

**United States Section
International Boundary and Water Commission**

Directives Management System

Volume I : Mission Support
Part 0700 : Office of the Commissioner
Chapter 0702 : Equal Employment Opportunity
Directive 07027 : Reasonable Accommodations for Individuals with Disabilities
Citation : SD.I.07027
Proponent : Equal Employment Opportunity
Effective Date : October 21, 2022

1. **Purpose:** To provide employment opportunities for persons with disabilities who otherwise would not be able to perform the essential functions of their job, and to allow employees with disabilities to perform or be more productive.
2. **Requirement and Authority:**
 - A. Executive Order 13164 (65Federal Register 46565) “Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation” requires each agency to adopt procedures for processing requests for reasonable accommodations.
 - B. Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) As amended.
 - C. The United States Section International Boundary and Water Commission, (USIBWC), hereby establishes its Procedures to Facilitate the Provision of Reasonable Accommodation.
3. **Applicability:** This policy applies to all USIBWC employees and applicants for employment. All USIBWC supervisors are responsible for ensuring compliance with the policy contained herein.
4. **Overview:**
 - A. Establish prompt, fair, and effective procedures to respond to requests for reasonable accommodation by individuals with disabilities, who are federal employees or applicants for federal employment with USIBWC.
 - B. Increase awareness of the responsibility to provide for the expansion of opportunities for individuals with disabilities.
 - C. Ensure that managers and supervisors comply with the provisions of laws, regulations, and policies regarding reasonable accommodation.

- D. Establish a standard procedure to capture data for reporting disability-related actions to higher headquarters.
- E. Accommodation decisions should be based primarily on whether they will help the applicant or employee become a successful and productive member of the USIBWC workforce.

5. Definitions

A. Disability –

(1) with respect to an individual,

(a) A physical or mental impairment that substantially limits one or more of the major life activities of such individual.

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment. This means 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.”

B. Reasonable Accommodation –

(1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires;

(2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position; or

(3) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

C. Qualified - Qualified means that the individual with a disability “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

D. Essential functions of the job - The essential functions of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be "essential" if, among other things, the position exists specifically to perform that function, there are a limited number

of other employees who could perform the function if it were assigned to them, or the function is specialized, and the incumbent is hired based on his/her ability to perform it. The Essential Functions are decided by the Agency and identified in the position description or the performance plan, in consultation with the supervisor and human resources.

E. Undue hardship - Undue hardship means that “with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity.” In determining whether an accommodation would impose an undue hardship on a covered entity, we must consider the following factors:

- (1) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding;
- (2) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;
- (3) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities.
- (4) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and
- (5) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

6. Responsibilities

A. Applicants and Employees,

- (1) Applicants and employees with a disability must inform the employer that a reasonable accommodation is needed to do the following: participate in the application process to be considered for employment; to perform the essential job functions; or to receive equal benefits and privileges of employment.

B. Managers and Supervisors

- (1) Managers and supervisors at all levels, but especially immediate supervisors, will:
 - (a) Provide necessary resources to support the reasonable accommodation process.

(b) Review reasonable accommodation requests received from applicants and employees; and begin the interactive process to identify and implement a reasonable accommodation in coordination with Equal Employment Opportunity and Human Resources Offices.

(c) **After consulting with the EEO Officer, the manager or supervisor is responsible for making the final determination on accommodation requests made by employees.**

(d) IBWC Form 398, Reasonable Accommodation Checklist, was created to assist managers in the processing of Reasonable Accommodations. This is a guide only.

C. Equal Employment Opportunity (EEO) Director: The Equal Employment Opportunity Officer will:

(1) As the proponent for the Program for Individuals with Disabilities, serve as the Agency's Disability Program Manager (DPM)

(2) Provide all applicants and employees with information about their rights and responsibilities related to disabilities in the workplace; including their right to request reasonable accommodation because of a medical condition.

(3) Assist supervisors on all reasonable accommodation requests.

(4) Be the agency's official responsible for processing requests for reasonable accommodation and to make recommendations.

(5) Track and report reasonable accommodation request in reports, as requested by EEOC, OPM or any other

D. Human Resources Office: The Human Resources Office (HRO) staff will:

(1) Review and coordinate with the hiring supervisor and the EEO Office all reasonable accommodation requests received from applicants for employment.

(2) Forward all reasonable accommodations received to the EEO Office.

(3) Assist with modifications to positions or reassignment to alternative positions as a result of the Agency's grant of a reasonable accommodation.

(4) After consulting with the EEO Officer, make the final determination on accommodation requests made by applicants for employment.

E. Legal Office Affairs Office: The Legal Affairs Office will:

- (1) Review and coordinate with the hiring supervisor, the HRO staff and the EEO Office all reasonable accommodation requests received from applicants for employment.
- (2) Forward all reasonable accommodations received to the EEO Office.
- (3) Provide legal advice, when appropriate.

7. **Steps and Procedures for Requests:**

- A. The individual need not have a particular accommodation in mind before making request.
- B. An individual may request a reasonable accommodation orally or in writing at any time, need not fill out any specific form in order for the interactive process to begin.
- C. The request may be made to
 - (1) a supervisor or manager in the individual's chain of command;
 - (2) the EEO Office, or the HR office,
 - (3) any agency employee connected with the application process, or
 - (4) any other individual designated by the agency to accept such requests.
- D. An applicant or employee may initiate a request for reasonable accommodation orally or in writing. If the request is made orally, the individual will be asked to complete a written request for record-keeping purposes. Regardless of how it is initiated, the oral or written request starts the reasonable accommodation process and begins the interactive process required by law. A decision maker from the HR office must begin processing an oral request immediately upon receipt of such a request and should not wait for the written confirmation. Processing means engaging in the interactive process by discussing with the Employee their limitations, needs, and possible accommodations. The EEO Office, manager, supervisor, or HR Office (for applicants) must document any verbal or written discussion/ processing in writing for the Agency's record. This record should be conveyed to the EEO Office within 3 business days. **However, processing the request should not be delayed and does not require written documentation to proceed.**
- E. All requests, whether they are done orally or in writing, must be documented using IBWC Form 392: Reasonable Accommodation Request Form. IBWC Form 392 must be forwarded to the EEO Office for record keeping purposes.

- F. When an individual with a disability requests assistance in completing the written request for reasonable accommodation, the supervisor must provide the assistance. Employees may also seek assistance from the EEO Office.
- G. The immediate supervisor and/or the decision maker will maintain communication with individuals early and periodically through the interactive process concerning the requested accommodation.
- H. The supervisor of the employee requesting a reasonable accommodation must complete IBWC Form 393: Reasonable Accommodation Information Reporting Form. (Appendix B) A copy of IBWC Form 393 will be provided to the EEO Officer.
- I. The reasonable accommodation process is initiated when an individual with a disability, for a reason related to a medical condition, indicates to a supervisor in their chain, or the EEO Office the need for an adjustment or a change at work; or a job applicant makes such a request to the HRO. The medical condition does not have to be apparent to the individuals listed above. The requestor does not have to use any particular words, cite the Rehabilitation Act of 1973, or even use the term "reasonable accommodation" or "disability". The disability does not have to be obvious, such as cancer, or a respiratory, cardiac, neurological, or immune deficiency disorder. It may be related to a specific medical diagnosis or simply be related to how the employee reacts to a new medication. It is impossible to list or identify every possible situation that can trigger a reasonable accommodation request.
- J. A family member, health professional, or other representative may request a reasonable accommodation on behalf of the individual with a disability. The EEO Office will confirm the need for a reasonable accommodation with the person who has the disability.
- K. The request for accommodation begins an interactive and flexible process between the requester and the immediate supervisor. The process may include communicating with the requester to clarify the request, obtaining and exchanging information with the requester to the extent necessary, regarding needs and alternatives, searching for solutions, consulting outside resources, and evaluation possible accommodations and additional information, if needed. The Agency is not obligated to provide the exact accommodation provided and can offer alternative accommodations. The supervisor needs to communicate at all times with the EEO Office in order to process the reasonable accommodation request in a timely manner.

Immediate supervisors, with the assistance of the EEO Office, will consider and approve requests for reasonable accommodation, whenever possible. Each reasonable accommodation request will be different and will have to be considered on a case-by-case basis. The person receiving the request will forward it promptly EEO Office. The EEO Office will meet the HRO and the Legal Affairs Office, for their assistance on more complex requests. An employee or applicant

should be informed as soon as possible about the status of their reasonable accommodation request, especially if an urgent situation exists.

- L. The EEO Office, the HRO, the Legal Affairs Office, the supervisor and/or any other person identified as “need-to-know” is bound by strict confidentiality requirements. All records will be maintained in the EEO Office in accordance with the Privacy Act of 1974 and requirements of Title 29 C.F.R. Part 1611. The following are “need-to-know” individuals:
 - (1) Agency officials and managers who need to know (including the deciding official who requested the information) may be told about necessary restrictions on the work or duties of the employee and about the accommodation(s) that the Agency offers to the employee, but medical information should only be disclosed if strictly necessary.
 - (2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.
 - (3) Government officials may be given information necessary to investigate USIBWC’s compliance with the Rehabilitation Act.
 - (4) The information may in certain circumstances be disclosed to workers’ compensation offices or insurance carriers.
- M. The agency will process requests for reasonable accommodation and will provide or deny accommodations, in writing, as soon as reasonably possible or within 30 business days whichever comes first. The timeframe starts on the date that the supervisor first engages in the interactive process. The 30-day timeframe could be delayed by any periods required to gather medical or other documentation necessary to fully process the request. All parties must recognize the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information and/or medical documentation.
- N. If a particular reasonable accommodation can be provided in less time than 30 business days, the failure to respond promptly to the request may result in violation of the Rehabilitation Act.
- O. Whether or not an accommodation is provided or denied, the Deciding Official must complete IBWC Form 394: Resolution of Request for Reasonable Accommodation and provide a copy to the EEO Office. The EEO Office will then issue a copy to the requestor.

Where the requested accommodation is determined to be reasonable by management and will not pose an undue hardship to the Agency, the reasonable accommodation should be provided, in writing, within 30 business days of the request, absent extenuating circumstances. The 30-day time limit begins to run when

the supervisor/manager first engages in the interactive process. Supervisors and managers must engage in the interactive process within three (3) business days of first being informed of the need for an accommodation.

The agency will not be expected to adhere to its usual timelines if an individual's health professional fails to provide needed documentation in a timely manner; if the employee fails to respond for a request for information or delays providing information; or if the delivery of the required equipment causes a delay in implementing the accommodation. Should additional medical, or other, documentation be necessary to process the request, the 30 business-day time period stops running on the date that the Agency requests that additional information from the employee and while information is being provided by the employee or a health care provider. The processing timeframe resumes as soon as medical (or other) documentation is received by the EEO Office. The processing timeframe runs while the Agency determines the sufficiency of medical documents. The agency can again toll the timeframes if additional documentation is needed and until completion of the sufficiency review.

If there are extenuating circumstances that will preclude providing the requested reasonable accommodation within 30 calendar days, the requester will be notified of the reason for the delay and will be provided the anticipated completion date in writing. In the interim, management may also consider whether a provisional or temporary accommodation should be provided. "Extenuating circumstances" covers limited situations in which unforeseen or unavoidable events prevent prompt processing delivery of an accommodation.

When all the facts and circumstances known to the agency make it is reasonably likely that the individual will be entitled to an accommodation, but the accommodation cannot be provided immediately, the agency will provide the individual with an interim accommodation that allows the individual to perform some or all of the essential functions of the job, absent undue hardship.

The following are examples of extenuating circumstances:

- (1) The purchase of equipment may take longer than 15 business days because of requirement under the Federal Acquisition Regulation.
- (2) Equipment must be backordered, the vendor typically used for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.
- (3) The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before it is purchase by the agency.

- (4) New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.
 - (5) Employee or the Agency is unable to get medical information in a timely manner.
- P. There may be special circumstances where expedited processing might be necessary, for example:
 - (1) The reasonable accommodation is needed to enable an individual to apply for a job.
 - (2) The reasonable accommodation is needed for a specific agency activity that is scheduled to occur shortly.
- Q. For granted accommodations requests, decision makers have the responsibility for following through and making any necessary arrangements to ensure the accommodation is provided in a timely manner. The organization will determine how funding will be provided to support the provision.
- R. Prior to denying any accommodation request, decision makers will coordinate with the EEO Office. The EEO Office will meet with the HRO and the Legal Affairs Office for a review of the request. If a request for a reasonable accommodation is denied, the individual will be informed in writing and advised that a request for reconsideration may be submitted with any additional information within 10 calendar days of receipt of the denial.
- S. Supervisors will complete IBWC Form 393: Reasonable Accommodation Information Reporting Form, and submit it (without any medical information), to the EEO Officer, who will maintain it for the length of the employee's tenure with USIBWC or a minimum of three years. (Appendix C)
- T. There may be times where we will process requests for an accommodation that are needed on a repeated basis. When an individual request a type of accommodation that will be needed on a repeated basis (e.g., a sign language interpreter, CART Services, or readers), the EEO Office may not require the individual to submit a written request for each time the accommodation is needed. Once the accommodation is approved for first time, the employee may obtain the accommodation by notifying the appropriate individual or office.
- U. When a particular reasonable accommodation can be provided in less than the maximum amount of time permitted under paragraph 29 C.F.R. § 1614.203(d)(3)(i)(M), failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act. 29 C.F.R. § 1614.203(d)(3)(i)(O).

- V. The following individual will issue a copy of IBWC Form 394: Resolution of Request for Reasonable Accommodation (the final decision) to any requests for reasonable accommodation:

Name: Frances Castro
Job Title: Director, EEO
E-mail: frances.castro@ibwc.gov
Phone No. 915-832-4112

8. Medical Information:

- A. If the disability or need for accommodation is not obvious or already known by the supervisor, the employee or applicants for employment must provide relevant medical information related to the disability; for example, the functional impairment and/or limitations at issue and the requested accommodation. If additional information is needed, the decision maker will coordinate with EEO Office for assistance in requesting the information.
- B. Additional medical information may be requested, only to the extent reasonably necessary, if initial medical information:
- (1) Does not clearly explain the nature of the disability, the need for reasonable accommodation, or the permanent or temporary nature and duration of the disability.
 - (2) Does not clearly explain the activity or activities the impairment limits or the extent to which the impairment limits the individual's ability to perform the activity or activities.
 - (3) Does not clarify how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy the benefits and privileges of the workplace.
- C. An authorization for disclosure of medical or dental information may be used to request the use and/or disclosure of an individual's protected health information to process the reasonable accommodation request. The applicant or employee should write "reasonable accommodation request" in the space provided. In most cases, it will be unnecessary to request and/or provide an applicant's or employee's entire medical record unless all the information contained therein is related to whether the applicant/employee can perform the essential job functions.
- D. The Disability Program Manager may have the medical information reviewed by a medical expert of the Commissioner's choice at USIBWC's expense to assist in assessing functional abilities. If the medical documentation provided by the employee does not result in sufficient information on which to assess the employee's accommodation request, USIBWC may require the requestor to be examined by a health care professional of USIBWC's choice at USIBWC's

expense.

- E. In accordance with the Rehabilitation Act of 1973, medical information may not be requested where:
 - (1) The disability, the need for reasonable accommodations, and the type of accommodations necessary are obvious or already known. For example, requesting medical information for a deaf employee working in an office is unnecessary for a decision maker to provide an accommodation to assist the employee in using their phone.
 - (2) The individual has already provided the agency with sufficient information to document the existence of the disability and how it functionally limits the individual from performing the essential duties of the position the person holds or for which the person is being considered.
- F. The Rehabilitation Act also requires that all medical information be kept confidential and maintained in a secure location. If necessary, medical information may only be shared with other agency officials who need the information to perform their duties. When medical information is disclosed to appropriate officials, they must be informed regarding the confidentiality requirements under the law.
- G. In order to maintain the confidentiality of the medical information and the reasonable accommodation request data, these records must be filed separately from the employee's personnel files maintained in most offices. All documents that identify the employee's medical condition, diagnosis, treatment plan, or prognosis are to be treated as medical records. These include doctor or other care provider notes that relate to the disability, such as sick slips and return to duty notes. Access to these medical records must be limited to the supervisor and only those management officials with a need to know the information in order to perform their official duties. Failure to maintain the confidentiality of this information may be determined to be a violation of the Privacy Act or the Health Insurance Policy and Accountability Act (HIPAA) of 1996, resulting in liability to the employer and possible disciplinary action against the offending official.
- H. When an individual submits insufficient documentation to demonstrate that s/he has a disability and needs accommodation, the decision maker or the Disability Program Manager needs to explain to that person why the submitted documentation is insufficient. The decision maker or the Disability Program Manager should identify the information that is needed and allow the individual an opportunity to provide the information before requesting a medical examination. Failure to provide necessary documentation where it has been properly requested could result in a denial of reasonable accommodation.
- I. Failure to provide necessary medical documentation where it has been properly requested could result in a denial of reasonable accommodation.

J. All requests for and provision of reasonable accommodation must be kept confidential.

9. **Types of Reasonable Accommodation:** There is no standard “one size fits all” answer to what constitutes a reasonable accommodation. If one is identified, it must be tailored to the individual’s needs and must result in the employer’s mission still being met. Cost alone may not be used as a reason for not providing a reasonable accommodation. Creativity and flexibility should govern the interactive process of identifying a reasonable accommodation. The outcome should focus on the employee still being able to perform all of the essential tasks of the employee’s permanent position for which the employee was hired. If the interactive dialogue reveals that the employee will not be able to perform all of the essential tasks of the employee’s permanent position, even with a reasonable accommodation, the decision maker should immediately notify the Director of Human Resources. The following options should be considered in this process:

A. Modifications or adjustments may be made to the application process, to the job, or the workplace. Refer to the examples described for reasonable accommodation in the glossary. A variety of resources, some cost-free, are available to assist management in making modifications to workplace facilities and equipment. Assistance may be obtained from the EEOO, HRO and the Computer/Electronic Accommodations Program (CAP).

B. Alternative work schedules, such as maxi-flex or telework, and use of paid and unpaid leave, each providing specific flexible work arrangements between a supervisor and an employee.

C. Reassignment is the accommodation of last resort. Reassignment is available only to employees, not to applicants. Reassignment must be considered if no other accommodation is available to enable the individual to perform the essential functions of the current position or if the only effective accommodation would cause an undue hardship to the Agency. Reassignment may be made only to a vacant position for which the employee is otherwise qualified. The law does not require the organization to create a new position or move other employees from their jobs in order to create a vacancy. The law also does not require a change of supervisor as a reasonable accommodation. Reassignment cannot be an adverse action and must be noncompetitive.

D. If reassignment is being considered as an accommodation, the decision maker should explain to the employee why they cannot be accommodated in the current position. The decision maker should determine the employee’s preferences with respect to the reassignment. For example, is the employee willing to be reassigned:

(1) Outside the facility or outside the commuting area, including outside the geographical area, and if so, to what locations.

- (2) To a different type of position for which he/she may be qualified, and if so to what type(s);
 - (3) To a different sub-component of the department, and if so, to which one(s); to a lower-grade position if no position is available in their current grade level. If so, identify down to what grade level.
- E. If reassignment is being considered as an accommodation, the decision maker must consult with HRO for assistance in conducting a vacancy search based upon the employee's expressed preference and qualifications. A search must first focus on equivalent positions within the Agency before extending the search to other areas within the employee's expressed preferences.
- F. A qualified employee with a disability requesting accommodation can be offered a reassignment as a reasonable accommodation to a position for which a vacancy announcement has been published if a selection to fill the position has not been made and there are no pending Priority Placement Program matches. If an employee is being reassigned to a different geographical area, the employee must pay for any relocation expenses unless the activity routinely pays such expenses when granting voluntary transfers to other employees.
- G. In some circumstances where an individual has a recurring, predictable need for accommodation (for example, sign language interpreters or large print documents), the agency may be obligated to provide the accommodation as needed, whether or not the individual has requested it.

10. Resources

Individuals with disabilities, managers and decision makers can consult the following resources to identify and evaluate possible accommodation:

- A. Job Accommodation Network (JAN) – JAN is leading source of free, expert, and confidential guidance on workplace accommodations and disability employment issues. Website: <https://askjan.org/>
- B. Enforcement Guidance and Other Policy Documents on the ADA. Website: <https://www.eeoc.gov/selected-enforcement-guidances-and-other-policy-documents-ada>
- C. Other resources, such as medical professionals.

11. Denial of Reasonable Accommodation:

- A. If an individual's request for reasonable accommodation is denied, the individual must be notified in writing of the reason. The denial must be completed using EEOC Form 557a, Resolution of Reasonable Accommodation Request. (Appendix C). Where appropriate, the notice of denial should be provided in an

alternate format, such as large print, Braille, etc.

- B. All denials notifications must include the individual's rights to file an EEO complaint, and all alternative procedures available. The agency encourages the use of voluntary informal dispute resolution processes. This allows individuals with disabilities to obtain prompt reconsideration of denials of reasonable accommodation.
- C. Where the employer identifies a different accommodation, the notice must explain why the employer rejected the individual's request and why the employer's chosen accommodation would be effective. While the law requires the employer to consider the individual's preference, the employer selects and implements the accommodation deemed most appropriate for both the individual and the organization.
- D. In determining if a proposed reasonable accommodation poses an undue hardship, the overall resources, and options available to USIBWC must be considered, not just the budget or resources of an individual segment.
- E. At all stages of the process of complex requests, the EEO Office will be coordinating with HRO and the Legal Affairs Office.

12. Avenues of Redress for Denied Reasonable Accommodations Requests

- A. An employee or applicant who is denied reasonable accommodation may file a discrimination complaint with the EEO Office. To be timely, the individual must contact the EEO Office within 45 calendar days of the receipt of the denial decision.
- B. An employee may also file an appeal with the Merit Systems Protection Board (MSPB) if the discrimination allegation is in conjunction with some other personnel action that is otherwise appealable.
- C. An employee may also file a grievance under the negotiated grievance procedure, if applicable, over the denied accommodation request in accordance with the local Collective Bargain Agreement (CBA). Employees not covered by the CBA may still request reconsideration of the decision to the decision maker. If the decision maker does not reverse the denial, the individual must then be informed of the appropriate senior management official, normally the executive staff member of the affected activity, to whom a request for review can be made.
- D. Employees seeking to redress the denial of their accommodation request through any of the avenues listed above also have the option of initiating Alternative Dispute Resolution (ADR) through any applicable ADR process established by USIBWC that covers such disputes. However, employees must be aware that the ADR process does not affect the time limits governing the EEO complaint process,

the MSPB appeal process, or the union grievance procedures. An individual's participation in the ADR procedures does not satisfy the requirements for pursuing one of the three options listed above.

13. **Tracking Requirements:** USIBWC EEO Office is responsible for keeping records of all reasonable accommodations. This information may be used to determine whether the agency is complying with the nondiscrimination and affirmative action requirements imposed under Section 501, and to make such records available to the Equal Employment Opportunity Commission (EEOC), upon their request.

As soon as an accommodation is requested, activities and individuals will report the following information to USIBWC EEO Office:

A. HRO:

- (1) The number and types of reasonable accommodation requests received by HRO in the application for employment process and whether those requests were granted or denied.
- (2) The jobs (occupational series, grade level, and organization) for which reasonable accommodations were requested.
- (3) The types of reasonable accommodations that were requested for each of those jobs.
- (4) The number and types of reasonable accommodation for each job, by department, that were approved, and the number and types that were denied.

B. Supervisors:

- (1) Using IBWC Form 395: The number and types of requests for reasonable accommodations received by supervisors that relate to the benefits or privileges of employment and whether those requests were granted or denied.
- (2) The reasons for denial of any requests for reasonable accommodation.
- (3) The amount of time taken to process each reasonable accommodation request.
- (4) The sources of technical assistance consulted in trying to identify possible reasonable accommodations.

C. Each department serviced by the EEO Office will submit the Reasonable Accommodation Annual Tracking Information data, detailed above, to the EEOO upon receiving a Reasonable Accommodation request.

D. Applicants and employees can contact the EEO Office to track the processing of their requests for reasonable accommodations.

E. The EEO Office will track the following information for all requests:

- (1) The specific reasonable accommodation requested, if any.
- (2) The job (occupational series, grade level, and agency component) sought by the requesting applicant or held by the requesting employee.
- (3) 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.
- (4) Whether the request was granted (which may include an accommodation different from the one requested) or denied.
- (5) The identity of the deciding official; and
- (6) The number of days taken to process the request.

14. Disposition of Reasonable Accommodation Request Data, to Include Medical

- A. The EEO Office will safeguard any and all documentation related to a particular individual who has requested reasonable accommodation must be filed apart from other personnel records, safeguarded regarding confidentiality requirements, and maintained for the duration of that employee's employment.
- B. The tracking information data should be maintained for a period of three years. This data will assist management in evaluating its performance regarding the adequate and timely processing of reasonable accommodation requests and to take corrective action, is required.

15. Additional Recourses

- A. Supervisors and managers have additional resource materials to process a reasonable accommodation, including:
 - (1) EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (July 27, 2000). This guidance can be found at: www.eeoc.gov.
 - (2) EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (revised October 17, 2002). This guidance can be found at: www.eeoc.gov.

16. Disability Retirement Application

A. The Disability Retirement Process

- (1) An employee who meets the timeline criteria established by their retirement system and has become disabled shall be retired on the employee's own application or on application by USIBWC. Any employee shall be considered to be disabled only if the employee is found by the Office of Personnel Management (OPM) to be unable, because of disease or injury, to render useful and efficient service in the employee's position and is not qualified for reassignment, under procedures prescribed by OPM, to a vacant position which is in the agency same grade or level and in which the employee would be able to render useful and efficient service.
- (2) An employee must fill out the appropriate forms according to their retirement (FERS or CSRS) in order to apply for disability retirement. An employee should consider applying for disability retirement only after they have provided the agency with complete documentation of their medical condition and the agency has exhausted all reasonable attempts to retain the employee in a productive capacity, through accommodation or reassignment.
- (3) An employee who selects to complete the written forms for disability retirement may seek assistance from the HRO Benefits Officer.
- (4) After the forms are submitted to, and reviewed by, the HRO Benefits Officer, they will be forwarded to EEO Office for further review and signature. After the EEO Office reviews the documentation, they will return to HRO who will forward them to OPM.

B. FERS Requirement for Disability Retirement

- (1) An employee who is subject to the FERS must meet all the following conditions to be eligible for disability retirement:
 - (a) The employee must have completed at least 18 months of Federal civilian service which is creditable under FERS.
 - (b) The employee must, while employed in a position subject to the retirement system, have become disabled, because of disease or injury, for useful and efficient service in your current position.
 - (c) The disability must be expected to last at least one year.
 - (d) USIBWC must certify that it is unable to accommodate the employee's disabling medical condition in the employee's present position and that it has considered the employee for any vacant position at the same grade or pay level, within the same commuting area, for which the employee is

qualified for reassignment.

- (e) The employee, or their guardian or the interested person, must apply before the employee's separation from service or within one year thereafter. The application must be received by either OPM or the employee's former employing agency within one year of the date of separation. This time limit can be waived only if the employee was mentally incompetent on the date of separation or within one year of this date. OPM will make this determination.
 - (f) The employee must apply for social security disability benefits. Application for disability retirement under FERS requires an application for social security benefits. If the application for social security disability is withdrawn for any reason, OPM will dismiss the FERS disability retirement application upon notification by the Social Security Administration.
- (2) The employee must complete SF3107, Application for Immediate Retirement, and SF3112, Documentation in Support of Disability Retirement. Both forms are available electronically at the Office of Personnel Management's website (<http://opm.gov/forms/html/sf.asp>) and in the HRO office.
 - (3) If the employee is under age 62, they must also provide documentation that they have applied for social security disability benefits after separation from USIBWC.

C. CSRS Requirement for Disability Retirement

- (1) An employee who is subjected to the CSRS must meet all the following conditions to be eligible for disability retirement:
 - (a) The employee must have completed at least five years of creditable Federal civilian service.
 - (b) The employee must, while employed in a position subject to CSSR, have become disabled, because of disease or injury, for useful and efficient service in the current position. "Useful and efficient service" is defined as fully successful performance of the critical or essential elements of the position or the ability to perform at that level and satisfactory conduct and attendance.
 - (c) The disability must be expected to last at least one year.
 - (d) The agency must certify that it is unable to accommodate the disabling medical condition in the employee's present position and that it has considered the employee for any vacant position in the same agency, at the same grade or pay level, and within the same commuting area, for which the employee is qualified for reassignment.

- (e) The employee, or their guardian or other interested person, must apply before the employee's separation from service or within one year thereafter. The application must be received by OPM within one year from the date of separation. This time limit can be waived only in instances involving incompetency.
- (f) The employee must complete the SF 2801, Application for Immediate Retirement, and SF 3112, Documentation in Support of Disability Retirement. Both forms are available electronically at the Office of Personnel Management's website (<http://opm.gov/forms/html/sf.asp>) and in HRO.

17. **Availability of Reasonable Accommodations Procedures.** Job applicants and employees can request a copy of this procedures with all pertinent forms as attachments, in written and/or accessible formats that meets an individual's particular need, including braille, large print, and other alternative formats.

18. **Supersession:** This Directive supersedes Reasonable Accommodations for Individuals with Disabilities Directive, SD.I.07027, dated 17 July 2014.

Approved:

Dr. Maria-Elena Giner, P.E.
Commissioner

October 24, 2022
Date

Appendix A

Forms

IBWC Form 392	Request for Reasonable Accommodation
IBWC Form 393	Reasonable Accommodation Information Reporting
IBWC Form 394	Resolution of Request for reasonable Accommodation
IBWC Form 398	Reasonable Accommodation Checklist
SF 2801	Application for Immediate Retirement
SF 3107	Application for Immediate Retirement
SF 3112	Documentation in support of Disability Retirement

Send a signed copy of all forms via e-mail, to: frances.castro@ibwc.gov.