



## **FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL**

### **REASONABLE ACCOMMODATION PROCEDURE**

**March 2024**

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March, 2024

**Subject:** Federal Permitting Improvement Steering Council (Permitting Council) Reasonable Accommodation Procedure.

**Purpose:** This document sets forth the Federal Permitting Improvement Steering Council procedures and processes for reasonable accommodations, in compliance with applicable laws and regulations.

**Scope and Applicability:** This procedure applies to applicants and all permanent staff, including all political appointees, employees and detailees. This procedure is for internal use.

This procedure has been reviewed by the Permitting Council's General Counsel.

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# Federal Permitting Improvement Steering Council Reasonable Accommodation Procedure

## I. Purpose

This document sets forth the Federal Permitting Improvement Steering Council's procedures for reasonable accommodations, in compliance with applicable laws and regulations.

The name "Federal Permitting Improvement Steering Council" subsumes both a federal agency comprising the Executive Director and a staff, as well as a 16-member body of which the Executive Director is a member and serves as chair. The other members of that body are the Chair of the Council on Environmental Quality, the Director of the Office of Management and Budget and the Deputy Secretary (or equivalent) of the 13 member agencies. For the purposes of this policy, the Executive Director and staff constitute the "Federal agency" that is the subject of this policy and are referred to as the "Permitting Council" herein. The U.S. General Services Administration (GSA) is the agency service provider for the Permitting Council.

## II. Authority

The laws and regulations below are applicable and must be followed for compliant administrative control of funds.

- [Rehabilitation Act of 1973, sections 501 and 505](#)
- [Federal Sector Equal Employment Opportunity, 29 C.F.R. § 1614](#)
- [Titles I and V, Americans with Disabilities Act of 1990, Title 42 U.S.C. 12101-12117.](#)
- [Title 29, Subtitle B, Regulations relating to Labor, Chapter XIV—Equal Employment Opportunity Commission, Part 1630—Regulations to implement the equal employment provisions of the Americans with Disabilities Act](#)
- [Executive Order 13164, October 20, 2000.](#)
- [Employment Opportunity Commission \(EEOC\) Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, October 20, 2000.](#)
- [EEOC Directive 715 \(MD-715\)](#)

## III. Definitions

The following terms originate from the [Rehabilitation Act](#) and are applicable to this policy:

### Disability

For purposes of determining eligibility for a reasonable accommodation, a person with a disability has (1) a physical or mental impairment that substantially limits a major life activity (actual disability); (2) a record of physical or mental impairment that substantially limits a major life activity; or, (3) regarded as having an impairment, meaning that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both "transitory and minor." The Permitting Council must provide reasonable accommodation to qualified employees and applicants with a substantially limiting impairment or a "record of" such an impairment.

## Essential Functions

Essential functions are those job duties that are so fundamental to the position that the individual cannot do the job without performing them. A function can be "essential" if, among other things, the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized, and the individual is hired based on ability to perform. 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.

## Extenuating Circumstances

Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation.

## Personal Assistance Services (PAS)

Assistance with performing activities of daily living that an individual would typically perform if he or she did not have a targeted 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.

## Personal Assistance Service Provider

An employee or independent contractor whose primary job functions include provision of personal assistance services.

## Qualified Individual with a Disability

An individual with a disability is qualified if: (1) he/she satisfies the requisite skill, experience, education and other job-related requirements of the position; and, (2) he/she can perform the essential functions of the position, with or without reasonable accommodation.

## Reasonable Accommodation

Reasonable accommodations include any change or modification in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities. When there is a delay in processing a request for, or delivering, a reasonable accommodation, the agency must investigate whether there are temporary measures that could be taken to assist the individual with a disability.

## Undue Hardship

If a specific type of reasonable accommodation causes significant difficulty or expense, then the agency does not have to provide that particular accommodation. Determination of undue hardship must be made on a case-by-case basis, considering factors such as the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the agency.

## IV. Reasonable Accommodation Procedure

### Reasonable Accommodation Request

1. An employee or applicant with a disability, family member, health professional or other representative who is acting on behalf of the employee/applicant may initiate a request for reasonable accommodation orally or in writing. An individual's oral request will start the reasonable accommodation process.
2. The request should be made to the designated Americans with Disabilities Act (ADA) Coordinator.
  - a. Any Permitting Council employee, other than the ADA Coordinator, who receives a request for a reasonable accommodation must forward the request to the ADA Coordinator as soon as possible but no later than three business days of receipt.
3. All requests must be reflected in writing using the [Permitting Council's Reasonable Accommodation Request Form](#). The form may be completed by the requestor, family member, health professional or other representative who is acting on behalf of the employee/applicant, or the ADA Coordinator. When possible, it is preferable the form is completed and/or reviewed by the requestor.
4. The ADA Coordinator reviews the request for completeness before processing.
5. The ADA Coordinator provides the request to the Associate Director of Administration for review.

### Reasonable Accommodation Review

1. After receiving a request, the ADA Coordinator and Associate Director of Administration will take a proactive approach in searching out and considering possible accommodations, including consulting the employee's supervisor and appropriate resources for assistance.
  - a. Requesting employees and reviewers may consult EEOC guidance and technical assistance documents to identify and evaluate possible accommodations, available at [www.eeoc.gov](http://www.eeoc.gov). The Permitting Council may also consult with GSA to review and process the reasonable accommodation request per its service level agreement.
2. Any request that is deemed reasonable will be addressed as soon as possible or within 20 business days from the date the request was sent to the ADA Coordinator, unless there are extenuating circumstances. In certain circumstances, time limits for processing requests for and providing reasonable accommodations should be expedited. Expedited processing might be necessary where, for instance, the reasonable accommodation is needed to enable an individual to apply for a job; or the reasonable accommodation is needed for a specific activity that is scheduled to occur shortly.
3. When all the facts and circumstances known to the Permitting Council makes it reasonably likely that the requesting employee will be entitled to an accommodation, but the accommodation cannot be provided immediately, the Permitting Council will provide

the individual with an interim accommodation that allows the individual to perform some or all of the essential functions of the job, absent undue hardship.

4. Where an accommodation can be provided in less than the maximum time frame, failure to provide an accommodation in a prompt manner may result in a violation of the Rehabilitation Act. 29 U.S.C. § 701 et seq. This violation may be a basis for the requestor to file an Equal Employment Opportunity (EEO) complaint.

## Medical Documentation

1. If a requestor's disability and/or need for accommodation are not obvious or already known, the Associate Director of Administration and the ADA Coordinator are entitled to ask for and receive medical information showing that the requestor has a covered disability that requires accommodation. A disability is obvious or already known when it is clearly visible or the individual previously provided medical information showing that the condition met the Rehabilitation Act definition. It is the responsibility of the applicant/employee to provide appropriate medical information requested by the Permitting Council where the disability and/or need for accommodation are not obvious or already known.
  - a. Medical documentation will be shared with GSA CABS or the Deputy Executive Director pertaining to their role during the reasonable accommodation process.
2. If medical documentation is necessary, the ADA Coordinator will prepare the request for medical documentation with input from the requestor, in accordance with EEOC policy guidance on Executive Order 13164.
3. Provided medical information must be sufficient to explain: (1) the nature of the individual's disability; (2) the need for reasonable accommodation; and (3) how the requested accommodation, if any, will assist the individual to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace.
4. Confidential medical information may be disclosed by the Permitting Council under limited circumstances including: (1) supervisors and managers may be told about necessary restrictions and accommodation(s); (2) first aid and safety personnel should the disability require emergency treatment; (3) government officials to investigate the agency's compliance with the Rehabilitation Act; (4) workers' compensation offices or agency insurance providers; and (5) agency EEO officials may be given the information to maintain records.

## Reasonable Accommodation Decision

1. Requestors may track the processing of their reasonable accommodation request(s) by contacting the ADA Coordinator as needed.
2. Upon a final determination on the reasonable accommodation request, the Associate Director of Administration, in coordination with the ADA Coordinator, will draft the [Reasonable Accommodation Information Report](#) to document the decision and maintain it for recordkeeping and compliance reporting.

- a. The Permitting Council is required to record the following information: the specific reasonable accommodation that was requested; the job sought by requesting applicant or held by the employee; whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment; whether the request was granted or denied; the specific reasonable accommodation provided (if different from what was requested); the identity of the deciding official; the basis of the denial; and the number of days taken to process the request.
3. The Associate Director of Administration, in coordination with the ADA Coordinator, provides written notification to the requester of the final decision. If a request is denied, the notification will explain the reasons for the denial and the procedures for reconsideration. The denial notice will seek to provide sufficient details for the denial; for example, why the medical documentation is inadequate to establish that the individual has a disability or needs reasonable accommodation; why the requested accommodation would not be effective; or, why the accommodation would pose an undue hardship to the agency.
4. The Associate Director of Administration will finalize and approve the [Reasonable Accommodation Information Report](#) and maintain it for recordkeeping and compliance reporting.

### Reasonable Accommodation Appeal Process

1. Within five business days upon receipt of the denial notice, the requestor can appeal the decision by submitting a request to the Deputy Executive Director to reconsider his/her denial. New evidence and sound justification should be presented to support this request. The Deputy Executive Director will issue a decision on reconsideration within 10 business days after receipt of the individual's request for reconsideration.

### Reasonable Accommodation Discrimination

1. Any applicant or employee for employment who believes he/she has been discriminated against based on race, sex, color, religion, national origin, age, mental or physical disabilities, and/or reprisal in an employment matter, must contact an EEO counselor (EEO@gsa.gov) within 45 calendar days of the date of the matter to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action. Further information on the Permitting Council's [EEO policy and procedures](#) are found in the Record Management System.
2. Any Applicant or employee for employment may initiate an appeal to the Merit Systems Protection Board (MSPB) within 30 days of an appealable adverse action, as defined in 5 CFR § 1201.22.



## Personal Assistance Services

Consistent with 29 C.F.R. §1614.203(d)(5)(v), the Permitting Council will leverage its reasonable accommodations procedures and time frames for processing personal assistance service requests.

## V. Responsibilities and Authorities

### ADA Coordinator

The ADA Coordinator shall: (1) Manage requests for reasonable accommodation and, where appropriate, determine which Permitting Council management officials will handle the request by providing reasonable accommodation, if possible, in a prompt, fair and efficient manner. (2) Assure the maintenance of the records related to an employee's request for accommodation in accordance with the Federal records disposition schedule. Ensure that medical records are kept confidential and maintained in files separate from the individual's official personnel file.

### Associate Director of Administration

The Associate shall administer and implement the policy and: (1) Process requests for reasonable accommodation providing timely, fair and equitable processing, as well as respect for the requestor's privacy. (2) Make vacancy announcements available to applicants/employees with disabilities. (3) Ensure that all vacancy announcements include a statement of reasonable accommodation, to ensure compliance with Executive Order 13078 and support the Office of Personnel Management initiatives to increase the representation of people with disabilities in the Federal workforce. (4) Assist the Executive Director with reassignment, if reassignment is deemed as a reasonable accommodation, in accordance with EEO regulations and laws.

### Deputy Executive Director

The Deputy Executive Director oversees the responsibilities of the Associate Director of Administration

### Employees

Employees should provide fair and equitable treatment to people with disabilities. Any employee requesting a reasonable accommodation shall: (1) Initiate a request for reasonable accommodation orally or in writing in accordance with procedures. (2) Provide sufficient information and documentation, such as a description of the accommodation requested, and an explanation of how it would enable an employee to perform the job or assist an applicant in the selection process. (3) When required, provide relevant medical information related to the functional impairment and the requested accommodation when the disability and/or need for accommodation is not obvious.

### Executive Director

The Executive Director, or designated official will ensure a continuing affirmative application and vigorous enforcement of the policy. Provide sufficient resources for program implementation to

ensure efficient and successful processing of requests for reasonable accommodation. Recognize and reward individuals who have demonstrated superior efforts in supporting the spirit of the law.

### General Counsel

The General Counsel advises the Executive Director, employee and/or staff acting on behalf of the Executive Director on the application of law as it relates to reasonable accommodation requests.