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NASA Procedural Requirements

COMPLIANCE IS MANDATORY

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Request Notification of Change (NASA Only)

Subject: Reasonable Accommodations Procedures

Responsible Office: Office of Diversity and Equal Opportunity

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Chapter 4. Processing the Request

4.1 Decision Makers

4.1.1 The person who decides whether to grant the request for reasonable accommodation is generally the employee's immediate supervisor. These individuals shall be referred to as the "Decision Maker (DM)." In the case of an applicant, the DM shall be the HRS processing the vacancy. In processing reasonable accommodation requests, the DM should work in consultation with other stakeholders such as the HR, EO, and the Agency or Center Disability Program Manager.

4.1.2 In cases where the request is submitted to someone other than the immediate supervisor or the appropriate HRS, the request shall be referred by the person receiving the initial request to the Headquarters or Center's Equal Opportunity Office not later than five (5) business days after receipt. In this case, the Headquarters or Center EO Officer shall be the DM. The Headquarters or Center EO Office shall contact the immediate supervisor or HRS, as appropriate, as soon as possible to advise of the receipt of a request for reasonable accommodation. To the extent that the immediate supervisor or HRS remains unavailable, the Headquarters or Center EO Office shall continue to process the request until a determination to grant or deny the request is made, in consultation with stakeholders, such as the next level of management and HR.

4.1.3 Where the employee is a detailee or matrixed employee (i.e., an employee who reports to more than one immediate supervisor based on specific projects and assignments) from another organization, the DM shall be the employee's immediate supervisor of record, acting in coordination and consultation with the detail or matrix supervisor.

4.1.4 An employee or applicant for Federal employment with NASA can make a request for a reasonable accommodation to any member of Headquarters or Center management, a staff member in the Headquarters or Center EO Office, or the Human Resources Office. Processing of a request for a reasonable accommodation shall begin upon receipt of the initial request.

4.2 Timeframes

4.2.1 NASA shall process requests for reasonable accommodation and provide reasonable accommodations, where they are appropriate, as soon as reasonably possible. NASA recognizes, however, that the time necessary to process a request shall depend on the nature of the reasonable accommodation requested and whether it is necessary to obtain supporting information.

4.2.2 If a request for a reasonable accommodation requires no supporting medical information and no extenuating circumstances apply, the request shall be processed and the reasonable accommodation provided in no more than 20 business days from the date that the request was first made.

4.2.3 Hypothetical examples of reasonable accommodations that may easily be provided within this 20 business day timeframe might include:

4.2.3.1 Employees with diabetes who sit in an open area ask for four breaks a day to test their blood sugar levels so that they may do these tests in private.

4.2.3.2 Employees who take antidepressants which make it hard for them to get up in time to get to the office at 9 a.m. request that core hour requirements be modified and be allowed to start work at 10 a.m. and still put in an 8-hour day.

4.2.3.3 A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes it difficult to read quickly and needs more time to prepare.

4.2.4 "Extenuating circumstances" to time frames. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for reasonable accommodation. "Extenuating circumstances" covers limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of a reasonable accommodation. For example, NASA may not delay processing or providing a reasonable accommodation because a particular staff member is unavailable.

4.2.4.1 When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the reasonable accommodation shall be extended, as necessary, at the discretion of the DM. Extensions based on extenuating circumstances shall be limited. The reasons for such extensions must be in writing. The DM's response, regardless of whether the extension is granted, must also be documented. NASA staff is expected to act as quickly as possible, but not take longer than 20 business days to process requests and provide reasonable accommodations, absent extenuating circumstances. Even with extenuating circumstances, every effort should be made to ensure prompt processing, such that processing time does not extend beyond 50 business days.

4.2.4.2 The following are some examples of extenuating circumstances:

4.2.4.2(a) There is an outstanding initial or followup request for medical information, or the physician or other health professional chosen by NASA is evaluating medical information which has been provided.

4.2.4.2(b) The purchase of equipment may take longer than 20 business days because of requirements under the Federal Acquisition Regulations.

4.2.4.2(c) Equipment has to be back-ordered because the vendor typically used by NASA 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.

4.2.4.2(d) The employee with a disability needs to work with equipment on a trial basis to ensure that it is effective before NASA executes a final purchase.

4.2.4.2(e) New staff needs to be hired or contracted for, or a reasonable accommodation involves the removal of architectural barriers.

4.2.4.2(f) The acquisition of assistive technology from the Department of Defense Computer/Electronics Accommodations (CAPS) Program may take time to obtain.

4.2.4.2(g) A reasonable accommodation would not reduce or eliminate a direct threat posed by the individual either to himself or to others.

4.2.5 Where extenuating circumstances are present, the DM shall notify the individual in writing and apprise appropriate stakeholders (e.g., management, EO, HR) of the reason for the delay and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes shall also be communicated promptly by the DM to the individual in writing, including other extenuating circumstances that would modify or limit the Agency's ability to provide the reasonable accommodation.

4.2.6 If there is a delay in providing a reasonable accommodation which has been approved, the DM shall determine whether temporary measures can be taken to assist the employee. (Note: Generally, this section refers to employees rather than applicants.) This could include providing the requested reasonable accommodation on a temporary basis or providing a less effective form of reasonable accommodation. In addition, the DM may provide, although is not required to provide, measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if: (a) they do not interfere with the operations of the Agency; and (b) the employee is clearly informed that they are being provided only on a temporary, interim basis.

4.2.7 For example, there may be a delay in receiving adaptive equipment for an employee with a vision disability. During the delay, the DM might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it shall allow the employee to perform as much of the job as possible until the equipment arrives.

4.2.8 If a delay is attributable to the need to obtain or evaluate medical documentation and NASA has not yet determined that the individual is entitled to a reasonable accommodation, NASA may also provide temporary measures. In such a case, the DM shall notify the individual in writing that the measures are temporary, pending a decision on the reasonable accommodation request.

4.2.9 DMs who approve such temporary measures are responsible for assuring that they do not take the place of a permanent reasonable accommodation and that all necessary steps to secure the permanent reasonable accommodation are taken.

4.2.10 Expedited Processing. In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a timeframe that is shorter than 20 business days. This includes situations where a reasonable accommodation is needed.

4.2.10.1. To enable an applicant to apply for a job. Due to the timetable for processing a vacancy, e.g., conducting interviews and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, the DMs at all NASA Installations need to move as quickly as possible to make a decision and, if appropriate, provide a reasonable accommodation.

4.2.10.2 To enable an employee to attend a short-notice meeting. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 business days.

4.3 Medical Information

4.3.1 NASA may seek information to help determine that an employee or applicant has a disability that requires a reasonable accommodation when the disability and/or need for reasonable accommodation are not obvious or otherwise known. In cases where the

disability and need for reasonable accommodation are obvious or otherwise already known to the DM, the Agency shall not seek additional medical documentation from the requestor. However, when a disability and/or need for reasonable accommodation are not obvious or otherwise already known to the DM, NASA may require reasonable documentation from the individual regarding the disability and any functional limitations which are related to the ability to do the job.

4.3.2 NASA recognizes that the need for documentation may not become apparent until after the interactive process has begun. NASA also recognizes that in some cases the individual requesting the reasonable accommodation shall supply medical information directly to the DM without being asked. In these cases, the DM shall consider such documentation (with appropriate consultation, e.g., consultation with a NASA physician) (what does appropriate consultation mean?), and if additional information is needed, the DM shall work with the physician or other health professional chosen by NASA as set forth in this chapter.

4.3.3 If the DM determines, based on a recommendation from the NASA or contractor physician at the respective installation, and in consultation with appropriate stakeholders (e.g., HR, EO, DPM), that it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or to identify the requesting individual's functional limitations, the DM shall make such request in writing to the requesting individual as soon as possible after receipt of the request for reasonable accommodation, but before the expiration of the 20 business day period. A request for medical and other information shall pertain only to the disability that requires reasonable accommodation to substantiate that the individual has a disability or needs the reasonable accommodation requested. Therefore, the DM (with appropriate consultation) shall seek information or documentation only about the disability and/or functional limitations and/or ask the individual to obtain such information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. To obtain the most helpful information possible, all requests for information shall describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information.

4.3.4 The types of medical information or documentation. A DM may request in connection with a request for reasonable accommodation include information on:

4.3.4.1 The nature, severity, and duration of the individual's impairment.

4.3.4.2 The activity or activities that the impairment limits.

4.3.4.3 The extent to which the impairment limits the individual's ability to perform such activity or activities.

4.3.4.4 The reason(s) supporting the request for reasonable accommodation or the particular reasonable accommodation requested, specifically how the reasonable accommodation would assist the individual in the position applied for to perform the essential functions of the job, or to enjoy a benefit of the workplace.²

² See EEOC Policy Guidance on Executive Order 13164, Questions 17-18.

4.3.5 NASA also must explain to the individual requesting reasonable accommodation that the failure to provide medical information or documentation or to cooperate with NASA's efforts to obtain such documentation may result in a denial of the requested reasonable accommodation.

4.3.6 Once the medical documentation is received, the DM, in consultation with the NASA or contractor physician or other NASA chosen physician as appropriate, shall evaluate it. The evaluation shall be conducted at NASA's expense. If the information provided by the health professional (or the information volunteered by the individual requesting the reasonable accommodation) is insufficient to allow the DM (with appropriate consultation, e.g., consultation with a NASA physician) to determine whether a reasonable accommodation is appropriate, the DM may ask for reasonable supplemental

documentation. The DM shall request this information in writing, explaining to the individual seeking the reasonable accommodation, in specific terms, why the information which has been provided is insufficient, what additional information is needed, and why it is necessary for a determination on the reasonable accommodation request. Alternatively, the DM may ask the individual to sign a limited release authorizing NASA to contact her/his health care provider directly, and then either submit a list of specific questions to the individual's health care professional or have NASA's own physician contact the individual's health care provider.

4.3.7 If the medical documentation referred to in 4.3.6 does not result in sufficient information, NASA may require the requester to go to a health care provider of NASA's choice at NASA's expense.³ The medical examination must be limited to determining the existence of a disability and/or the functional limitations that require reasonable accommodation. (Note: NASA may only seek that documentation which is reasonably necessary to establish that the requester is an individual with a disability and needs the reasonable accommodation requested.)⁴

³ See EEOC: Practical Advice, "Drafting Tips: Address how and when to obtain review by the agency's own medical expert." 17-18.

⁴ See EEOC: Practical Advice For Drafting And Implementing Reasonable Accommodation Procedures Under Executive Order 13164 (July 2005), "Drafting Tips: Expressly warn against asking for medical information in support of every accommodation request." (hereafter cited as EEOC: Practical Advice).

4.3.8 If the DM requests that a physician or other health professional obtain medical information, the requirement of the 20 business day period shall stop. This shall be documented by the DM using NF 1699B. If the physician or other health professional determines that medical information is not needed, the continuation of the 20 business day time period shall resume as soon as the DM is notified by the physician or other health professional of her/his determination. The physician or other health professional shall make a determination in writing within 20 business days from the date NASA requests the determination. If the physician or other health professional determines that medical documentation is not needed, the DM shall be informed of the determination as soon as possible. The DM shall make a determination on the request for reasonable accommodation in writing as soon as possible, but not later than 10 business days from the date the DM received the relevant information from the physician or other health professional.

4.3.9 Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. Medical documents shall be maintained by the NASA Occupational Health Unit Medical Records facility. This means that all medical information, including information about functional limitations that NASA obtains in connection with a request for reasonable accommodation, must be securely kept in files separate from the individual's personnel file. It also means that any authorized NASA employee who obtains or receives such information is subject to the restrictions and requirements of the Privacy Act of 1974 (5 U.S.C. § 552a).

4.3.9 The EO Officer for each NASA installation shall maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, excluding medical documents and Agency attorney work products. Medical documents shall be maintained by the Occupational Health Unit Medical Records facility. The responsibilities of the installation's EO Officer shall include responding to all requests for disclosure of the records. After a decision has been rendered on the request, the supervisor or DM shall forward all medical information to the Occupational Health Unit Medical Records facility. All records shall be securely maintained in accordance with the Privacy Act of 1974 and the requirements of NASA regulations implementing the Privacy Act of 1974 at 14 CFR Part 1212.

4.3.10 Individuals and organizations to which information may be disclosed can include, but are not limited to:

4.3.10.1 Supervisors and managers, including the DM who requested the medical

information, who need to know about necessary restrictions on the work or duties of the employee's position, or the position for which the applicant has applied, and about the reasonable accommodation(s).

4.3.10.2 First aid and Occupational Health and Safety personnel, if the disability may require emergency treatment or assistance with building evacuation during emergencies.

4.3.10.3 Federal Government officials who need the information to determine the Agency's compliance with the Rehabilitation Act of 1973, as amended.

4.3.10.4 NASA contractors, such as physicians working under contract for the Agency but who are not Agency officials.

4.3.10.5 Whenever medical information is disclosed, the individual disclosing the information shall inform the recipients of the information that they are strictly bound by the requirements of the Privacy Act of 1974. All Privacy Act protected documents shall have a NASA Form 1534 and contain the statement, "Privacy Act Warning Document" on the top of the document or outside the document package.

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