Memorandum for Denali Commission Employees

From: Garrett Boyle, Federal Co-Chair

Re: Procedures for Providing Reasonable Accommodation for Individuals with Disabilities

Implementation Date: January 3, 2022

I. Denali Commission Policy on Reasonable Accommodation

Executive Order 13164 requires all Federal Agencies to establish procedures on handling requests for reasonable accommodation.

The Denali Commission’s (Commission) procedures fully comply with the requirements of the Rehabilitation Act of 1973. Under the law, the Denali Commission must provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship. Disability means, with respect to an individual: (i) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (ii) a record of such an impairment; or (iii) being regarded as having such an impairment as described in subsection (i). This means that the individual has been subjected to an action prohibited by the Americans with Disabilities Act, as amended, because of an actual or perceived impairment that is not both “transitory and minor.” The Commission is committed to providing reasonable accommodation to its employees and applicants for employment to ensure that individuals with disabilities enjoy equal access to all employment opportunities. The Commission will make available to job applicants and employees a copy of its procedures in written and accessible formats. 29 C.F.R. § 1614.203(d)(3)(i). The Commission provides reasonable accommodations:

- when a qualified applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;

- when an employee with a disability who is qualified needs an accommodation to perform the essential functions of the job or to gain access to the workplace; and
• when an employee with a disability who is qualified needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., details, trainings, office-sponsored events).

A reasonable accommodation is any change in the workplace, or the way things are customarily done that provides an equal employment opportunity to an individual with a disability. While there are some things that are not considered reasonable accommodations (e.g., removal of an essential job function or personal use items such as a hearing aid that is needed on and off the job), reasonable accommodations can cover most things that enable an individual to apply for the job, perform a job, or have equal access to the workplace and employee benefits such as kitchens, parking lots, and office events.

Common types of accommodations include:

• modifying work schedules or supervisory methods
• granting breaks or providing leave
• altering how or when job duties are performed
• removing and/or substituting a marginal function
• moving to a different office space
• providing telework beyond that provided by agency policy
• making changes in workplace policies
• providing assistive technology, including information technology and communications equipment or specially designed furniture
• providing a reader or other staff assistant to enable employees to perform their job functions, where the accommodations cannot be provided by current staff
• removing an architectural barrier, including reconfiguring workspaces
• providing accessible parking
• providing material in alternative formats (e.g., Braille, large print)
• providing a reassignment to another job.

With respect to an individual with a disability, “qualified” means that the individual satisfies the requisite skill, experience, education, and other job-related requirements of the employment position he or she holds or desires and, with or without reasonable accommodation, can perform the essential functions of the position. An individual who poses a direct threat to the health and safety of him/herself or others, with or without accommodation, such that the individual poses a significant risk of substantial harm, is not a qualified individual with a disability. Determining whether an individual poses a direct threat requires an individualized assessment based on objective, scientific information. See Section 5.09 for the impact that mitigating measures have on determinations as to whether specific conditions or impairments are covered disabilities.
The Denali Commission will process requests for reasonable accommodation and will provide reasonable accommodations where appropriate, in a prompt and efficient manner in accordance with the time frames set forth in these procedures.

The Commission does not have to provide accommodations that would impose an undue hardship on their operations. Undue hardship refers to accommodations that are unduly/excessively extensive, costly, substantial, disruptive, or would fundamentally alter the nature or operation of the organization. This determination must be made on a case-by-case basis and considers factors such as, the nature and cost of the accommodation requested; the overall financial resources of the agency; the number of persons employed by the agency; the effect on expenses and resources of the agency; the size, number of employees, type and location of organizations, the difficulty in providing a specific accommodation, as well as the impact on the operations of the agency.

The Denali Commission has designated the Human Resources Officer as the agency’s Disability Program Manager (DPM) to oversee the reasonable accommodation program agency wide. All requests for reasonable accommodation will be handled by the DPM. If a request is given to a manager or supervisor rather than directly to the DPM, that individual should forward the request immediately and must do so within 2 business days. When an employee makes a request for reasonable accommodation that involves performance of the job, the DPM will work with the employee’s supervisor to ensure that an appropriate accommodation is provided that meets the individual’s disability-related needs and enables the individual to perform the essential functions of the position.

As part of the reasonable accommodation interactive process, the DPM will obtain and evaluate documentation supporting an accommodation request (such as medical documentation demonstrating that the requestor is an individual with a disability), whenever the disability or need for accommodation is not obvious.

While the DPM will handle all requests for reasonable accommodations, supervisors, managers, and office direction often will need to be consulted about specific requests. Therefore, all management personnel must be familiar with these procedures, the materials listed on the EEOC’s public website and the EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (July 27, 2000) as a resource. (located at: https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees which contains significant information on the responsibilities of agency personnel involved in responding to a request for reasonable accommodation, as well as the rights and responsibilities of those requesting accommodation. Applicants and employees may wish to consult this guidance to better understand the reasonable accommodation process.

Supervisors and managers who decide requests for accommodation or make hiring decisions are aware that to deny an accommodation based on cost, they must consider all resources available to the agency, excluding those designated by statute for a specific purpose that does not include
reasonable accommodation. Additionally, officials who grant or deny requests for accommodation or who make hiring decisions know how to arrange for the use of agency resources to provide the accommodation, including any centralized fund the agency may have for that purpose.

The Denali Commission may take steps, solely at the agency’s discretion, beyond those required by section 501 of the Rehabilitation Act of 1973.

II. Reasonable Accommodation Procedures

A. Requesting Reasonable Accommodation

Generally, an applicant or employee must let the Commission know that they need adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition. An applicant or employee may request a reasonable accommodation at any time, orally or in writing. An individual should request a reasonable accommodate from the DPM.

If an employee makes a reasonable accommodation request to someone other than the DPM, such as their supervisor, they should forward the request to the DPM immediately and must do so within 2 business days. The reasonable accommodation process begins as soon as the oral or written request for accommodation is made to any manager in an employee’s chain of command, so it is imperative that the request be forwarded to the DPM within 2 business days.

An individual’s receipt or denial of an accommodation does not prevent the individual from making another request at a later time if circumstances change and he/she believes that an accommodation is needed due to limitations from a disability (e.g., the disability worsens, or an employee is assigned new duties that require an additional or different reasonable accommodation). Additionally, the DPM may not refuse to process a request for reasonable accommodation, and a reasonable accommodation may not be denied, based on a belief that the accommodation should have been requested earlier (e.g., during the application process).

A request does not have to include any special words, such as “reasonable accommodation”, “disability”, or “Rehabilitation Act”. A request is any communication which an individual asks or states that they need the Commission to provide or to change something because of a medical condition. An individual need not have a particular accommodation in mind before making a request. A supervisor, manager, or DPM should ask an individual whether she is requesting a reasonable accommodation if the nature of the initial communication is unclear.

A family member, health professional, or other representative may request an accommodation on behalf of a Commission employee or applicant. For example, a doctor’s note outlining medical restrictions for an employee constitutes a request for reasonable accommodation.
When an individual (or third party) makes an oral request, the DPM must ensure that the Reasonable Accommodations Form is filled out. The DPM must fill out the form if the requestor does not. The request form shall be made available upon request in alternative formats that are accessible to individuals with disabilities.

An employee needing a reasonable accommodation on a recurring basis, such as assistance of a sign language interpreter, must submit the form only for the first request. However, the employee requesting accommodation must give appropriate advance notice each subsequent time the accommodation is needed. If the accommodation is needed on a regular basis (e.g., a weekly staff meeting), the DPM should ensure that an employee’s supervisor makes the appropriate arrangements without requiring a request in advance of each occasion.

B. Processing the Request

The Disability Program Manager (DPM) is responsible for processing requests for reasonable accommodation. The Commission’s General Counsel will serve as the alternate DPM.

While the DPM has responsibility for processing requests for reasonable accommodation, the DPM may work closely with an employee’s supervisor in responding to the request, particularly those involving performance of the job. The DPM will need to consult with an employee’s supervisor and/or office director to gather relevant information necessary to respond to a request and to assess whether a particular accommodation will be effective. No reasonable accommodation involving performance of the job will be provided without first informing an employee’s supervisor.

C. The Interactive Process

1. Generally

After a request for accommodation has been made, the next step is for the parties to begin the interactive process to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and the DPM must communicate with each other about the request, the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodation that may be effective in meeting an individual’s need.

The DPM will contact the applicant or employee within 10 business days after the request is made (even if the request is initially made to someone else) to begin discussing the accommodation request. In some instances, the DPM may need to get information to determine if an individual’s impairment is a “disability” under the Rehabilitation Act or to determine what would be an effective accommodation. Such information may not be necessary if an effective accommodation is obvious, if the disability is obvious (e.g., the requestor is blind or has paraplegia) or if the disability is already known to the Denali Commission (e.g., the requestor...
previously asked for an accommodation and information submitted at that time showed a
disability existed and that there would be no change in the individual’s medical condition).

Communication is a priority throughout the entire process, but particularly where the specific
limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or
where the parties are considering different forms of reasonable accommodation. Both the
individual making the request and the decision maker should work together to identify effective
accommodations.

When a third party (e.g., an individual’s doctor) request accommodation on behalf of an
applicant or employee, the DPM should, if possible, confirm with the applicant or employee that
they want a reasonable accommodation before proceeding. Where this is not possible, for
example, because the employee has been hospitalized in an acute condition, the DPM will
process the third party’s request if it seems appropriate (e.g., by granting immediate leave) and
will consult directly with the individual needing the accommodation as soon as practicable.

The DPM may need to consult with other Commission personnel (e.g., an employee’s
supervisor, Information Technology staff) or outside sources to obtain information necessary to
make a determination about the request. The Commission expects that all agency personnel will
give a high priority to responding quickly to a DPM’s request for information or assistance. Any
delays by Commission personnel may result in the agency’s failing to meet the required time
frame.

2. Reassignment

Reassignment to a vacant position for which an employee is qualified, and not just permission to
compete for such a position, is a reasonable accommodation. 29 C.F.R. § 1614.203(d)(3)(i)(B).
There are specific considerations in the interactive process when an employee needs, or may
need, a reassignment.

• Generally, a 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.

• In considering whether there are positions available for reassignment, the DPM
will work with the Office of Human Resources (OHR) and the employee
requesting the reassignment to identify: (1) vacant positions within the agency for
which the employee may be qualified, with or without reasonable
accommodation; and (2) positions which OHR has reason to believe will become
vacant within 60 days from the date the search is initiated and for which the
employee may be qualified.

• Reassignment may be made to a vacant position outside of the employee’s
commuting area if the employee is willing to relocate. As with other transfers not
required by management, the Commission will not pay for the employee’s relocation costs.

**D. Requests for Medical Information**

If a requestor’s disability and/or need for accommodation are not obvious or already known, the Commission (specifically the DPM) is entitled to ask for and receive medical information showing that the requestor has a covered disability that requires accommodation. A disability is obvious or already known when it is clearly visible or the individual previously provided medical information showing that the condition met the Rehabilitation Act definition. It is the responsibility of the applicant/employee to provide appropriate medical information requested by the Denali Commission where a disability and/or need for accommodation are not obvious or already known.

Only the DPM may determine whether medical information is needed and, if so, may request such information from the requestor and/or the appropriate health professional. Even if medical information is needed to process a request, the DPM does not necessarily have to request medical documentation from a health care provider; in many instances the requestor may be able to provide sufficient information that can substantiate the existence of a “disability” and/or need for a reasonable accommodation. If an individual has already submitted medical documentation in connection with a previous request for accommodation, the individual should immediately inform the DPM of this fact. The DPM will then determine whether additional medical information is needed to process the current request. If medical information is required to support a reasonable accommodation request, it should describe the nature of the individual’s disability, his or her need for reasonable accommodation, and 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 initial information provided by the health professional or volunteered by the requestor is insufficient to enable the DPM to determine whether the individual has a “disability” and/or that an accommodation is needed, the DPM will explain what additional information is needed. If necessary, the individual should ask their health care provider or other appropriate professional to provide the missing information. The DPM may also give the individual a list of questions to give to the health care provider or other appropriate professional to answer. If sufficient medical information is not provided by the individual after several attempts, the DPM may ask the individual requesting accommodation to sign a limited release permitting the DPM to contact the provider for additional information. The DPM may have the medical information reviewed by a doctor of the agency’s choosing, at the agency’s expense.

In determining whether documentation is necessary to support a request for reasonable accommodation and whether an applicant or employee has a disability within the meaning of the Rehabilitation Act, the DPM will be guided by principles set forth in the ADA Amendments Act of 2008. Specifically, the ADA Amendments Act directs that the definition of “disability” generally
should not require extensive analysis. Notwithstanding, the DPM may require medical information in order to design an appropriate and effective accommodation.

A supervisor who believes that an employee may no longer need a reasonable accommodation should contact the DPM. The DPM will decide if there is a reason to contact the employee to discuss whether they have a continuing need for a reasonable accommodation.

E. Confidentiality Requirements

Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all medical information that the Denali Commission obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual’s personnel file. This includes the fact that an accommodation has been requested or approved and information about functional limitations. It also means that any Commission employee who obtains or receives such information is strictly bound by these confidentiality requirements.

The DPM may share certain information with an employee’s supervisor or other agency official(s) as necessary to make appropriate determinations on a reasonable accommodation request. Under these circumstances, the DPM will inform the recipients about these confidentiality requirements. The information disclosed will be no more than is necessary to process the request. In certain situations, the DPM will not necessarily need to reveal the name of the requestor and/or the office in which the requestor works, or even the name of the disability.

In addition to disclosures of information needed to process a request for accommodation, other disclosures of medical information are permitted as follows:

- supervisors and managers are entitled to whatever information is necessary to implement restrictions on the work or duties of the employee or to provide a reasonable accommodation;

- first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or assistance in evacuations; and

- government officials may be given information necessary to investigate the agency’s compliance with the Rehabilitation Act.

- medical information may in certain circumstances be disclosed to insurance carriers, workers’ compensation offices, and agency EEO officials charged with maintaining records.

In the case that medical information is disclosed, the Denali Commission must inform those individuals about the confidentiality requirements that attach to such information.
F. Time Frame for Processing Requests and Providing Reasonable Accommodations

1. Generally

The time frame for processing a request (including providing accommodation, if approved) is as soon as possible by no later than 30 business days from the date the request is made. This 30-day period includes the 10-day time frame in which the DPM must contact the requestor after a request for reasonable accommodation is made.

The Denali Commission will process requests and, where appropriate, provide accommodation in as short a period as reasonably possible. The time frame above indicates the maximum amount of time it should generally take to process a request and provide a reasonable accommodation. The DPM will strive to process the request and provide an accommodation sooner, if possible. Unnecessary delays can result in a violation of the Rehabilitation Act.

The time frame begins when an oral or written request for reasonable accommodation is made, and not necessarily when it is received by the DPM. Therefore, everyone involved in processing a request should respond as quickly as possible. This includes referring a request to the DPM, contacting a doctor if medical information or documentation is needed, and providing technical assistance to the DPM regarding issues raised by the request (e.g., information from a supervisor regarding the essential functions of an employee’s position, information from the Information Technology staff regarding compatibility of certain adaptive equipment with the Commission’s technology).

If the DPM must request medical information or documentation from a requestor’s doctor, the time frame will stop on the day that the DPM makes a request to the individual to obtain medical information or sends out a request for information/documentation and will resume on the day that the information/documentation is received by the DPM.

If the disability is obvious or is already known to the DPM, if it is clear why reasonable accommodation is needed, and if an accommodation can be provided quickly, then the DPM should not require the full 30 business days to process the request. The following are examples of situations where the disability is obvious or already known and an accommodation can be provided in less than the allotted time frame.

- An employee with insulin-dependent diabetes who sits in an open area asks for three breaks a day to test their blood sugar levels in private.

- An employee with clinical depression who takes medication which makes it hard for them to get up in time to get to the office at 9:00 am, requests that they be allowed to start work at 10:00 am and still work a eight-and-a-half-hour day.
• A supervisor distributes a detailed agenda at the beginning of each staff meeting. An employee with a serious learning disability asks that the agenda be distributed ahead of time because their disability makes it difficult to read quickly and they need more time to prepare.

In an instance where all the facts and circumstances known to the DPM make it reasonably likely that an individual will be entitled to a reasonable accommodation, but the accommodation cannot be provided immediately, the Denali Commission shall provide an interim accommodation that allows the individual to perform some or all the essential functions of his or her job, if it is possible to do so without imposing undue hardship on the agency.

2. **Expedited Processing of a Request**

In certain circumstances, a request for reasonable accommodation requires an expedited review and decision. This includes where reasonable accommodation is needed:

• To enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job.

• To enable an employee to attend a meeting scheduled to occur soon. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 days.

3. **Extenuating Circumstances**

There are circumstances that could not reasonably have been anticipated or avoided in advance of the request for accommodation, or that are beyond the Denali Commission’s ability to control. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. Extensions will be limited to circumstances where they are absolutely necessary and only for as long as required to deal with the extenuating circumstance. When there is a delay in either processing a request for or providing a reasonable accommodation, the Denali Commission must notify the individual of the reason for the delay, including any extenuating circumstances that justify the delay.

G. **Resolution of the Reasonable Accommodation Request**

All decisions regarding a request for reasonable accommodation will be communicated to an applicant or employee by use of the Request for Reasonable Accommodations Form, as well as orally.
1. The Denali Commission will document its decision on The Reasonable Accommodation Form (Exhibit 1). The DPM will give the form to the requestor and discuss implementation of the accommodation. The form must be filled out even if the Commission is granting the request without determining whether the requestor has a “disability” and regardless of what type of change or modification is approved. (e.g., the Commission grants a three-month removal of an essential function, which is not a form of reasonable accommodation but nonetheless must be specified on the form).

   - A decision to provide an accommodation other than the one specifically requested will be considered a decision to grant an accommodation. The form will explain both the reasons for the denial of the individual’s specific requested accommodation and why the Commission believes that the chosen accommodation will be effective.

   - If the request is approved but the accommodation cannot be provided immediately, the DPM will inform the individual in writing of the projected time frame for providing the accommodation.

2. If the Denali Commission denies a request for accommodation, the DPM will give the form to the requestor and discuss the reason(s) for the denial. When completing the form, the explanation for the denial will clearly state the specific reason(s) for the denial. This means the Commission cannot simply state that a requested accommodation is denied because of “undue hardship” or because it would be “ineffective”. Rather, the form will state and the DPM will explain specifically why the accommodation would result in undue hardship or why it would be ineffective. The form of denial will be provided in an accessible format when requested. The Commission will provide that denials of requests for reasonable accommodation include information about the individual’s right to file an EEO complaint pursuant to 29 C.F.R. § 1614.106, and to invoke other statutory processes, as appropriate.

   - If there is a legitimate reason to deny the specific reasonable accommodation requested (e.g., the accommodation poses an undue hardship or is not required by the Rehabilitation Act), the DPM will explore with the individual whether another accommodation would be possible. The fact that one accommodation proves ineffective or would cause undue hardship does not necessarily mean that this would be true or another accommodation. Similarly, if an employee requests removal of an essential function or some other action that is not required by law, the DPM will explore whether there is a reasonable accommodation that will meet the employee’s needs.

   - If the DPM offers an accommodation other than the one requested, but the alternative accommodation is not accepted, the DPM will record the
H. Informal Dispute Resolution

If the requestor is not satisfied with this decision, the requestor may request reconsideration from the person who issued the decision (the deciding official) or to a higher-level supervisor in deciding official’s chain of command.” An individual must request reconsideration with 30 business days of receiving the form. A request for reconsideration will not extend the time limits for initiating administrative, statutory, or collective bargaining claims.

I. Information Tracking and Reporting

In order for the Denali Commission to ensure compliance with these procedures and the Rehabilitation Act, the DPM will complete the “Reasonable Accommodation Information Reporting” form within 5 business days of issuing the decision.

The form will be the basis of an annual report to be issued to all employees that will provide a qualitative assessment of the Commission’s reasonable accommodation program, including any recommendations for improvement of the Commission’s reasonable accommodation policies. This annual report will not contain confidential information about specific requests. Rather, this report will provide only general information, such as total number of requests for accommodations, the types of accommodations requested, and the length of time taken to process requests.

Denali Commission employees and applicants may track processing and requests for reasonable accommodations by contacting the Designated Program Manager and requesting a status update. The Denali Commission will inform applicants and employees how they may track the processing of requests for reasonable accommodation. The Commission will keep records that it may use to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501, and to make such records available to EEOC upon EEOC’s request. The records retained will contain the following information: the specific reasonable accommodation, if any; the job (occupational series, grade level, and agency component) sought by requesting applicant or held by the employee; whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment; whether the request was granted or denied; the identity of the deciding official; the number of days taken to process the request; and if denied, the basis for the denial

J. Inquires and Distribution

Any employee or applicant wanting further information concerning these procedures may contact the Disability Program Manager (DPM) at 907-271-1414.
These procedures shall be distributed to all employees upon issuance, and annually thereafter. They will also be distributed to all new employees as part of their orientation on their first day of work. These procedures will be provided in alternative formats when requested from the DPM by, or on behalf of, and Denali Commission employee.