



**REASONABLE ACCOMMODATION
PROCEDURES FOR INDIVIDUALS WITH
DISABILITIES**

Issue Date: May 13, 2019

A. GENERAL PROVISIONS

1. **Purpose.** This Federal Labor Relations Authority (FLRA) policy establishes standard procedures for the application of reasonable accommodations to job applicants with disabilities, and to employees who have or develop a disabling condition while employed at the Federal Labor Relations Authority (FLRA).

2. **Cancellation.** This FLRA policy cancels and supersedes FLRA Policy No. 3891.2, Reasonable Accommodation for Individuals with Disabilities, dated December 16, 2015.

3. **Definitions.**

a. *Americans with Disabilities Act (ADA) of 1990.* The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else. The ADA gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.

b. *Agency* means Federal agencies including the FLRA.

c. *Assistive Devices* are devices that help people overcome a handicap such as a mobility, vision, mental, dexterity or hearing loss.

d. *Days* are work days unless otherwise noted.

e. *Decision-Maker* is the FLRA official who renders decisions on requests for reasonable accommodation. For employees, this individual is the Human Resources Director (HR Director) or his/her designee, or the employee's immediate supervisor. For applicants, the decision-maker is the HR Director or the HR Specialist that the HR Director designates for the particular vacancy.

f. *Disability*, with respect to an individual, is – (A) a physical or mental impairment that substantially limits one or more of the major life activities of that individual; (B) a record of such impairment; or (C) being regarded as having such impairment.

g. *Disabled Person (Eligible Individual)* is an individual who currently has a disability or a record of a disability.

h. *Equal Employment Opportunity* is an opportunity for a qualified individual with a disability to perform the essential job functions, or to enjoy the benefits and privileges of employment that are available to similarly situated individuals who are not disabled.

i. *Essential Functions* are those job duties that are so fundamental to the position that the individual holds or desires that s/he cannot do the job without performing them. A function is considered “essential” if: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized, and the individual is hired based on her/his ability to perform it.

j. *Executive Director* as used herein is the Executive Director of the FLRA or his or her designee.

k. *Family Medical History* means information about the manifestation of disease or disorder in family members of the individual.

l. *Family Member* means, with respect to any individual: a person who is a dependent of that individual as the result of marriage, birth, adoption, or placement for adoption; or a relative of the first degree (the individual’s parents, siblings, and children), second degree (the individual’s grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings), third degree (the individual’s great-grandparents, great-grandchildren, great-uncles/aunts, and first cousins), or fourth degree (the individual’s great-great-grandparents, great-great-grandchildren, and first cousins once-removed).

m. *Genetic Information* means information about an individual’s or family member’s genetic tests; the manifestation of disease or disorder in family members of the individual (family medical history); the individual’s request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member; and the genetic information of a fetus carried by an individual or an individual’s pregnant family member or any embryo lawfully held by the individual or family member using an assisted reproductive technology. Genetic information is **not** information about: an individual’s or family member’s sex or age; or an individual or family member’s race or ethnicity that is not derived from a genetic test.

n. *Genetic Services* means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

o. *Genetic Test* means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. A genetic test is **not** an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

p. *Health Care Professional* is a person who is legally competent to diagnose and/or treat the particular medical condition(s) that are the basis of the accommodation request.

q. *Interactive Process* is a cooperative, constructive and, if necessary, ongoing dialogue between the individual who requests reasonable accommodation and the appropriate FLRA official for the purpose of identifying the nature of the request and effective accommodations.

r. *Major Life Activities* include, but are not limited to, 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. Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system. The term “major” shall not be interpreted strictly to create a demanding standard for disability. Whether an activity is a “major life activity” is not determined by reference to whether it is of “central importance to daily life.”

s. *Manifestation or Manifested* means, with respect to a disease, disorder, or pathological condition that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise in the field of medicine involved. A disease, disorder, or pathological condition is not “manifested” if the diagnosis is based principally on genetic information.

t. *Mental Impairment* is any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities.

u. *Personal Assistance Services (PAS)* is assistance provided to persons performing activities of daily living that would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom.

v. *Physical Impairment* is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory (including speech organs); cardiovascular; reproductive; digestive; genitourinary; immune; circulatory; hemic; lymphatic; skin; and endocrine.

w. *Qualified Individual* is an individual who satisfies the requisite knowledge, skills, abilities, and other job-related requirements of the position and can perform the essential functions of the position with or without reasonable accommodation.

x. *Reasonable Accommodation* may include: making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations; training materials or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. Reasonable accommodation normally does not require: providing an employee with a new supervisor; allowing an employee to work at home in circumstances where the essential functions of the job can only be performed at the work site; excusing a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity; excusing past misconduct even if it is the result of the individual's disability; and monitoring whether an employee takes medication as prescribed.

y. *Reasonable Accommodations Coordinator (RAC)* is the (1) appointing authority, (2) person designated by an appointing authority to administer the processing of reasonable accommodation requests, or (3) accommodation coordinator's designee.

z. *Reassignment* is a form of reasonable accommodation that, absent undue hardship, is provided to employees who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignment as reasonable accommodation is a last resort measure. Reassignments are made without competition to vacant positions when employees are qualified for the new position.

aa. *Record of an Impairment* is a history of, or classification as having, a mental or physical impairment that substantially limits one or more major life activities.

bb. *Regarded as Having Such an Impairment* means having a physical or mental impairment that does not substantially limit major life activities, but being treated by an employer as constituting such a limitation; having a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such an impairment; or having none of the impairments defined above, but being treated by an employer as having such a limitation. An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that s/he has been subjected to an action prohibited by the Rehabilitation Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. "Being regarded as having such an impairment" does not apply to impairments that are both transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

cc. *Request for Accommodation* is an oral or written statement that an individual needs an adjustment or change at work, or in the application process, for a reason related to a medical condition. Additional information, as appropriate, may be obtained through the interactive process that follows the request.

dd. *Requestor* is the applicant for employment or the employee who initiates a request for reasonable accommodation, or a family member, health professional, or other representative acting on the individual's behalf.

ee. *Substantially Limits* is to be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. Substantially limits are not meant to be a demanding standard. Impairment is a disability if it substantially limits an individual's ability to perform a major life activity as compared to most people in the general population. Impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. The threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis. Each case requires an individual assessment. However, comparing an individual's performance of a major life activity to that of most people in the population will usually not require scientific, medical, or statistical analysis. The determination of whether 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. The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting.

ff. *Schedule A* is the hiring authority for individuals with intellectual disabilities, severe physical disabilities, or psychiatric disabilities.

gg. *Targeted Disabilities* are a subset of conditions that would be considered disabilities under the Rehabilitation Act, and for which qualified individuals with certain disabilities such as, blindness, paralysis, convulsive disorders, and mental illnesses (see the Office of Personnel Management, Self-Identification of Disability form –SF 256, Oct 2016, for a complete list of targeted disabilities) have faced significant barriers to employment that are above and beyond the barriers faced by people with the broader range of disabilities.

hh. *Undue Hardship* resulting from an action generally means significant difficulty or expense when considered in light of factors such as: the nature and cost of the accommodation needed; the overall financial resources of the agency; the number of persons employed; the effect of the accommodation on expenses and resources; and the impact of the accommodation on the operation of the agency.

4. **References.**

- a. The Rehabilitation Act of 1973, as amended (Rehabilitation Act).
- b. Americans With disabilities Act of 1990 (ADA). As amended, Title 1, Employment.
- c. ADA Amendments Act of 2008, 42 U.S.C. §12101 note.

- d. Genetic Information Nondiscrimination Act (GINA) of 2008, 42 U.S.C. §§ 2000ff-2000ff-11.
- e. Section 717 of Title VII, Civil Rights Act of 1964, prohibiting employment discrimination based on race, color, religion, sex, and national origin.
- f. Civil Rights Act of 1991 (Public Law 102-166), amending several sections of Title VII.
- g. U.S. Equal Employment Opportunity Commission Management Directive 715, providing policy guidance and standards for establishing and maintaining effective affirmative programs of equal employment opportunity under Section 717 of Title VII (Part A) and effective affirmative action programs under Section 501 of the Rehabilitation Act (Part B).
- h. Title 5, Code of Federal Regulations, Part 339, Medical Qualification Determination.
- i. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151-4156.
- j. Executive Order 1364, Requiring Federal Agencies to Establish Procedures to facilitate the Provision of Reasonable Accommodation.
- k. Title 29, code of Federal Regulations, Part 1614, Federal Sector Equal Employment Opportunity.
- l. Title 29, Code of Federal Regulations, Part 1630, Regulations to Implement the Equal Employment Provisions of the ADA.
- m. Title 29, Code of Federal Regulations, Part 1635, GINA of 2008.

5. Responsibilities.

- a. *Requestors* are responsible for:
 - i. Bringing to the attention of the appropriate decision-maker a need for reasonable accommodation;
 - ii. Participating in the interactive process or designating someone to do so; and
 - iii. Providing the FLRA with sufficient medical documentation in support of requests for reasonable accommodation, when necessary.

- b. *Decision-Makers* are responsible for:
- i. Receiving, processing, and documenting reasonable accommodation requests;
 - ii. Consulting with and obtaining guidance from the RAC within the HR Division on all aspects of the reasonable-accommodation procedure;
 - iii. Participating in the interactive process;
 - iv. Approving and providing the accommodation or forwarding the request to the appropriate office for implementation;
 - v. Meeting stated timeframes for processing and implementing approved accommodation requests;
 - vi. Protecting the privacy of the requestor and the confidentiality of information obtained in the course of the reasonable-accommodation request; and
 - vii. Consulting with the HR Director or his/her designee when accommodation is requested in conjunction with an anticipated or pending performance-and/or conduct-based action.

c. The *Public Health Service Medical Officer* is responsible for:

- i. Reviewing and interpreting medical documentation, when necessary, for the purpose of assisting FLRA management in determining whether the individual requesting accommodation is an individual with a disability as defined in these procedures;
- ii. Communicating with the requestor, her/his representative, and/or her/his health care professional, when required, to clarify specific medical issues regarding a requestor's claim for reasonable accommodation; and
- iii. When FLRA management deems necessary, providing input to FLRA officials on medically-appropriate and effective accommodations.

d. The *RAC* is responsible for:

- i. Reviewing all reasonable-accommodation requests to ensure compliance with law and regulation;
- ii. Advising supervisors, managers, and employees regarding their rights and responsibilities under this Instruction;
- iii. Establishing mechanisms for monitoring the processing of accommodation requests;

iv. Maintaining the confidentiality of all information related to requests for reasonable accommodation;

v. Identifying possible accommodations for applicants and employees;

vi. Conferring with the HR Director or her/his designee in situations where performance and/or conduct issues are involved in the reasonable-accommodation process;

vii. Seeking guidance and assistance, upon consultation with the HR Director or his/her is designee, as needed, from other offices and officials.

viii. Maintaining and safeguarding reasonable-accommodation case files in accordance with records-retention requirements;

ix. Providing statistical reports with respect to processing requests for reasonable accommodation, as required; and

x. Preparing an annual report in January for the Executive Director on the preceding year's requests for reasonable accommodation. The report will include the disposition of those requests, types of accommodations implemented, identification of issues that require attention, and recommendations for enhancements to the procedures.

e. The *HR Director* (or designee) is responsible for:

i. Providing operational support and services to FLRA organizations;

ii. Conducting job analyses on vacancies to ensure that the associated knowledge, skills, and abilities are related to the essential functions of the job and that barriers are removed from the hiring process;

iii. Addressing requests from applicants for reasonable accommodation during the selection process;

iv. Consulting with the RAC and supervisors on situations where performance and/or conduct issues are involved in the reasonable-accommodation process; and

iv. Assisting in identifying and implementing accommodation solutions for employees, when needed.

f. The *HR Director* is responsible for:

i. Maintaining overall responsibility for the FLRA's HR programs, policies, procedures, and services, and making changes, when appropriate; and

ii. Providing guidance and assistance to all FLRA offices and officials involved in reasonable-accommodation issues, and exercising general oversight of the reasonable-accommodation procedures.

g. The *Executive Director* is responsible for rendering final agency decisions on requests for reconsideration of denials or designating another official to act in this capacity, if warranted.

B. PROHIBITION AGAINST DISCRIMINATION. The FLRA is committed to providing a workplace free of discrimination and harassment of any type, including discrimination and harassment based on disability. The need for reasonable accommodation shall not adversely affect an individual's consideration for employment, training, promotion, or opportunity to enjoy equal terms, benefits, privileges, or conditions of employment, including FLRA-supported social or recreational activities. Supervisors, managers, and others involved in the processing and implementation of requests for reasonable accommodation are expected to perform their duties in a manner that fosters a professional and discrimination-free environment, and will be held accountable to maintain such an environment.

C. REASONABLE ACCOMMODATION PROCEDURES

1. General Guidelines for Requesting Reasonable Accommodation.

a. A request for reasonable accommodation is a statement that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition. A request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." Nor does the requestor need to have a particular accommodation in mind before making the request.

b. An individual with a disability may request a reasonable accommodation at any time, even if s/he has not previously disclosed the existence of a disability. Because the concept of reasonable accommodation centers on the needs of applicants and employees with disabilities, it is only within this context that a person's disability may be considered. By contrast, consideration of a person's disability that does not relate to elimination of workplace barriers affecting job performance or the enjoyment of equal employment opportunity is inappropriate.

c. Reasonable accommodations are addressed in three aspects of employment:

i. **Recruitment/application process:** A reasonable accommodation is provided in the recruitment process to provide a qualified applicant with a disability an equal opportunity to be considered for the position for which the person applied.

ii. **Performance of the Essential Functions of a Job:** A reasonable accommodation is provided to enable a qualified person with a disability to perform the essential duties of the job being sought or currently held. This may include modifications or adjustments

to the work environment and to the way duties are customarily performed. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.

iii. Receipt of all benefits of employment: A reasonable accommodation is provided to enable an employee with a disability to enjoy benefits and privileges of employment equal to those enjoyed by other similarly situated employees without disabilities. This would include equal access to buildings, conferences, meetings, events, and services related to FLRA business.

2. **Initiating a Request for Reasonable Accommodation.**

a. **Employee.** An employee may make a request for reasonable accommodation orally or in writing to her/his immediate supervisor or, in the supervisor's absence, to another supervisor or manager in the employee's chain of command. An employee may also make a request to any FLRA official designated to oversee the reasonable-accommodation process (RAC, HR Director, and Executive Director) or who is proposing to take a performance or conduct action. When possible, the request should indicate the specific form of accommodation requested and the basis for such accommodation. Where necessary, the employee may submit additional medical documentation to the RAC in support of the request.

b. **Applicant Employment.** The obligation to provide reasonable accommodation applies to all aspects of the hiring process, including the application and interview processes. All FLRA vacancy announcements must include a statement regarding reasonable accommodation available for applicants during the selection process. An applicant may make a request for reasonable accommodation orally or in writing to any FLRA employee with whom the applicant has contact or to the HR Specialist whose name and telephone number appear on the vacancy announcement. Although an applicant with a disability may request a reasonable accommodation at any time during the application process, the applicant should, to the greatest extent possible, make a request as soon as s/he is aware of a barrier in the process. Accommodation for the interview is the responsibility of the selecting official.

c. **Family Member, Health Professional, or Other Representative.** A request made by such a person on behalf of an employee or applicant shall go to the same person to whom the employee or applicant would make the request. The request may be made orally or in writing. Whenever possible, the decision-maker should confirm with the person with a disability that s/he, in fact, wants a reasonable accommodation.

d. **Reasonable Accommodation Request and Record Form.** To enable the FLRA to track the reasonable-accommodation process accurately and efficiently, all requests must be documented on the Reasonable Accommodation Request and Record form (Appendix A). Copies of this form are available in the Human Resources (HR) division of the FLRA and the form may be made available in alternative formats accessible to persons with disabilities upon request to HR. This form may be used by the employee, applicant, or representative to initiate the request. If the request is made orally, the official receiving the request must complete the appropriate areas on the form. For applicants seeking a reasonable accommodation, the HR

Specialist handling the request must either give the applicant(s) the form to complete or complete the form on her/his behalf.

e. Regardless of who initiates the request, the official who receives the request is ultimately responsible for ensuring that the form is completed and for promptly forwarding a copy of the form to the RAC. While the Reasonable Accommodation Request and Record form should be completed as soon as possible, it is not a requirement for the request itself. The FLRA will begin processing the request as soon as it is made, whether or not the form has been completed. This form will also be used to document management approvals and denials of requested accommodations.

f. A request for reasonable accommodation form is not required when an individual needs the same type of accommodation on a repeated basis (e.g., the assistance of sign language interpreters or readers). The form is required only for the first request for a given accommodation, but appropriate notice should be given, where practicable, each time the accommodation is needed.

3. Authority to Act on Request.

a. The FLRA official responsible for rendering decisions on requests for reasonable accommodation shall be referred to as the “decision-maker” in this Instruction. The HR Director, or his /her designee, may serve as the decision-maker for any request. Other decision-makers are listed below and will handle the process as follows:

i. The HR Specialist who is assigned to the vacancy will handle requests for accommodation from applicants with disabilities in the application process.

ii. The selecting official will handle requests for accommodations from applicants with disabilities for the interview process.

iii. The immediate supervisor, or in her/his absence another official with supervisory/managerial responsibility in the employee’s chain of command, will handle requests for accommodation from employees with disabilities.

iv. The proposing and/or deciding official for a disciplinary or adverse-action notice handles requests for accommodation from employees who have received a notice.

v. The RAC, within the HR Division, in consultation with the FLRA’s Public Health Service Medical Officer and other appropriate individuals, handles requests for determinations as to whether or not applicants or employees requesting accommodation have a covered disability.

b. As a note, all decision-makers must have designated back-ups to continue receiving, processing, and providing reasonable accommodations when the decision-maker is unavailable. Decision-makers should ensure that individuals know who has been designated as

back-up. The time frames discussed in Section L, below, will not be suspended or extended because of the unavailability of a decision-maker.

4. Engaging in the Interactive Process.

a. Once the appropriate decision-maker receives a request for reasonable accommodation, the interactive process begins in order to determine what, if any, accommodation should be provided. Communication is a priority throughout the entire process. The decision-maker will explain to the applicant or employee that s/he will be rendering a decision on the request and describe what will happen during the processing of the request. This initial discussion should happen as soon as possible after a request for reasonable accommodation is presented by or on behalf of the employee.

b. When a third party makes a request for accommodation, the decision-maker should, if possible, confirm with the applicant or employee with a disability that s/he, in fact, wants a reasonable accommodation before proceeding. It may not be possible to confirm the request if the employee has, for example, been hospitalized in an acute condition. In this situation, the decision-maker will process the third party's request and will consult directly with the individual needing the accommodation as soon as it is practicable.

c. Ongoing communication is particularly important where: the specific limitation, problem, or barrier is unclear; an effective accommodation is not obvious; or the parties are considering different possible accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation that should be provided are clear, extensive discussions are not necessary. Even so, the decision-maker and requestor should communicate with each other to make sure that there is a full exchange of relevant information. The decision-maker will consult with the RAC and other appropriate officials during the course of the interactive process for advice and guidance. S/he may also utilize various resources to obtain additional information in rendering decisions on the request and appropriate accommodations. The chart that details the interactive process is in Appendix B.

d. The final decision will typically come from the RAC, who may be reached at 202-218-7979. The status of a particular request for reasonable accommodation may also be tracked through the RAC, who will provide status updates when requested.

5. Determining Whether the Individual Has a Disability.

a. General Evaluation Criteria.

i. Neither the statutes – the ADA and the Rehabilitation Act – nor the regulations promulgated under these statutes list all diseases or conditions that make up “physical or mental impairments” because it would be impossible to provide a comprehensive list, given the variety of possible impairments. An impairment is a “disability” under the ADA and, by extension, the Rehabilitation Act, only if it substantially limits one or more major life activities. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability; An impairment that is episodic or in

remission is a disability if it would substantially limit a major life activity when active; or, An individual must be substantially limited in the ability to perform an activity compared to an average person in the general population.

(1) The following factors must be considered in determining whether a person's impairment substantially limits a major life activity:

- Its nature and severity;
- How long it will last or is expected to last; and
- Its permanent, long-term, or expected impact.

(2) These factors must be considered because it is not generally the name of an impairment or a condition that determines whether a person qualifies for accommodation. Rather, it is the effect of an impairment or condition on the life of a particular person. Some impairments, such as blindness and deafness, are by their nature substantially limiting. But many other impairments may be disabling for some individuals, but not for others, depending on the impact on their life activities. Whether an asserted impairment constitutes a disability is a determination that must be made on an individualized, case-by-case basis.

ii. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as: medication, medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics, including limbs and devices; hearing aid(s) and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; learned behavioral or adaptive neurological modifications; or psychotherapy, behavioral therapy, or physical therapy. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

b. Determining When Medical Information is Required.

i. The accommodation request shall be considered immediately, without the need for further medical documentation, if the individual has an obvious disability or previously documented medical condition that qualifies her/him as an individual with a disability and the accommodation request is related to the known disability. For example, it may not be necessary for an employee who uses a wheelchair to submit medical information for the reasonable accommodation of raising an office desk or adjusting other furniture in the workspace. Likewise, medical information would not be required from a deaf applicant to have sign language interpreting services provided during an interview.

ii. If the individual does not have an obvious disability or previously documented medical condition that qualifies her/him as an individual with a disability, s/he may be required to provide sufficient and reasonable documentation of her/his medical condition to the RAC, who will determine, in consultation with the Public Health Service Medical Officer, as necessary, whether the requestor is an individual with a disability. The RAC will request

relevant supplemental medical information if: (1) the information submitted does not clearly explain the nature of the disability or need for reasonable accommodation; or (2) it does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or enjoy benefits and privileges of the workplace. In the case of an applicant, relevant supplemental medical information may be requested to determine the nature of the disability or how the accommodation will assist with the application process.

iii. The GINA of 2008 prohibits the FLRA from requesting, requiring, or purchasing genetic information of an individual or family member of the individual, except as specifically allowed by the GINA. To comply with the GINA, the FLRA will not seek any genetic information about individuals or their family members and requests that individuals not provide any genetic information when responding to requests for medical information.

iv. Not all information need be medical, as the appropriate information may be received from a social worker or vocational rehabilitation counselor. The documentation received must be sufficient for the RAC to determine whether the requestor is an individual with a disability. In order for appropriate and useful information to be obtained, all requests should describe the nature of the individual's job, the essential functions, and any other relevant information. The RAC and the decision-maker shall consult with the Public Health Service Medical Officer, when necessary, regarding the interpretation of medical documentation.

v. If, after a reasonable period of time, there is still not sufficient information to demonstrate that the individual has a disability and needs a reasonable accommodation, the RAC may request that a physician examine the individual, at the FLRA's expense. The GINA's general prohibition on the acquisition of genetic information, including family medical history, would apply to such an examination. A decision to undergo an examination is voluntary on the part of the individual. The physician will advise the decision-maker of the individual's relevant medical condition and any additional relevant information about the individual's functional limitations. The failure to provide appropriate documentation or to cooperate in the FLRA's efforts to obtain such documentation can result in a denial of the reasonable accommodation.

6. Confidentiality of Medical Information.

a. Under the Rehabilitation Act, medical information obtained in connection with the reasonable-accommodation process must be kept confidential. Thus, all medical information, including information about functional limitations and reasonable-accommodation needs, that the FLRA obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's Official Personnel Folder (OPF). Medical documents shall be sealed, marked as "Confidential Medical Information," and maintained in secure storage by the RAC.

b. Under the GINA, the FLRA must maintain the confidentiality of any genetic information that it lawfully obtains about an individual or an individual's family member by keeping that information in a file separate from the individual's OPF. But the FLRA may maintain the genetic information in the same file in which it maintains other confidential medical

information about the individual. If the FLRA receives genetic information orally, it need not reduce that information to writing, but it may not disclose that information unless permitted to under the GINA.

c. Any FLRA employee, including Alternative Dispute Resolution (ADR) participants described in Section 11(d) below, who obtains or receives such information is strictly bound by these confidentiality requirements. Confidentiality applies to all aspects of the reasonable-accommodation process. The HR Division is responsible for maintaining custody of all medical records obtained or created during the processing of a request for reasonable accommodation and will forward all requests for disclosure of the records to the Executive Director for response. All medical records will be maintained in accordance with the Privacy Act, and information regarding these records, or any aspect of the process, may be disclosed only as follows:

i. Supervisors and managers who need to know may be told about the determination of eligibility as an individual with a disability, the necessary restrictions on the work or duties of the employee, and about any recommended accommodations. However, medical information will only be disclosed if strictly necessary.

ii. First aid and safety personnel may be provided specific medical information, when appropriate, if the disability might require emergency treatment.

iii. Government officials may be provided information necessary to investigate the FLRA's compliance with the Rehabilitation Act.

iv. Workers' compensation offices or insurance carriers may receive medical information in certain circumstances, in accordance with EEOC regulations.

v. A U.S. Public Health Service Medical Officer may receive medical information when the FLRA is consulting with her/him regarding the interpretation of medical documents.

d. Whenever information is disclosed, the individual disclosing the information will inform the recipient of the confidentiality requirements, as well as about the requirement to comply with applicable provisions of the Privacy Act. If there is a doubt as to whether to release such information, individuals must contact and obtain guidance from the RAC and the Executive Director before releasing such information. The violation of confidentiality requirements of reasonable-accommodation-medical information is a serious matter and may be grounds for disciplinary or adverse action.

7. Aggregate Information Tracking.

a. HR will maintain aggregate records, without individual identifiers, including records of reasonable-accommodation activity, as required by 29 C.F.R. § 1614.203(d)(8)(i)-(iv) in order to determine whether the FLRA is complying with the nondiscrimination and affirmative action requirements imposed under Section 501 of the

Rehabilitation Act. Some or all of said records may be included in the FLRA's annual report to the EEOC, and/or made available to the Commission upon request. The aggregate records regarding reasonable accommodation will include the following:

- i. The number and types of reasonable accommodations that have been requested, both granted and denied;
- ii. The specific reasonable accommodation requested, if any;
- iii. The jobs (occupational series, grade level, and agency component) for which reasonable accommodations have been requested;
- iv. The types of reasonable accommodations that have been requested for each of those jobs;
- v. The number and types of reasonable accommodations for each job, by agency component, that have been approved, and that have been denied;
- vi. 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;
- vii. The reasons for denial of requests for reasonable accommodation;
- viii. The amount of time taken to process each request for reasonable accommodation; and
- ix. The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.
- x. The identity of the deciding official for each reasonable accommodation.

8. Determining Agency Undue Hardship.

a. There is no duty to provide reasonable accommodation if the accommodation poses an undue hardship on the FLRA. A determination that a particular accommodation would impose an undue hardship must be based on a case-by-case analysis of current circumstances that shows that a particular accommodation would: cause significant difficulty or expense; be unduly extensive, substantial, or disruptive; or fundamentally alter the nature of FLRA operations. A claim of undue hardship based on fellow employees' fears or prejudices toward the individual's disability is impermissible. Nor can undue hardship be based on the fact that providing a reasonable accommodation might have a negative impact on the morale of other employees. However, undue hardship may be shown where an accommodation would be unduly disruptive to other employees' ability to work. The balance between an

accommodation that is reasonable and an accommodation that would cause an undue hardship is usually dependent upon the resources available to the FLRA.

- b. Factors used to make an assessment of undue hardship include:
 - i. The type of FLRA operations, including the composition and structure of the workforce;
 - ii. The nature and net cost of the accommodation needed;
 - iii. The impact of the accommodation on the ability of other employees to perform their duties; and
 - iv. The impact on the FLRA's ability to conduct business.
- c. Determining that a particular accommodation would result in undue hardship does not end the FLRA's obligation to provide accommodation. In this situation, it is necessary to determine whether other effective accommodations exist that could be provided and would not result in undue hardship.

9. Time frames for Providing or Denying Reasonable Accommodation.

a. Requests for reasonable accommodation must be processed and provided, where appropriate, in as short a time frame as reasonably possible. A request, whether oral or written, and whether explicit or implicit, triggers the FLRA's time limits for processing **and** providing or denying an accommodation. Absent extenuating circumstances (Sub-Section 10 of this section below), the maximum time limits for providing or denying reasonable accommodation are set out below. Notwithstanding the maximum time limits, some accommodations can be provided in less time and failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act.

i. For Applicant Request. Normally, no more than 30 days from the date of receiving the request for accommodation, if the request relates to an applicant's participation in the hiring process, whether or not medical information is required.

ii. For Employee Requests.

(1) Normally, no more than 30 days from the date of receiving the request for accommodation, when the request does not require medical documentation and does not involve extenuating circumstances.

(2) Normally, no more than 35 days from the date of receiving the request for accommodation, when the request requires medical documentation.

(3) Normally, no more than 45 days from the date of receiving a request for accommodation that requires considering reassignment as a possible accommodation (see Section D, Sub-section 1(i)).

iii. Expedited Requests. In certain circumstances, a request for reasonable accommodation requires expedited review and decision in a time frame that is shorter than the above time frames. This includes where a reasonable accommodation is needed to enable an applicant to be considered for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, 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 decision-maker, the RAC, and the HR Director need to make a decision as quickly as possible and, if appropriate, provide a reasonable accommodation. Expedited processing would also be appropriate to enable an employee to attend a meeting scheduled to occur in the near future or when the employee is given short notice, such as an employee needing a sign language interpreter for a meeting scheduled to take place in 3 days. Other requests may also be appropriate for expedited processing.

10. **Extenuating Circumstances.**

a. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. The following are examples of extenuating circumstances:

- i. There is an outstanding initial or follow-up request for medical information.
- ii. The purchasing of equipment takes longer than desired.
- iii. An accommodation involves the removal of architectural barriers.

b. When extenuating circumstances are present, the decision-maker must notify the individual of the circumstance and the approximate date on which a decision, or provision of the reasonable accommodation is expected. In some situations, the decision-maker may provide temporary accommodation measures during this extended period (see Sub-Section 12 of this section).

11. **Determination on Requests for Reasonable Accommodation.**

a. Approvals. As soon as a decision to provide a reasonable accommodation is made, the decision-maker shall complete the appropriate part in the Reasonable Accommodation Request and Record form detailing the specific accommodation(s) and the time frame for effecting the accommodation(s). If the accommodation cannot be provided immediately, the decision-maker must inform the requestor of the projected timeframe for

providing the accommodation. The original form shall be provided to the requestor and copies retained by the decision-maker and the RAC.

b. Delays. When there is a delay in either processing a request for or providing a reasonable accommodation, the agency must notify the requesting individual of the reason for the delay, including any extenuating circumstances that justify the delay.

c. Denials. As soon as a decision to deny a request for reasonable accommodation is made, the decision-maker shall complete the appropriate part in the Reasonable Accommodation Request and Record form detailing the specific reasons for the denial, for example, why the accommodation would not be effective or why it would result in undue hardship. The completed form, and in an accessible format when requested, will be provided to the requestor at the time of the denial serving as written notice of the denial pursuant to 29 C.F.R. § 1614.203(d)(i)(V). When a specific requested accommodation was denied, but an offer of a different one in its place is provided, the decision-maker will explain both the reasons for the denial of the requested accommodation and the reasons why s/he believes that the offered accommodation will be effective.

d. The Reasonable Accommodation Request and Record form will also contain information regarding the requestor's rights in connection with the denial, including the availability of the alternative dispute resolution (ADR) and reconsideration processes within the FLRA, as well as the right to file an EEO complaint and the right to invoke other statutory processes, as appropriate. A request for ADR is not a request for reconsideration, and a request for reconsideration is not a request for ADR. But both processes may be requested simultaneously. And the use of the ADR and/or reconsideration process does not toll the time limit for filing an EEO complaint or invoking other statutory processes. The original form shall be provided to the requestor and copies retained by the decision-maker and the RAC.

e. Alternative Dispute Resolution (ADR) for Reasonable Accommodation Requests. An up-to-date roster of ADR-trained specialists consisting of FLRA employees will be made available to assist with requests for reasonable accommodation as necessary (so as to avoid conflicts of interest associated with other agency ADR processes). The roster will include employees in the Authority Headquarters, the FLRA's Regional Offices, and appropriate employees in the Office of Administrative Law Judges and the Federal Service Impasses Panel. If the requestor wishes to participate in ADR, s/he must submit a written request to the decision-maker within 5 days of receipt of the denial notice. Within 5 days thereafter, a specialist from the roster (outside the agency component in which the requestor works) will be requested to attempt resolution of the request for reasonable accommodation using ADR techniques. All reasonable efforts will be made to complete the ADR process within 30 days after the initial request for ADR. All ADR participants are bound by the confidentiality requirements as set forth in Section 6 above and under Section 501 of the Rehabilitation Act of 1973.

f. Request for Reconsideration within the FLRA.

i. If the requestor wishes reconsideration, s/he must submit a written request to the decision-maker within 5 days of receipt of the denial notice. The request may

present additional information in support of her/his request. The decision-maker will issue their decision normally within 5 days on the Reasonable Accommodation Request and Record form.

ii. If the decision-maker does not reverse the decision, the requestor may submit a written request for reconsideration to the Executive Director within 5 days of receipt of the decision-maker's denial of reconsideration. The Executive Director will issue her/his decision normally within 10 days on the Reasonable Accommodation Request and Record form. If the Executive Director acted as the decision-maker for the initial denial, then s/he will designate another senior-level official who is not under her/his authority to render the final agency decision on reconsideration.

g. EEO and other Statutory Claims. The reconsideration process outlined above is in addition to statutory protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Thus, employees may exercise any statutory rights to challenge the denial of a requested accommodation regardless of whether they have sought reconsideration. Pursuant to 29 C.F.R. § 1614.106, employees may challenge the denial of a requested accommodation through the EEO-complaint process, which is explained in FLRA Instruction 3700.1B (Appendix C). Denials of requested accommodations **also** are appealable to the Merit Systems Protection Board (MSPB), **but** only when they arise in connection with an action that is otherwise appealable to the MSPB.

i. The requirements governing the initiation of statutory claims, including time frames for filing such claims, remain unchanged.

(1) For an EEO complaint, the requestor must contact an EEO counselor within 45 calendar days from the date of receipt of the written notice of denial regardless of whether or not the requestor participates in an informal dispute resolution process or the right to file a complaint will be lost pursuant to 29 C.F.R. § 1614.105; and

(2) For an MSPB appeal, the requestor must file an appeal with the MSPB within 30 days of an appealable adverse action as detailed in 5 C.F.R. § 1201.3.

h. Re-evaluation of Existing Accommodation.

i. The re-evaluation process is intended to ensure that a previously granted accommodation is effective, remains appropriate, and is not causing an undue burden.

ii. An employee previously granted a reasonable accommodation or a manager/supervisor within the employee's chain of command may request a re-evaluation of an existing accommodation at any time. The RAC may initiate a re-evaluation of an existing accommodation at any time and without the consent of the employee being accommodated.

iii. The RAC is responsible for conducting re-evaluations of granted accommodations. Re-evaluations, whether initiated by the employee, the RAC, or another FLRA official, will follow the policies and procedures set forth within this Instruction for

requesting reasonable accommodation. Before a re-evaluation is conducted, the employee will be notified, in writing, of the planned re-evaluation.

iv. Re-evaluation of an existing accommodation will not be initiated as a form of disciplinary action, retaliation, or reprisal.

v. An employee or applicant may decline to accept an accommodation that is offered by the FLRA. If this occurs, then the manager, supervisor, or other FLRA official should document the declination and provide a copy to the RAC.

12. Temporary (Interim) Accommodation Measures.

a. If there is a delay in providing an accommodation that has been approved, or when all the facts and circumstances known to the agency make it reasonably likely that an individual will be entitled to a reasonable accommodation, but the accommodation cannot be provided immediately, the decision-maker must investigate whether or not temporary measures can be taken to assist the employee in performing all or some of the essential functions of his or her job without imposing undue hardship on the agency. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation on a temporary basis. For example, there may be a delay in receiving adaptive equipment for an employee with a vision disability. During the delay, the supervisor might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.

b. If a delay is attributable to the need to obtain or evaluate medical documentation, and the decision-maker has not yet determined that the individual is entitled to an accommodation, an accommodation may also be provided on a temporary basis. In such a case, the decision-maker will notify the individual on the Reasonable Accommodation Request and Record form that the accommodation is being provided on a temporary basis pending a decision on the accommodation request. Decision-makers who approve such temporary measures are responsible for ensuring that they do not take the place of a permanent accommodation, and that all necessary steps to secure the permanent accommodation are being taken.

D. TYPES OF REASONABLE ACCOMMODATION

1. As each accommodation is determined on a case-by-case basis, decision-makers must consult with the RAC and other appropriate staff to ensure that an effective accommodation is adopted. This consultation includes arranging for the use of agency resources to provide approved accommodations, as required by 29 C.F.R. § 1614.203(d)(3)(ii)(B). The types of accommodations detailed below are not exhaustive; instead, they illustrate the broad spectrum of appropriate accommodations that may be provided to an employee or applicant.

a. *Modifications of Worksite.* Facilities should be made readily accessible. Modifications may include, but are not limited to, arranging files or shelves for accessibility;

raising or lowering equipment and work surfaces to provide suitable working heights; installing special holding devices on seats, desks, or machines; and using Braille labels or other tactile cues for identification purposes.

b. *Assistive Devices.* In determining whether the purchase of equipment and assistive devices should be authorized, consideration should be given to whether the device will enable the person with a disability to perform job-related tasks that s/he would otherwise be unable to carry out, and whether the major benefit would be an increase in the quantity, quality, or efficiency of the employee's work. Examples of assistive devices include a teletypewriter (TTY) or telephone amplifier to assist persons with hearing impairments and large-type computer terminals and Braille printers to assist persons with vision impairments. But the FLRA is not required to provide as reasonable accommodations personal-use items – such as prosthetic limbs, wheelchairs, eyeglasses, hearing aids, or similar devices – that are needed in accomplishing daily activities both on and off the job.

c. *Readers, Interpreters, and Personal Assistants.* Under the provisions of 5 U.S.C. § 3102, the FLRA may employ, with or without pay, readers, interpreters, and personal assistants, or assign such assistance as may be necessary to enable the employee with a disability to perform her/his job, either at the regular duty station or while traveling on official business.

d. *Flexible Leave Policies.* Decision-makers have authority to adopt flexible leave policies, subject to appropriate laws and regulations, to accommodate employees with disabilities.

e. *Modified or Part-Time Work Schedule.* Modified work schedules requiring change in arrival or departure times, periodic breaks, and part-time schedules are forms of accommodations. If a modified schedule is needed because of an employee's disability, and there is no other effective accommodation, a change in work schedule may be an effective accommodation unless it would impose an undue hardship.

f. *Restructuring Jobs.* Job restructuring, involving assigning non-essential job functions that the employee cannot perform to other employees, or changing when or how a function, essential or non-essential, is performed, may be an appropriate accommodation if an employee is unable to perform job functions based on disability-related limitations.

g. *Accommodations for Meetings, Conferences, Training, and Seminars.* The supervisor of an employee with a disability will arrange reasonable-accommodation needs for approved work-related events, whether held at the FLRA or at other locations, including the arrangement of transportation to and from the event site.

h. *Work at Home.* Employees may work at home to accommodate a disability, provided that the duties may be performed away from the principal office without creating an undue burden on the organization, and the employee has the necessary resources to accomplish the work.

i. *Reassignment.* Reassignment to a vacant position is a form of reasonable accommodation that may be provided, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position, with or without reasonable accommodation. Reassignment is a “last-resort” accommodation that must be considered if there are no other reasonable accommodation(s) that would enable the employee to perform the essential functions of the current job, or if all other possible accommodation(s) would impose an undue hardship on the organization. When considering reassignment as a reasonable accommodation, supervisors and other relevant agency employees should first contact HR in order to coordinate the search for available vacancies by utilizing the FLRA’s intranet, usajobs.gov, and knowledge of future vacancies. The following criteria apply to reassignments:

i. The employee must be qualified - not necessarily the best qualified individual - for the vacant position. A position is considered vacant even if the FLRA has posted a notice or announcement seeking applicants for that position.

ii. If there is no vacancy at a comparable grade for which the employee is qualified, then the search should turn to lower-grade positions.

iii. Absent a position at the same grade or status, reassignment to the highest grade below the employee’s current position is required. Further efforts to accommodate are not required if these efforts are unsuccessful.

E. **LIMITATIONS ON THE OBLIGATION TO ACCOMMODATE.**

1. The **obligation to accommodate employees or applicants** has limits. The law does not require:

- a. Changes or modifications that would cause an undue hardship;
- b. Accommodations for persons who are not qualified for the position in question;
- c. Elimination of legitimate selection criteria or essential job functions;
- d. Lowering standards - whether qualitative or quantitative - that are applied uniformly to employees with and without disabilities. However, the FLRA acknowledges that one of the principle purposes of reasonable accommodation is to enable an employee with a disability to perform the functions of her/his job to include meeting the quantitative and qualitative performance standards;
- e. Creating a new position as an accommodation, although the FLRA must consider reassignment to a vacant position that the individual is qualified to perform;
- f. Excusing a violation of uniformly applied conduct rules; or
- g. Monitoring medication because it is not a reasonable accommodation.

The FLRA has no obligation to monitor medication because doing so does not remove a workplace barrier. Similarly, the FLRA has no responsibility to monitor an employee's medical treatment or ensure that s/he is receiving appropriate treatment because such treatment does not involve modifying workplace barriers. However, accommodations such as flexible leave policies or modified work schedules that enable an employee to take medications or obtain medical treatment relating to a disability may be appropriate. Accommodations may also be appropriate to address side effects caused by medication that an employee must take because of a disability and symptoms or related medical conditions resulting from a disability.

h. Providing an employee with a new supervisor. The law may, however, require that supervisory methods be altered as a form of reasonable accommodation.

F. REASONABLE ACCOMMODATION FOR ALCHOLISM AND DRUG ABUSE

1. Under a provision set forth in the ADA that also applies under the Rehabilitation Act, "a qualified individual with a disability" does not include an individual who is currently engaging in illegal use of drugs. Thus, such individuals are not entitled to reasonable accommodation. By contrast, individuals who are no longer using drugs illegally and who (1) are participating in a rehabilitation program or (2) have successfully completed a rehabilitation program are protected under the ADA and, by extension, the Rehabilitation Act. An example of reasonable accommodations that may be granted to individuals who have been rehabilitated or are undergoing rehabilitation would be measures that permit them to engage in self-help programs.

2. It is the policy of the FLRA that its workplace be free from the illegal use, possession, or distribution of controlled substances by its employees.

3. A person who is an alcoholic may be a "qualified individual with a disability" under the ADA and the Rehabilitation Act, and may be entitled to reasonable accommodation.

G. PROCEDURE FOR PERSONAL ASSISTANCE SERVICES (PAS). PAS allow employees with targeted disabilities to fully participate in the workplace by providing assistance with activities of daily living, such as eating, drinking, using the restroom, and putting on and taking off clothing. The Procedures for providing Personal Assistance Services (PAS) are accessible on the FLRA's website and are included in Appendix D for reference.

H. FEDERAL INFORMATION TECHNOLOGY ACCESSIBILITY INITIATIVE. In 1998 Congress amended the Rehabilitation Act of 1973 and strengthened the provisions covering access to information in the Federal sector for people with disabilities. As amended, Section 508 of the Rehabilitation Act requires that when Federal Agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology allows Federal employees with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by Federal employees who are not individuals with disabilities, unless an undue burden would be imposed on the agency. It also requires access for individuals with disabilities who are members of the public seeking information and services from a Federal Agency.

I. RECORDS MANAGEMENT, RETENTION, AND DISPOSAL

1. **Records** related to a particular individual. Individual accommodation request shall be kept until the employee separates from the FLRA. These records are confidential. They will be kept separate in a reasonable accommodation file and not in the employee's OPF.

2. **Aggregate records.** The RAC will maintain the aggregate records of reasonable accommodation activity as described in Sub-Section 1, above, for 3 years.

J. PROGRAM EVALUATION. The RAC or HR Director will prepare an annual report in January for the Executive Director on reasonable accommodation activity for the preceding year, using the aggregate records described in Section I, Sub-Section 2, above. The information contained in the report will be used solely for program review and evaluation purposes.

K. ADDITIONAL INFORMATION. Additional information regarding reasonable accommodation, including Commission guidance and technical assistance documents may be accessed on the U.S. Equal Employment Opportunity Commission's website at eoc.gov.

This policy is effective on May 13, 2019.

A handwritten signature in black ink, appearing to read "William Tosick". The signature is written in a cursive style with a large loop at the end.

William Tosick
Executive Director

Appendix A

**Federal Labor Relations Authority
REASONABLE ACCOMMODATION REQUEST AND RECORD**

PART I – GENERAL INFORMATION

Applicant/Employee Name (<i>Print</i>):	Position/Series/Grade:
Employee's Office:	Date of Request:
Name of Individual Initiating the Request if Other Than Applicant or Employee (<i>Print</i>):	Relationship of Individual Initiating the Request to the Applicant or Employee:
Type(s) of Accommodation Requested (<i>Be as specific as possible, e.g., adaptive equipment, reader, interpreter</i>):	

Basis for Request (*When necessary, medical or other documentation in support of the accommodation may be submitted directly to the Reasonable Accommodation Coordinator. But, in accordance with the Genetic Information Nondiscrimination Act of 2008, do not provide "genetic information" as that term is defined in FLRA Instruction No. 3890.2– Reasonable Accommodation for Individuals with Disabilities.*)

If accommodation is time sensitive, please explain.

Signature of Applicant/Employee or Other Individual Completing Form

Date of Submission

ACKNOWLEDGEMENT OF RECEIPT OF ORAL OR WRITTEN REQUEST:

Name and Title of Decision-Maker (*Print*)

Signature of Decision-Maker

Date of Receipt

REASONABLE ACCOMMODATION REQUEST AND RECORD (continued)

PART II – DECISION-MAKER DETERMINATION (*Select one*)

- Request for reasonable accommodation approved in full. Describe the specific type(s) of accommodation(s) approved, means by which the accommodation(s) will be implemented, and the timeframe for implementation.
- Request for reasonable accommodation is approved in part. Describe the specific type(s) of accommodation(s) approved, means by which the accommodation(s) will be implemented, and the timeframe for implementation. Provide reason(s) why the other requested type(s) of accommodation(s) are not granted and identify alternative accommodations, if appropriate, and why they will be effective.
- A decision on reasonable accommodation is delayed. Specify the reason for the delay. Provide estimated timeframe for decision. Specify any temporary accommodation measures taken while the request is pending.
- Request for reasonable accommodation is denied. State the specific reason(s) why the requested accommodation(s) are ineffective or causes undue hardship.

Supporting Narrative (Required):

PART III – AVENUES OF REDRESS (*Information for applicant/employee whose request for reasonable accommodation has been denied*)

If you wish to request ADR of a denial, then you must submit a written request to the decision-maker within 5 days of receipt of the denial notice. Within 5 days, a specialist (from outside the component in which the requestor works) will be requested to attempt resolution of the request for reasonable accommodation using ADR techniques.

If you wish to request reconsideration of a denial (in part or in full) of your request for reasonable accommodation, then you may take the following steps:

1. Submit a written request to the decision-maker within 5 days of receipt of the denial notice. The request may present additional information in support of your request. The decision-maker will respond in writing to your request for reconsideration normally within 5 days.
2. If the decision-maker does not reverse her/his decision, then you may submit a written request for reconsideration to the Executive Director within 5 days of receipt of the decision-maker's denial of

REASONABLE ACCOMMODATION REQUEST AND RECORD (continued)

reconsideration. The Executive Director will issue her/his decision in writing, normally within 10 days of receipt of the request. If the Executive Director acted as the decision-maker for the initial denial, then s/he will designate another senior level official who is not under her/his authority to render the final agency decision on reconsideration.

A request for ADR is not a request for reconsideration, and a request for reconsideration is not a request for ADR. But both processes may be requested simultaneously.

Reconsideration procedures do not affect the time limits for initiating the following statutory claims:

1. For an EEO complaint, contact an EEO counselor within 45 days from the date of denial of reasonable accommodation;
2. Where the denial of a request results in an adverse action, initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action, as defined in 5 C.F.R. § 1201.3.

PART IV – ACKNOWLEDGEMENTS

Name and Title of Decision-Maker (*Print*)

Signature of Decision-Maker

Date

Signature of Applicant/Employee

Date

(The applicant/employee's signature acknowledges only the receipt of the form and does not void one's reconsideration, statutory, or collective-bargaining appeal rights).

REASONABLE ACCOMMODATION REQUEST AND RECORD (continued)

PART V – RECONSIDERATION DETERMINATION

(To be completed by the Decision-Maker and Executive Director or designee)

Decision-Maker's Determination (Specify reasons for sustaining the initial decision or changes to the initial decision and the basis for the decision).

Name and Title of Decision-Maker (Print)

Signature

Date

Second-Level Determination (Specify reasons for sustaining the Decision-Maker's determination or changes to the initial decision and the basis for the decision).

Name and Title of Official (Print)

Signature

Date

Signature of Applicant/Employee

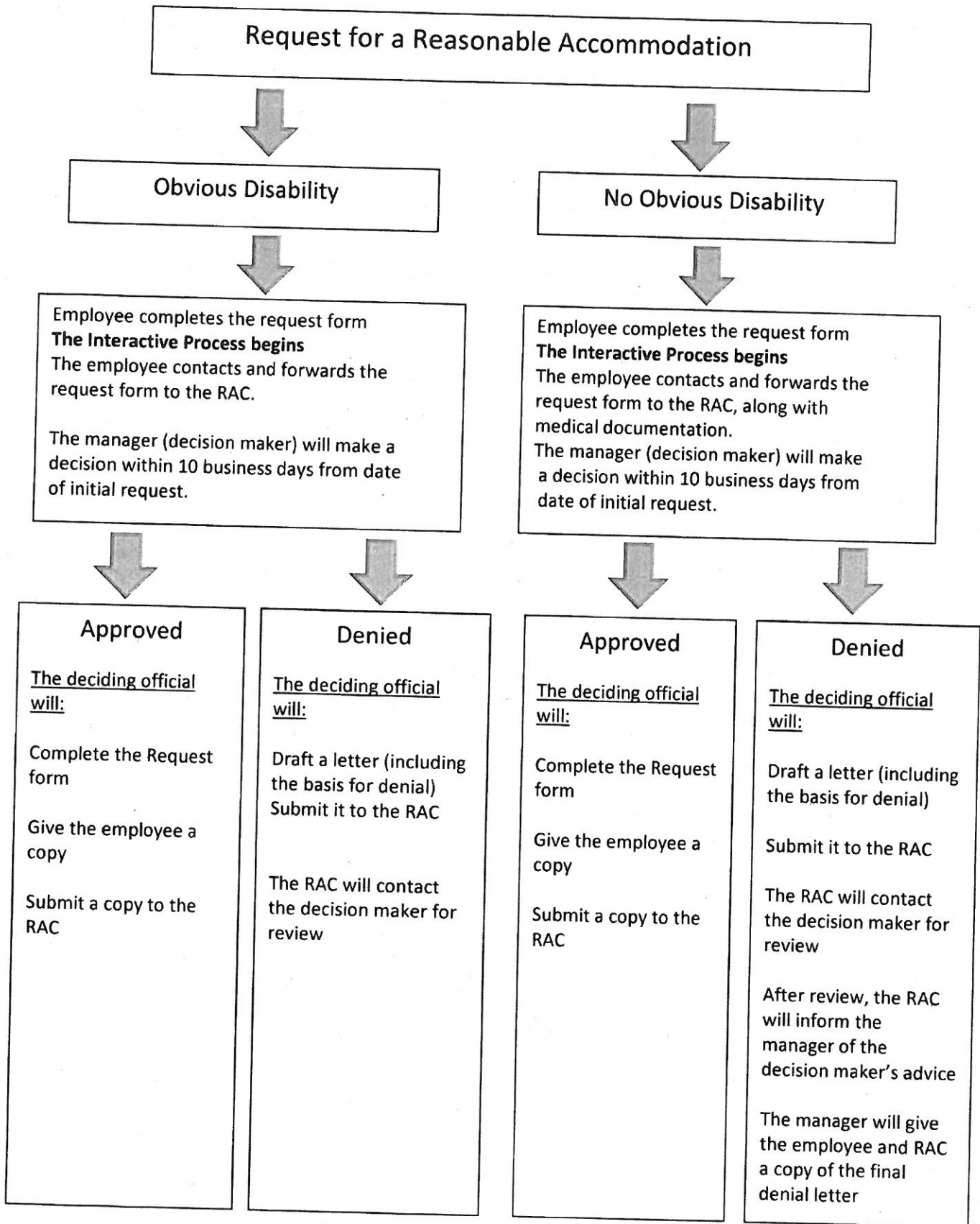
Date

(The signature of the applicant/employee acknowledges only the receipt of the form and does not void one's statutory or collective-bargaining-appeal rights).

cc: Reasonable Accommodation Coordinator

The Reasonable Accommodation Process

Appendix B





FLRA Policy No. 3701

EQUAL EMPLOYMENT OPPORTUNITY	Issue Date: 03/22/19
-------------------------------------	-----------------------------

A. GENERAL PROVISIONS

1. **Purpose.** This policy articulates the Federal Labor Relations Authority's (FLRA) dedication to promote and achieve equal opportunity in employment and personnel practices within the Agency without regard to race, color, religion, sex, national origin, age, disability, or genetic information.

2. **Cancellation.** This FLRA policy cancels and supersedes FLRA Instruction No. 3700.1B, Equal Employment Opportunity, dated June 27, 2001.

3. Definitions.

a. *Individual Complaint.* An individual complaint is a written complaint of discrimination filed by an employee, applicant for employment, those found to be employees for the purposes of Title VII, or former employee alleging that a specific act of discrimination or retaliation (reprisal) has taken place and has adversely affected the individual. (For procedure, see section C - Individual Complaint Procedures, below).

b. *Mixed Case.* A mixed case complaint is a complaint of employment discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information related to or stemming from an action that is appealable to the Merit Systems Protection Board (MSPB), such as a removal, demotion, suspension for more than 14 calendar days, reduction in force, denial of within-grade increase, or furlough for less than 30 calendar days. (See 29 C.F.R. § 1614.302, and procedures at section D – Mixed Cases, below).

c. *Class Complaint.* A class complaint is a written complaint filed on behalf of a class by the agent of the class alleging that an FLRA personnel management policy or practice discriminates against a class and the agent has been personally harmed by the policy or practice. A class complaint is appropriate where: (1) the class is so numerous that a consolidated complaint of the members of the class is impractical; (2) there are questions of fact common to the class; (3) the claims of the agent of the class are typical of those of the class; and (4) the agent or representative of the class will fairly and adequately protect the interests of the class. (See 29 C.F. R. § 1614.204(a)(2)).

i. *Class.* A group of FLRA employees, former FLRA employees, those found to be employees for the purposes of Title VII, and/or applicants for FLRA employment on whose behalf it is alleged that they have been, are being, or may be adversely affected by an FLRA personnel management policy or practice on the basis of their common race, color, religion, sex, national origin, age, disability, and/or genetic information.

ii. *Agent*. A class member who acts for the class during the processing of the class complaint.

d. *An Individual with Disability*. An individual who: (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. (See 29 C.F.R. § 1630.2(g)(1)(i)-(iii)). This term shall not include an individual who is currently engaging in the illegal use of drugs, when the FLRA acts on the basis of such use, but may include an individual who has successfully completed or is currently participating in a supervised rehabilitation program, or is erroneously regarded as engaging in such drug use. (29 C.F.R. § 1630.3(a)-(b)). See also FLRA Policy 3891 "Reasonable Accommodation Procedures for Individuals with Disabilities."

e. *Physical or Mental Impairment*. (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory (including speech organs), genitourinary, immune, circulatory, hemic and lymphatic, skin, and endocrine; or (2) any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (29 C.F.R. § 1630.2(h)(1)-(2)).

f. *Has a Record of Such an Impairment*. Means that an individual has a history of, or has been classified (or misclassified) as having, a mental or physical impairment that substantially limits one or more major life activities. (29 C.F.R. § 1630.2 (k)(1)).

g. *Is Regarded as Having Such an Impairment*. Except as provided in 29 C.F.R. § 1630.15(f), means that an individual is subjected to a prohibited action 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. Prohibited actions include but are not limited to refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment. (29 C.F.R. § 1630.2(i)(1)).

h. *Major Life Activities*. These activities include, but are not limited to:

i. Functions, such as caring for one's self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, working; and,

ii. 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 functions. (29 C.F.R. § 1630.2(i)(1)(i)-(ii)).

i. *Qualified Individual with Disability*. With respect to an individual with a disability, means that individual 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. (29 C.F.R. § 1630.2(m)).

j. *Civil Action.* A complaint filed by an employee, class agent, claimant, applicant for employment, or former employee in a Federal district court.

4. **References.**

- a. Executive Order 11478 of August 8, 1969, as amended;
- b. Public Law 88-352, Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000(e)-16);
- c. Public Law 93-112, The Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 791 and 794(a));
- d. Public Law 93-259, The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d));
- e. Public Law 93-259, Section 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 633(a));
- f. The Equal Employment Opportunity Commission (EEOC) Federal Sector Complaint Procedures (29 C. F. R. Part 1614);
- g. The EEOC Management Directive, MD-110, as revised (August 5, 2015);
and
- h. The Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. §§ 2000ff-2000ff-11)).

5. **Responsibilities.** The responsibility for assuring that equal opportunity is achieved within the FLRA rests with every employee. The following sets forth specific responsibilities for designated officials in discharging specific programmatic aspects of the FLRA EEO program.

a. **Chairman.** The Chairman of the FLRA has the overall responsibility for the FLRA EEO program and shall:

i. Provide personal leadership in establishing, maintaining and carrying out a continuing affirmative program designed to promote equal opportunity for all employees and all applicants for employment in every aspect of the FLRA's policies and practices;

ii. Provide sufficient resources to carry out a positive, innovative, and continuing EEO program; and

iii. Annually review the EEO program to ensure that its direction, capability, and results are consistent with the stated EEO goals of the Agency.

b. Director, EEO Program. The EEO Director is delegated the authority for managing the overall FLRA EEO Program and reports directly to the Chairman concerning all EEO matters, and shall:

i. Develop and implement operating guidelines and instructions for the FLRA EEO programs;

ii. Make written materials available to all FLRA employees and applicants concerning all established EEO programs and the administrative and judicial procedures available to them, and post the names and business telephone numbers of all EEO counselors at each FLRA location;

iii. Develop EEO reports, as required;

iv. Manage the EEO counseling process, and incorporate alternative dispute resolution (ADR) procedures wherever deemed appropriate, to attempt to resolve matters at the lowest possible level and the earliest possible stage, and to provide a workable process of investigations, dispute resolutions, hearings, as necessary, and final decisions;

v. Participate with the Affirmative Action Director and other public and private sector employees, groups, and organizations in cooperative action to improve employment opportunities for all groups;

vi. Evaluate periodically the sufficiency and responsiveness of the EEO Program and report findings with recommendations to the Chairman;

vii. Evaluate the effectiveness of the FLRA non-EEO programs and procedures, including general personnel management, the Selective Placement Program, the Upward Mobility Program, etc., for factors which may impede EEO progress, and recommend improvements;

viii. Collaborate with the Affirmative Action Director in developing solutions to barriers related to recruitment, training, employee utilization, and career advancement with other individuals within the Agency, including the communication of the FLRA EEO policy to all sources of job candidates and solicitation of recruitment assistance from those sources on a continuing basis, and the evaluation and training of managers and supervisors to ensure their understanding and implementation of this Policy;

ix. Ensure that the FLRA makes reasonable accommodation regarding the religious beliefs of all employees and applicants when such accommodations can be made without undue hardship on the FLRA;

x. When authorized by the Chairman, make the final decision on discrimination complaints, and order such improvements as considered necessary; and

xi. When not authorized to make the final decision for the Chairman, review the record of a complaint before the final decision is made, and make recommendations to the Chairman, as appropriate.

c. Director, Affirmative Action Program. The Director of the Human Resources Division (HRD) is delegated the authority to maintain a continuing affirmative action program to promote equal employment opportunity. The FLRA Affirmative Action Program Director shall report directly to the Chairman and develop and implement affirmative plans that:

- i. Communicate the Agency's EEO policy and program to all sources of job candidates;
- ii. Work with Agency managers to develop solutions to problems of recruitment, training, employee utilization, and career advancement with other individuals within the FLRA;
- iii. Train managers and supervisors to ensure their understanding and implementation of the EEO Affirmative Action Program;
- iv. Collect and maintain accurate employment information on the race, national origin, sex, and disabilities of its employees to use in studies and analyses which contribute to achieving the Agency's EEO objectives; and
- v. Periodically evaluate the efficacy of the Agency Affirmative Action Program and report findings and recommendations to the Chairman.

d. EEO Counselors. EEO counselors are selected by the EEO Director. They make informal inquiries and seek solutions to informal complaints. These duties and responsibilities are collateral duties which are performed in addition to a counselor's regular duties. EEO counselors shall receive a minimum of 32 hours of appropriate training prior to assuming their counseling responsibilities, and shall receive a minimum of 8 hours training annually.

e. EEO Investigators. EEO investigators, including contract investigators where appropriate, are selected by the EEO Director and are responsible for timely investigating formal complaints of discrimination submitted by employees, those deemed employees for purposes of Title VII, or applicants of the FLRA. EEO investigators shall receive a minimum of 32 hours of appropriate training prior to performing EEO complaint investigations, and shall receive a minimum of 8 hours training annually.

f. Managers and Supervisors. All managers and supervisors are responsible for promoting and implementing the EEO program in their organizational units, and shall:

- i. Stay informed of all EEO program policies and procedures;
- ii. Comply with FLRA EEO policy as set forth in this Policy;
- iii. Ensure that employees working as collateral-duty EEO Counselors are provided an adequate amount of duty time to carry out their counseling responsibilities in a timely and effective manner;
- iv. Provide all employees and applicants equal opportunity within the

merit system in employment, development, career advancement, and treatment in their areas of responsibility;

v. Consult with the FLRA Director of Human Resources and/or the EEO Director on personnel management decisions with EEO implications;

vi. Provide an atmosphere free from discrimination;

vii. Make reasonable accommodations as required by law; and

viii. Cooperate with EEO Counselors and/or EEO Investigators in carrying out their EEO responsibilities.

g. Employees. Employees shall:

i. Keep informed of all EEO program policies and procedures as required by their job description or performance plan;

ii. Cooperate with supervisors and managers in carrying out their responsibilities in the EEO Program;

iii. Comply with FLRA EEO policy as set forth in this Instruction;

iv. Provide non-discriminatory treatment to all individuals with whom they are in contact while in the performance of their official duties; and

v. Cooperate with EEO Counselors and/or EEO Investigators in carrying out their EEO responsibilities.

B. GENERAL PROVISIONS FOR PROCESSING COMPLAINTS

1. **Coverage.** This section covers individual and class complaints of employment discrimination and retaliation, prohibited by Title VII, as amended, made by employees, former employees, those deemed employees for the purposes of Title VII, and applicants who believe they have been discriminated against because of race, color, religion, sex, national origin, age, disability, genetic information, and/or complaints of retaliation (reprisal), as described below:

a. **Race, Color, Religion, and National Origin.** Allegations of discrimination filed by members of protected categories and allegations of failure to accommodate religious needs.

b. **Sex.** Allegations of sex discrimination, including sexual harassment, gender identity, sexual orientation, pregnancy, and sex-based wage claims, filed by either women or men.

c. **Age.** Allegations of age discrimination filed by persons who were at least 40 years of age when the action complained of took place. (See 29 C.F.R. § 1614.201).

d. **Disability.** Allegations of discrimination based on physical or mental impairment, including alleged failures to make reasonable accommodations. (See 29 C.F.R. § 1630.2).

e. **Genetic Information.** Allegations of discrimination based on genetic information including an individual's genetic tests, genetic tests of family members, and family medical history.

f. **Retaliation (reprisals).** Allegations of reprisal in connection with: (i) opposing an Agency act or practice believed to be discriminatory; (ii) participating in the EEO process. (See 29 C.F.R. § 1630.12(a)).

2. **Effect of Regulations.** This Policy is intended to supplement the procedures found in 29 C.F.R. Part 1614 and in EEOC MD-110. Employees are advised to consult these resources, as well as this Policy. In the event there is a conflict between the provisions of this Policy and the applicable regulations, the regulations will govern.

3. **Employee Rights.** All employees, those deemed to be employees for purposes of Title VII, former employees, and applicants for employment have a right to file a discrimination complaint. Employees involved in the discrimination complaint process, including complainants, class agents, and witnesses, have the right to use a reasonable amount of official time under the administrative complaint process, and the right to be free from coercion, interference, intimidation, or reprisal. Individuals will be notified of their rights at each stage of the complaint process. (See section C - Individual Complaint Procedures).

4. **Representatives.** At any stage in the preparation and presentation of complaints or administrative appeals from decisions on complaints, complainants have the right to be accompanied, represented, and advised by a representative of their own choosing, including another FLRA employee, provided the choice does not involve a conflict of interest or position (e.g., an EEO counselor cannot also represent employees processing discrimination complaints), does not conflict with the priority needs of the FLRA, and does not give rise to unreasonable costs to the Government. A complainant or class agent must promptly notify the EEO counselor or EEO Director in writing of the representative's identity. Any changes must also be reported in writing to one of them. The FLRA will designate its Agency representative. The Agency representative may not be an EEO staff member, the alleged-responsible management official, or, in the case of a class complaint, a member of the class.

5. **Time Extensions.** A time limit may be extended if a complainant, agent, or claimant shows that: a) he/she was not notified and was not otherwise aware of the time limit; b) he/she did not know or reasonably should not have known that the alleged discriminatory

action occurred; c) circumstances beyond his/her control prevented submission of the matter within the time limit; or d) for other reasons considered sufficient by the EEO Director. Time limits may also be reasonably extended for other reasons noted in the regulations. (See 29 C.F.R. §§ 1614.105(a)(2), 1614.105(e), 1614.105(f), and 1614.108(e)).

6. **Computation of Time.** Any time period specified in this chapter will be computed by counting as the first day the day following the event, such as the day after

receiving a notice. When the last day falls on a Saturday, Sunday, or Federal holiday, the time period will be extended to include the next business day. (See 29 C.F.R. § 1614.604).

C. **INDIVIDUAL COMPLAINT PROCEDURES**

1. **Pre-complaint Procedures.** An individual complainant who believes that he/she has been discriminated against must consult with an EEO counselor before filing a complaint in order to pursue an informal resolution of the matter. The counselor may not reveal the complainant's identity during the informal counseling process unless so authorized by the complainant. The counselor can be contacted through the EEO Director or by notifying one of the EEO counselors listed in the FLRA telephone directory. The counselor must be contacted within 45 calendar days of the alleged discriminatory action, the effective date of an alleged personnel action, or the date that complainant knew, or reasonably should have known, of the discriminatory action. In an attempt to resolve the issue on an informal basis, the counselor shall advise the complainant, in writing, at the initial counseling session, of his or her rights and responsibilities including:

- a. The right to pursue only those matters raised in the pre-complaint process in a subsequent complaint;
- b. The right to a hearing or an immediate Agency decision after an investigation;
- c. The right to elect among procedures for pursuing allegations of discrimination (see 29 C.F.R. §§1614.106, 1614.201, 1614.301, and 1614.302);
- d. The obligation to mitigate damages;
- e. The obligation to keep the FLRA and EEOC informed of his or her current address; and
- f. The obligation to serve copies of an appeal on the FLRA.
- g. The counselor shall also inform the complainant of administrative and judicial time limits. In addition, the counselor shall advise the complainant that, where the FLRA has deemed ADR appropriate, the complainant may choose either the ADR program or counseling. (See 29 C.F.R. § 1614.105). The FLRA ADR program is set forth and described in an Addendum to this Policy.

2. **Time Limits.** The counselor shall conduct the final interview within 30 calendar days of the date on which the complainant brought the matter to the counselor's attention. The 30-day counseling period may be extended for:

- a. Up to an additional 60 calendar days if the complainant and the FLRA agree to such an extension in writing; or
- b. 90 calendar days if the FLRA and the complainant agree to participate in an ADR procedure.

c. If the matter is not resolved to the satisfaction of the complainant, the counselor shall notify the complainant, in writing, of the right to file a complaint of discrimination up to 15 calendar days after complainant's receipt of the notice. The counselor shall also inform the complainant of the appropriate official with whom to file a complaint and of the complainant's duty to promptly inform the Agency if the complainant retains a representative. (See 29 C.F.R. § 1614.105(d)).

d. When advised that a complaint has been filed by an aggrieved person, the counselor shall submit a written report within 15 calendar days to the EEO Director and to the aggrieved person concerning the issues discussed and actions taken during counseling.

3. **Manner of Filing.** A complaint must:

a. Be signed by complainant, or complainant's representative, and submitted to the Chairman;

b. Describe the specific FLRA personnel management policy or practice giving rise to the complaint or the action that allegedly harmed the complainant; and

c. Be filed within 15 calendar days of the date of receipt of the notice referred to in section C.2. – Time Limits, above. The date of filing is the postmark date rather than when the complaint is received by the designated receiving official.

4. **Amendment of Complaints.** A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like those raised in the complaint. After requesting a hearing, a complaint may be amended only on motion to the administrative judge. (See 29 C.F.R. § 1614.106(d)).

5. **Transfer of Received Complaints.** Upon receipt of the complaint, the receiving official shall transmit it to the EEO Director, who shall acknowledge its receipt in accordance with paragraph C.6. – Acknowledgement of Complaint, below.

6. **Acknowledgment of Complaint.** The EEO Director shall acknowledge receipt of a complaint in writing, and shall inform the complainant of the date on which the complaint was filed. Such acknowledgment shall also advise the complainant that:

a. The complainant has the right to appeal the final decision or dismissal of all, or (subject to paragraph 7.c. – Where the FLRA determines..., below) a portion of, the complaint; and the FLRA is required to conduct a complete and fair investigation of the complaint within 180 calendar days of the filing of the complaint, unless the parties agree in writing to extend the period.

7. **Dismissal of a Complaint.**

a. Prior to a request for a hearing, the Chairman, or designee, shall dismiss an entire complaint for the reasons set forth in 29 C.F.R. § 1614.107, including where:

i. The complainant has failed to contact an EEO counselor, or has

raised a matter that has not been presented to the EEO counselor, and is unrelated to issues presented;

- (a)(2);
- ii. The complaint is not timely filed (see 29 C.F.R. § 1614.107
 - iii. The complaint lacks specificity and detail;
 - iv. The complaint involves matters not subject to FLRA control;
 - v. The complainant fails to state a claim covered in this Policy (see 29 C.F.R. § 1614.107(a)(1));
 - vi. The claim is the same as one pending or previously decided by the FLRA or the EEOC (see 29 C.F.R. § 1614.107(a)(1));
 - vii. The claim relates to an issue that is moot, or an action that is in a preliminary stage (see 29 C.F.R. § 1614.107(a)(5));
 - viii. The complainant cannot be located, provided that reasonable efforts have been made to locate the complainant (see 29 C.F.R. § 1614.107(a)(6));
 - ix. The complainant has failed to: (a) proceed with the complaint without undue delay; or (b) respond to the Agency's request to provide relevant information, or otherwise proceed with the complaint (see 29 C.F.R. § 1614.107(a) (7));
 - x. The complainant has filed a civil action in a Federal district court (see 29 C.F.R. § 1614.107(a)(3));
 - xi. The complaint alleges dissatisfaction with the processing of a previously filed complaint (see 29 C.F.R. § 1614.107(a)(8)); and/or
 - xii. The complaint is part of a clear pattern of misuse of the EEO process. A clear pattern of misuse requires evidence of multiple complaint filings and (1) allegations that are similar or identical, lack specificity or involve matters previously resolved; or (2) evidence of circumventing other administrative processes, retaliating against the FLRA in-house administrative processes or overburdening the EEO complaint system. (See 29 C.F.R. § 1614.107(a)(9)).

b. If the Agency determines that the complaint does not meet the requirements of EEOC regulations, the Agency will give the complainant, and representative, if any, a written notice of proposed dismissal of the complaint, and an opportunity to respond, or to provide a specific explanation and/or relevant information in writing within 15 calendar days. If such an explanation or information is not received within the 15 calendar days, the complaint will be dismissed. The Agency will notify the complainant and his/her representative of its decision to dismiss the complaint. The content of the final decision is discussed in section 11 – Final Action by the FLRA, below. Allegations may be withdrawn, in writing, at any time.

c. Where the Agency determines that some, but not all, of the claims in a complaint should be dismissed, the Agency shall notify the complainant, and representative, if any, in writing of its determination, the rationale for that determination, and that those claims will not be investigated. A copy of this notice shall be placed in the investigative file. The determination is reviewable by an administrative judge if a hearing is requested on the remainder of the complaint, but it is not appealable until final action is taken on the remainder of the complaint.

8. Investigation of Allegations.

a. The EEO Director shall provide for an independent, impartial, and prompt investigation of a complaint. An investigation is conducted in accordance with 29 C.F.R. § 1614.108 and shall include a complete and impartial review of:

- i. The circumstances under which the alleged discrimination occurred;
- ii. The treatment of members of the complainant's group as compared with the treatment of other employees in the same organization; and
- iii. Any work-related policies and practices that may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant.

b. Time Limits. The Agency will conduct a complete and fair investigation within 180 calendar days of the filing date of the complaint (29 C.F.R. § 1614.108(e)) or, where the complaint has been amended, within the earlier of 180 days after the last amendment of the complaint or 360 days after the original complaint was filed (29 C.F.R. § 1614.108(f)), unless otherwise directed when an appeal from dismissal is involved. An extension of time is authorized for not more than:

- i. 90 calendar days if the complainant and Agency agree in writing; and/or
- ii. 30 calendar days if the complaint file must be sanitized.

c. Authority of the Investigator. An investigator is authorized to:

- i. Investigate all aspects of the complaint;
- ii. Require all Agency employees to cooperate in the conduct of investigations;
- iii. Obtain sworn statements from Agency employees who have knowledge of the events surrounding the complaint;
- iv. Obtain certified copies of relevant documents and information about a person's membership, or non-membership, in a complainant's group; and/or

v. Where appropriate, when a party fails to provide requested information: (1) draw an adverse inference against the uncooperative party; (2) establish the matter to which the requested information relates in favor of the opposing party; (3) exclude other evidence submitted by the uncooperative party; (4) issue, in whole or in part, a decision in favor of the party opposing the uncooperative party; or (5) take other appropriate action. (See 29 C.F.R. § 1614.108(c)(3)).

d. **Report of Investigation.** A report of investigation will contain relevant documents and information, including affidavits or other sworn statements acquired during the investigation. A copy of the report of investigation will be furnished to the complainant or complainant's representative with a notice of complainant's right to an EEOC hearing or an immediate final FLRA decision without a hearing. The complainant must notify the EEO Director in writing of his/her choice within 30 calendar days of receiving the investigation file. If complainant does not notify the Agency within the 30-day period, the final FLRA decision may be issued.

9. **Hearings.** A hearing will be conducted when requested by the complainant, in writing, within the time limits specified in 29 C.F.R. § 1614.108(f). When a complainant requests a hearing, the FLRA shall request the EEOC to appoint an administrative judge to conduct the hearing. Procedures for the hearing can be found at 29 C.F.R. § 1614.109 and EEOC MD-110, Chapter 7. Where there is no issue of material facts, findings and conclusions may be issued without a hearing or other appropriate action may be taken. (29 C.F.R. § 1614.109(g)). Absent good cause, the administrative judge will issue a decision, and, where discrimination is found, order appropriate relief, within 180 calendar days of receipt by the administrative judge of the complaint file.

10. **Offer of Resolution** (see 29 C.F.R. § 1614.109(c)).

a. The Agency may make an offer of resolution:

i. To a complainant represented by an attorney, at any time after the filing of a formal complaint, until 30 calendar days prior to a hearing, or

ii. To a complainant not represented by an attorney, at any time after the appointment of an administrative judge, but not later than 30 calendar days prior to the hearing.

b. An offer of resolution must be in writing and provide:

i. An explanation of the possible consequences of failing to accept the offer;

ii. Attorney's fees and costs, as of the date of the offer;

iii. Any specific non-monetary relief; and

iv. Any monetary relief, which may be offered as a lump sum, or may be itemized as to amounts and types.

c. The complainant shall have 30 calendar days from receipt of the offer to accept it. If the complainant does not accept the offer and the relief ultimately awarded, whether by an administrative judge, the FLRA, or the EEOC, is not more than the offer, the complainant may not recover attorney's fees or costs incurred after the end of the 30-day acceptance period. However, the EEOC may, in unusual circumstances, find that equitable considerations make it unjust to withhold such attorney's fees and costs.

d. An acceptance of an offer of resolution must be in writing and be postmarked or received by the Agency within the 30-day period.

11. **Final Action by the FLRA.** The Chairman, or designee, shall take the following final FLRA action on complaints based on information in the complaint file.

a. Where an administrative judge has issued a decision, the FLRA shall issue a final order within 40 calendar days after receipt of the judge's decision.

i. The final order shall notify the complainant whether or not the Agency will implement the decision and order of the administrative judge, and must inform the complainant of the right of appeal, the right to file a civil action, applicable time limits, the name and address of the EEOC official with whom to file an appeal, and the name of the proper defendant in a civil action. A copy of the EEOC Form 573, Notice of Appeal/Petition, shall be attached. (See sections P – Civil Actions, and Q – Confidentiality, below);

ii. If the final order does not fully implement the administrative judge's decision and order, the Agency shall simultaneously file an appeal with the EEOC and append a copy of the appeal to the final order.

iii. If the Agency fails to issue a final order within the 40-day period, the decision of the administrative judge becomes the final action of the Agency.

b. When the Agency dismisses a complaint in its entirety, receives a request for a final decision or does not receive a response to the notice referenced in section C.7 – Dismissal of a Complaint, above, it shall issue a final decision. The final decision shall include:

i. Findings on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint;

ii. When there is a finding of discrimination, appropriate remedies and relief in accordance with 29 C.F.R. § 1614.501; and

iii. When there is a finding of discrimination, the complainant and complainant's representative will be notified that in order to request attorney's fees or costs, a verified statement of costs and fees accompanied by an affidavit, executed by the attorney, must be submitted to the Agency within 30 calendar days of receipt of the final decision. (See section O – Appeals to the EEOC, below).

c. **Time Limits.** The Chairman, or designee, shall issue a final decision within 60 calendar days after:

- i. Receiving a request for an immediate final FLRA decision;
- ii. The 30-day period for requesting a hearing or an immediate final FLRA decision has expired, and the complainant has requested neither a hearing nor a final FLRA decision.

d. **Transmittal of Decision.** The final decision shall be transmitted to the complainant and complainant's representative by a method that will show the date of issuance and receipt.

D. MIXED CASES

1. **Choice of Procedures.** Where a personnel action is appealable to the MSPB, an employee may appeal to the MSPB or file a discrimination complaint, but not both. The choice is made when a timely appeal is filed with the MSPB, or a formal complaint of discrimination is filed with the FLRA. (See 29 C.F.R. § 1614.302).

2. **Mixed Case Appeals.** When an individual elects to file a mixed case appeal with the MSPB, the matter is processed pursuant to MSPB procedures. (See 5 C.F.R. § 1201).

3. **Mixed Case Complaints.** When an individual elects to file a formal discrimination complaint with the FLRA, it is processed pursuant to section C – Individual Complaint Procedures, above, with the following exceptions:

a. A complainant's appeal from a final FLRA decision and request for a hearing is made to the MSPB, not the EEOC;

b. A final FLRA decision shall be made within 45 calendar days after completion of the investigation without a hearing; or

c. If a final FLRA decision is not issued within 120 calendar days from the filing of a formal complaint, an employee may appeal to the MSPB at any time thereafter as specified at 5 C.F.R. § 1201.154(b)(2), or may file a civil action as specified at 29 C.F.R. § 1614.310(g), but not both.

4. **Dismissal of Mixed Case Complaints.** Mixed case complaints shall be dismissed for the reasons specified in section C.7 – Dismissal of a Complaint, above, and additionally shall be dismissed if the complainant has made a prior election of the MSPB procedures. (29 C.F.R. § 1614.302(c)(2)).

5. **Petition for Review of Final MSPB Decisions Involving Allegations of Discrimination.** An individual who has been before the MSPB with a matter involving allegations of discrimination and has received a final MSPB decision may petition the EEOC to consider the MSPB decision on the discrimination issues within 30 calendar days after receipt of notice of the final MSPB decision, or within 30 calendar days after the decision of an MSPB field office becomes final. (See 29 C.F.R. § 1614.303).

6. **Review Procedures.** The procedures governing petitions for review of final MSPB decisions are set forth in 29 C.F.R. § 1614.303-305.

E. **GRIEVANCE PROCEDURES.** The FLRA's administrative grievance procedure does not permit the filing of grievances over matters covered by this Policy.

F. **AGE DISCRIMINATION COMPLAINT PROCEDURES**

1. **Administrative Complaint.** An individual within the protected age group may choose to use either the EEO complaint procedure, or mixed case procedures, as applicable to the circumstances of the case.

2. **Civil Action.** As an alternative to filing a complaint, an aggrieved individual may bypass the administrative complaint process and file a civil action directly in an appropriate United States district court. (See section P.3.c. – Age Complaints, and 29 C.F.R. § 1614.201(a)).

G. **CLASS COMPLAINT PROCEDURES** (see 29 C.F.R. § 1614.204)

1. **Pre-complaint Procedures.** Paragraph C.1. – Pre-complaint Procedures, above, applies to class complaints, with the following exceptions:

a. An employee or applicant who wishes to pursue a class complaint will be the agent of the class (hereinafter referred to as "agent"); and

b. The counselor shall explain class complaint procedures and the agent's responsibilities.

2. **Manner of Filing.** Paragraph C.3. – Manner of Filing, above, applies to class complaints, with the following exceptions:

a. The term "agent" is substituted for complainant; and

b. The complaint must describe the policy or practice adversely affecting both the class and agent.

3. **Acceptance or Dismissal of a Complaint.**

a. Within 30 calendar days of the Agency's receipt of a complaint, the EEO Director will forward the complaint, a copy of the EEO counselor's report, relevant information, and Agency recommendations to the EEOC. The EEOC will assign the complaint to an administrative judge. The administrative judge may dismiss the complaint for any of the reasons found in paragraph C.7. – Dismissal of a Complaint, above, or because the complaint does not meet the prerequisites of a class complaint.

b. The administrative judge will transmit the decision to accept or dismiss the class complaint to the Agency and the agent. The FLRA must issue its final order within 40 calendar days of receipt of the administrative judge's decision.

i. The final order shall notify the agent whether or not the Agency will implement the decision and order of the administrative judge, and must inform the agent of the right of appeal, the right to file a civil action, applicable time limits, the name and address

of the EEOC official with whom to file an appeal, and the name of the proper defendant in a civil action. A copy of the EEOC Form 573, Notice of Appeal/Petition, shall be attached. (See sections P – Civil Actions, and Q – Confidentiality, below).

ii. If the final order does not fully implement the administrative judge's decision and order, the Agency shall simultaneously file an appeal with the EEOC and append a copy of the appeal to the final order.

iii. If the Agency fails to issue a final order within the 40-day period, the decision of the administrative judge becomes the final action of the FLRA.

iv. A dismissal of a class complaint shall inform the agent either that the complaint is being accepted as of that date as an individual complaint to be processed under section C – Individual Complaint Procedures, above, or that the complaint is also being dismissed as an individual complaint.

c. Within 15 calendar days of receiving notice that the administrative judge has accepted a class complaint (or a reasonable time set by the administrative judge), the FLRA shall, by reasonable means, notify all class members of the acceptance of a class complaint.

4. **Obtaining Evidence.**

a. Once the class complaint is accepted, the agent, or the agent's representative, and the Agency representative shall be given a period of at least 60 calendar days to prepare their cases and develop evidence through accepted discovery techniques. The time for developing evidence may be extended, upon the request of either party, by the administrative judge.

b. If cooperative efforts fail, either party may request a ruling from the administrative judge on a request to develop evidence. Failure to comply with such a ruling without good cause may result in the administrative judge's action(s) set forth at 29 C.F.R. § 1614.204(f).

c. During the period for development of evidence, the administrative judge may direct that an investigation of facts relevant to the complaint be conducted by an outside Agency certified by the EEOC, and that a copy of that investigative file be given to the representatives of each party.

5. **Opportunity for Resolution.** After the evidence is developed, the administrative judge shall furnish the agent, or the agent's representative, and the Agency representative a copy of all pertinent documents and provide opportunities for discussion and resolution. Any resolution will be reduced to writing, signed by the agent and/or class representative, and the Agency's representative. The complaint may be resolved at any time pursuant to the notice and approval provisions set forth below.

a. Notice. If a resolution is proposed, notice must be given, where possible, to all members of the class. The notice must include a copy of the proposed resolution, set out the relief, if any, the Agency will grant, and inform the class members that the resolution will

bind all class members. The notice must also inform the members of the right to object to the resolution to the administrative judge within 30 days of receipt of the notice.

b. **Approval.** The Agency will provide the administrative judge with the proposed resolution and the notice sent to the class members. If the administrative judge determines that the resolution is not fair, adequate and reasonable, the agreement between the class agent and the Agency will be vacated. The class agent, class members and the Agency may appeal the determination to the EEOC. If the administrative judge determines that the resolution is fair, adequate and reasonable, the resolution becomes binding. Any class member who filed objections to the proposed resolution may appeal the administrative judge's decision.

6. **Hearings.** A hearing shall be conducted in accordance with 29 C.F.R. § 1614.109 (a)-(f).

7. **Findings and Recommended Decision.** The EEOC will send the hearing record, analysis and findings, and recommended decision on the complaint to the FLRA Chairman, or designee, and will notify the agent of the date on which this was done.

8. **Final FLRA Decision.** Within 60 calendar days of receipt of the administrative judge's findings and recommendations, the Agency must issue a decision to accept, reject, or modify those findings and recommendations. If the Agency does not issue a decision within 60 calendar days, the administrative judge's findings and recommendations become the decision of the Agency. The decision shall be served on the class agent within 5 calendar days after the expiration of the 60-day period.

a. If the final FLRA decision dismisses the class element of the complaint, the allegations of individual discrimination shall be processed under section C – Individual Complaint Procedures, above.

b. A final decision finding discrimination is binding on the class. A finding of no discrimination is not binding on a class member's individual complaint.

c. The Agency shall notify class members of the final decision and the relief awarded, if any, through the same medium used to give notice of the existence of the class complaint and within 10 calendar days of transmittal of the decision to the agent.

H. **COMPLAINTS BASED ON PHYSICAL OR MENTAL DISABILITY**

1. The Agency shall make reasonable accommodation to the known physical or mental disability of a qualified applicant or employee unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its program. (See 29 C.F.R. § 1630.2(o)(4) or FLRA Policy 3891 Reasonable Accommodation for Individuals with Disabilities).

2. Reasonable accommodation may include, but shall not be limited to:

- a. Making facilities readily accessible to, and usable by, disabled persons;
- b. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies;

- c. Provision of readers and interpreters, or other similar actions.

3. In determining whether an accommodation would impose an undue hardship on the operation of the Agency, factors to be considered include: (a) the overall size of the Agency's program with respect to the number of employees, number and type of facilities, and budget; (b) type of Agency operation, including the composition and structure of the Agency's work force; and (c) the nature and cost of the accommodation.

I. COMPLAINTS OF RETALIATION (REPRISAL)

1. **Manner of Filing.** Any employee who believes he/she has suffered retaliation (reprisal) based on his/her:

- a. Opposition to discriminatory FLRA policies or practices; and/or
- b. Participation in a discrimination complaint procedure, may file formal charges of retaliation (reprisal). Allegations of retaliation (reprisal) may be processed as an individual complaint of discrimination, or as a mixed case if related to an Agency action which is appealable to the MSPB. (See sections C – Individual Complaint Procedures, D – Mixed Cases, and E – Grievance Procedures, above).

2. **Allegations at Hearing Stage.** If a complainant alleges coercion, interference, intimidation, discrimination, or reprisal, during the hearing stage, the EEOC may consolidate the allegations with any pending complaint.

J. COMPLAINTS AGAINST THE CHAIRMAN, THE EEO DIRECTOR, OR AN EEO COUNSELOR

1. **Chairman.** When the FLRA Chairman is named in an individual capacity in a complaint of discrimination, a designee named by the Chairman will take any action that is otherwise the primary responsibility of the Chairman.

2. **EEO Director or EEO Counselor.** The EEO Director and EEO counselors shall not participate in the complaint process if named in any capacity in a complaint of discrimination. The EEO Director shall notify the FLRA Chairman of his/her disqualification and shall refer the complaint file to the Chairman. The Chairman shall designate a person to receive and process the complaint.

K. COMPLIANCE WITH SETTLEMENT AGREEMENTS

1. When a complainant believes that the Agency has failed to comply with the terms of a settlement agreement, he/she must notify the EEO Director in writing, within 30 calendar

days of when he/she knew or should have known of the alleged noncompliance. (See 29 C.F.R. § 1614.504 and paragraph O.4. – Time Limits, below; MD-110, Chap. IX, F.). The complainant may request that the agreement be specifically implemented or that the complaint be reinstated.

2. The Agency shall respond to the complainant in writing. If the Agency fails to respond or the complainant is dissatisfied with the response, the complainant may appeal to the EEOC in accordance with 29 C.F.R. § 1614.504. The complainant may file an appeal 35 calendar days after serving the EEO Director with the allegations of noncompliance, but must file an appeal within 30-days of the Agency response.

L. COMPLAINTS ALLEGING VIOLATION OF THE EQUAL PAY ACT

1. Complaints alleging violation of the Equal Pay Act may be filed as an individual or class complaint. (See sections C – Individual Complaint Procedures, and G – Class Complaint Procedures, above, 29 C.F.R. § 1614.202, and C.F.R. § 1614.409).

2. In its enforcement of the Equal Pay Act, the EEOC has the authority to investigate FLRA employment practices on its own initiative at any time in order to determine compliance with the provisions of the Act. The EEOC will provide notice to the Agency when it will be initiating an investigation.

M. CONSOLIDATION AND JOINT PROCESSING OF COMPLAINTS (see 29 C.F.R. § 1614.606)

1. Complaints filed by different persons relating to the same or similar issues may, after appropriate notice to the parties, be consolidated for joint processing.

2. Two or more complaints of discrimination filed by the same individual shall be consolidated after appropriate notice to the complainant. There is one investigation, one attempted informal adjustment, one proposed disposition, and one hearing when complaints have been joined for processing.

N. ATTORNEY'S FEES AND COSTS (29 C.F.R. § 1614.501(e))

1. The Agency is authorized to award reasonable attorney's fees or costs incurred in the processing of an administrative complaint when there is a finding of discrimination or retaliation (reprisal), as follows:

a. Attorney's fees may be awarded for services performed after the filing of the complaint and after the complainant has notified Agency that (s)he is represented; and

b. Attorney's fees may be awarded only to members of the bar and law clerks, paralegals, or law students under the supervision of members of the bar. No fees may be awarded, however, for the services of any employee of the Federal Government.

2. The amount of the attorney's fees and costs is determined under 29 C.F.R. § 1614.501(e). If the Agency determines not to award attorney's fees or costs to a prevailing

complainant, it will give specific reasons for denying the award. Attorney's fee awards may be appealed to the EEOC. (See section O – Appeals to the EEOC, below).

O. APPEALS TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

1. **Procedures.** The procedures governing appeals on individual and class complaints and grievances (if applicable) are found at 29 C.F.R. § 1614.401-405. A written appeal must be submitted by mail, personal delivery or facsimile ((202) 663-7022) to the Director, Office of Federal Operations, EEOC, P.O. Box 77960, Washington, D.C. 20013. The complainant should use EEOC Form 573, Notice of Appeal/Petition, and describe the FLRA decision giving rise to the appeal. (See 29 C.F.R. § 1614.403(a)).

2. **Appealable Matters.** Appealable matters include:

- a. Dismissal of an entire complaint;
- b. The final FLRA decision on the merits and/or partial dismissal of the complaint;
- c. The award of attorney's fees or costs; and
- d. Failure to comply with the terms of a settlement agreement. (See 29 C.F.R. § 1614.504).

3. **Non-appealable Decisions.** A complainant may not appeal to the EEOC when:

- a. The Agency dismisses some but not all claims in a complaint;
- b. A determination has not been made on all issues in the complaint;
- c. The issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the EEOC;
- d. A final FLRA decision has been issued on the merits of the mixed case complaint; or
- e. An FLRA decision rejects or cancels a mixed case complaint, unless a misapplication of procedures is alleged.

4. **Time Limits.**

- a. **FLRA Decisions.** A complainant may appeal any matters, outlined in paragraph O.2. – Appealable Matters, to the EEOC within 30 calendar days of receiving the dismissal or final decision. If there is an attorney of record, the 30-day period will run from the day the attorney received the dismissal or final FLRA decision. Time limits may be extended, at the discretion of the EEOC Office of Federal Operations, upon a showing that complainant was not notified of the time limit and was not otherwise aware of it, or that

circumstances beyond his/her control prevented the filing of an appeal within the time limit.

b. **Non-compliance Complaint.** If the Agency fails to respond, in writing, within 30 calendar days of receipt of allegations of noncompliance, or if complainant is not satisfied with the Agency's attempt to resolve the allegations, the complainant may appeal to the EEOC. A complainant may file an appeal 35 calendar days after the service of the allegations of noncompliance, but must file within 30 calendar days after receiving the final FLRA decision.

5. **Briefs.** Any statement or brief in support of the appeal must be submitted to EEOC and FLRA representatives within 30 calendar days of filing the appeal.

P. **CIVIL ACTIONS** (see 29 C.F.R. §§1614.407-409)

1. **Statutory Rights.** The FLRA will notify complainants, agents, and claimants, of the right to file civil actions and the applicable time frames.

2. **Proper Defendant.** When a civil action is filed, the FLRA Chairman is the appropriate official to be named as defendant in captioning the complaint.

3. **Time Limits.**

a. **Individual and Class Complaints and Claims.** A complainant or class agent may file a civil action alleging Title VII, Age Discrimination in Employment Act, or Rehabilitation Act violations in an appropriate Federal district court:

i. Within 90 calendar days of receiving notice of the final FLRA decision on a complaint or claim where no appeal has been filed;

ii. After 180 calendar days of filing a complaint or claim with the Agency, if there has been no decision on the complaint or claim;

iii. Within 90 calendar days of receiving the final EEOC decision on an appeal; or

iv. After 180 calendar days of filing an appeal with the EEOC, if there has been no final EEOC decision. (See 29 C.F.R. § 1614.407).

v. A complainant or class agent may file a civil action alleging violation of the Equal Pay Act in an appropriate Federal district court within two years or, if the violation is willful, within three years of the alleged violation. (See 29 C.F.R § 1614.408).

b. **Mixed Case Complaints.** A mixed case complainant may file a civil action in an appropriate Federal district court within 30 calendar days of receiving:

i. The final FLRA decision, unless an appeal is filed with MSPB;

ii. The MSPB decision, unless a petition for consideration is filed with the EEOC;

- iii. The EEOC decision not to consider the MSPB decision;
- iv. The EEOC concurrence with the MSPB decision;
- v. The MSPB concurrence and adoption of the EEOC decision, if the EEOC differs from the MSPB decision; and
- vi. The Special Panel decision, if MSPB disagrees with the EEOC decision and reaffirms its initial decision with or without revisions.

vii. A civil action may also be filed:

(1) After 120 calendar days of filing a complaint with the Agency if there has been no final FLRA decision on the complaint;

(2) After 120 calendar days of filing an appeal with MSPB if there has been no decision on the appeal; or

(3) After 180 calendar days of filing a petition for consideration with EEOC if there is no decision by the Commission, reconsideration decision by the MSPB, or decision by the Special Panel. (See section D – Mixed Cases, above, and/or 29 C.F.R. § 1614.310).

c. **Age Complaints.** A complainant or agent may serve the EEOC with a notice of intent to file a civil action, and after 30 calendar days, may file a civil action in an appropriate Federal district court. The notice of intent must be filed within 180 calendar days after the alleged discriminatory act occurred. (See 29 C.F.R. § 1614.201).

Q. **CONFIDENTIALITY**

1. **Pre-complaint Process.** The identity of an aggrieved person will be maintained on a confidential basis in the pre-complaint process unless the person authorizes the counselor to reveal the person's identity.

2. **Post-complaint Process.**

a. The complainant, the complainant's representative, and the Agency representative will be provided copies of the complaint file and the investigative report.

b. Information and documents may also be disclosed to a witness who is a Federal employee where the investigator determines that the disclosure of the information is necessary to obtain further information from the witness (see MD-110, Chapter 6, § VIII.A.).

R. **USE OF OFFICIAL TIME AND RESOURCES**

1. **Official Time and Resources.** FLRA employees involved in the complaint process, such as complainants, agents, witnesses, and representatives, have the right to use a reasonable amount of official duty time and Agency resources, including library research,

copy machines and office supplies, as needed, to prepare a complaint under this Policy.

2. **Reasonable** refers to the time necessary to allow a complete presentation of information associated with the complaint. The time will vary depending on the nature and complexity of the complaint and the Agency's need to have its employees available to perform their normal duties on a regular basis.

3. **Official duty time** refers to time used during working hours without charge to leave or loss of pay.

a. Employees who do not request anonymity during pre-complaint procedures or who file a formal complaint must get advance approval from their immediate supervisors to use official time prior to meeting with EEO personnel.

b. Employees who request anonymity during pre-complaint procedures must use annual leave, or schedule meetings with EEO personnel before or after regular office hours or during scheduled lunch periods.

This policy is effective on March 22, 2019.

A handwritten signature in dark ink, appearing to read "William Tosick". The signature is written in a cursive style with a large, looping flourish above the name.

William Tosick
Executive Director

Addendum

FLRA Alternative Dispute Resolution (ADR) for EEO Disputes

The FLRA ADR program provides an alternative to the informal counseling process and an option during the formal complaint process, currently provided for in the EEOC regulations codified in 29 C.F.R. Part 1614. This ADR program supersedes all other existing EEO-related ADR programs at the Agency.

A. INTRODUCTION

1. The ADR program as described below will be administered in a manner that is consistent with the core principles as outlined in the EEOC Management Directive (MD-110), including fairness, flexibility, and an emphasis on training and evaluation.
2. The FLRA ADR program includes but is not limited to, mediation, and is available as an alternative to informal EEO counseling, or during the formal complaint process, for aggrieved persons who believe they have been discriminated against based on race, color, religion, sex (including sexual harassment), , national origin, age, disability (mental and/or physical), genetic information, and retaliation (reprisal), coercion or intimidation as referenced in the FLRA EEO Policy (to which this ADR program notice is attached).
3. The ADR program is designed to settle disputes without litigation or administrative adjudication. ADR is intended to address individual disputes within a reasonable period at the informal stage of the EEO process by using trained mediators to facilitate resolution. If ADR is chosen during the informal counseling stage, the initial 30 day informal period is extended to 90 calendar days. This replaces the informal counseling process. The second opportunity for ADR is during the formal complaint process. A formal complaint must be timely filed, and if ADR is requested during that stage of the process, the time period for processing the complaint may be extended by agreement for not more than 90 days. If the dispute is not resolved, the complaint must be processed within the extended time period.
4. The aggrieved person may request ADR, or its use may be recommended by a management official or an EEO counselor.
5. Participation in the ADR program by the aggrieved person is strictly voluntary. However, when the aggrieved person elects to participate in the ADR program, appropriate management officials are required to participate in this program as well. Management will abide by the procedural requirements of the ADR program. The Agency will designate management officials who have the authority to enter into a settlement agreement. This official with settlement authority will not be the official directly involved in the case. As explained below, the aggrieved person and FLRA management are entitled to be represented throughout the ADR process.
6. Due to the voluntary nature of this process, the aggrieved person can terminate ADR after sessions have begun. Participants are advised that this is an alternative process, and therefore all EEO processes are still available if ADR is not successful.

B. DIFFERENCES BETWEEN INFORMAL COUNSELING AND MEDIATION

1. **EEO Counseling.** During the informal counseling period, an EEO counselor works with the aggrieved person and management to gather information on the matter and attempts to resolve the dispute. If the matter is not resolved during this period, the EEO counselor writes a counseling report that documents the alleged discrimination and any attempts at settlement. The counseling report must detail the issue(s), basis of discrimination claimed, and address any other jurisdictional questions. The counseling report is subsequently used in the processing of the formal complaint to determine the scope of the complaint. Counselors are trained to gather information (interview witnesses and gather records and documents) about the matter in order to effectively write the counseling report. The EEO counselor generally focuses on gathering information from each individual separately. Informal resolution efforts by the counselor are usually pursued by circulating information and resolution proposals between the parties rather than directly holding joint discussions.

2. ADR

a. ADR involves alternatives to formally established processes, usually litigation, for resolving disputes. In the context of EEO processes, ADR generally provides an alternative to the traditional informal EEO counseling and/or formal complaint processes. ADR usually involves a third-party neutral such as a mediator or facilitator working with the parties in dispute to facilitate communication and to assist them in working toward a resolution of their dispute. Generally, the third-party neutral is a process expert, skilled in a particular type of ADR.

b. The FLRA ADR program is available at any time during the EEO process. However, the objective is to seek informal resolution of alleged employment discrimination through the Agency EEO process at the earliest possible time while not infringing upon the rights guaranteed under 29 C.F.R. Part 1614.

c. Mediators are neutral third parties whose focus is to facilitate communication and problem solving by the individual disputants. Mediators work to identify common ground between the parties and help them develop options for resolving their dispute. The mediator is someone from outside the disputants' office/organization who has no interest in the matter. The mediator meets with the disputing parties and their representative(s) (if any) jointly to discuss the issues and ways of possibly resolving the dispute.

d. The mediator may meet separately with the parties, namely the management representative with authority to settle on behalf of the FLRA and with the aggrieved person with any representative, to further discuss the issues and explore possible settlement options privately. The mediator may carry settlement offers between the parties. Mediators do not evaluate the merits of the matters in dispute or the fate of the potential case if the matter is not resolved through mediation and is pursued through the formal complaint process and litigation in the courts. However, the mediator may provide information about the resolution of similar disputes. The parties retain complete control over the outcome. The parties decide whether or not to continue with mediation, whether or not to resolve the matter through a settlement agreement, and how to fashion the terms of their agreement. Mediation is a confidential process, as more fully discussed in section D, below. The mediator does not keep records or write reports or otherwise disclose anything about the mediation proceedings. Because they have no role in documenting the matter, mediators do not engage in fact-finding activities. If the mediation does not result in a resolution

of the matter during the informal stage, the EEO Counselor will be informed only that mediation has not resolved the dispute. Thereafter, the aggrieved person will receive written notice from the EEO counselor that if he/she wishes to go forward with the dispute, a formal complaint must be filed with the EEO Director. The mediator will play no role in advancing the EEO process. Mediation may continue, however, into the formal stage of the complaint process so long as a formal written complaint has been timely filed.

C. ADR PROGRAM COVERAGE. This ADR program covers EEO disputes initiated by all current employees, those deemed employees for purposes of Title VII, former employees concerning matters arising during their employment, and applicants for FLRA employment. Also, the program covers aggrieved persons who are currently involved in the pre-complaint counseling stage. However, for the latter instances, the pre-complaint process cannot extend the period for filing a formal EEO complaint beyond the 90 day period (discussed during the introduction of this addendum) provided in 29 C.F.R. Part 1614 for informal counseling. Even if the aggrieved person files a formal complaint, any informally initiated ADR process may continue, if all parties agree.

D. CONFIDENTIALITY

1. In general, a mediator is prohibited from disclosing any dispute resolution communication or any communication provided to the mediator in confidence, including personnel data, such as performance evaluations. A dispute resolution communication is any oral or written communication prepared for purposes of a proceeding under this program, except any written agreement to mediate or any final written agreement reached as a result of this program. Unless the communication falls within one of the exceptions discussed below, the mediator cannot voluntarily disclose the communication and cannot be forced to disclose the communication through a discovery request or other compulsory process.

2. A mediator may disclose a communication if all parties and the mediator agree in writing to the disclosure. A mediator may disclose a communication if the communication already has been made public. A mediator may disclose a communication if there is a statute that requires the communication to be made public. A mediator may disclose a communication if so ordered by a court. Courts may order disclosure upon finding that the mediator's testimony or the disclosure is necessary to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health and safety. Courts may require disclosure upon determining that the need for disclosure outweighs the detrimental impact on the integrity of dispute resolution proceedings in general.

3. The aggrieved person is advised that these provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (a) classified information, (b) communications to Congress, (c) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (d) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

4. The EEO Director or his/her designee will assure that all aggrieved parties and mediators are familiar with these confidentiality provisions.

E. **PROCEDURES.** The procedures for electing either mediation or the traditional EEO counseling process are outlined below. These procedures also apply where mediation is elected after a formal written EEO complaint has been filed.

1. As set forth in the EEO Policy, when an aggrieved person timely contacts an EEO Counselor alleging specific grounds for believing that unlawful discrimination has occurred, the EEO Counselor will inform the aggrieved person of the ADR option and provide him/her with a copy of the ADR program. If deemed necessary, the aggrieved person may contact the EEO Director for further explanations concerning how ADR works generally.

2. The EEO Counselor will also advise the aggrieved person of his or her rights and responsibilities in the EEO process, as set forth in 29 C.F.R. § 1614.105(b).

3. The initial contact with the EEO Counselor will start the time limits provided in EEOC regulations for informal counseling. If the person elects to use ADR instead of counseling, the 30-day informal counseling period shall be extended to 90-days.

4. If the aggrieved person chooses to use ADR, he or she must fill out the ADR Request Form (Form A).

5. The EEO Counselor will contact the EEO Director for assistance in obtaining names of mediators within 5 working days of the notification that ADR has been chosen by the aggrieved person. Mediators must be mutually agreeable to the aggrieved person and the appropriate management official(s).

a. Mediators will come from the following sources:

- i. The Federal Sharing Neutrals Program, and/or
- ii. The private sector.

b. All mediators must meet minimum training and qualification requirements as defined in the EEOC Management Directive (MD)-110.

6. The EEO Director will coordinate the mediation effort, having primary responsibility for logistical arrangements. The EEO Director is responsible for the overall management of the ADR program. He or she develops and maintains trained staff to implement the ADR program and ensures that the ADR program is in compliance with applicable EEOC and OPM regulations. The EEO Director arranges for mediators and manages, implements, and evaluates the ADR process.

7. The mediation process will commence by the mediator contacting the aggrieved person (and representative, if any) and the appropriate management official with settlement authority to schedule the mediation session. When the parties to the dispute convene, they will sign an Agreement to Mediate (Form B). Per MD-110, the alleged discriminating management official cannot be the management official with settlement authority. By signing the agreement, the parties indicate that they understand the mediation process and the conditions and procedures of participation. After electing to participate in the mediation process, the aggrieved person may opt-out of the process at any time.

8. If mediation successfully resolves the EEO dispute, the parties will execute a Mediation Settlement Agreement describing the resolution of the dispute. (Form C serves as an example of such an agreement). The mediator will notify the EEO counselor that the dispute has been resolved so that the counselor can close the case. An aggrieved person cannot file an EEO complaint concerning anything said or done during attempts to resolve the dispute through ADR, including the Agency's failure to provide a neutral. Allegations by an aggrieved person that the Agency has not complied with the terms of the Mediation Settlement Agreement shall be handled in accordance with 29 C.F.R. § 1614.504 (see also MD-110, Ch. IX), beginning with the aggrieved person's notice to the EEO Director, in writing, of the alleged non-compliance within 30-days.

9. If mediation in the informal stage is unsuccessful, the mediator will report the outcome (without specifics) to the EEO Director and will indicate on the Mediator Reporting Form (Form D) that no resolution was reached. The EEO Director will then contact the EEO Counselor of record and ask him/her to prepare the Notice of Final Interview/Right to File a Formal Discrimination Complaint and the EEO Counselor's Report as referred to in the FLRA EEO Policy. The latter report will specify the aggrieved person's alleged grounds of discrimination, and will reflect that the aggrieved person was offered and accepted ADR, in lieu of counseling, but that such efforts at informal resolution were unsuccessful.

10. The EEO Counselor will provide the aggrieved person with two copies of the Counselor's report, the Notice of Final Interview, the Notice of Right to File a Formal Discrimination Complaint, and the Complaint Form. The EEO counselor will advise the aggrieved person that if he or she elects to file a complaint of discrimination on any of the grounds previously raised, it must be filed within 15 calendar days of receipt of the Notice of Right to File a Discrimination Complaint.

11. If the aggrieved person has opted for EEO counseling rather than ADR mediation during the informal stage of the EEO process, he or she still may choose to invoke mediation after a formal written EEO complaint has been timely filed (see paragraph 10, above) by so notifying the EEO Director in writing. The same procedures governing ADR at the informal stage also apply after a formal EEO complaint has been filed, except that if mediation is successful, the EEO Director upon being so notified will take the necessary steps to close the case by advising the EEO investigator, the EEOC, and/or the FLRA representative responsible for preparing a final agency determination, as appropriate. If mediation of the formal complaint is unsuccessful, the complaint must be processed within the applicable time period as extended by the 90 days during which ADR procedures were in effect.

F. **IMPLEMENTATION.** The ADR program will be implemented and training will be conducted through a variety of methods designed to involve employees and inform them about mediation as an alternative to EEO counseling and as an adjunct to the processing of formal complaints.

1. **Awareness Education.** The ADR program for mediating EEO disputes will be explained Agency-wide to management and employees in the following manner:

a. A memorandum signed by the FLRA Chairman, the General Counsel, and the Chairman of the Federal Service Impasses Panel will be sent to all employees describing the ADR mediation process as an alternative to traditional EEO counseling and/or EEO litigation;

- b. Notification will be sent to all employees when the program begins; and
- c. Detailed information concerning the ADR program, including a copy of the program, will be placed on the FLRA Home Page.

2. **Training.**

a. Training about ADR, mediation, and the EEO process will be a vital factor in the successful implementation of the program at the FLRA. Employees need detailed information about the two alternatives (counseling or ADR available at the informal stage). Participants in mediation need to know what to expect and the roles of the parties. The Agency's full support for the ADR process should be communicated.

b. The EEO Director will provide a briefing (approximately 30 minutes) about the ADR program to all staff during the first 3 months of the program and routine updates. In addition, a portion of the New Employee Orientation will include a description of this program.

G. **EVALUATION**

1. **Data Requirements.** Management will evaluate the program and how it is functioning on an annual basis. The following statistical data will be used:

- a. The total number of EEO cases filed;
- b. The number of disputes referred to ADR, the stage of referral (informal or formal), and the number of those referred which were resolved;
- c. The parties' level of satisfaction with the ADR process, and the reasons for satisfaction or dissatisfaction (Participant's Comments Form - Form E);
- d. The amount of time spent on ADR attempting to resolve the dispute; and
- e. The estimate of cost savings, showing the criteria used to calculate savings.

2. **Data Gathering.** The ADR program will be evaluated by using the following questionnaires: Mediator's Reporting Form (Form D) and Participants' Comments (Form E). The distribution of evaluation questionnaires and the gathering of information will be the responsibility of the EEO Director or his/her designee. The EEO Director will have the responsibility of summarizing the information to be evaluated and will develop an annual report on the status and/or accomplishments of the ADR program. These summary reports will be shared with the FLRA Chairman, the General Counsel, and the Chairman of the Federal Service Impasses Panel.

Note: All forms referenced throughout this document are available in a Form Book to be distributed to all EEO counselors and staff administering this ADR program. Employees who would like copies can contact the Human Resources Director or the EEO Director.

Form A

FLRA ALTERNATIVE DISPUTE RESOLUTION REQUEST/REFERRAL

Case #:

1. Date of Request/Referral:
 2. Name of Requester:
 3. Organization of Requester:
 4. Telephone # of Requester:
 5. Briefly summarize the dispute which you wish to resolve:
-
6. Note other parties to this dispute (these may be referenced in #5 above. Please provide name and telephone number if possible).
-
-
-
-
-
-
-
-
-
-
7. I understand that ADR is a joint effort between the parties to facilitate an expedited resolution of disputes involving them.

I understand that the pre-complaint processing period shall be extended to 90 days for the purposes of resolving the dispute through the ADR process.

I understand that my right to continue with the administrative complaints process will remain intact and available to me should an agreement not be reached using ADR, provided I have timely filed a formal complaint.

I understand that I have the right to representation (attorney or other person of my choice) throughout this process.

Signature of ADR Requester

Date of Request

Form B

AGREEMENT TO MEDIATE

The parties agree to engage in mediation to attempt resolution of issues pertaining to the dispute of alleged employment discrimination. The parties understand that mediation is voluntary and may be ended by the requester at any time.

The parties understand that the mediator(s) has/have no authority to decide the case and is/are not acting as advocates, or attorneys, for any party.

Mediation is a confidential process. Any documents submitted to the mediators, and any statements made during the mediation are for settlement purposes only. The parties agree not to subpoena the mediators, or any documents prepared by or submitted to the mediator(s). In no event will the mediator(s) voluntarily testify for any party or submit any type of report concerning this mediation.

Confidentiality will not extend to (1) threats of imminent physical harm; (2) matters deemed not to be confidential under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571-584; or (3) disclosures made pursuant to statutory whistleblower rights (see 5 U.S.C. § 2302(b)(13)).

The aggrieved person is advised that these provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

No party is bound by anything said or done at the mediation unless a written settlement agreement is reached and executed by the parties and/or their representatives. If an agreement is reached, it will be reduced to writing and, when signed and approved by the parties and/or their representatives, will be binding upon them.

By signature below, we acknowledge that we have read, understand, and agree to this mediation process.

Aggrieved person

Date

Management/Settlement Official

Date

Mediator(s)

Date

Form C

MEDIATION SETTLEMENT AGREEMENT

Memorandum of settlement in the complaint(s) of (name), Case Numbers(s) if applicable_.

The Aggrieved person, (name), and the Federal Labor Relations Authority (FLRA), the parties to this agreement, hereby agree and stipulate as follows:

TERMS OF AGREEMENT

1. The FLRA (name of Center/Division/Office)

agrees to _____

2. The Aggrieved person _____ agrees to withdraw or dismiss with prejudice all informal/formal complaints of illegal discrimination related to and including the complaint(s) identified above which he/she has filed against the FLRA.

The Aggrieved person represents that no other action or suit with respect to the matters encompassed by the complaint referenced herein or to related matters occurring at any time up to and including the effective date of this agreement has been or will be filed in or submitted to any court, administrative agency, or legislative body. If any other related complaint was filed prior to the effective date of this agreement, (name) agrees that it too is covered by the terms of this agreement and, by signing this agreement, withdraws and dismisses each with prejudice. The Aggrieved person is advised that these provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling. *See* 5 U.S.C. § 2302(b)(13).

This agreement is not intended as, and will not be construed by either party to constitute, an admission or statement by either party as to the validity of any legal position or factual contention advanced in the above referenced complaint(s). Nor does it indicate in any way the views of either party as to the substantive merits of the complaint(s).

Issues related to compliance under this agreement shall be resolved in accordance with 29 C.F.R. § 1614.504; MD-110, Chap. IX.

This agreement shall become effective as of the date the last signature is obtained below. This settlement agreement constitutes the entire agreement between the aggrieved person and FLRA, and there are no other representations or obligations except for those enumerated herein. The parties agree that the terms of this agreement constitute a full and complete satisfaction and settlement of all claims which the aggrieved person may have against the FLRA, its officers, agents or employees which are encompassed by or arise out of the instant complaint(s).

The aggrieved person acknowledges that he/she clearly and fully understands the terms and conditions of this agreement and fully agrees to its terms. Further, the aggrieved person acknowledges having voluntarily entered into this agreement.

Aggrieved person

Date

Name of Management/Settlement

Date Official

Form D

FLRA ADR MEDIATOR REPORTING FORM

INSTRUCTIONS: This form is to be completed immediately upon closing of your case. Please return the form to the EEO Director.

1. Mediator's Name:
2. Office Telephone Number:
3. ADR Case Number:
4. Date of Sessions and Time Spent:
 - 1.
 - 2.
 - 3.
 - 4.
5. If either party had a representative in attendance please indicate which party did so:

A. Employee	B. Manager or 2nd Party
1. ___Attorney	1. ___Attorney
2. ___Other	2. ___Other
6. OUTCOME:

___Not Settled	___Settled prior meeting
___Settled, agreement	___Partial settlement signed

7. GENERAL: In the preparation process, it was determined that ADR was appropriate to address this dispute. In your opinion was it appropriate in this case?

1. Yes/No
2. Why or why not?

8. Other comments or suggestions:

Signature

Date

Form E

FLRA PARTICIPANT'S COMMENTS - ADR

To assist in improving the ADR process, please take a few minutes to answer the questions below. Send your completed survey to the EEO Director at 1400 K Street, N.W., Suite 200, Washington, D.C. 20424-0001. All personal information will be kept confidential.

Please circle the letter which best reflects how you feel about each of the following statements:

1- Strongly Agree 2- Somewhat Agree 3-No opinion 4- Somewhat Disagree 5- Strongly Disagree

1. The Mediator explained the program so that I knew what to expect during the process.

1 2 3 4 5

2. The Mediator allowed me and/or my representative to fully present my case.

1 2 3 4 5

3. The Mediator carefully listened to my side of the case.

1 2 3 4 5

4. The Mediator treated all parties fairly.

1 2 3 4 5

5. The Mediator asked appropriate questions.

1 2 3 4 5

6. The Mediator helped facilitate realistic options for settling the dispute.

1 2 3 4 5

7. Did you reach an agreement and settle your case? Yes/No

8. Did the ADR process help you understand the other party's/parties' concerns? Yes/No

9. Did you feel that the process helped the other party or parties understand your concerns?

10. How satisfied are you overall with the ADR process?

11. Please provide any comments you wish to make regarding the process in the space below:

Signature (Optional)

Date

Appendix D

Federal Labor Relations Authority PROCEDURES FOR PERSONAL ASSISTANCE SERVICES

Procedures for Personal Assistance Services (PAS) allow employees with targeted disabilities to fully participate in the workplace by providing assistance with activities of daily living, such as eating, drinking, using the restroom, and putting on and taking off clothing.

PAS allow employees with targeted disabilities to fully participate in the workplace by providing assistance with activities of daily living, such as eating, drinking, using the restroom, and putting on and taking off clothing. The Procedures for providing Personal Assistance Services (PAS) are also accessible on the FLRA's website.

Eligibility

The following conditions may entitle an employee to PAS:

- The individual is a new or existing employee of the Agency and has a targeted disability.
- The employee requires such services because of his/her targeted disability (certain disabilities such as missing extremities and paralysis require assistance with basic activities of daily living like eating and using the restroom).
- The provision of such services would, together with any reasonable accommodation required under the Rehabilitation Act, enable the employee to perform the essential functions of his/her position, without posing a direct threat to safety; and
- Providing PAS will not impose an undue hardship on the Agency.

Not all employees with a targeted disability are entitled to PAS. Generally, such assistance is only necessary when it is obvious that an employee has a targeted disability (i.e. paralysis or missing limbs) and requires assistance with basic activities, like eating and using the restroom. In these situations, the Agency may not require the individual to provide medical documentation in support of their request. However, to determine whether a requesting individual is entitled to PAS and, if so, the nature of the required services, the Agency RAC should ask the employee what types of PAS he or she needs using the same type of informal, interactive process used for reasonable accommodation.

PAS do not help individuals with disabilities perform their specific job functions, such as services required as a reasonable accommodation to help an individual perform job-related tasks. For example, services provided as a reasonable accommodation, but not PAS, are sign language interpreters who enable individuals who are deaf to communicate with coworkers, and readers who enable individuals who are blind or have learning disabilities to read printed text.

The Agency will provide PAS for employees to participate in employer-sponsored events, to the same extent as reasonable accommodations is provided.

Procedures for requesting PAS

- As with reasonable accommodation, an individual may request PAS by informing a supervisor, human resources professional, RAC, or other suitable individual that he or she needs assistance with daily life activities because of a medical condition. The request may be made orally or in writing. The individual does not need to mention Section 501 or the EEOC's regulations explicitly, or use terms such as "PAS" or "affirmative action" to trigger the Agency's obligation to consider the request.
- A request for PAS may be made by a family member, health professional, or other representative on the individual's behalf with the individual's consent. The RAC will confirm the request, when necessary, with the person with the disability.
- As with reasonable accommodation, to enable the Agency to maintain accurate records of requests for PAS, the requestor is asked to confirm the request by completing the Request for Reasonable Accommodation, Appendix A and submit it to the designated RAC. The Agency will address PAS requests promptly even if the requestor does not complete the Request form.

PAS Providers

- PAS must be performed by a personal assistance service provider. The Agency has the discretion to use Federal employees, independent contractors, or a combination of employees and contractors. For services performed by Federal employees, the Human Resources Division will consult with the appropriate point of contact (e.g., employee's supervisor, the RAC) prior to determining the terms and conditions of employment. PAS may also be provided by an employee's family member who is hired as a professional PAS provider, either as a contractor or Federal employee.
- Resources for PAS providers include local vocational rehabilitation offices, American Job Center, centers for independent living, home care agencies, and the individual with requests PAS. If the Agency decides to hire a full-time/part-time PAS provider, applicants for PAS provider positions may be found in the same way that applicants for other positions are located - by advertising the opening on USAJOBS and other job-posting sites.
- If an individual that provides PAS is unavailable, the PAS providers must notify the Agency point of contact of any absences as soon as possible, so that they can make alternative arrangements. For example, contracting with different providers on a short-term basis, the schedules of shared PAS providers, or allowing the individual to telework if the employee can work at home without the need for PAS provided by the Agency.

Granting request for PAS

As with reasonable accommodations, the RAC has the responsibility for processing requests for PAS. As soon as a decision has been made to provide PAS to an employee, the RAC will assist the deciding official in arranging the service. As part of the interactive process, and in consultation with the Human Resources and /or Contracting, the RAC will assist the deciding official in determining the most appropriate source for PAS based on the employees' needs and available resources as prescribed in Sub-Section 1(c) (i) above. The deciding official is responsible for providing the decision in writing to the requestor. The Agency will maintain a copy of the decision in the same manner records are maintained for requests for reasonable accommodations.

Denial of request for PAS

- Procedures for denying a request for PAS are the same as the reasonable accommodations (See Appendix A). The Agency is only required to provide PAS if the requesting employee is entitled as prescribed in Sub-Section 1(a) above. Therefore, a request for PAS may be denied if:
 - The requestor is not an employee of the Agency;
 - The requestor does not have a targeted disability;
 - The targeted disability does not create a need for PAS;
 - The requestor is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations;
 - The requestor would create a direct threat to safety on the job, even with PAS and any reasonable accommodations; or
 - The PAS would impose undue hardship on the Agency.
- Under the new regulations, the term "undue hardship" has the same meaning that it has in the reasonable accommodation context. Granting a request for PAS will impose undue hardship on an Agency if it would result in "significant difficulty or expense." The regulations emphasize that, as with reasonable accommodation, the determination of whether granting an individual's request for PAS would impose "significant" difficulty or expense must take into account all resources available to the Agency as a whole.
- The number of individuals with the types of disabilities that require assistance in activities of daily living and who will apply for federal employment is very low. However, in the unlikely event that the resources available to the Agency as a whole are insufficient to grant a particular individual's request for PAS, the Agency may deny the request on the grounds that it would impose an undue hardship.

Confidentiality

As with reasonable accommodations, the Rehabilitation Act prohibits the disclosure of medical information except in certain limited situations. Generally, information that is otherwise confidential under the Rehabilitation Act may be shared only with individuals involved in the PAS process who need to know the information to consider PAS for a specific individual.