



**OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
INSTRUCTION 121.01**

**Category 121—Accessibility and Reasonable Accommodations
Office of Primary Responsibility: Human Resources Management
Revision 1**

**SUBJECT: (U) FACILITATING REASONABLE ACCOMMODATIONS FOR
INDIVIDUALS WITH DISABILITIES**

1. (U) AUTHORITIES: The National Security Act of 1947, as amended; and other applicable provisions of law.

2. (U) REFERENCES: The Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; the Architectural Barriers Act of 1968, as amended; the Privacy Act of 1974, as amended; the Genetic Information Non-Discrimination Act of 2008 (GINA); Executive Order (EO) 13164; 29 CFR, Part 1630; Intelligence Community Directive (ICD) 110, *Intelligence Community Equal Employment Opportunity and Diversity*; Office of the Director of National Intelligence (ODNI) 73.07, *Work Schedules*; ODNI Instruction 77.11, *Staff Reserve Appointments in the ODNI*; ODNI Instruction 103.01, *Travel Policy*; ODNI Instruction 113.02, *Use of Portable Electronic Devices*; and ODNI Instruction 120.02, *Equal Employment Opportunity Discrimination Complaint System*.

3. (U) PURPOSE

A. (U) This Instruction establishes ODNI policy, procedures, and responsibilities for providing reasonable accommodations for qualified individuals or applicants who have, or who develop, a disability. This Instruction replaces ODNI Instruction 121.01, *Facilitating Reasonable Accommodations*, 27 June 2017, and incorporates Internal Process Document 121.01a, *Process for Facilitating Reasonable Accommodations*.

B. (U) This Instruction is intended to provide guidance for the implementation of the Rehabilitation Act of 1973. Nothing in this Instruction shall be construed as creating any legal rights for individuals or applicants other than the rights such persons may have under existing law.

4. (U) APPLICABILITY

A. (U) This Instruction applies to ODNI permanent cadre employees; ODNI staff reserve (i.e., time-limited) cadre employees; Highly Qualified Experts; Intergovernmental Personnel Act detailees; presidential appointees (collectively, "ODNI personnel" or "individuals"); and applicants for ODNI employment. In accordance with any relevant agreement by the ODNI and other government agencies (OGAs), this Instruction also applies to OGA employees providing service support to the ODNI.

(1) (U) Reasonable accommodations provided for federal civilian detailees will be coordinated with the detailee's employing department or agency as described in Section 6.K.

(2) (U) An assignee who may require a reasonable accommodation must request that their employing department or agency contact the ODNI Disability Program Manager to coordinate the employing department or agency's provision of, or payment for, the reasonable accommodation.

(3) (U) Contractor companies are responsible for providing reasonable accommodations to contractor personnel as outlined in Section 6.L.

(4) (U) For military detailees, any reasonable accommodation request or requirement for light or limited duty will be in accordance with the detailee's Service regulations and coordinated through that detailee's respective Service.

B. (U) This Instruction does not apply to discretionary modifications for conditions which do not qualify as a disability under the law. Such modifications are not subject to the reasonable accommodation process under this Instruction, and are executed at management's discretion.

5. (U) **DEFINITIONS:** For the purposes of this Instruction, the terms used hereinafter are defined as follows:

A. (U) **Authorized Official(s):** Deputy Directors, Center Directors, and Heads of Independent Offices or designees (i.e., the employee's supervisor or manager, or the component Chief of Staff or Staff Director).

B. (U) **Disability:** A physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such impairment, or being regarded as having such an impairment. (*Rehabilitation Act of 1973*)

C. (U) **Discretionary Modification:** An adjustment or alteration granted outside of the reasonable accommodation process for individuals who do not have a disability, as defined above. For example, the Disability Program Manager coordinates the provision of scooters to employees with a temporary condition that limits mobility. The provision of a discretionary

modification does not mean that ODNI considers the individual to be an individual with a disability or a person who has a record of a disability.

D. (U) **Essential Job Functions:** Essential job functions are the fundamental duties of a position the individual holds or desires. A function can be "essential" if, among other things, the position exists specifically to perform that function, there are a limited number of personnel who could perform the function, or the function is highly specialized and the individual is hired based on expertise or ability. The essential functions of a position must be determined on a case-by-case basis, and must reflect the actual job performed, and not simply the components of a generic position description. (*Americans with Disabilities Act*)

E. (U) **Extenuating Circumstances:** Extenuating circumstances are those which could not reasonably have been anticipated or avoided in advance of the request for accommodation, or are outside of ODNI control. These can include situations in which equipment must be back-ordered, the vendor typically used by ODNI has unexpectedly gone out of business, or the equipment is not compatible with ODNI security requirements and must be modified for the classified working environment. When extenuating circumstances are present, the time for processing a request for a reasonable accommodation and providing the necessary accommodation will be extended as reasonably necessary.

F. (U) **Flexible Work Schedule (FWS):** In the case of a full-time employee, there is a basic 80-hour work requirement that allows an employee to determine their own schedule with the approval of a supervisor. In the case of a part-time employee, there is a basic work requirement of less than 80 hours that allows an employee to determine their own schedule within limits set by a supervisor. (*ODNI Instruction 73.07*)

G. (U) **Hiring Official(s):** Human Resources and ODNI officers who are involved in the selection process for ODNI positions.

H. (U) **Interactive Process:** The process by which the individual requesting an accommodation and the competent authority involved discuss the request for accommodation, communicate, exchange information, search for solutions, and consult resources as needed, to determine whether an accommodation will be provided, and as necessary, to examine potential alternative accommodations. (*Americans with Disabilities Act of 1990*)

I. (U) **Personal Assistance Services (PAS):** PAS provides assistance with performing activities of daily living that an individual would typically perform if they 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. (*29 CFR. Sec.1614.203(d)(5)*)

J. (U) **Qualified Individual:** An individual who satisfies the requisite skill, experience, education, and other job-related requirements of the position such individual holds or seeks, and who, with or without reasonable accommodation, can perform its essential functions of such position. (*Rehabilitation Act of 1973*)

K. (U) **Reasonable Accommodation:** A modification or adjustment to a job-related process (including the job application process), the work environment, or the manner or circumstances under which the job is customarily performed that enables a qualified individual with a disability to perform the essential job functions of their position, or to enjoy benefits and privileges of employment, and does not place an undue hardship on the employer. Reasonable accommodations can cover most things that enable an individual to apply for a job, perform a job, or have equal access to the workplace and employee benefits such as kitchen areas, parking lots, and office events. Reasonable accommodations do not include removal of essential job functions or provision of personal use items needed outside the workplace, but may include provision of personal use items to ensure equal access to the workplace. Refer to Section 6.H. for types of reasonable accommodations and the procedures for requesting a reasonable accommodation. (*Americans with Disabilities Act of 1990*)

L. (U) **Reassignment:** A reasonable accommodation of last resort, that, absent undue hardship, is provided to ODNI permanent cadre employees who, because of a disability, can no longer perform the essential functions of their current position, with or without accommodation. Reassignments are made only to funded vacant positions and for employees who are qualified to fill the vacant position. If the employee is qualified for the position, the employee will be reassigned to the job and will not have to compete. (*Americans with Disabilities Act of 1990*)

M. (U) **Service Animals:** Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task the dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the Americans with Disabilities Act. ODNI may approve the use of Service Animals on ODNI premises as a reasonable accommodation. (*Americans with Disabilities Act of 1990*)

N. (U) **Targeted disabilities:** A subset of conditions that would be considered disabilities under the Rehabilitation Act. These disabilities include: deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and distortion of limb and/or spine. (*Office of Personnel Management Standard Form 256*)

O. (U) **Undue Hardship:** If a specific kind of accommodation causes significant difficulty or expense, ODNI may not be able to provide a particular accommodation. Determinations of undue hardship are always made on a case-by-case basis, considering factors that include the nature and cost of the required accommodation, the overall resources of ODNI, and the impact of the accommodation on ODNI operations. (*29 CFR. Sec.1630.2*)

6. (U) POLICY

A. (U) ODNI will provide reasonable accommodations to individuals and applicants with a disability. If the individual or applicant is able to perform the essential job functions, with or without a reasonable accommodation, the individual's or applicant's disability will not preclude ODNI employment. In accordance with applicable laws, ODNI must provide reasonable accommodation to qualified employees or applicants with a disability, unless doing so would cause undue hardship.

B. (U [REDACTED]) The reasonable accommodation process is an interactive process during which the employee, management, authorized officials, and the Disability Program Manager work together, communicating early and periodically, to determine the best solution. Throughout the process, individuals may contact the Disability Program Manager by unclassified email (DNI_DRA@dni.gov) or classified email [REDACTED]

C. (U) When an individual requests a type of reasonable accommodation that will likely be needed on a repeated basis (for example, the use of sign language interpreters), the individual is not required to go through the reasonable accommodation request process multiple times. Once the reasonable accommodation is approved the first time, the individual may obtain the accommodation by notice of subsequent need to the individual or office that initially provided the accommodation. For example, for sign language interpreter services, the individual or supervisor may submit a request through the Reasonable Accommodation Program website.

D. (U) Supervisors and managers may be advised of necessary restrictions on work-related duties, to include official travel, for individuals with a reasonable accommodation. Emergency and security personnel may be advised if the individual requires or might require particular treatment or assistance during an evacuation. Government officials investigating compliance with non-discrimination laws and regulations must be given relevant information upon request.

E. (U) To ensure a responsive reasonable accommodation process, ODNI will ensure supervisors and managers are aware of the Equal Employment Opportunity Commission's (EEOC) resource materials available for their use. Resource examples include the EEOC's *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (2000)*, and *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (revised October 17, 2002)*.

F. (U) As part of the Reasonable Accommodation Program, ODNI will provide Personal Assistance Services (PAS) to qualified employees, who, because of certain targeted disabilities, require assistance to perform activities of daily living that an individual would typically perform if the individual did not have a disability, such as eating and using the restroom.

(1) (U) ODNI will provide PAS if:

(a) (U) The employee requires such services because of a targeted disability;

(b) (U) The requesting employee will be able to perform the essential functions of the job, without posing a direct threat to safety, once PAS and any required reasonable accommodations have been provided; and

(c) (U) Providing PAS to the requesting employee will not impose undue hardship on ODNI.

(2) (U) The process for requesting PAS, the process for determining whether such services are required, and ODNI's right to deny such requests when provision of the services would pose an undue hardship, are the same as for reasonable accommodations.

G. (U) Absent an undue hardship, ODNI will provide a reasonable accommodation to a qualified individual or applicant who:

(1) (U) Requests an accommodation in order to participate in the application process;

(2) (U) Requests an accommodation to enable the individual to perform the essential functions of the job or to gain access to the workplace; or

(3) (U) Requests an accommodation to enjoy equal benefits and privileges of employment, enjoyed by similarly situated individuals without disabilities.

H. (U) **Types of Reasonable Accommodations**

(1) (U) The authorized official, in consultation with the Disability Program Manager, and the Office of General Counsel (OGC), as appropriate, may choose among reasonable accommodations as long as the chosen accommodation is effective. Through the interactive process, the authorized official will solicit and consider the individual's input, but the authorized official has the ultimate discretion to choose among proposed effective accommodations. Reasonable accommodations may include, but are not limited to:

(a) (U) Making existing facilities readily accessible;

(b) (U) Job restructuring, removing and/or substituting a non-essential job function;

(c) (U) Approving part-time or modified work schedules;

(d) (U) Granting breaks or approving leave;

(e) (U) Acquiring or modifying equipment or devices in such manner that provides effective accommodation while ensuring security considerations are met;

- (f) (U) Providing specially designed furniture;
- (g) (U) Providing qualified service providers, such as sign language interpreters;
- (h) (U) Modifying testing and examination procedures;
- (i) (U) Upgrading seating or class of service for official travel, as described in ODNI Instruction 103.01; or
- (j) (U) Offering reassignment of ODNI permanent cadre employees to a vacant position.

(2) (U) ODNI is not required to create a position as an accommodation to individuals or applicants with disabilities, however, supervisors or managers must consider reassigning nonessential job functions or modifying how essential job functions are performed.

(3) (U) Reasonable accommodations DO NOT include:

- (a) (U) Removing an essential function or hiring someone else to perform it;
- (b) (U) Lowering performance or production standards;
- (c) (U) Excusing misconduct in violation of uniformly applied rules that are job-related and consistent with business necessity; or
- (d) (U) Providing items that are primarily for personal use, such as prosthetic limbs, glasses, or wheelchairs, unless this equipment is specifically designed or required to meet job-related, rather than personal needs. These requests are distinct from PAS, such as providing a sign language interpreter.

I. (U) Applicants for ODNI Cadre Employment: ODNI will provide reasonable accommodations to otherwise qualified applicants with disabilities who request a reasonable accommodation to participate in the application process, unless the hiring component can demonstrate that a particular accommodation would impose an undue hardship on ODNI operations. When undertaking applicant processing, ODNI personnel will observe the practices below:

- (1) (U) Accommodation during the application and interview process:
 - (a) (U) Applicants will be advised of the hiring process (e.g., an interview, security, and medical evaluations), and that reasonable accommodations may be provided for this process.
 - (b) (U) During the application process and before a conditional offer of employment (COE) is made, ODNI hiring officials may not ask applicants any questions that are likely to

elicit information about a disability. Applicants may be asked about their ability to perform any or all job functions, to describe their qualifications and skills, and may be asked to describe or demonstrate how they would perform job tasks, as long as all applicants in the job category are asked about these matters in the same manner.

(c) (U) During the application process and before a COE, the hiring official may not ask whether the applicant needs a reasonable accommodation in order to perform applicable job duties. The exception to this prohibition is when the applicant has a known disability—either because it is obvious or the applicant has voluntarily disclosed the information—and one could reasonably believe that the applicant will need a reasonable accommodation. If the applicant requests a reasonable accommodation, the hiring official may inquire as to the type of accommodation. Once an applicant requests a reasonable accommodation, the hiring official must immediately contact the Disability Program Manager for advice and assistance. In order to facilitate a reasonable accommodation for an applicant, the Disability Program Manager may ask the applicant to provide additional information, including medical documentation, of their disability. Hiring officials may not ask for medical documentation and may not store medical information in the individual's application records or employee personnel file. Only the Disability Program Manager is authorized to receive and maintain relevant medical documentation on file.

(d) (U) Individuals with disabilities who meet initial requirements in order to be considered for the job, should not be excluded from the application process based upon speculation that the individual cannot perform the job without an accommodation. The Disability Program Manager will work with the hiring manager and the applicant to develop an effective accommodation strategy.

(2) (U) Accommodation following a COE:

(a) (U) Once an individual with a disability has been cleared for employment, an authorized official may ask the individual whether they will need a reasonable accommodation to perform the job. Alternatively, the authorized official may ask the individual if they need a reasonable accommodation, if the individual has a known disability—either because it is obvious or the individual has voluntarily disclosed the information—and one could reasonably believe that the individual will need a reasonable accommodation to perform specific job functions. If the individual states that they need a reasonable accommodation, the authorized official will immediately contact the Disability Program Manager for advice and assistance.

(b) (U) If the individual has an obvious disability, or voluntarily discloses a disability that was not raised during the pre-employment medical screening process and requests an accommodation, the authorized official must contact the Disability Program Manager for guidance, in order to develop an effective accommodation strategy.

J. (U) ODNI Personnel

(1) (U) Managers and supervisors may not ask whether an individual has a disability, or question the nature or severity of a disability, if one is revealed or is apparent. However, when an individual has a known disability—either because it is obvious or the individual has voluntarily disclosed the information—and one could reasonably believe that the individual will need a reasonable accommodation to perform specific job functions, the individual's manager or supervisor must contact the Disability Program Manager for guidance, in order to identify an effective accommodation.

(2) (U) To ensure a responsive reasonable accommodation process, ODNI will train supervisors and managers to recognize when an employee is making an accommodation request. For example, supervisors and managers should be attuned to employees indicating they are having difficulty performing their job, such as difficulty reading a computer screen, hearing others speak, and similar statements indicating a possible need for help in performing their jobs. It is then the supervisor's responsibility to proactively ask how they can help the employee address the difficulty. Similarly, if an employee states that some sort of change or assistance is required based on a medical condition, supervisors and managers should interpret this statement as a request for a reasonable accommodation.

K. (U) Federal Civilian Detailees to ODNI: ODNI will accommodate detailees, who are qualified individuals with disabilities, in the position to which they have been detailed, to include ensuring reasonable accommodation is provided to enable an individual with a disability to have an equal opportunity to apply for a detailee position. Memoranda of Understanding (MOUs) for detailees must include a provision requiring the employing agency to bear the cost of any accommodation required in order for the detailee to perform in a detail position. An individual who is not able to perform the essential functions of the position to which they are detailed (i.e., is no longer qualified for the position) will be returned to their employing agency.

L. (U) Contractors: Contractors must contact their employer for arranging a reasonable accommodation. Contracting Officer's Technical Representatives (COTRs) or Contracting Officers (COs) must work with the Chief, Counterintelligence and Security (CIS) to ensure any proposed accommodations made by a contractor's employer will not introduce security vulnerabilities. Compliance with contract terms, such as provision of information technology (IT) and office furnishings and equipment to contractor personnel when required under a contract is not considered a reasonable accommodation under the law. COTRs should consult with COs to determine whether a request by a contractor to substitute office furnishings and equipment is within the scope of the contract terms, or whether the contractor must be referred to the employer for a reasonable accommodation. When a substitution in office equipment or supplies is made pursuant to the contract terms, COTRs or COs must document that in the contract file. COTRs and COs may consult with the Disability Program Manager or OGC for further guidance, if needed.

M. (U) Initiating and Engaging in the Interactive Process

(1) (U) An individual or applicant with a disability is not required to make a request for a reasonable accommodation at any particular time, or at all. An employee or applicant does not need to have a particular accommodation in mind when making the request.

(2) (U) ODNI personnel or applicants may initiate a request for reasonable accommodation verbally or in writing (see Appendix A). ODNI personnel or applicants may make a request for a reasonable accommodation to: (1) a supervisor or manager in the individual's chain of command, (2) the office designated by the agency to oversee the reasonable accommodation process, (3) any ODNI individual connected with the application process, or (4) any other individual designated by ODNI to accept such requests. A request can be made by the individual with a disability and also by: (1) a family member, (2) a health professional, or (3) other representative who is acting on the individual's behalf. Anyone who has contact with an applicant and receives a request for accommodation has an obligation to immediately refer the request to the Disability Program Manager.

(3) (U) Requesters are not required to mention the Rehabilitation Act, or the phrase "reasonable accommodation" or "disability" when requesting an accommodation, but the request must be for a reason related to a medical condition in order for it to be reviewed as a reasonable accommodation request. It is sufficient for the individual requesting accommodation to state that some sort of change or assistance is required based on a medical condition, in order to begin the reasonable accommodation process.

(4) (U) Verbal requests for accommodation must be documented by the recipient of the request for accountability and record-keeping purposes, via classified e-mail, with a copy to the Disability Program Manager, or by submitting a request through the Reasonable Accommodations Program website. The Disability Program Manager must receive documentation of the request from the recipient within two (2) business days of the request for accommodation.

(5) (U) With assistance from the Disability Program Manager and/or OGC, the authorized official must participate in the interactive process, which includes discussing any request for accommodation with the individual or applicant as soon as possible, explaining the reasonable accommodation process, and thoroughly exploring alternatives for reasonable accommodation. The Disability Program Manager will assist in the interactive process, working in collaboration with the individual, the authorized official, the Chief, Human Resources Management (HRM), the Employee Management Resource Officer (EMRO), the Chief Operating Officer (COO), the Chief Information Officer (CIO), Chief of CIS, Chief of Facilities and Logistics, the Head of Contracting Activity, and a designated medical professional, as appropriate.

(6) (U) Individuals or applicants who request a reasonable accommodation are required to cooperate with the accommodation evaluation process and provide appropriate medical information to the Disability Program Manager when the disability and/or need for accommodation are not obvious. Information provided shall 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. If the submitted information is not sufficient, ODNI has the right to request relevant supplemental medical information. ODNI may not request medical information from an individual or applicant making a reasonable accommodation request when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the individual has already provided ODNI with sufficient information to document the existence of the disability and the individual's functional limitations.

(7) (U) Failure to engage, or cooperate, in the interactive process could potentially result in an ineffective accommodation or an unwarranted denial of a reasonable accommodation. Neither the authorized official, nor the Disability Program Manager, may delay the interactive process while waiting for a written request.

(8) (U) ODNI has the right to have medical documentation reviewed by a medical professional or service provider of ODNI's choosing and at ODNI's expense. The medical review must be limited to determining the existence of a disability and the functional limitations that require a reasonable accommodation.

(9) (U) If an authorized official cannot determine the accommodation(s), or the individual's disability is not obvious or already known, the Disability Program Manager may refer the individual to designated medical professional(s) for additional assessment and reasonable accommodation recommendation(s) at ODNI's expense (see Appendix B for the consent form for the release of confidential medical information). ODNI may not request medical information from an individual or applicant making a reasonable accommodation request when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the individual has already provided ODNI with sufficient information to document the existence of the disability and the individual's functional limitations.

(10) (U) An authorized official may select among available reasonable accommodations if medical professionals present alternatives, but must inform the individual, in writing, of the reason for the particular selection.

(11) (U) The authorized official, or designee, is the decision-maker for recommendations provided by the Disability Program Manager for reasonable accommodation.

(12) (U) A re-evaluation of a previously granted accommodation may be initiated with the Disability Program Manager by an authorized official, or by the individual, when there is a change in medical condition, a need for additional consideration(s), or a change in business operations. For example, a change in an organization's core hours or mission requirements could trigger a re-evaluation. The requester must provide appropriate written justification and supporting documentation when requesting re-evaluation of an existing accommodation. The Disability Program Manager will work with the authorized official and employee or applicant to address all re-evaluation requests.

N. (U) Processing Requests for Reasonable Accommodations

(1) (U) The processing of a request for accommodation will begin within three (3) working days of initial receipt of the verbal or written request unless special circumstances require that a request be processed immediately. For example, expedited processing might be necessary when the reasonable accommodation is needed to enable an individual or applicant to apply for a job within the required timeframe or to attend a scheduled meeting. Everyone involved in the processing of a request should respond as soon as possible.

(2) (U) Reasonable accommodation requests will be granted or denied within 10 business days of a request to an authorized official, absent the need for additional medical information, or other extenuating circumstances. In those cases where a disability and/or need for accommodation is not obvious, and ODNI has requested necessary medical information, ODNI is not required to adhere to the prescribed time frames if an individual has not provided the necessary medical information. The time period permitted for granting the accommodation begins when the accommodation is first requested. The Disability Program Manager provides the recommendation to the authorized official for review no later than 10 days after receiving all required medical documentation. If the authorized official concurs with the recommendation, the Disability Program Manager will send the recommendation to the requester. When a particular accommodation can be provided in less than the maximum amount of time permitted, failure to respond promptly may result in a violation of the Rehabilitation Act of 1973.

(3) (U) Because the interactive process is intended to be flexible, decisions concerning requests for reasonable accommodations should be made as quickly as feasible, and implementation of approved reasonable accommodations should be made at the lowest possible level, to minimize the burden on the requester and to expedite the processing and delivery of reasonable accommodations. It is imperative throughout this process that those responsible for making decisions regarding reasonable accommodations maintain open communication with the individual requesting accommodation in order to gain a clear understanding of their needs and the nature of the accommodation request. Failure to process accommodation requests in a timely fashion may result in an undue delay or an improper denial of the request.

(4) (U) If the authorized official non-concurs, the Disability Program Manager will work with the authorized official and requester towards an alternate recommendation. Once an alternate recommendation is approved by the authorized official, the Disability Program Manager will send the recommendation to the requester. In consultation with the Disability Program Manager, the authorized official should grant or deny the request within 10 business days from the date of the request, or the date when the Disability Program Manager receives all required medical documentation, in cases where such documentation is required.

(5) (U) All ODNI personnel who process reasonable accommodation requests will ensure that response times are kept to a minimum, and will respond promptly to requests by the Disability Program Manager for information, assistance, and provision of accommodations. Any delays may result in the ODNI's failure to satisfy legal requirements for providing timely and effective reasonable accommodations.

(a) (U) Absent an extenuating circumstance, the accommodation should be provided as soon as possible, but no later than 15 business days from the date of the request—if medical documentation is unnecessary—or five(5) business days from the date of approval. Where the accommodation is simple and straightforward, the responsible office(s) should provide the accommodation immediately, absent undue hardship, but must still coordinate with the Disability Program Manager to ensure proper recording and tracking of the accommodation.

(b) (U) Extenuating circumstances may justify delays beyond the 15 day time period. The Disability Program Manager will notify the individual or applicant of the reason for a delay and will keep the individual informed of the expected date the request will be processed. If there is a delay in processing an approved request, the Disability Program Manager, in concert with the individual's supervisor or manager, shall provide interim accommodations that will allow the individual to perform some or all of the essential functions of the individual's job, if it is possible to do so without imposing undue hardship on the agency.

(6) (U) An individual or applicant cannot be compelled to request or accept an accommodation. However, an individual who refuses the proposed accommodation may not be qualified to remain in the job if the accommodation is needed to enable the individual to perform an essential job function or to eliminate a direct threat to the health or wellbeing of the individual or any other person. It is within the ODNI's discretion to determine whether an individual who refuses an accommodation is qualified for an assigned position without such accommodation.

(7) (U) Any questions from ODNI personnel and applicants regarding an approved reasonable accommodation will be directed to the Disability Program Manager. The Disability Program Manager will track the processing of requests for reasonable accommodation and will also serve as the focal point for questions regarding reasonable accommodations, requests for medical information, implementation of accommodations, and available resources.

O. (U) Reassignment as a Reasonable Accommodation for ODNI Cadre Employees:
This Section applies only to reassignment of ODNI permanent cadre employees. Reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such position, is a reasonable accommodation. Staff reserve cadre employees are subject to the reassignment provisions of ODNI Instruction 77.11.

(1) (U) Reassignment is an accommodation of last resort. Reassignment will only be considered if no accommodations are available to enable the individual to perform the essential functions of their current job, or if the only effective accommodation would cause undue hardship to ODNI. Employees who cannot perform the essential functions of a job, with or without reasonable accommodation, are deemed not qualified for that job, and will be considered for reassignment to an equivalent grade vacant position, or if there is not an equivalent grade vacant position, reassignment to a lower grade vacant position as an accommodation. If there is more than one vacancy for which the employee is qualified, the employee will be assigned to a vacant position that is the closest to the employee's current position in terms of grade, status, etc. "Vacant" means that the position is available when the employee asks for reasonable

accommodation, or that the employer knows that it will become available within a reasonable amount of time, as determined on a case-by-case basis considering relevant facts, such as anticipated detailee rotations and other personnel movements. Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. ODNI will not fund the employee's relocation costs.

(2) (U) If an employee needs to be reassigned as an accommodation, the Chief, HRM, or designee, will meet with the employee to discuss the employee's current job tasks, skills, and the limits the employee may wish to place on the vacancy search, employee positions of interest, and the other types of jobs within ODNI the employee may be able to perform. An employee may be reassigned within the employee's component of assignment, or another component within ODNI, with a final determination made by the the Chief, HRM, or designee. The Chief, HRM, or designee, will review all vacant positions at the employee's current grade. If there is no vacant equivalent grade position, the employee will be reassigned to a vacant lower grade position for which the individual is qualified. If the employee is qualified for the position, the employee should be reassigned noncompetitively to the job as a reasonable accommodation.

(3) (U) The ODNI-wide position review will be conducted by the Chief, HRM, or designee, in consultation with the ODNI Senior Employee Management Officer (SEMO) and/or the EMRO. In preparation for a review of vacant positions in consultation with the SEMO and the EMRO, the Chief, HRM, or designee, will:

(a) (U) Review ODNI vacancies at or below the employee's current grade to determine if a suitable position exists that meets the accommodation needs of the employee; and

(b) (U) Provide a package of background information that will include: the employee's current biographic profile, last two Performance Evaluation Reports, and active reprimands, if any, for SEMO and EMRO reference. The SEMO and the EMRO may be advised of restrictions that would affect placement of the employee into a suitable position.

(4) (U) If the employee accepts a position identified through this process, the employee will be reassigned as soon as possible.

(5) (U) If a determination is made that no position exists that would allow the employee to perform the essential job functions with or without reasonable accommodation, and the COO determines that separation of an employee is appropriate, the Chief, HRM or designee, will provide written notification to the employee. The Chief, HRM, or designee, will review with the employee available options such as immediate retirement, eligibility for medical disability retirement, or involuntary separation. Within 30 calendar days of the determination that no position exists, the Chief, HRM, or designee, must deliver copies of the documentation to the COO for retention.

(6) (U) The Chief, HRM, or designee, must develop procedures to ensure careful documentation of meetings, discussions, and decisions throughout the reasonable accommodation process for reassignment. The Chief, HRM, or designee, will prepare written

summaries of all counseling sessions, evaluations, meetings, and job offers to the employee. The documentation must note items discussed, the nature of the accommodation options that were considered, and resolutions to any pertinent issues. If possible, employees should sign any counseling sessions or evaluations pertaining to them and should be provided copies for their records.

P. (U) Denial of a Request for a Reasonable Accommodation

(1) (U) Prior to denying a reasonable accommodation request based on cost, all ODNI resources must be considered as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation.

(2) (U) If an individual's request for an accommodation is denied, the authorized official will respond to the applicant or employee, in writing and in accessible format if requested, at the time of denial with the specific reasons for the denial. The notice of denial must include:

(a) (U) Information encouraging the option of voluntary informal dispute resolution;

(b) (U) Information on how to file for reconsideration in accordance with Section 6.Q.;

(c) (U) Information about the individual's right to file an EEO complaint pursuant to 29 CFR. 1614.106 and invoke other statutory processes as appropriate;

(d) (U) Instructions on how to file an EEO complaint and explain that the individual must initiate contact with an EEO Counselor within 45 days of the denial, regardless of whether the applicant or employee participates in the voluntary informal dispute resolution process;

(e) (U) Name and contact information of the authorizing official that made the denial decision; and

(f) (U [REDACTED]) Contact information for the ODNI Reasonable Accommodations team including addresses for unclassified email (DNI_DRA@dni.gov) or classified email [REDACTED] and the unclassified website (www/dni.gov/accessibility) and classified website ([REDACTED])

(3) (U) If an individual's original request for a specific accommodation is denied, and the authorized official offers an alternative accommodation, the written response, in accessible format if requested, to the individual will explain the reason(s) for denying the requested accommodation and the reason(s) the chosen accommodation is deemed effective.

(4) (U) The Disability Program Manager must be notified of the final decision on all reasonable accommodation requests.

Q. (U) Reconsideration: Within 10 business days after receiving the initial written decision on the request, an individual dissatisfied with the resolution of a reasonable accommodation request may request, in writing, that the COO review the decision. The COO will promptly review and provide a written response, in accessible format if requested, to the Disability Program Manager handling the case and the requestor.

R. (U) Formal EEO Processes: An individual who has requested a reasonable accommodation has the right to file an EEO complaint if the individual believes the denial of the request was discriminatory. To preserve this right, the individual must contact the ODNI Office of Equal Employment Opportunity (OEEO) within 45 calendar days of the date of the delay or denial of an accommodation. For information about EEO rights and responsibilities, as well as the EEO complaint process, see ODNI Instruction 120.02.

S. (U) Medical Confidentiality Protections

(1) (U) Maintaining confidentiality of medical information is mandatory, and disclosure of confidential medical information is permitted only in limited circumstances set forth in applicable laws and regulations. All information pertaining to disabilities, including requests for reasonable accommodations, the fact that an individual is receiving an accommodation, and related information, must be protected in accordance with legal requirements, including the Privacy Act and GINA. Medical confidentiality extends to information that an individual voluntarily discloses during the reasonable accommodation process.

(2) (U) Barring medical emergencies, applicants and ODNI personnel requesting an accommodation must provide required medical information directly to the Disability Program Manager. In exceptional circumstances, when the individual is unable to do so, medical information may be provided directly to the Disability Program Manager by a medical provider, designee (e.g. designated representative, spouse, family member, close friend), or another agency, and must be maintained by the Disability Program Manager separately from non-medical personnel files.

(3) (U) Medical conditions and medical histories constitute confidential medical records, and supervisors and managers are not authorized to request, receive, or maintain information concerning either. Records of sick leave taken or excused absence notes from medical professionals are not considered confidential medical information, unless the records document the individual's diagnosis or symptoms.

(4) (U) The Disability Program Manager will ensure that ODNI systems of recordkeeping monitor and track the processing of requests for reasonable accommodations and maintain the confidentiality of medical information received, in accordance with General Records Schedule Series 2.3, Item 20, or subsequent records retention guidance and applicable laws and regulations. Absent specific legal authority to release, the Disability Program Manager must keep medical information of all persons covered by this Instruction confidential at all times. In consultation with OGC, the Office of Civil Liberties, Privacy, and Transparency (CLPT), and the Information Management Office (IMO), as necessary, the Disability Program Manager will

determine when such information may be released in accordance with applicable statutes. Specifically, confidential medical information may only be disclosed to:

(a) (U) Supervisors and managers who need to know may be told about necessary restrictions and about the necessary accommodation(s);

(b) (U) First aid and safety personnel may be told if the disability might require emergency treatment;

(c) (U) Government officials to investigate the agency's compliance with the Rehabilitation Act;

(d) (U) Workers' compensation offices or insurance carriers; and

(e) (U) ODNI's EEO officials in order to maintain records.

T. (U) **Information Tracking:** The Reasonable Accommodations Office shall track information about the reasonable accommodation process in order to maintain an accurate record. Such records will be made available to the EEOC upon request and will include, at a minimum:

(1) (U) The specific reasonable accommodation requested;

(2) (U) The job (occupational series, grade level, and agency component);

(3) (U) 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) (U) Whether the request was granted (which may include an accommodation different from the one requested) or denied;

(5) (U) The identity of the deciding official;

(6) (U) If denied, the basis for such denial; and

(7) (U) The number of days taken to process the request.

7. (U) **RESPONSIBILITIES**

A. (U) The COO will:

(1) (U) Provide policy oversight;

(2) (U) Issue decisions on applicant or employee requests for reconsideration of denials of reasonable accommodation requests in a timely manner; and

(3) (U) When reassignment to a new position is sought as a reasonable accommodation, and no appropriate position is identified, determine whether separation of the employee is appropriate.

B. (U) The Disability Program Manager will:

(1) (U) Implement this Instruction;

(2) (U) Forward policies and procedures governing the provision of reasonable accommodations to the EEOC, in accordance with EO 13164;

(3) (U) Monitor and advise ODNI leadership on compliance with the governing laws, regulations, EOs, and EEOC guidance related to the provision of reasonable accommodations;

(4) (U) Oversee the processing of requests for reasonable accommodations and fund those reasonable accommodations that have been determined appropriate;

(5) (U) Request, maintain, and release relevant medical information concerning reasonable accommodations in accordance with Section 6.S.;

(6) (U) Monitor, track, and report on the provision of reasonable accommodations;

(7) (U) Maintain a central fund for reasonable accommodations during each fiscal year to facilitate delivery of accommodations within timelines referenced in this policy, and to ensure federal reporting requirements regarding reasonable accommodations are met;

(8) (U) Ensure ODNI reasonable accommodations policies and procedures that inform individuals with disabilities about their rights and responsibilities are readily accessible to all ODNI personnel and applicants for employment, including using alternative formats for those with disabilities. These policies and procedures will be posted to ODNI's internal and external websites;

(9) (U) Ensure authorized officials and hiring officials understand their roles and obligations with respect to the provision of reasonable accommodation;

(10) (U) Provide advice and guidance to ODNI personnel, applicants, and supervisors concerning reasonable accommodations, and serve as the focal point for available resources; and

(11) (U) Consult with OGC, CLPT, OEEO, and IMO, as appropriate.

C. (U) The Chief, HRM, or designee will:

(1) (U) At all stages of the application and hiring process, ensure that cadre and detailee applicants to ODNI are advised of the process for requesting a reasonable accommodation. Assignees to ODNI will also be advised of the reasonable accommodation process;

(2) (U) Ensure that MOUs for federal civilian detailees to ODNI include provisions for reasonable accommodation;

(3) (U) Facilitate the process when reassignment, telework, or in limited circumstances an excused absence, is a reasonable accommodation;

(4) (U) Refer management, personnel, and applicant questions about reasonable accommodation to the Disability Program Manager; and

(5) (U) Work with the Disability Program Manager, as applicable, to provide approved accommodations.

D. (U) Authorized Officials will:

(1) (U) Ensure managers, supervisors, and other authorized officials:

(a) (U) Immediately contact the Disability Program Manager for advice and assistance when a request for a reasonable accommodation is made or there is an obvious disability or an individual voluntarily discloses a disability;

(b) (U) Participate and cooperate during the interactive process including early and periodic communication;

(c) (U) Refrain from questioning the individual or applicant about their medical history or obtaining any medical information, but rather refer them to the Disability Program Manager; and

(d) (U) Ensure that reasonable accommodations are provided to individuals and applicants with disabilities in accordance with ODNI policies and procedures.

(2) (U) In consultation with the Disability Program Manager and OGC, as necessary, make final determinations regarding reasonable accommodation requests and must advise the individual, in writing and in accessible format if requested, of the specific reasons for any denial, as well as the avenues for requesting reconsideration;

(3) (U) Ensure that all personnel who handle information obtained in connection with a request for a reasonable accommodation maintain the required confidentiality of any medical information and described in Section 6.S.;

(4) (U) Ensure any contracts established for the use of external facilities (e.g., hotels for conferences or training) reflect the obligation that the facilities be accessible to individuals with

disabilities;

(5) (U) Track accountable property received in the form of reasonable accommodations (e.g., desks, chairs);

(6) (U) Coordinate with the Disability Program Manager for any travel requests that involve new or modified reasonable accommodations prior to any travel or travel approvals, and consult with the Disability Program Manager regarding any reasonable accommodation travel requests, should questions arise;

(7) (U) Notify the Disability Program Manager of the final status of all reasonable accommodation requests, whether approved or denied; and

(8) (U) As needed, consult the resource materials available on the EEOC's public website, including EEOC's *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (2000)*, and *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (revised October 17, 2002)*.

E. (U) ODNI Chief, Facilities and Logistics will, as required by law and regulation, work with building owners of all ODNI-occupied buildings and ensure all ODNI-owned buildings provide accessibility for individuals and applicants with disabilities, in accordance with applicable provisions of law.

F. (U) The ODNI CIO will provide the Disability Program Manager, supervisors, and managers with technical and research support concerning potential accommodations related to IT, and will process requests for reasonable accommodations as priority work requests.

G. (U) The ODNI Chief, CIS will ensure any proposed accommodation requiring the use of portable electronic devices (see ODNI Instruction 113.02) will not introduce security vulnerabilities, and will process such requests as priority.

H. (U) The Head of Contracting Activity will ensure that contracts contain the requisite clauses to comply with laws and EOs, and give priority processing to contracts involving the provision of reasonable accommodations.

I. (U) CLPT will provide guidance for the handling of protected health information.

J. (U) ODNI employees and applicants seeking a reasonable accommodation will:

(1) (U) Begin the interactive process by requesting an accommodation in accordance with Section 6.M.;

(2) (U) Provide necessary and appropriate medical information directly to the Disability Program Manager in accordance with Section 6.M.;

(3) (U) Cooperate with the interactive process and the accommodation evaluation process;
and

(4) (U) In the event of a denial of an accommodation request, refer to Sections 6.P. and 6.Q. above for the voluntary informal dispute resolution process and for requesting reconsideration of denials of reasonable accommodation requests.

K. (U) The OEEEO will, in accordance with ODNI Instruction 120.02, receive and process complaints of discrimination when an individual or applicant alleges a delay or a failure by ODNI to provide a reasonable accommodation.

8. (U) **EFFECTIVE DATE:** This Instruction is effective upon signature.

Lora A. Shiao
Lora A. Shiao
Chief Operating Officer

5/16/2022
Date

- (U) Appendix A: Reasonable Accommodation Request Form
- (U) Appendix B: Consent for Release of Confidential Patient Information

(U) APPENDIX A

Reasonable Accommodations

Notes: 5/18/2017 (1/1)

Requestor

Employee Name [REDACTED]

AIN [REDACTED]

Employee Status

Staff

Position/Title [REDACTED]

GS Grade

None

Office/Component [REDACTED]

Location

[REDACTED]

Employee's IC Email

[REDACTED]

Employee's Unclassified Email [REDACTED]

Employee's Non Secure Phone [REDACTED]

Employee's Secure Phone [REDACTED]

Supervisor's Name [REDACTED]

Supervisor's Secure Phone [REDACTED]

Supervisor's Unclassified Phone [REDACTED]

Supervisor's Unclass Email [REDACTED]

Supervisor's IC Email [REDACTED]

Chief of Staff's Name [REDACTED]

Chief of Staff's Unclassified Phone [REDACTED]

Chief of Staff's Secure Phone [REDACTED]

Chief of Staff's IC Email [REDACTED]

Chief of Staff's Unclass Email [REDACTED]

Accommodation(s) Requested

Accommodation Type [REDACTED]

Required By Date [REDACTED]

Reason for Request [REDACTED]

Accommodation Details

(If not, include general health information that may be helpful below.)

Describe if available, areas which the disability or condition may: (1) describe the nature, timing, and duration of the impairment, that actually or which the impairment may, and the extent to which the activity is limited and (2) substantially limit the requested reasonable accommodation requested.

Describe below any other accommodations that you are requesting, including but not limited to: assistive technology, adaptive equipment, software, hardware, parking, etc.

NOTE: An employee must be able to perform the essential functions of the employee's position, with or without accommodations.

Time Sensitive Issues [REDACTED]

Length of Time for Accommodations [REDACTED]

Additional Information

Additional Comments [REDACTED]

Add attachments

(U) **APPENDIX B**

(U) **CONSENT FOR RELEASE OF CONFIDENTIAL PATIENT INFORMATION**

(U) This authorization permits the release from the Office of the Director of National Intelligence Reasonable Accommodations (RA) Office to the Central Intelligence Agency's Office of Medical Services (OMS) the medical information provided by (Insert Name).

(U) I understand that I have provided medical information to the RA Office for the purpose of evaluating my reasonable accommodation request(s), and may be required to provide additional information as needed. I authorize the RA Office to share such information with appropriate medical personnel within the OMS, to the extent deemed necessary by the RA Office, to fulfill that purpose.

Patient Signature

Date