as for example, trained so that, absent illness or accident, the animal controls its waste elimination. Other staff members are not to be required to provide care or food for a service animal. When there is a legitimate reason to ask for a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal’s presence.

e. Inquiries, exclusions, charges, and other specific rules related to service animals. When it is not obvious what service an animal is providing, only limited inquiries are allowed:

(1) Is the dog or service animal required because of a disability?

(2) What work, or task has the dog been trained to perform? Staff cannot ask about the person's disability, require medical documentation, require a special identification care or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.

f. Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

g. Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises. People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals. If a business such as a hotel normally charges guests for damage they cause, a customer with a disability may also be charged for damage caused by them or their service animal.

ENCLOSURE 6

DEFENSE HEALTH AGENCY FORM 31-RA REQUEST

For DHA RA requests, employees are to complete DHA Form 31 and send it to dha.eodm@mail.mil.

ENCLOSURE 7
INSTRUCTION FOR FOH 6 ME FORM

For the Instruction for FOH 6 ME Form, visit the following website:

<https://www.hrsa.gov/sites/default/files/hr/nofearact/forms/authorizationdisclosureinfo.pdf>.

ENCLOSURE 8

DEFENSE HEALTH AGENCY FORM 46–SIGN LANGUAGE INTERPRETER REQUEST

1. DHA Sign Language Requests for Interpreters from Activities Assigned will complete DHA Form 46 and send it to DPM at: dha.eodm@mail.mil.

2. The EODM Division DPM will:
 - a. Review and assign a log number.

 - b. Set up interpreting service to include requesting funds for DHA and Assigned Activity-sponsored events and trainings.

 - c. Coordinate the services with DHA and Assigned Activities’.

 - d. Procure the service.

 - e. Pay on invoice once service completed.

ENCLOSURE 9

PERSONAL ASSISTANCE SERVICES ACTION PLAN

A. Individual Information:

- Employee Name: _____
- Job Title: _____
- Pay Plan, Series, Grade: _____
- Start Date: _____ End Date: _____
- Organization: _____
- Assigned Activity/Directorate/Division: _____
- Worksite Location Address: _____
- Phone: _____
- E-mail: _____
- Employee Signature: _____

B. General Schedule of services:

C. General description of tasks to be provided as agreed upon in Action Plan: (Only provide the information that you wish to share with an attendant.) NOTE: PAS does not include, for example, performing medical procedures (e.g., administering shots), or medical monitoring (e.g., monitoring blood pressure). Assigned Activities are not required to provide additional services to employees with disabilities, including services with getting to and from work, identifying transportation options and accessing transportation, assistance with becoming familiar with surroundings, and informational and navigational awareness as well as lightweight communication.

D. Supervisor Information*:

Name: _____

Job Title: _____

Organization: _____

Supervisor's Signature: _____ Date: _____

*NOTE: Signing PAS Action Plan, notes you have conducted the interactive process with individual requestor, and the individual requestor, and the individual has a qualified disability).

ENCLOSURE 10

SAMPLE DENIAL OF REQUEST FOR RA MEMORANDUM FOR RECORD



DEFENSE HEALTH AGENCY
7700 ARLINGTON BOULEVARD, SUITE 5101
FALLS CHURCH, VIRGINIA 22042-5101

Date
Office Symbol

MEMORANDUM FOR RECORD

SUBJECT: Denial of Request for Reasonable Accommodation (RA)

1. Reference Log Number: [Enter Number]
2. Individual Requesting Accommodation: [Name }
3. Types(s) of accommodation requested: [Description]
4. Request for accommodation denied because (may check more than one box):
 - Accommodation would cause undue hardship.
 - Medical documentation is inadequate.
 - Accommodation would require removal of one or more essential job functions.
 - Other (please identify)
5. The requested accommodation was denied because [Provide detailed, specific reasons, such as why the accommodation is ineffective or causes undue hardship].
6. If the individual proposed one type of RA, which is being denied, but rejected an offer of a different type of accommodation, explain both the reasons for denial of the requested accommodation and why the offered accommodation is effective.
7. An individual who disagrees with the denial of an accommodation request is encouraged to initiate ADR through any applicable process the DHA has established.

8. If the individual wishes to file an EEO complaint or pursue Merit Systems Protection Board appeal and union grievance procedures, he or she must take the following steps. The time limits for these steps apply whether or not the individual has initiated ADR:

a. For an EEO complaint pursuant to Code of Federal Regulation, Title 29, Part 1614, contact an EEO counselor in the EEO office within 45 days from the date of this notice of denial of accommodation request; or

b. For a collective bargaining claim, file a written grievance in accordance with the provisions of the collective bargaining agreement; or

c. Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in the Code of Federal Regulation, Title 5, Section 1201.3.

[Signature]
Decision Maker Signature Block

In accordance with DHA-AI 1020.01, Denial of Requested Accommodation, the denial of request for RA memorandum for record must be sent to the DHA DPM for coordination of legal review.

NOTE: Legal reviews for all proposed denials of a RA or the particular accommodation requested must be obtained before informing the requester of the denial.

Receipt Acknowledged:

[Signature]
Employee Signature

[Date]
Date Received

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
CAP	Computer/Electronic Accommodations Program
DHA	Defense Health Agency
DHA-AI	Defense Health Agency-Administrative Instruction
DPM	Disability Program Manager
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EODM	Equal Opportunity and Diversity Management
FOH	Federal Occupational Health
HR	Human Resources
ME	Medical Employability
PAS	personnel assistance service
POH	Principal Organization Head
RA	Reasonable Accommodation
SF	Standard Form

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this DHA-AI.

adjusting or modifying examinations or training materials. An employer may need to modify employment tests so the test results reflect job skills, aptitude, or whatever the test purports to measure, rather than the applicant's hearing, visual, speaking, or manual skills (unless the test is designed to measure hearing, visual, speaking, or manual skills).

Assistance Animal, Decision maker, DoD CAP; Discrimination Assistance Animal. The term "assistance animal" refers to an animal that provides assistance or performs tasks for the benefit of an individual with a disability or provides emotional support that alleviates one or more identified symptoms or effects of an individual's disability. Assistance animals may provide emotional support, well-being, comfort, or companionship. Other animals besides dogs can be assistance animals.

assistive devices. Numerous assistive devices are available to individuals with disabilities, some common types of equipment might include: touch-tone telephones for those who cannot dial; speaker phones, or an extension arm or gooseneck to hold a phone receiver; telecommunication devices or telephone amplifiers for persons with hearing impairments; hand-held magnifying devices, video magnifiers, or computer magnification systems that enlarge the characters for persons with partial sight impairments; and various types of braille systems and other specialized types of computer equipment for persons who are blind or for a person with a loss of limbs.

decision maker. The decision maker is an agency official within the employee's chain of command, usually the employee's immediate supervisor. In the case of an applicant, the decision maker will usually be the selecting official, an agency official in the selecting official's chain of command, or an HR staff member assigned to process the vacancy.

discrimination. Civil Rights laws and implementing regulations applicable to persons with disabilities define discrimination as the failure to provide opportunities to persons with disabilities equal to and as effective and meaningful as those opportunities provided to others. It is also defined as the failure to make RAs or reasonable modifications to policies, practices, and procedures unless it creates an undue hardship/undue burden, fundamental alteration to the program, or direct threat to the health and safety of the employee or others, or the health and safety of others with respect to the provision of goods and services.

DoD CAP. CAP is a centrally-funded RAs program that provides assistive technology and services to people with disabilities, Federal managers, supervisors, and information technology professionals. CAP increases access to information and works to remove barriers to employment opportunities by eliminating the costs of assistive technology and accommodation solutions. More information is available at: www.cap.mil.

essential job functions. Those job duties which are so fundamental to the position the individual holds or desires he or she 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 employee was hired to perform the function. Determination of the essential functions of a position must be made on a case-by-case basis so it reflects the job as actually performed, and not simply the components of a generic position description.

facility accessibility. Under Reference (d), as amended, all Federal agencies must ensure their programs and activities are accessible to persons with disabilities. Eliminating architectural barriers through such means as ramps, wider doorways, elevators, work platforms, and handrails often make the work facility more usable by all employees, not just those with disabilities.

invisible (hidden) disabilities. Disabilities that are not readily apparent, such as asthma, arthritis, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, learning disabilities, and mild mental retardation.

job restructuring. Includes modifications such as reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability and altering when and/or

how a function, essential or marginal, is performed. An employer never has to reallocate essential functions as an RA but can do so if he/she wishes. If, as an RA, an employer restructures an employee's job to eliminate some marginal functions, the employer may require the employee to take on other marginal functions that he/she can perform. An employer may switch the marginal functions of two (or more) employees in order to restructure a job as an RA.

modifying work schedules. Providing flexible work schedules as an RA to employees with disabilities where the employee establishes the need for such schedule.

person with a disability. Reference (d) defines a person with a disability as one who:

a. Has a physical or mental impairment that substantially limits one or more of such person's major life activities (Substantial limitations are evaluated in terms of the severity of the limitation and the length of time it restricts a major life activity).

b. Major life activities include, among other activities: caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, concentrating, interacting with others, and working; or has a record of such an impairment; has a history of or has been classified or misclassified as having a mental or physical impairment that substantially limits one or more major life activities); or is regarded as having such an impairment; has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer; or is treated by an employer as having such an impairment.

qualified individuals with a disability. Refers to a disabled individual who meets the job-related skill, experience, and education requirements and, who, with or without an RA, can perform the essential functions of the position held or desired. Individuals with disabilities are those who have a physical or mental impairment that substantially limits one or more of that individual's major life activities, a history of such impairment, or is regarded as having such impairment. The term "essential functions" means the fundamental job duties of the employment position the individual with disability holds or desires. A person with a disability is "qualified" if he or she satisfies the agency's job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related and consistent with business necessity; and is able to perform those tasks essential to the job, with or without RA.

RA. A change in the work environment, or in the way things are customarily done in the performance of a job, an employment practice, or the work environment, that makes it possible for an individual with a disability to enjoy an EEO, unless to do so would cause an undue hardship. Changes, modifications, or adjustments to a job that make it possible for an otherwise qualified employee with a disability to perform the duties or tasks required.

readers and interpreters. When a reader is assigned to provide reading assistance to a specific blind or severely visually impaired employee, the employee should be involved in the selection process, since the reader and employee must be compatible. Providing reading assistance to an employee in no way relieves DHA of its responsibility to provide secretarial, clerical, and/or

stenographic assistance to that employee in those instances where the employee's position requires or entitles such assistance that no specialized equipment is necessary. When making authorization decisions, consideration should be given to how well the employee would perform without the equipment or device.

reassignment. Is the RA of last resort 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 RAs would impose an undue hardship. However, if both the employer and the employee voluntarily agree that transfer is preferable to remaining in the current position with some form of RA, then the employer may transfer the employee. Reassignment also covers employees who are new to the job, employees who no longer perform essential functions of the position, and employees who acquire essential functions that they are unable to perform. Reassignments are made only to funded vacant positions and only to employees who are qualified for the new position. If the employee is qualified for the position, he/she will be reassigned to the job without having to compete for it.

Service animal. As of March 15, 2011, only dogs are recognized as service animals under References (o) and (p). Specifically, service animals are defined as dogs that are individually trained to do work or perform tasks for persons with disabilities (including physical, sensory, psychiatric, intellectual, or other mental disabilities). Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder during an anxiety attack, or performing other duties. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under Reference (u).

targeted disabilities. Targeted disabilities, as defined by the EEOC, are disabilities "targeted" for emphasis in affirmative action planning. These are: deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and genetic or physical condition affecting limbs and/or spine. Although the list of targeted disabilities is meant to include those who are most likely to suffer job discrimination, the EEOC recognizes some disabilities that are not targeted are nevertheless just as severe, or more severe than some of the targeted disabilities.

undue hardship. Undue hardship, as defined, is when excessive financial burden or interference occurs with the nature or operation of the business. Factors considered in determining undue hardship include the overall financial resources of the organization, the nature and cost of the accommodation, and the impact of providing the accommodation on the particular site or operation of the business.