



## **PBGC's Procedures for Processing Requests for Reasonable Accommodations and Personal Assistance Services**

**Effective Date: April 2, 2019**

1. **PURPOSE:** These are PBGC's Procedures for processing, determining eligibility for, or otherwise handling reasonable accommodation requests submitted by PBGC employees, their authorized representatives, and applicants for employment. These requests may include a change in work environment, a modification or adjustment to workplace rules, and/or a modification or adjustment to the physical work environment. These Procedures also apply to requests for personal assistance services (PAS) (Referred collectively to "Procedures").
  
2. **CANCELLATION:** These Procedures revise and update PBGC Directive PM 30-07 (Procedures for Processing Requests for Reasonable Accommodation) issued June 6, 2013. The revisions incorporate the Equal Employment Opportunity Commission's (EEOC) Final Rule: Affirmative Action for Individuals with Disabilities in Federal Employment, 29 CFR §1614.203, effective January 3, 2018. The Procedures conform with the EEOC's guidance to PBGC issued by letter dated July 24, 2018, and were approved by the EEOC by letter dated February 6, 2019. Any modifications to these Procedures must be re-submitted to the EEOC.
  
3. **SCOPE:** All PBGC employees and applicants for employment are covered by these Procedures. For bargaining unit employees, the CBA and any agreement made pursuant thereto, shall take precedence over any conflicting provision in these Procedures. Individuals currently engaged in the illegal use of drugs, either as a casual user or as an addict, are not protected by the Rehabilitation Act when the PBGC acts on the basis of such drug use.
  
4. **AUTHORITIES:**
  - a. The Rehabilitation Act of 1973, *as amended*, 29 U.S.C. §§ 701 *et seq.*, requires the PBGC to provide reasonable accommodation to a qualified individual with a disability unless the accommodation would pose an "undue hardship."
  
  - b. The American with Disabilities Act Amendments Act of 2008 (ADAAA), 42 U.S.C. §§ 12101, *et seq.*, which emphasizes that the definition of disability under the ADAAA, should be



construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADAAA. The changes made by the enactment of the ADAAA apply to federal employees through amendments made to the Rehabilitation Act. The Equal Employment Opportunity Commission (“EEOC”) was charged by Congress to issue regulations consistent with the changes made by the ADAAA. These regulations were effective May 24, 2011 and are codified at 29 CFR Part 1630.

- c. Effective January 3, 2018, the EEOC amended its regulations under Section 501 of the Rehabilitation Act. Codified at 29 CFR 1614.203, these regulations require agencies to meet a number of requirements designed to improve the recruitment, hiring, retention and advancement of individuals with disabilities in the federal workforce. One of these requirements is to provide personal assistance services (PAS) to employees with targeted disabilities.
- d. Genetic Information Nondiscrimination Act of 2008 (GINA). An act prohibiting covered employers from requesting or requiring disclosure of genetic information from or by an individual, with some specific exceptions.
- e. Executive Order 13164 and Equal Employment Opportunity Commission (“EEOC”) policy guidance require the PBGC to establish written procedures for processing requests for reasonable accommodation.

5. **DEFINITIONS:**

- a. **An individual with a disability.** An individual who:
  - (1) Has a physical or mental impairment that substantially limits one or more of the person's major life activities (sometimes referred to in the regulations as an “actual disability”);
  - (2) Has a record of a physical or mental impairment that substantially limited a major life activity (sometimes referred to as “record of”); or
  - (3) Is regarded as having such impairment. This means the individual has been subjected to an action prohibited by the Americans with Disabilities Act (ADA) because of an



actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity (sometimes referred to as “regarded as”). Prohibited actions include but are not limited to refusal to hire, demotion, placement on involuntary leave, termination, harassment or denial of any other term, condition, or privilege of employment. However, PBGC is not obligated to provide a reasonable accommodation to an employee or applicant that is covered only under the “regarded” as prong of the definition.

- b. **Authorized representative.** A person endorsed by the requestor to act on the requestor’s behalf.
  
- c. **Essential functions.** Those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be "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 if assigned to them; or
  - (3) The function is specialized and the incumbent is hired based on his/her ability to perform it.
  
- d. **Extenuating circumstances.** Factors that reasonably could not have been anticipated or avoided in advance of the request for the accommodation. For example, a decision to grant or deny a reasonable accommodation request may be delayed by the failure of an individual’s health professional to provide needed medical documentation. The provision of an accommodation may be delayed by the need to purchase furniture or equipment on back order from a vendor. In both cases, the delay would be considered the result of extenuating circumstances. These examples are provided for illustration purposes and are not meant to exclude other situations that may result in extenuating circumstances.
  
- e. **Genetic Information Nondiscrimination Act of 2008 (GINA).** An act prohibiting covered employers from requesting or requiring genetic information of an individual or family member of the individuals with specific exceptions. “Genetic information” as defined by GINA, includes an individual’s family medical history the results of an individual’s or family member’s genetic



tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistance reproductive services.

- f. **Has a record of such impairment.** An individual who does not currently have a substantially limiting impairment but who had one in the past meets this definition of "disability." An individual also can meet this definition if they were once misclassified as having a substantially limiting impairment (e.g., someone erroneously deemed to have had a learning disability but who did not).
  
- g. **Hidden impairment.** An impairment is considered "hidden" when its nature or extent is not obvious, readily apparent, or already known to others (e.g., diabetes, heart disease, mental disorders, etc.). Individuals requesting reasonable accommodation may be required to submit medical documentation from a health care provider where the disability and/or the need for accommodation is not obvious or known.
  
- h. **Interactive Process.** A dialogue between the employee, Reasonable Accommodation Coordinator ("RAC") and PBGC official to determine the essential functions of the position, gather medical information, identify the limitations caused by the condition, discuss possible reasonable accommodation options and assess the effectiveness of identified reasonable accommodations. The interactive process is generally needed when the specific limitation, problem or barrier caused by the medical condition is unclear; an effective accommodation is not obvious; or the participants involved are considering different forms of reasonable accommodations.
  
- i. **Major life activities.**
  - (1) Activities which include but are not limited to the following:
    - (a) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and



- (b) The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive function. The operation of a major bodily function includes the operation of an individual organ within a body system.
    - (c) In determining other examples of major life activities, the term “major” shall not be interpreted strictly to create a demanding standard for disability.
- j. **PBGC Official.** PBGC supervisors, managers, and/or team leaders.
- k. **Personal Assistance Services (PAS).** Non-medical services that help someone perform basic activities like eating, helping an individual take off and put on a coat, and use the restroom. They are not the same services that help the individual perform job related tasks, such as sign language interpreters for individuals who are deaf or readers for individuals who are blind or have learning disabilities. Personal assistance services must be provided to employees who need them because of a targeted disability unless doing so would impose an undue hardship on the agency as defined below.
- l. **Physical or mental impairment.**
  - (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, hemic, lymphatic, skin and endocrine; or
  - (2) Any mental or psychological disorder, such as intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.



- m. **Qualified individual with a disability.** An individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.
- n. **Reasonable accommodation.** A change in the work environment or in the application process that would enable a person with a disability to enjoy equal employment opportunities. There are three general categories of reasonable accommodations:
- (1) Changes to a job application process to permit people with disabilities to be considered for jobs;
  - (2) Changes to enable people with disabilities to perform the essential functions of a job; and
  - (3) Changes to give people with disabilities equal access to the benefits and privileges of employment. Benefits and privileges of employment include, but are not limited to, such things as employer-sponsored:
    - (a) Training;
    - (b) Services (e.g., employee assistance programs (EAP's), credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation); and
    - (c) Parties or other social functions (e.g., parties to celebrate retirements and birthdays, and company outings).
- o. **Reasonable Accommodation Coordinator (RAC).** The Director of the Human Resources Department (HRD), or another federal employee designated by the Director, HRD who may grant or deny reasonable accommodation and PAS requests.
- p. **Regarded As.** An individual is regarded as having an impairment if the individual is the subject of an employment action (e.g., refusal to hire, demotion, denial of promotion, termination, etc.) because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity. PBGC is not obligated to provide a reasonable accommodation to an employee or applicant that is covered under the “regarded as” prong of the definition of an “individual with a disability.”

- q. **Substantially limits.** The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term “substantially limits” will be construed broadly in favor of expansive coverage and is not meant to be a demanding standard. It is subject to the following conditions:
- (1) An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. In appropriate cases, the condition under which the individual performs the major life activity; the manner in which the individual performs the major life activity; and/or the duration of time it takes the individual to perform the major life activity, as compared to most people in the general population, should be considered. The comparison of an individual’s performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical analysis; however, there is no prohibition on obtaining scientific, medical, or statistical evidence to make such a comparison where appropriate.
  - (2) An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.
  - (3) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.
  - (4) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
  - (5) An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment.
  - (6) Applying the principles set forth in this paragraph, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of disability. For example, it should easily be concluded that



the following types of impairments will, as a minimum, substantially limit the major activities indicated: Deafness substantially limits hearing; blindness substantially limits seeing; an intellectual disability (formerly mental retardation) substantially limits brain function; partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function, etc.)

- r. **Targeted Disabilities.** Targeted disabilities are a subset of the larger disability category. They are:
- (1) Developmental disabilities, for example, cerebral palsy or autism spectrum disorder;
  - (2) Traumatic brain injuries;
  - (3) Deafness or serious difficulty hearing, benefiting from, for example, American Sign Language;
  - (4) Blindness or serious difficulty seeing even when wearing glasses;
  - (5) Missing extremities (arm, leg, hand and/or foot)
  - (6) Significant mobility impairments, benefiting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other supports;
  - (7) Partial or complete paralysis (any cause)
  - (8) Epilepsy and other seizure disorders
  - (9) Intellectual disabilities (formerly described as mental retardation)
  - (10) Significant psychiatric disorders, for example, bipolar disorder
  - (11) schizophrenia, PTSD, or major depression;
  - (12) Dwarfism; and
  - (13) Significant disfigurement, for example, disfigurements caused by burns, wounds, accidents, or congenital disorders
- s. **Undue hardship.** Significant difficulty or expense. The PBGC determines undue hardship on a case by case basis, considering the nature and cost of the request. Any denial of an accommodation based on cost must consider all resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation.





## 6. OVERVIEW:

- a. **Request for Reasonable Accommodation.** The PBGC will process a request for, and where appropriate provide, reasonable accommodation to a qualified individual with a disability in a prompt, fair, and efficient manner. Whenever possible, the PBGC will make use of organizations such as Computer/Electronic Accommodations Program (CAP) to assist qualified individuals with a disability to acquire assistive technology items and needs assessments. The PBGC will consider an employee's suggestion for a specific reasonable accommodation; however, the PBGC is not obligated to provide the employee's preferred accommodation. Likewise, reasonable accommodation does not include rescinding discipline for misconduct.
  - (1) In these Procedures all references to "disability" refer to only those impairments that meet the ADA/Rehabilitation Act definition of "disability" as amended by the ADA Amendments Act of 2008. The expanded definition of "disability" is to be interpreted broadly and does not require an extensive analysis.
  - (2) A reasonable accommodation is a change in the work environment or in the application process that would enable a person with a disability to enjoy equal employment opportunities.
  - (3) Requests for reasonable accommodation may require coordination between applicants for employment, or PBGC employees, their authorized representatives, and PBGC officials. Each request will be processed on a case-by-case basis.
  
- b. **Request for Personal Assistance Services (PAS) ("PAS request").** The process for requesting PAS, the process for determining whether such services are required, and the agency's right to deny such requests when provision of the services would pose an undue hardship, are the same for reasonable accommodations as described below in Section 8 a, b f, g, h and i.
  
- c. **Requests That Do Not Involve Reasonable Accommodation or PAS.** PBGC Officials have broad discretion to assist an employee in the performance of official duties. Assistance can be given to an employee who has not been determined by the Reasonable



Accommodations Coordinator (RAC) to have a disability as defined under the ADAAA. The PBGC encourages employees needing assistance to first meet with their PBGC Official in their department or organization to discuss available options. For example, PBGC Officials, subject to applicable budgetary, procurement, and other policy restrictions, may:

- (1) Approve the purchase and use of office equipment or supplies, such as an anti-glare screen to fit over a computer monitor for an employee assigned to a workstation who is bothered by the glare from an overhead light; provided the equipment or supplies do not exceed \$100.00.
- (2) Authorize an employee to participate in one of the family-friendly work programs offered by the PBGC (*e.g.*, leave flexibilities, gliding, 5-4/9, or maxiflex work schedules, the telework program.)
- (3) Take actions to assist an employee, who does not have a disability as defined under the ADAAA, provided the assistance does not exceed \$100.00 and does not fall into one of the following categories:
  - (a) Office furniture (*e.g.*, the purchasing of orthopedic/ergonomic chairs);
  - (b) Furniture reconfiguration (*e.g.*, raising/lowering desk);
  - (c) Construction (*e.g.*, automated door openers);
  - (d) Computer assistive technology (*e.g.*, visual magnification systems, teletypewriters, telephone amplifiers, alternative input devices, speech recognition systems, computer software); or
  - (e) Interpreter services.
- (4) PBGC Officials should contact the HRD if they have questions regarding allowable assistance.

- d. **Confidentiality.** Every PBGC employee will preserve the confidentiality of information related to a request for reasonable accommodation by limiting disclosure of such information to others who have a need-to-know about the facts associated with the request.

## 7. **RESPONSIBILITIES:**



- a. **Employees and Applicants for Employment.** Make request(s) for reasonable accommodation(s) and PAS from an appropriate PBGC official(s) and cooperate with PBGC officials during the reasonable accommodation/PAS process.
  
- b. **Director of Workplace Solutions Department (WSD).**
  - (1) Processes reasonable accommodation requests the Reasonable Accommodations Coordinator (RAC) approves that require the purchase of office equipment, retrofitting offices and furniture, etc.;
  - (2) Ensures the requestor is notified when a product is delivered or when modification work will be completed; and
  - (3) Forwards reasonable accommodation requests to the RAC.
  
- c. **Director of Human Resources Department (HRD).**
  - (1) Serves or designates a federal employee to serve as the Reasonable Accommodation Coordinator (RAC) and provides guidance to all PBGC employees, PBGC Officials, family members, and others concerning these Procedures;
  - (2) Processes all reasonable accommodation and PAS requests;
  - (3) Informs the requestor of the decision to grant or deny requests for reasonable accommodation; and
  - (4) Prepares annual reports on requests for reasonable accommodation and PAS, as required.
  
- d. **Office of Equal Employment Opportunity (OEEO).**
  - (1) Serves as a resource on matters regarding reasonable accommodations and PAS;
  - (2) Forwards reasonable accommodation and PAS requests to the RAC;
  - (3) Processes Equal Employment Opportunity (EEO) complaints relating to reasonable accommodation matters; and
  - (4) Prepares, with input provided by the RAC, MD-715 reports and plans for the recruitment, hiring, advancement, and retention of persons with disabilities, and serves as a resource.
  
- e. **Office of General Counsel (OGC)** renders legal advice on reasonable accommodation matters. Prior to denying any



reasonable accommodation or PAS request, the RAC will obtain concurrence from OGC.

- f. **Office of Information Technology (OIT):**
  - (1) Processes all reasonable accommodation requests the RAC approves that require the purchase and installation of Computer Assistive Technology;
  - (2) Ensures the requestor is notified when a product is delivered or when installation work will be completed; and
  - (3) Forwards reasonable accommodation requests to the RAC .
  
- g. **PBGC Officials.** Recognize reasonable accommodation and PAS requests made by PBGC employees and applicants for employment with the PBGC and forward reasonable accommodation and PAS requests to the RAC .

8. **PROCEDURES AND REQUIREMENTS:**

- a. **Initiating the Process.**
  - (1) A request for reasonable accommodation is any statement that an individual needs an adjustment or change at work or in the employment application process for a reason related to a medical condition. An individual need not have a particular accommodation in mind before making a request.
    - (a) A PBGC employee may request reasonable accommodation either orally or in writing directly from his/her immediate supervisor, or other PBGC official in his/her immediate chain of command, or by contacting the RAC, Donald Beasley, at [beasley.donald@pbgc.gov](mailto:beasley.donald@pbgc.gov), or (202) 326-4000, ext. 3637.
    - (b) An applicant for employment may request a reasonable accommodation orally or in writing from any PBGC employee involved in the application process, or by contacting the RAC, at the contact information listed in subsection (a) above.
    - (c) A family member, health professional, or other authorized representative may request an accommodation on behalf of an employee or applicant.



- (d) An individual may request accommodation whenever he or she chooses to do so.
- (2) PBGC officials must be careful to recognize a reasonable accommodation request, even if the employee or applicant does not use the words “reasonable accommodation,” and notify the RAC of the request within five work days so that the request can be processed. Requests for reasonable accommodation may be oral or in writing. The individual requesting accommodation does not need to use any special language or terminology. The recipient of a request is responsible for notifying the RAC that an employee or applicant has made an oral request for reasonable accommodation, or for forwarding a written request for reasonable accommodation to the RAC, and for notifying the employee or applicant that his/her request for reasonable accommodation has been forwarded to the RAC for processing.
  - (a) Although processing an oral request for reasonable accommodation begins when the request is received, a PBGC employee, applicant, or authorized representative making an oral request for reasonable accommodation should confirm the request by submitting either a written request or sending an electronic mail message to the original recipient of the oral request or the RAC. This written follow up request enables the PBGC to maintain accurate records regarding accommodation requests.
  - (b) An individual who has already been determined eligible for reasonable accommodation is not required to submit a written request for subsequent requests for the same or similar accommodation.
- (3) A PBGC official is prohibited from asking an employee whether a reasonable accommodation is needed, except in very limited circumstances as identified in subsection (a) – (c) below. An employee’s immediate supervisor or other PBGC official may initiate the reasonable accommodation process without being asked by the employee if the immediate supervisor or other PBGC official:
  - (a) Knows that an employee has been determined by the RAC to be a qualified individual with a disability;



- (b) Knows, or has reason to know, that the employee is experiencing workplace problems because of a disability; or
  - (c) Knows, or has reason to know, the employee's disability prevents the employee from requesting a reasonable accommodation.
- (4) PBGC officials must keep all requests for and provisions of reasonable accommodations confidential, limiting disclosure of such information only to others who have a need-to-know about the facts associated with the request for or provision of a reasonable accommodation, in accordance with Section 8.c (7), "Confidentiality of Medical Documentation."
- (5) If the employee with a disability responds to the RAC or PBGC Official by stating that s/he does not need a reasonable accommodation, the PBGC will have fulfilled its obligation.

b. **Processing the Request.**

- (1) Once an employee or applicant for employment makes a reasonable accommodation request, the RAC is responsible for processing the request. A request may initiate an interactive process that requires communication between the individual making the request and the RAC. Immediate supervisors or prospective immediate supervisors and other PBGC officials who have information relevant to providing assistance in considering and implementing different types of accommodations, may also be included in the interactive process where appropriate.
- (2) As the initial step in the interactive process, the RAC will discuss the request with the employee, and where appropriate, other PBGC personnel, including the following:
- (a) The process and time frames for determining whether an accommodation will be provided;
  - (b) The nature and extent of the individual's impairment; and
  - (c) Potential accommodations.

The resources available to assist individuals with disabilities and agency decision-makers who identify and evaluate possible accommodations are identified below in subsection d (Selecting the Appropriate Accommodation).



- (3) The RAC is responsible for determining whether the individual making the request is a qualified individual with a disability and, if so, making a final decision to grant some form of accommodation or to deny the request. The RAC will obtain concurrence from OGC on any reasonable accommodation request denials.
- (4) When appropriate, the RAC will report information concerning the reasonable accommodation process and the decision to grant or deny the request.

c. **Requesting Medical Documentation.**

- (1) When an individual's disability and/or the need for reasonable accommodation is obvious, or where the PBGC has previously determined that an individual is a qualified individual with a disability and is entitled to reasonable accommodation, the PBGC will not normally seek medical information from an individual making a request for reasonable accommodation.
- (2) When an individual's mental or physical impairment is not obvious and/or the need for accommodation is not obvious, the RAC will request, and the individual requesting an accommodation is required to provide, appropriate medical information related to the functional impairment and the requested accommodation.
  - (a) The request for medical documentation will be individually tailored to seek only that information necessary to establish that the individual has a disability under the ADAAA, and that (s)he needs reasonable accommodation, or the particular accommodation requested.
  - (b) The requested medical information or documentation will normally be limited to information or documentation as to the following, as applicable:
    - (i) The nature, severity, and duration of the individual's impairment, if any;
    - (ii) The activity or activities that the impairment limits, if any;
    - (iii) The extent to which the impairment limits, if any, the individual's ability to perform the activity(ies), if any;



- (iv) Why the individual needs accommodation or the particular accommodation requested; and
    - (v) How the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.
  - (c) When necessary to enable an individual's health professional to provide information regarding that individual's ability to perform a job, the agency will provide information to the health professional that describes the nature of the job, the essential functions the individual will be expected to perform, and any other information that is relevant to evaluating the request.
  - (d) The requested medical information will not require disclosure of information protected under GINA.
- (3) The RAC may ask the individual requesting accommodation to provide additional medical documentation, if the information provided by the health care provider (or the information volunteered by the individual requesting the accommodation) in response to the request does not clearly explain:
  - (a) The existence of the disability;
  - (b) The need for the reasonable accommodation; or
  - (c) How the requested accommodation will assist the employee to perform the essential functions of the job or assist the applicant with the employment application process.
    - (i) The individual may then ask the health care provider to submit the missing information, or
    - (ii) The RAC and the individual requesting the accommodation may agree that the individual will sign a limited release to permit the RAC or contracted Federal Occupational Health (FOH) medical consultant to contact the health care provider directly.
- (4) When PBGC is entitled to request medical information under this subsection because an individual's impairment or need for accommodation is not obvious or known, it may have that information reviewed by a medical expert of its choosing at its own expense. The decision to have medical information submitted by an individual or his or her health





- care provider reviewed by a medical expert is made by the RAC at his/her discretion.
- (5) The RAC may request that an individual be examined by a physician of the PBGC's choosing and at its expense, but only if the RAC finds the requesting individual has not provided sufficient documentation from his or her health care provider to substantiate the existence of a disability and/or the need for a reasonable accommodation. Before arranging an examination with a physician of the PBGC's choosing and at its expense, the RAC must:
    - (a) Explain to the requesting individual why the submitted medical documentation is insufficient;
    - (b) Identify the specific additional medical information needed; and
    - (c) Allow the individual or his or her health care provider the opportunity to submit the additional medical documentation.
  - (6) If the individual requesting an accommodation is still unable to provide sufficient information in support of the request, PBGC may request that the individual be examined by a health care professional of the agency's choice at the agency's expense. Where a medical examination is warranted, the agency must explain to the individual that failure to provide the necessary medical documentation to establish the existence of a disability could result in the denial of the request for reasonable accommodation.
  - (7) Confidentiality of Medical Documentation
    - (a) All medical information obtained by the PBGC regarding the requests for reasonable accommodation will be maintained in HRD in confidential reasonable accommodation files that are maintained separately from other official personnel files.
    - (b) These records are maintained in accordance with the Privacy Act of 1974, *as amended*, 5 U.S.C. § 552a, and 29 C.F.R. § 1611.
    - (c) The RAC will not disclose the records, or the information contained therein except as authorized or required under the Privacy Act and the Rehabilitation Act. Confidential medical information may be disclosed only as follows:
      - (i) The requester's immediate supervisor and other PBGC



Official (s) who have a need to know may be told about any necessary work restrictions and necessary accommodations.

- (ii) First-aid, safety, or emergency response personnel may be told about the nature of the individual's disability *if* the individual might require emergency medical treatment, or assistance in evacuating PBGC office space in the event of an emergency;
  - (iii) Government officials who are investigating the PBGC's compliance with the Rehabilitation Act may have access to this information;
  - (iv) The information in the records may be disclosed to Workers' Compensation offices or insurance carriers investigating claims; and
  - (v) The PBGC's EEO officials may access the records as necessary to prepare reports on the PBGC's performance in processing reasonable accommodation requests.
- (d) If confidential medical information is disclosed pursuant to the Privacy Act, the RAC will advise the recipient of the sensitive nature of the information and instruct them that it must remain confidential.

d. **Selecting the Appropriate Accommodation.**

- (1) To determine what, if any, accommodation should be provided, the RAC will consult with the individual requesting the accommodation, and other PBGC officials with a need-to-know regarding the request, the nature and extent of the individual's impairment, and potential accommodations.
- (2) Potential accommodations include but are not limited to:



- (a) Adaptive equipment, including, information technology and communications equipment;
  - (b) Specially designed or reconfigured furniture;
  - (c) Removal of architectural barriers, including reconfiguring work spaces;
  - (d) Sign language interpreters for the Deaf and Hard of Hearing; or
  - (e) Written materials in alternative formats (e.g. Braille or large print).
- (3) Although the individual may request a specific accommodation, the individual is not entitled to the accommodation of his/her choice.
- (4) Resources
- (a) The following supervisors, managers, or other PBGC officials, as appropriate, are a resource in suggesting possible accommodations, including:
    - (i) For a request by an employee, the employee's immediate supervisor and other PBGC Official(s) in the employee's chain of command;
    - (ii) For a request by an applicant for employment, the PBGC employees responsible for the selection process;
    - (iii) The EEO Office;
    - (iv) Employees from OIT for requests for information technology applications and devices;
    - (v) Employees from WSD for requests involving architectural barriers or furniture.
  - (b) The Job Accommodations Network (JAN), the Department of Defense Computer/Electronic Accommodations Program (DoD CAP), or other technical assistance resources can also provide help in selecting the appropriate accommodation.
  - (c) EEOC Enforcement Guidance; Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act (July 27, 2000) and the EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (revised October 17, 2002) are available at:  
<https://www.eeoc.gov/policy/docs/guidance-inquiries.html> and  
<https://www.eeoc.gov/policy/docs/accommodation.html>



- (5) The RAC is the final approving authority for the specific accommodation that will be provided.

e. **Reassignment as a Reasonable Accommodation.**

- (1) Reassignment to a vacant position, and not just permission to compete for such position, normally will be considered as a reasonable accommodation only when the agency determines no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position and only if:
  - (a) The employee is qualified for the vacant position, with or without reasonable accommodation; and
  - (b) No other accommodations are available to enable the individual to perform her/his current job; or
  - (c) The only effective accommodation to enable the individual to perform her/his current job would cause undue hardship to the PBGC.
- (2) The PBGC is *not required* to create a position as a means of reasonably accommodating an employee.
- (3) If reassignment is requested as a potential accommodation, the RAC will work with the requesting individual to identify:
  - (a) All vacant positions within the agency for which the individual is qualified, with or without reasonable accommodation, and
  - (b) All such positions which HRD anticipates becoming vacant within the next thirty calendar days. In addition, supervisors and other agency employees may conduct searches on USAJOBS for available vacancies within the agency and contact HRD and Department Directors to inquire about potential vacancies.
- (4) If the RAC is considering reassignment to a vacant position as a reasonable accommodation for an employee, the RAC will consult with the Department Director who holds the vacant position and obtain concurrence from the Director, HRD prior to making a decision to effectuate a reassignment as a reasonable accommodation.

f. **Granting/Denying a Reasonable Accommodation Request.**



- (1) If the RAC concludes the request should be granted, the RAC will notify the individual in writing of the specific accommodation(s) that the PBGC will provide and the projected time frame for providing the accommodation if the accommodation is not immediately available.
- (2) If the RAC concludes a request should be denied because the requester is not a “qualified individual with a disability” or the accommodation would cause an undue hardship, the RAC will issue a written denial notice to the requesting individual at the time the request for accommodation is denied.
- (3) The written notice of denial will clearly state the specific reason(s) for the denial. However, before denying on the basis of “undue hardship,” the RAC will obtain the concurrence of the Chief Management Officer (CMO).
- (4) The written notice of denial will also inform the individual of his/her rights to file an EEO complaint or to grieve the decision using the administrative or negotiated grievance procedure, as appropriate. The employee must meet the appropriate EEO time frames for filing, even if the employee requests reconsideration of the denial decision.
- (5) The RAC Coordinator will obtain OGC’s concurrence on any reasonable accommodation request denials.

g. **Time Frames for Processing Requests.**

- (1) Any PBGC Official who receives a reasonable accommodation request will refer the request to the RAC .
- (2) Absent extenuating circumstances, the RAC will either provide an accommodation or deny the request within 30 work days of the date the accommodation is first requested. The RAC will inform the individual making the request of the decision.
- (3) When an accommodation can be provided in less than the 30-work day period referenced above, such failure may result in a violation of the Rehabilitation Act.
- (4) The 30-work day time period does not include the time period during which the PBGC is awaiting receipt of medical information from the employee.
- (5) When the RAC is unable to meet the 30-work day time period, the RAC shall advise the requesting individual of the reason for the delay and try to provide an approximate date



on which a decision or the provision of the accommodation will be made.

- (6) For requests from applicants for employment, the PBGC will extend the time frames in the selection process as necessary to allow for reasonable accommodation such that disabled applicants can meaningfully compete for vacant positions.
- (7) Requests for reasonable accommodation will be expedited in instances such as when the accommodation is needed to enable an individual to apply for a job, or the accommodation is needed for a specific agency activity that will occur in a short span of time.
- (8) When all the facts and circumstances known to the agency make it reasonably likely that the individual will be entitled to an accommodation, but the accommodation cannot be provided immediately, the agency will provide the individual with an interim accommodation that allows the individual to perform some or all of the essential functions of the job, absent undue hardship.

**h. Dispute Resolution Procedures.**

- (1) The PBGC encourages individuals requesting reasonable accommodation to utilize the informal dispute resolution process.
- (2) **Informal Resolution.** If an individual wishes reconsideration of a final decision, the individual must submit a request to the PBGC's CMO within ten calendar days of the date of the decision. The individual may present additional information in support of the request. The CMO will strive to provide a written response within fifteen calendar days of receipt of the reconsideration request. Despite seeking an informal reconsideration, the employee has forty-five days from the time of notice of the original denial to file a complaint with the OEEO.
- (3) **EEO Complaint.** If the requesting individual wishes to pursue an EEO complaint for the denial of an accommodation, he or she must contact the OEEO within forty-five calendar days of the date of the agency's denial of a request for accommodation. This time limit must be met even if he or she is participating in the informal resolution process.
- (4) **Grievance Procedure.** If the requesting individual wishes to pursue a grievance for the denial of an accommodation, he



or she must file a grievance within the time limits prescribed by: 1) PM 30-5, Grievance Procedure for Non-Bargaining Unit Employees; or 2) the collective bargaining agreement(s) for bargaining unit employees. This time limit must be met even if (s)he is participating in the informal resolution process.

i. **Information Tracking.**

- (1) In accordance with Executive Order 13164 and 29 C.F.R. § 1614.203(d)(8)(vi), the RAC will track information regarding the provision of reasonable accommodation. Information necessary to track the PBGC's compliance with the Executive Order and Section 1614.203(d)(8)(vi) will be maintained for at least three years.
- (2) The HRD will maintain confidential records, as described in Section 8.c. (7) of this order, for three years or the duration of that individual's employment, whichever is longer.
- (3) The RAC, with the assistance of the OEEO, will prepare an annual report on requests for reasonable accommodation. The report will not include individual names or other personal identifiers.
- (4) The agency will keep records used to determine compliance with Section 501 of the Rehabilitation Act and will make such records available to the EEOC on request, including, at a minimum the following information:
  - (a) The number and types of reasonable accommodation requests made in the application process and whether they have been granted or denied;
  - (b) The jobs (occupational series, grade level and agency component) of the requesting individuals;
  - (c) The types of reasonable accommodations that have been requested for each of those jobs;
  - (d) The number and types of requests that relate to the benefits or privileges of employment, and whether these requests were granted or denied;
  - (e) The reasons for denial of requests for reasonable accommodation;
  - (f) The amount of time taken to process each request; and
  - (g) The sources consulted for technical assistance in identifying possible reasonable accommodations.



- (5) Applicants and employees may track the processing of requests for reasonable accommodations by contacting the RAC.

9. **Special Provisions Related to PAS**

- a. Criteria. To be entitled to PAS, the individual must:
  - (1) be an employee of the agency
  - (2) have a targeted disability
  - (3) require the services because of a targeted disability; and
  - (4) be able to perform the essential functions of the job, without posing a direct threat to safety, once PAS and any reasonable accommodations have been provided;
  
- b. A PAS request may be denied if any of the criteria in subsection a above are not satisfied. A PAS request may also be denied if providing the PAS request would impose an undue hardship on the agency.
  - (1) In determining whether a requesting individual is entitled to PAS and, if so, the nature of the requested services, the agency may ask the employee what types of PAS he or she needs using the same interactive process described in subsection 8 (b) above.
  - (2) The interactive process for PAS should be brief in most cases.
  - (3) Where it is obvious that an employee has a targeted disability, and needs the requested services, the agency may not require the individual to provide medical documentation in support of the request.
  - (4) When hiring a PAS provider who will be assigned to a single individual, the agency must give primary consideration to the employee's choice to the extent permitted by law. However, the agency may choose a different provider if, for example, the individual's preferred provider is not qualified or less qualified than another applicant, for reasons of cost or convenience, or if the agency decides to have appropriate existing employees provide PAS for reasons of cost or convenience.