REASONABLE ACCOMMODATION POLICY AND PROCEDURE

I. Introduction

The New York City Department of Youth and Community Development will ensure that each Agency that receives federal financial assistance makes reasonable accommodation to qualified individuals with disabilities to enable them to:

- be considered for the aid, benefits, services, training or employment as desired; and/or

- perform the essential functions of their jobs; or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities; and/or

- enjoy benefits and privileges of the aid, benefits, services, training, or employment equal to those that are enjoyed by other similarly situated individuals without disabilities

unless providing such accommodation would impose an undue hardship. The requirement to provide reasonable accommodation applies to disabilities that are known to the Agency.

The reasonable accommodation process, including a description of key terms, is set forth below and should be implemented immediately.

II. Key Terms

A reasonable accommodation means:

- Modifications or adjustments to an application/registration process that enables a qualified individual with a disability to be considered for the aid, benefits, services, training, or employment that the qualified individual desires; or

- Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities; or

- Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

A qualified individual with a disability means:

- With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question; or
- With respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

An **applicant** is an individual seeking federally-assisted aid, benefits, services, or training. An individual is considered an "applicant" at the point at which s/he submits personal information in response to a request by the Agency for such information.

A **participant** is an individual who is receiving aid, benefits, services or training under a WIA Title I program.

A **disability** means, with respect to an individual:

- a physical, medical, psychological or mental impairment that substantially limits one or more of the major life activities of such individual; or

- a history or record of such an impairment,[1] or

- being regarded as having such an impairment. [1]

Major life activities mean functions such as:

- caring for one's self;
- performing manual tasks;
- walking;
- seeing;
- hearing;
- speaking;
- breathing;
- learning; and/or
- working.[2]

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[1] Individuals in these categories are protected from discrimination on the basis of disability; however, they are not entitled to reasonable accommodations.

[2] The Supreme Court has suggested that "working" should not be considered a "major life activity" despite its inclusion in Federal regulations implementing disability nondiscrimination laws, such as the Equal Employment Opportunity Commission (EEOC) regulations implementing Title I of the Americans with Disabilities Act. *See* Sutton v. United Air Lines, Inc., 527 U.S. 471, 491 (1999), and Toyota Motor Mfg., Kentucky, Inc. v. Williams, 534 U.S. 184, 200 (2002).

Essential functions are duties that are fundamental to a position including, among others, those for which the position exists, those that only a limited number of employees are available to perform, or those that cannot be delegated. Evidence of what constitutes an essential function may include, but is not limited to: the employer's judgment; written job descriptions, if any; the amount and/or proportion of time spent performing the function; the consequences of not requiring a function; the terms of a collective bargaining agreement; the work experience of past incumbents in the job; and/or the current work experience of incumbents in similar jobs.

Essential eligibility requirements are such criteria that can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered. .

Undue hardship means significant difficulty or expense incurred by an Agency, when considered in light of the factors set forth in 29 CFR Part 37 and referenced in Step 3 of this process..

Fundamental alteration means a change in the essential nature of a program or activity, or a cost that an Agency can demonstrate would result in an undue burden. Factors to be considered in determining whether a requested modification would result in a fundamental alteration are referenced in Step 3 of this process.

III. Effective Communication and Other Assistance

Each agency's EO Liaison/designated staff member shall be responsible for ensuring effective communication between the qualified individual with a disability and agency staff throughout the reasonable accommodation process. Effective communication may require arranging for sign language interpreters, assistive listening equipment, alternative formats for people with visual impairments, or other approaches. In addition, the EO Liaison/designated staff member shall also be responsible for providing such other reasonable assistance as is requested throughout the reasonable accommodation process, as well as through the process of any necessary appeals.

IV. Confidentiality

Agency personnel must maintain confidentiality. All documentation and information concerning the medical condition or history of an individual with a disability requesting an accommodation must be collected on forms separate from other forms related to that individual, and must be maintained by the agency in separate medical files. The information shall be treated as confidential medical records, and access to the records must be limited, except to the extent that:

(1) The EO Liaison and/or designated staff members and managers must be informed about work restrictions or reasonable accommodations;

(2) The first-aid and safety personnel need to be informed if the disability may require emergency treatment; and

(3) Government officials investigating compliance with law are required to be provided with relevant information upon request.

What Accommodations Are Reasonable?

Accommodations that are reasonable may include, but are not limited to, those listed below. The reasonableness of an accommodation will depend upon the circumstances of each case. For additional clarification as to what are reasonable accommodations in the employment context, refer to 29 CFR Part 32 – Appendix A.

- making facilities that are not otherwise required to comply with Federal accessibility standards physically accessible to and usable by people with disabilities (*e.g.*, providing ramps, rest room grab bars, signage, etc.);

- restructuring of job or training tasks (*e.g.*, reallocating non-essential typing, telephone or other clerical assignments among employees, assignment of non-essential tasks to others, eliminating non-essential tasks, etc.);

- modifying schedules (*e.g.*, permitting alternative starting and ending times to avoid standing and jostling on subways);

- providing or modifying equipment, devices or materials (*e.g.*, raising a desk on boards for a person who uses a wheelchair, providing flashing lights and volume controls on intercoms and telephones, installing text telephones [TTYs], providing large-print computer display programs, or materials in alternative formats, including Braille, audio tape or enlarged print, etc.);

- providing qualified readers, interpreters, or other support services for all aspects of programs and activities including the application, interview, and testing processes, and during training and employment-related activities.

Reasonable accommodation may also include permitting the individual with a disability to use aids or services that the Agency is not otherwise required to provide. For example, although an Agency generally would not be required to provide a motorized scooter to an individual with mobility impairment, reasonable accommodation may include providing an area to stow such a mobility aid, if necessary.

The Agency is not required to provide personal items to individuals with disabilities. Such items include hearing aids, prosthetic limbs, wheelchairs, or eyeglasses. However, such items may constitute reasonable accommodation where they are specifically designed to meet needs that are related to the program or activity in which

the person is participating, or the job the person is performing. For example, eyeglasses designed to enable the individual to view a computer monitor, but which are not otherwise needed outside of the program or activity in which the person is participating, or the job the person is performing, may constitute a reasonable accommodation.

Where more than one possible reasonable accommodation exists, the Agency should give primary consideration to the individual's preference in determining what accommodation it will provide.

As noted above, some requests for reasonable accommodation can be granted and implemented immediately following their receipt, without formal evaluation, consistent with this procedure. Such may be the case where the individual identifies any requested accommodation with specificity. For example, an employee who is deaf and who routinely uses a text telephone (TTY) can readily identify for the Agency that job-related limitation concerning use of the telephone, as well as the accommodation needed, a TTY. Where it is obvious that providing the TTY will enable the individual to meet the job's essential functions, the TTY can be ordered, provided and documented without the more comprehensive analysis provided for in Steps 2 and 3. In these cases, the reasonable accommodation process is merely compressed; it is not eliminated.

Accommodations may be considered "unreasonable" only if they impose an undue hardship for the specific Agency in question. For example, shifting tasks among clerical employees to accommodate an employee with a disability may be reasonable where a sufficient number of employees exist among whom the tasks can be distributed; however, such an accommodation may be unreasonable in a very small office with few employees. The factors listed in the definition of "undue hardship" in 29 CFR 37.4 must be considered in making this determination.

Where the Agency determines that the accommodation requested by the individual would impose an undue hardship, or the modification requested would result in a fundamental alteration, the Agency *must* propose an alternative accommodation or modification that would ensure that, to the maximum extent possible, the person with a disability receives the aid, benefits, services, training, or employment offered by the Agency.

Step by Step Process

Step 1: Individual with a disability requests Reasonable Accommodation: Initial Consultation

The individual with a disability should complete a Reasonable Accommodation Request form, and submit it to the EO Liaison or designated staff member (The form should be made available at the first possible opportunity in the application process.[3]). If a request for reasonable accommodation is made to facilitate the application process, the agency staff supervising the application procedures should assist in completing the form where requested and, in conjunction with the EO Liaison or designated staff member, process the request for accommodation. The EO Liaison or designated staff member receiving the request shall acknowledge each request by signing and dating the form in the space provided. One copy is to be returned to the individual requesting the reasonable accommodation and a second copy is to be filed with the EO Liaison or designated staff member, who is responsible for monitoring the process and for noting its outcome on the form. The current request for reasonable accommodation shall not preclude the submission of subsequent requests.

Generally, it is the responsibility of the individual with a disability to inform the agency of the need for an accommodation. Reasonable accommodation must be provided for disabilities that are known, but the Agency need not accommodate other disabilities. Nevertheless, once the agency is aware of an individual's disability, it may have the responsibility to initiate discussions about reasonable accommodation and set these procedures in motion.

Where the need for a requested accommodation is not apparent, the agency official supervising the application process or the involved EO Liaison and/or designated staff member may ask the individual to provide documentation in support of the request. For example, if the individual with dyslexia requests additional time within which to complete a timed, written entrance qualifying examination that individual may be asked to provide documentation in support of that request. Similarly, if an individual with a mental disability requests a flexible schedule to attend psychotherapy during the work day, the Individual may be asked to provide documentation from the treating professional in support of that request.

After acknowledging a request for accommodation and providing copies to the appropriate parties, the EO Liaison or designated staff member should either:

- provide or implement the request and document the accommodation or
- proceed to Step 2 of this procedure.

[3] Please note that a written request is not legally required in order to trigger the Agency's responsibility to provide a reasonable accommodation.

Step 2: **Consult with the Individual Requesting a Reasonable Accommodation**

The reasonable accommodation process sometimes can be accomplished without a formal analysis of the individual's limitations and the Agency's resources, as in the example provided above, where an individual's desk is elevated on blocks to permit access from a wheelchair. Other situations are more complex, however, and require structured analysis. In these instances, upon receipt of a request for reasonable accommodation, the EO Liaison and/or designated staff member should consult with the individual requesting the accommodation to assess the limitations of the disability and how the individual may best be involved in the accommodation process.

Using a collaborative, open and flexible approach, the EO liaison and/or designated staff member should consider how any limitations can be overcome, discuss possible reasonable accommodations, and assess the effectiveness of each. Other possible resources to consult with throughout this process include, but are not limited to, the following:

- the Job Accommodation Network (JAN), which can be reached at 1-800-JAN-7234 or by accessing their website at www.Jan.wvu.edu.

- the Mayor's Office of People with Disabilities, which can be reached at 1-212-788-2830 (voice) or (212) 788-2838 (TTY).

The Agency must consider the individual's preferences, along with what is reasonable and does not impose an undue hardship.

The circumstances, in which documentation can be requested, as well as the procedure for requesting such documentation, are as follows:

1. When the disability and/or the need for accommodation are not obvious, the Agency may ask the individual for reasonable documentation about his/her disability and functional limitations.

Reasonable documentation means that the Agency may require only the documentation that is needed to establish that a person has an actual, current disability, and that the disability necessitates a reasonable accommodation. However, the Agency, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation.

The Agency may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of function limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologist, nurses, physical therapists,

occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation the Agency should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. For example, the person can be asked to sign a limited release allowing the Agency to submit a list of specific questions to the health care or vocational professional. ***The Agency must maintain the confidentiality of all medical information collected during this process, regardless of where the information comes from.***

2. If a person provides insufficient documentation of a disability in response to the Agency's initial request, the Agency may require the person to go to a health care professional of the Agency's choice. However, the Agency should explain why the documentation is insufficient and allow the person an opportunity to provide the missing information in a timely manner.

Please note that under the Federal disability nondiscrimination law, you cannot ask for documentation under the following circumstances:

- both the disability and the need for reasonable accommodation are obvious, or
- the person has already provided sufficient information to substantiate the s/he has an actual, current disability and needs the reasonable accommodation requested.

If the individual's disability or need for reasonable accommodation is not obvious, and s/he refuses to provide the reasonable documentation requested by the Agency, then s/he is not entitled to reasonable accommodation. On the other hand, failure by the Agency to initiate or participate in an interactive process with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.

Step 3: EO Liaison and/or designated staff member analyzes the Request for Reasonable Accommodation

After consulting with the individual with a disability, the Agency should examine the request and determine if the requested accommodation is feasible and does not create an undue hardship or result in a fundamental alteration. ***Please note:*** Where a request is denied on the basis of undue hardship or fundamental alteration, an alternative accommodation/modification must be proposed that will ensure that, to the maximum extent possible, the person with a disability receives the aid, benefits, services, training, or employment offered by the Agency.

The factors to be considered in determining whether an accommodation would impose an undue hardship or in determining whether the cost of a modification would result in a fundamental alteration include:

(A) The nature and net cost of the accommodation/modifications needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation/modification;

(B) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation/modification, including:

- The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities, and
- The effect the accommodation/modification would have on the expenses and resources of the facility or facilities;

(C) The overall financial resources of the Agency, including:

- The overall size of the Agency,
- The number of persons aided, benefited, served, trained, or employed by the Agency, and
- The number, type and location of the Agency's facilities;

(D) The type of operation or operations of the Agency, including:

- The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the Agency, and
- Where the individual is seeking an employment-related accommodation/modification, the composition, structure and functions of the Agency's workforce; and

(E) The impact of the accommodation/modification upon the operation of the facility or facilities, including:

- The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties, and
- The impact on the facility's ability to carry out its mission.

Step 4: Select and Implement an Appropriate Reasonable Accommodation

Within 2[2] business days of receipt of a request for reasonable accommodation, the EO Liaison and/or designated staff member to whom it was submitted shall either grant or deny the request in writing in the space designated for that purpose on the Request for Reasonable Accommodation form. Provisions of this accommodation should commence immediately. Where the request is denied on

[2] This timeframe only applies if there are no extraordinary circumstances or need for additional documentation. See following page for timeframes that apply in such cases.

the basis of undue hardship or fundamental alteration, the EO Liaison and/or designated staff member must propose an alternative accommodation or modification that would ensure that, to the maximum extent possible, the person with a disability receives the aid, benefits, services, training, or employment offered by the Agency.

Where the provision or implementation of a reasonable accommodation will take longer than 10 business days, the steps taken to order, secure or carry out the accommodation shall be documented and discussed with the individual requesting a reasonable accommodation. In all instances, however, EO Liaison and/or designated staff members shall act as expeditiously as possible to provide reasonable accommodations.

Where further supporting documentation has been sought from the individual requesting a reasonable accommodation, the grant or denial of a request for reasonable accommodation shall be rendered as noted below:

- For those cases in which medical documentation is *necessary* in order to understand the individual's limitations and what accommodations are possible, the grant or denial shall be issued within 10 business days of receipt of the requested documentation;

- For those cases in which the documentation is being requested merely to verify the information provided by the individual with a disability, the grant or denial shall be issued within 5 business days of receipt of the requested documentation;

- For those cases in which the individual refuses to provide reasonable requested documentation, within 5 business days of the notification of refusal.

Where the EO Liaison and/or designated staff member determines to deny a request for accommodation, or to provide an accommodation other than the individual's expressed preference, the EO Liaison and/or designated staff member shall first consult with the individual requesting the reasonable accommodation. The EO Liaison and/or designated staff member will document the determination on the Request for Reasonable Accommodation form, and provide a copy to the individual requesting a reasonable accommodation. Where the determination is to deny the request on the basis of undue hardship or fundamental alteration, the proposed alternative accommodation or modification will also be documented on the form.

What if an Appropriate Reasonable Accommodation cannot be identified?

Sometimes, the EO Liaison and/or designated staff member, nor the individual requesting the reasonable accommodation, can identify possible reasonable accommodations. In those instances, the EO Liaison and/or designated staff member should consult with the LWIA EO Officer. The LWIA EO Officer will seek to facilitate effective communication between the parties with the goal of identifying and

implementing appropriate reasonable accommodation and, where a reasonable accommodation has been selected, shall monitor its implementation.

Throughout the Step 2 consultation process, the individual, the EO Liaison and/or designated staff member may seek technical assistance or clarification of each component of the reasonable accommodation process from the LWIA EO Officer.

For Further Guidance

Throughout the reasonable accommodation process, agency staff may seek guidance from the Mayor's Office of People with Disabilities by dialing 212-788-2830 (voice) or 212-788-2838 (TTY).