



# FMCS

# FEDERAL MEDIATION & CONCILIATION SERVICE

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## REASONABLE ACCOMMODATION PROCEDURES

May 2019

- 1. Introduction.** Pursuant to Executive Order 13164, the Federal Mediation & Conciliation Service (hereinafter referred to as “FMCS”), is charged with establishing written procedures for the facilitation of reasonable accommodation for: (1) individuals with disabilities in the application process for employment with FMCS; (2) FMCS’ employees with disabilities to perform the essential functions of a position; and (3) Employees of FMCS with disabilities to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

Reasonable accommodation involves the removal of workplace barriers, which may be physical obstacles such as inaccessible facilities, provision of adaptive equipment, or it may involve rules and procedures governing when, where and how work is performed

The Rehabilitation Act of 1973 (29 U.S.C. 701, *et seq.*), as amended, requires federal agencies to provide reasonable accommodation to a qualified employee or applicant with disabilities so that he/she can become a productive member of the workforce. The Act requires agencies to look for new and innovative ways to alter, restructure or change the ways of doing a job in order to allow a qualified person with a disability to perform the essential functions of a particular job. This document sets forth the procedures the Federal Mediation and Conciliation Service (FMCS or Agency) will use to process requests for reasonable accommodation by applicants and employees with disabilities.

The disability program manager responds to requests for reasonable accommodation and serves as the FMCS’s day-to-day point of contact for issues related to reasonable accommodation.

- 2. Policy.** It is the policy of the FMCS to comply fully with the reasonable accommodations requirements of the law. FMCS will provide reasonable accommodation for known physical or mental limitations of qualified applicants and employees with disabilities unless accommodation would impose an undue hardship for the agency
- 3. Authority.** The Rehabilitation Act of 1973, as amended by the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act Amendments of 2009, requires federal employers to provide reasonable accommodation for qualified individuals with disabilities unless the accommodation would pose an undue hardship for the agency.

Section 501 of the Rehabilitation Act, Executive Order 13164 and Equal Employment Opportunity Commission (EEOC) policy guidance require each federal agency to establish

written procedures for processing requests for reasonable accommodation by applicants and employees with disabilities.

#### 4. **Key Terms.**

- a. **Reasonable accommodation:** Reasonable accommodation is a change in the work environment or in the application process that enables an individual with a disability to experience equal employment opportunities. According to the Equal Employment Opportunity Commission (EEOC), the term “reasonable” has no independent definition. To be reasonable, the accommodation must be effective.

##### **Some examples of reasonable accommodations include:**

- removing an architectural barrier, including reconfiguring, or moving work spaces; making existing facilities readily accessible to, and usable by, employees and applicants with a disability;
  - providing assistive technology, including information technology and communications equipment or specially designed furniture;
  - acquiring or modifying equipment or devices; or adjusting or modifying examinations, training materials, or policies;
  - providing qualified readers or interpreters;
  - modifying work schedules and locations, including work breaks;
  - providing telework beyond that provided by the applicable collective bargaining agreement;
  - modifying supervisory methods;
  - job restructuring by reallocating or redistributing nonessential, marginal job functions or by altering when and/or how an essential function is performed and
  - reassignment to a vacant funded position.
- b. **Reassignment:** Reassignment is a form of reasonable accommodation that may be provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of the job with or without reasonable accommodation. Reassignments are made only to vacant funded positions and positions which the FMCS Office or Human Resources has reason to believe will become vacant within 60 business days from the date the search is initiated and for which the employee may be qualified. If the employee is

qualified for the position, the employee may be reassigned to the job without competition. Reassignments, by definition, may be made only to a position of equal or lower grade. Equal position reassignments are preferred. Employees accommodated by a reassignment to a lower grade may notify management that they would like to be considered for accommodation equal to his/her earlier position when such a position becomes available. Reassignment may be made to a vacant funded position outside of the employee's commuting area if the employee is willing to relocate at no cost to the FMCS. This provision will not limit any paid transfers an employee may otherwise be eligible for under a collective-bargaining agreement.

- c. Applicant: An individual who is seeking employment with the FMCS and is qualified to perform the essential functions for that position with or without reasonable accommodation.
- d. Requestor: An FMCS employee, including supervisors, managers, Presidential appointees; an applicant for employment with the FMCS, or any person designated by the employee/applicant, seeking an accommodation.
- e. Representative or Advocate: An individual other than the employee or applicant who represents the requestor's interests. A representative or advocate may include a family member, health care provider, a union representative or any other person designated by the requestor
- f. An individual with a disability: (1) a person who has a physical or mental impairment that substantially limits one or more major life activities; (2) a person who has a record of such impairment; or (3) a person who is regarded as having such impairment.
- g. Major life activities: "Major life activities" are activities that an average person can perform with little or no difficulty. Examples are: walking; speaking; breathing; performing manual tasks; seeing; hearing; learning; caring for oneself; and working.
- h. Qualified Individual: An individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.
- i. Essential functions: Job duties that are so fundamental to the position that an individual holds or desires that he/she cannot do the job without performing those functions. A function can be deemed essential if, among other things: (1) the position exists specifically to perform that function; (2) there are a limited number of other employees who could perform the function; or (3) the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position will be done on a case-by-case basis.
- j. Undue hardship: Undue hardship means significant difficulty or expense. FMCS is not required to provide a particular reasonable accommodation if it would cause significant

difficulty or expense for the Agency. Determination of undue hardship will be made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the accommodation on the operations of FMCS.

- k. Disability manager: An FMCS employee designated by the Director of Human Resources to serve as the disability manager. The disability manager will be responsible for processing, coordinating, and tracking requests for accommodation, and for deciding whether to grant a requested accommodation or some alternative form of accommodation, or to deny the request. The FMCS disability manager is Natalie Samuels and she is located in the Office of Human Resources.
  - l. Deciding official: The deciding official is the ultimate decision maker in granting or denying the reasonable accommodation. The FMCS deciding official is Chief Operating Official, Greg Goldstein.
  - m. Medical records: Documents from a healthcare provider which may be required to show the requestor's disability, functional limitations, and the need for reasonable accommodation.
  - n. Reasonable documentation. In cases where an individual's disability is not obvious, the Agency may require only the documentation that is needed to establish that a person has a qualified disability and that the disability necessitates a reasonable accommodation. Accordingly, a person's complete medical record may not be requested. Appropriate healthcare or rehabilitation professionals such as doctors, psychiatrists, psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals, may provide documentation about the disability and the functional limitations it imposes.
5. **Procedures for Requesting Reasonable Accommodation**. Reasonable accommodation is available to qualified applicants and employees with disabilities. Reasonable accommodations must be provided to qualified employees regardless of whether they work part-time or full-time, or are considered "probationary." Generally, the individual with a disability must inform the employer that an accommodation is needed. Requests for reasonable accommodation will be handled on a case-by-case basis and involve an interactive process between the employee/applicant and agency management. Generally, an employee or applicant carries the initial duty to inform management in his/her chain of command of the disability that may require an accommodation. Management then has the responsibility to initiate an interactive process to identify the precise limitations resulting from the disability and the potential reasonable accommodation that could overcome those limitations. The reasonable accommodation process begins as soon as the oral or written request for accommodation is made. An individual with a disability may request a reasonable accommodation at any time during the application process or during the period of employment. At the time of the reasonable accommodation request, an employee or applicant need not have a particular accommodation in mind. The accommodation may be identified during the interactive process.

### **Step 1: Requesting the accommodation**

An employee or his/her designee must direct an oral or written request for reasonable accommodation to his/her immediate supervisor, the disability manager, Natalie Samuels or the Agency's equal employment opportunity (EEO) program director, Denise McKenney. The requestor is not required to fill out the FMCS Request for Reasonable Accommodation form or make the request in writing to begin the interactive process. The requestor may also use make the request verbally, text, use email or memorandum. Request for accommodation may be orally requested in conversation or the requestor may use any other mode of communication. Regardless of the method of communication, the employer cannot ignore the initial request. If an individual (because of a disability) is unable to articulate their need for an accommodation, the person responsible for receiving such requests must be alert to accommodation requests even if the individual does not use words such as "reasonable accommodation," "disability," or "Rehabilitation Act." \*Resources for accommodation to consider are listed in the appendix.

#### Applicants for Employment

An employer must provide a reasonable accommodation to a qualified applicant with a disability that will enable the individual to have an equal opportunity to participate in the application process and to be considered for a job (unless it can show undue hardship). Individuals with disabilities who meet initial requirements to be considered for a job should not be excluded from the application process because the employer speculates, based on a request for reasonable accommodation for the application process, that it will be unable to provide the individual with reasonable accommodation to perform the job. In many instances, employers will be unable to determine whether an individual needs reasonable accommodation to perform a job based solely on a request for accommodation during the application process. Even if an individual will need reasonable accommodation to perform the job, it may not be the same type or degree of accommodation that is needed for the application process. Therefore, an employer should assess the need for accommodations for the application process separately from those that may be needed to perform the job. An applicant for employment may make an oral request (followed up in writing) or written request to an FMCS employee in the office of human resources with whom the applicant has contact in the application process. The applicant may make the request to any Agency employee who is involved in processing the employment application.

#### Alternative ways to make a request

A family member, health professional, or other representative may request an accommodation on behalf of an employee or applicant. Upon receiving an accommodation request, FMCS shall initiate a dialogue among the disability manager, any affected supervisor, and the employee or applicant. When an individual (or third party) makes an oral request, the disability manager must ensure that the request made by the third-party meets the employee's stated need. Methods of communicating a request for accommodation may also include email, a conversation, memorandum or a letter. Alternate methods to request a reasonable accommodation may also include texting, TTY or video CAP online. Additional resources for assistance may be found in the appendix.

**Step 2: Acknowledging receipt of the request**

The supervisor or disability program manager (i.e., who received the original request), shall notify the requesting employee or his designee in writing within five (5) calendar days that the reasonable accommodation request was received. \*A sample receipt for requesting accommodation is listed in the appendix.

**Step 3: Processing the request**

The disability manager is the primary person responsible for processing the request for reasonable accommodation. If needed, the director of human resources may provide a “back-up” to assist with processing the request in cases where the disability manager is not available. It is the responsibility of the disability manager to work closely with the requesting employee’s supervisor or team leader to ensure that the accommodation effectively meets the “work need”. Careful monitoring of the accommodation will be needed to ensure its success and that the employee is able to work at an acceptable level.

**Step 4: The Interactive Process**

The Interactive Process is the way in which employees, supervisors, and their departments arrive at a reasonable accommodation. The law requires that employees and employers engage in the Interactive Process. After a request for accommodation has been made, the disability program manager will begin the interactive process to determine what, if any, accommodation should be provided to the employee. It is essential that the employee making the request for accommodation and the disability program manager remain in constant communication regarding the nature of the disability, how the disability is affecting the current work, how accommodation would put the employee on par with similarly situated employees and accommodations that may be effective in meeting an individual's needs. The disability program manager may need to consult with other Agency personnel (e.g., an employee's supervisor or Information Technology staff) or outside sources to obtain information necessary for making a determination about the request. FMCS expects that all agency personnel will cooperate with this process and give a high priority in responding quickly to a disability program manager’s request for information or assistance.

When a third party (supervisor or doctor) requests an accommodation on behalf of an applicant or employee, the disability program manager should confirm with the applicant or employee that he or she wants a reasonable accommodation before proceeding. In extenuating circumstances where it is not possible to speak directly with the employee, (for example the employee is incapacitated), the disability program manager may confer with the employee’s doctor and will process the third party's request if appropriate, consulting directly with the individual needing the accommodation as soon as practicable.

### Providing Interim Accommodation

There are two circumstances that dictate that an employee requesting reasonable accommodation receive interim accommodation:

1. If the disability manager deems that he/she has received sufficient information in the interactive process to ascertain that it is reasonably likely that the employee will be entitled to a reasonable accommodation, even while awaiting additional information needed to make a final decision. This depends on finding that there is an available interim accommodation (either what the individual has requested or something else) that allows the individual to perform some or all of the essential functions of the position without imposing an undue hardship on the agency.
2. If the accommodation is warranted and it cannot be provided immediately. The disabilities program manager must explain to the requesting employee: 1) why there is a delay in providing the accommodation chosen, 2) when the employee can expect to receive that accommodation, and 3) why the disabilities program manager chose an interim accommodation.

### Temporary Accommodation

If the accommodation selected is for a temporary condition (e.g. a Broken hand or leg), a supervisor or team leader who believes that an employee may no longer need a reasonable accommodation should contact the disability program manager. The disability program manager will decide if there is a reason to contact the employee to discuss the continuing need for reasonable accommodation

## **Step 5            Requests for medical information**

Obtaining medical information to evaluate the request: If the disability manager believes that medical information or documentation is necessary to evaluate a request for reasonable accommodation, he/she shall request it. If the information provided is incomplete, the disability manager will provide the employee or applicant with a written request for additional medical documentation identifying the information or documentation needed. A health care professional may provide necessary documentation for an applicant or employee, or the disability manager may request that the individual sign a release of medical information pertinent to his/her condition.

The disability manager will evaluate the medical documentation. If he or she deems it necessary, the disability manager may, at FMCS' expense, consult with a physician chosen by FMCS and/or may request that the individual be examined by a physician chosen by FMCS. An individual's failure to provide appropriate information or documentation or to cooperate in (3) FMCS's efforts to obtain such information or documentation can result in a denial of a reasonable accommodation request. All medical information and documentation that FMCS obtains regarding a request for reasonable accommodation will be kept in a file separate from the individual's personnel file.

### Confidentiality Requirements

The Rehabilitation Act requires that all medical information be kept confidential. This means that all medical information that any agency obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. This also means that an employee who obtains or receives such information is strictly bound by these confidentiality requirements. It is the duty of the supervisor, manager or disability program manager to safeguard the confidentiality of all documents, medical or otherwise obtained during the processing of reasonable accommodation requests.

If an employee or applicant for employment is uncomfortable about sharing sensitive information about his or her medical condition with his or her supervisor, it is permissible for the individual to provide the medical information directly to the disability program manager for review. The disability program manager is then responsible for explaining to the supervisor that the individual has a disability rather than sharing all of the details regarding the medical decision.

### Disclosure of medical information

Medical information may be disclosed only as follows:

1. The manager or supervisor may need to know about necessary restrictions on the work or duties of the employee and about necessary accommodations;
2. First aid and safety personnel may be informed if the disability may require emergency treatment;
3. Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;
4. The information may, in certain circumstances be disclosed to workers' compensation offices or insurance carriers;
5. Emergency procedures for FMCS employees may dictate that an employee with disabilities require special assistance in an emergency evacuation situation and in some situations, the release of medical information or other supporting documentation that may be necessary to develop an appropriate emergency evacuation procedure for the employee.

\*Whenever medical information is disclosed to any agency official in the context of the above scenarios, the individual disclosing the information must inform the requestor of the confidentiality requirements covering this information.

\*Any disclosure of medical information not identified as a permissible exception listed above must be documented and the employee informed of the release prior to its disclosure, unless the



disclosure of such information is in support of a pending request for reasonable accommodation.

### **Step 6: Acceptance or denial of the reasonable accommodation**

The decision maker in all considerations for reasonable accommodation requests is identified as the FMCS Chief Operating Officer, Greg Goldstein.

#### Acceptance

If a request for accommodation is granted, the disability manager will inform the requesting individual of the projected time frame for providing the accommodation. The time frame may depend on the nature of the accommodation, but will be as short as reasonably possible.

#### Denial

1. If denied a request for reasonable accommodation, an individual may, within five (5) business days of notification of the denial, request reconsideration of the decision to the FMCS Chief Operating Officer, Greg Goldstein. The request for reconsideration must be in writing, and must be directed to the decision maker. The request should include any additional information or supporting documentation not originally considered by the decision maker.
2. In instances where the decision maker has denied a specific requested accommodation, and has offered to make a different accommodation in its place which was not agreed to during the interactive process, the denial communication should be in writing and explain both the reasons for the denial of the requested accommodation and the reasons that the decision maker believes that the recommended accommodation would be more efficient.

#### Examples of reasons for denial include the following:

- Purchasing the accommodation would provide an undue hardship to the FMCS under the Americans with Disabilities act;
- The requested accommodation would not be effective;
- Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation;
- The requested accommodation would require the removal of an essential function or;
- The requested accommodation would require the lowering of a performance production standard.

Upon receipt of the written decision to deny the reasonable accommodation, the disability program manager will notify the requesting individual of the recommended denial and give “next steps” in the process to include information regarding appeal of the decision. This information must also include the requestor’s right to file an EEO complaint, union grievance or pursue rights with the Merit Systems Protection Board (MSPB)

- 6. Time Frames.** In general, the time frame for processing a request, notifying the requester of the outcome, and providing accommodation, if the request is granted is as soon as possible but no later than 30 business days from the date the request is made, absent extenuating circumstances.

*Examples of extenuating circumstances may include:*

- The purchase of equipment may take longer than 30 calendar days because of requirements under the Federal Acquisition Regulations;
- Equipment must be back-ordered, the vendor typically used for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available;
- The employee with a disability works with the equipment on a trial basis to ensure that it is effective before it is purchased by the FMCS;
- An accommodation that involves the removal of architectural barriers;
- CAP’s delay in completing an investigation or providing equipment.

In the event of an extenuating circumstance, the disability program manager will notify the requestor in writing as soon as possible of the reason for the delay and the approximate date when the decision on the reasonable accommodation request or the provision thereof can be expected.

Upon notification of the request, the disability program manager will contact the applicant or employee as soon as practicable, preferably within 7 business days after the request is made, to begin discussing the accommodation request.

When the disability and/or the need for accommodation is not obvious, the disability program manager may ask the individual for reasonable documentation about his/her disability and functional limitations. The disability program manager is entitled to know that the individual has a covered disability for which he or she needs a reasonable accommodation.

Such information may not be necessary if the disability is obvious (e.g., the requestor is blind or has paralysis), if the disability is already known to the agency (a prior request revealed that

a disability existed and there has been no change in the individual's medical condition), or if the need for the requested accommodation is clear.

This 30-business day period includes the 7-business day time frame in which the disability program manager must contact the requestor after a request for reasonable accommodation is made.

The 30-business day period for processing of the request begins when an oral or written request for reasonable accommodation is made, and not necessarily when it is received by the disability program manager. It is very important that everyone involved in processing a request for reasonable accommodation respond as quickly as possible.

Expedited processing:

In some circumstances, a request for reasonable accommodation requires an expedited review and decision in fewer than 10 business days. Expedited processing includes, but is not limited to, the following situations:

- To enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, the FMCS will move as quickly as possible to make a decision and, if appropriate, will provide a reasonable accommodation;
- To enable an employee to attend a meeting scheduled to occur shortly. For example, an employee may need a sign language interpreter for a meeting or mandatory training scheduled to take place in 5 days.

**7. Information Tracking and Reporting.** The disability program manager is responsible for tracking and preparing data summaries for reasonable accommodation activities within the FMCS. All information will be kept confidential as described fully in the confidentiality section and will be maintained for the extend of the employee's tenure with the FMCS or three years.

The disability program manager will prepare an annual report containing the following information:

- The number and types of reasonable accommodations by type that have been requested in the application process and whether those requests have been granted or denied;
- The jobs (occupational series, grade level, and agency component) for which reasonable accommodations have been requested;

- The types of reasonable accommodations that have been requested for each of those jobs;
- The number and types of reasonable accommodations for each job, by agency division that have been approved, and the number and types that have been denied;
- The number and types of requests for reasonable accommodations that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
- The reasons for denial of requests for reasonable accommodation;
- The amount of time taken to process each request for reasonable accommodation; and
- The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

In addition, the report will provide a qualitative assessment of the FMCS's reasonable accommodation program, including any recommendations for improvement of reasonable accommodation policies and procedures to the Director of the Office of Human Resources. Any person wishing further information concerning these procedures may contact the disability program manager, Natalie Samuels in the Office of Human Resources.

**Appendix 1: Acknowledgement of a Request for Reasonable Accommodation**

**Appendix 2: Initial Request for Medical Documentation**

**Appendix 3: Request to Healthcare Provider for Medical Documentation**

**Appendix 4: Disability Program Manager Follow Up to Request Medical Documentation**

**Appendix 5: Granting an Accommodation**

**Appendix 6: Denial of Reasonable Accommodation Request**

**Appendix 7: Reasonable Accommodations Resources**

**APPENDIX 1: ACKNOWLEDGMENT OF ACCOMMODATION REQUEST**

Date:

To:

From: Disability Program Manager

Subject: Acknowledgment of Request for Reasonable Accommodation

To Whom It May Concern:

This is to acknowledge receipt of your request for a reasonable accommodation on \_\_\_\_\_  
(Or, as applicable: (made on your behalf by \_\_\_\_\_)).

The reasonable accommodation determination process is intended to be an interactive process between you (or, as applicable: the employee or applicant seeking accommodation) and the NLRB. Therefore, active cooperation in the interactive process, as well as timely submission of requested medical documentation, if necessary, is in your best interest, as a failure to do so may result in denial of your request.

I will contact you to advise whether medical documentation will be necessary in order to process your request for reasonable accommodation. If it is determined that such information is needed, it will be requested in a separate letter, which will state the nature of the information needed, where to forward it, and the date by which it should be provided. If and when such information is requested, you will be asked to provide it within a relatively short timeframe-- within 15 days.

If you have any questions about this interactive process or any other aspect of the FMCS's Reasonable Accommodation Program, please contact me at (insert Disability Program Manager name and number). I look forward to working with you to meet both your needs and the organization's workload requirements.

Sincerely,

May 2019

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**APPENDIX 2: DISABILITY PROGRAM MANAGER INITIAL REQUEST FOR MEDICAL DOCUMENTATION**

Date:

To:

From: Disability Program Manager

Subject: Request For Medical Documentation in Support of Request for Reasonable Accommodation (Employee name)

To Whom It May Concern:

So that we can effectively determine which, if any, reasonable accommodation can be provided in response to this request you will need to provide medical documentation concerning your medical condition. The type of information required can be found on the attachment.

**(Please see Appendix 3 - "Request to Healthcare Provider for Medical Documentation")**

This information will assist in evaluating your request and is in accordance with the Equal Employment Opportunity Commission guidelines and FMCS policy on Reasonable Accommodations.

Please provide this information to me by no later than *(15 days)*. Please note that you, not the FMCS, are responsible for any costs associated with obtaining this documentation unless we send you to a medical care provider. The information you provide will be maintained in a confidential manner and will be reviewed only by individuals who need to review it as part of the process of making a determination about your request for accommodation.

The reasonable accommodation determination process is intended to be an interactive process between you and the FMCS. Therefore, submission of current and complete information and active cooperation in the interactive process is in your best interest, as a failure to do so may result in a request for additional information, and, ultimately, the denial of your request. If you have any questions about this interactive process, please contact me at (insert Disability Program Manager name and number). I look forward to working with you to find a reasonable accommodation, if appropriate, which is effective and which meets your needs.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other covered entities from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, the NLRB will not seek any genetic information and requests that the employee/applicant not provide any genetic information when responding to this request for medical information.

Sincerely,

**APPENDIX 3: REQUEST TO HEALTHCARE PROVIDER FOR MEDICAL DOCUMENTATION**

**(Provide this to employee along with APPENDIX 2) (Employee is responsible for seeking information from the provider)**

Date:

To:

From: Disability Program Manager

Subject: (Employee name)

To Whom It May Concern:

Please provide the following medical documentation that specifically addresses (employee's) medical condition(s) relating to her/his ability to perform the essential job duties. These questions are necessary in determining what, if any, reasonable accommodation can be provided to (insert employee's name). A copy of (insert employee's name) position description is attached in order to facilitate your assessment.

(Insert employee's name) is a (insert position title,). (Insert description of the essential functions of the employee's position. The Disability Program Manager should craft this description based on day to day functions performed, so that a third party will have a clear idea of the type, manner and environment in which the tasks are performed. For example, the description should include such details as: the need to handle confidential or sensitive materials, need for access to secure database only accessible within FMCS's firewall, physical layout of office, interaction with people, independence or collaborative nature of work, need to drive during the workday, staffing and mission of the office, whether projects are predictable or unpredictable (such as other duties as assigned), sedentary or physical nature of the position, etc.)

**Please answer the following:**

1. the nature, severity, and duration of the impairment;
2. identify the major life activity(ies) that the impairment limits;
3. the extent or degree to which the impairment limits these activities;
4. the reason the individual requires reasonable accommodation and the particular reasonable accommodation recommended; and
5. how the reasonable accommodation will assist the individual to perform the essential functions of his position.

This information is requested by (15 days). Please submit this information directly to (Insert name of Disability Program Manager and contact information) and provide a copy to your patient who is requesting the accommodation. Your assistance in this matter is greatly appreciated.

Sincerely,

**APPENDIX 4:**

**DISABILITY PROGRAM MANAGER FOLLOW UP TO REQUEST FOR MEDICAL DOCUMENTATION**

Date:

To:

From: Disability Program Manager

Subject: (Employee /applicant name)

To Whom It May Concern:

This is to follow up on my letter of \_\_\_\_ (at least 15 days prior). As explained in that letter, in connection with your request for a reasonable accommodation (or, as applicable: the request for reasonable accommodation made on your behalf by \_\_\_\_\_), and confirmed on (date), the NLRB has requested medical documentation concerning your disability for the purpose of processing that request.

As previously noted in my letter of (date), the requested information will assist the FMCS in evaluating your request, in accordance with the FMCS Reasonable Accommodations Program and the guidelines of the EEOC. Please rest assured that the information you provide will be maintained in a confidential manner and will be reviewed only by individuals who need to review it as part of the process of making a determination about your request for accommodation. The reasonable accommodation determination process is intended to be an interactive process between you (or, as applicable: the employee or applicant seeking accommodation) and the FMCS.

The information requested.....(describe).....was due to be submitted to me by (date). As of this writing I have not received this information. If this information is not submitted by \_\_\_(15 days) your request for reasonable accommodation may be denied for insufficient information

**-OR-**

This serves to confirm the extension of time we discussed regarding the medical documentation which is/was due to me on \_\_\_\_\_. With this extension, the information is now due to me on (date). If this information is not submitted by \_\_\_(the business day after new due date) your request for reasonable accommodation may be denied for lack of/insufficient medical documentation. In the event you do not timely submit the requested medical documentation, or if the information provided is insufficient, your request for reasonable accommodation may be denied on this basis. If this occurs, you may either appeal the denial of your request, or you may file another request at a later time.

If you have any questions about this interactive process, please contact me at (insert Disability Program Manager name and number). I look forward to working with you to find a reasonable accommodation, if appropriate, which is effective and which meets your needs.



**APPENDIX 5: GRANTING AN ACCOMMODATION**

Date:

To:

From: Disability Program Manager

Subject: Reasonable Accommodation Request

To Whom It May Concern:

After reviewing your medical documentation (if applicable) and your job duties, the FMCS determined that you meet the definition of a qualified person with a disability under the Rehabilitation Act/ADAAA. The FMCS will provide the following accommodation **(list equipment, schedule change, etc...)** by **(date)**.

Please contact me if you have any questions.

## APPENDIX 6: DENIAL OF REASONABLE ACCOMMODATION REQUEST

Date:

To:

From: Disability Program Manager

Subject: Reasonable Accommodation Request

To Whom It May Concern:

After engaging in an individualized assessment of your impairment, reviewing your medical documentation, and your job duties, it has been determined that you do not meet the definition of a qualified individual with a disability under the Rehabilitation Act/ADAAA. The FMCS is therefore not obligated to provide you with the requested accommodation and your request is hereby denied.

*(NOTE: If the individual does not meet the definition of a qualified individual with a disability but the requested accommodation is a general employment practice that others are allowed or just makes business sense, the FMCS can still provide it to the **requestor**, however, it should be stated in the letter that the request is being provided even though the **requestor** has been determined not to meet the definition.)*

You are hereby notified of your right to request reconsideration of the decision denying your request for Reasonable Accommodations; and/or to challenge this decision by other means:

- You may, within 10 business days after receipt of this letter, request reconsideration of this decision by sending a request for reconsideration to the FMCS. Your request for reconsideration will be answered, in writing, within 10 business days of receipt of the request and/or of information provided in support of the request;
- If the FMCS does not reverse the denial, you may within 10 business days, appeal to the Director of the Office of Human Resources. The Director of Human Resources will respond to your appeal, in writing, within 10 business days of receipt;
- If you remain dissatisfied you may avail yourself of the FMCS ADR process by completing the form that will be provided with the Director of OHR's denial. This form is also available at Appendix 7 of the APPM Chapter regarding Reasonable Accommodation Program.
- If you believe that the refusal to provide the requested accommodation constitutes an unlawful refusal to accommodate your disability, or if you believe that the denial is based in whole or part on the basis of discrimination due to race, color, religion, sex, national origin, disability, age, sexual harassment, equal pay, equal compensation, pregnancy, genetic information or in retaliation for participation in the EEO process, you may contact an EEO Counselor or a representative of the

FMCS Office of Equal Employment Opportunity to pursue such claims. Please note that you must initiate this process through an EEO Counselor or a representative of the Office of Equal Employment within 45 days of receipt of this letter.

- If you are covered by a collective bargaining agreement, you may file a grievance if you believe that applicable provisions of the applicable Collective Bargaining Agreement were not followed. Please refer to your Collective Bargaining Agreement to determine the deadline by which you must initiate a timely grievance. Please note that your resort to the process for reconsideration referenced above will toll the contractual time limits for grievance filing. You may, also, at your option, file a grievance without exhausting the reconsideration process. Contact your union representative for more information regarding the filing of grievances.
- If you believe that an otherwise appealable adverse action occurred based on disability discrimination, you may initiate a mixed case appeal by filing an appeal with the Merit Systems Protection Board (MSPB) within thirty (30) calendar days from receipt of this letter.

If you have questions about making an election between the EEO, Grievance or MSPB options listed above, such as when an election is made, consider contacting your union representative, an EEO counselor, a representative of the Office of Equal Employment Opportunity, or an attorney.

## APPENDIX 7: REASONABLE ACCOMMODATION RESOURCES

**The EEOC provides guidance with respect to Reasonable Accommodations** at [www.eeoc.gov](http://www.eeoc.gov), including, but not limited to: EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act (July 27, 2000), and EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (revised October 17, 2002).

**All requests for and provision of, reasonable accommodation must be kept confidential.** See EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (revised October 17, 2002) at question 42 (discussing ways to respond to other employees' inquiries without violating confidentiality).

### **Department of Defense Computer/Electronic Accommodations Program**

**703-681-8813 (T) 703-681-3978 (TTY) 703-681-9075 (F)**

**[www.cap.mil](http://www.cap.mil)**

CAP ensures that people with disabilities and wounded Service members have equal access to the information environment and opportunities in the Department of Defense (DoD) and throughout the Federal government. CAP helps to make the Federal government the model employer for people with disabilities.

### **Employee Assistance Program (EAP)**

**800-222-0364 (T) 888.262.7848 (TTY)**

**<http://www.foh.dhhs.gov/services/EAP/EAP.asp>**

The EAP provides assessment, counseling, referral, management consultation, and coaching services to Federal employees and agencies throughout the United States.

### **U.S. Equal Employment Opportunity Commission**

**1-800-669-3362 (Voice) 1-800-800-3302 (TT)**

EEOC has published many ADA and Rehabilitation Act-related documents that may assist both individuals requesting accommodations as well as those involved in the decision-making process. Most of these documents are available at [www.eeoc.gov](http://www.eeoc.gov).

### **Job Accommodation Network (JAN)**

**1-800-232-9675 (Voice/TT)**

**<http://janweb.icdi.wvu.edu/>**

A service of the Office of Disability Employment Policy, JAN can provide information, free-of-charge, about many types of reasonable accommodations and provide referrals to other organizations that may have particular information about accommodations for persons with different disabilities.

### **ADA Disability and Business Technical Assistance Centers (DBTACs)**

**1-800-949-4232 (Voice/TT)**

The DBTACs consist of 10 federally-funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA

information and assistance. The DBTACs can provide information on reasonable accommodation and make referrals to local sources of expertise in reasonable accommodations.

### **Registry of Interpreters for the Deaf**

(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

### **RESNA Technical Assistance Project**

(703) 524-6686 (Voice) (703) 524-6639 (TT)

<http://www.resna.org>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services and may include information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products), centers where individuals can try out devices and equipment, assistance in obtaining funding for and repairing devices, and equipment exchange and recycling programs.

### **State Vocational Rehabilitation Agencies**

State Vocational Rehabilitation Agencies have a wealth of resources related to employment options for people with disabilities. Vocational rehabilitation (VR), a state-supported division of services, assists individuals with disabilities who are pursuing meaningful careers. VR assists those individuals to secure gainful employment commensurate with their abilities and capabilities through local job searches and awareness of self-employment and telecommuting opportunities. These state agencies also provide work retention services, such as financial assistance to help individuals with disabilities obtain personal devices, such as hearing aids.

In addition to VR, some states have separate agencies serving individuals who are blind and visually impaired. Contact information for each state's vocational rehabilitation agency is available from <http://askjan.org/cgi-win/typequery.exe?902> and [http://wdcrobcolp01.ed.gov/Programs/EROD/org\\_list.cfm?category\\_cd=SVR](http://wdcrobcolp01.ed.gov/Programs/EROD/org_list.cfm?category_cd=SVR).

### **State Independent Living Centers (SILC's)**

As defined in Section 702 of the Rehabilitation Act of 1973, as amended, the term "center for independent living" means a consumer-controlled community-based, cross-disability nonresidential private nonprofit agency that is designed and operated within a local community by individuals with disabilities, and which provides an array of independent living services. At least 51% of staff and 51% of the Board of Directors are persons with disabilities. State independent living centers provide four core services: (1) information and referral, (2) independent living skills, (3) individual and systems advocacy, and (4) peer counseling.

A state-by-state directory of these centers is available at:  
<http://www.ilru.org/html/publications/directory/index.html>.