

APPENDIX C

PROCEDURES FOR PROVIDING PERSONAL ASSISTANCE SERVICES (PAS)

SECTION 1. BACKGROUND.

01. On January 3, 2017, the Equal Employment Opportunity Commission (EEOC) amended the regulations implementing Section 501 of the Rehabilitation Act of 1973 (Section 501), the law that prohibits the Federal government from discriminating in employment on the basis of disability and requires it to engage in affirmative action for people with disabilities.

02. As part of the Agencies' obligation to engage in affirmative action, Federal agencies are required by the new regulations to provide Personal Assistance Services (PAS), in addition to reasonable accommodations, to employees who need them because of certain disabilities. See 29 C.F.R. § 1614.203(d)(5). PAS are services that help individuals who, because of certain targeted disabilities, require assistance to perform basic activities of daily living, like eating and using the restroom, to fully participate in the workplace.

03. As of January 3, 2018, Federal agencies are now required to provide PAS to both existing and new employees with targeted disabilities regardless of when the employee was hired. Even if an existing employee who is entitled to PAS under the regulations has arranged for his or her own PAS in the past, the Agency will be responsible for providing PAS beginning on January 3, 2018, provided the employee meets the criteria for PAS (see Section 3. Eligibility).

04. The process for requesting PAS, the process for determining whether such services are required, and the Agency's right to deny such requests when provision of the services would pose an undue hardship, are the same as those for reasonable accommodations. Therefore, procedures for PAS will be incorporated into the Departmental Administrative Order 215-10, Reasonable Accommodation for Employees or Applicants with Disabilities.

05. Each Agency is also required to prepare and submit annually to EEOC an affirmative action plan for individuals with disabilities that includes a copy of these procedures and information on its efforts to implement them.

SECTION 2. DEFINITIONS.

01. Personal Assistance Services allow employees with targeted disabilities to fully participate in the workplace by providing assistance with activities of daily living, such as eating, drinking, using the restroom, and putting on and taking off clothing. For many individuals with targeted disabilities, such as paralysis or cerebral palsy, full participation in the workplace is impossible without such services.

The provision of PAS for activities of daily living is not considered a reasonable accommodation, but rather a part of the Agency's affirmative action obligations under Section 501. Under this same provision, Federal agencies are prohibited from taking adverse actions against job applicants and employees based on their need for, or perceived need for, PAS.

02. Targeted disabilities are a subset of conditions that would be considered disabilities under the Rehab Act and for which qualified individuals with certain disabilities (i.e. such as blindness, deafness, paralysis, convulsive disorders, and mental illnesses, among others) have faced significant barriers to employment that are above and beyond the barriers faced by people with the broader range of disabilities. (See the Office of Personal Management, Self-Identification of Disability Form (SF 256, Oct 2016), for a complete list of targeted disabilities.)

03. Department refers to the Department of Commerce, all of its Bureaus and operating units.

04. Agency refers to Federal agencies including the Department of Commerce.

SECTION 3. ELIGIBILITY.

01. An employee may be entitled to PAS, during work hours and when on work-related travel, if the follow conditions apply:

- a. the individual is a new or existing employee of the Department and has a targeted disability (see Section 2. Definitions);
- b. the employee requires such services because of his/her targeted disability (certain disabilities such as missing extremities and paralysis, require assistance with basic activities of daily living like eating and using the restroom);
- c. the provision of such services would, together with any reasonable accommodation required under the Rehab Act, enable the employee to perform the essential functions of his/her position, without posing a direct threat to safety; and
- d. providing PAS will not impose an undue hardship on the Department.

02. Not all employees with a targeted disability are entitled to PAS. Generally, such assistance is only necessary when it is obvious that an employee has a targeted disability (i.e. paralysis or missing limbs) and requires assistance with basic activities, like eating and using the restroom. In these situations, the Department may not require the individual to provide medical documentation in support of their request. However, to determine whether a requesting individual is entitled to PAS, and, if so, the nature of the required services, the Bureau Reasonable Accommodation Coordinator (RAC), should ask the employee what types of PAS he or she needs using the same type of informal, interactive process used for reasonable accommodation.

03. PAS do not help individuals with disabilities perform their specific job functions, such as services required as a reasonable accommodation to help an individual perform job-related tasks. For example, services provided as a reasonable accommodation, but not PAS, are sign language interpreters who enable individuals who are deaf to communicate with coworkers, and readers who enable individuals who are blind or have learning disabilities to read printed text. An Agency's obligation to provide reasonable accommodations is unaffected by the new regulations.

04. Telework. The Department is required to provide PAS for employees who telework, if the employees meet the eligibility requirements in Section 3.01. and are entitled to telework under the Department's telework policy or as a reasonable accommodation. An employee's permission to telework must not be revoked because he or she is entitled to PAS under the new regulations.

05. Federal agencies must, as a matter of affirmative action, provide PAS for employees to participate in employer-sponsored events, to the same extent as they must provide reasonable accommodations.

06. The Department is not required to provide PAS to help employees commute to and from work.

SECTION 4. PROCEDURES FOR REQUESTING PAS.

01. As with reasonable accommodation, an individual may request PAS by informing a supervisor, human resources professional, Reasonable Accommodation Coordinator, or other suitable individual, that he or she needs assistance with daily life activities because of a medical condition. The request may be made orally or in writing. The individual does not need to mention Section 501 or the EEOC's regulations

explicitly, or use terms such as "PAS" or "affirmative action" to trigger the Agency's obligation to consider the request.

02. A request for PAS may be made by a family member, health professional, or other representative on the individual's behalf with the individual's consent. Whenever possible the Bureau RAC will confirm the request with the person with the disability.

03. As with reasonable accommodations, to enable the Department to maintain accurate records of requests for PAS, the requestor is asked to confirm their request in writing or by completing the *Form CD 575, Written Confirmation of Request for Reasonable Accommodation*, (see Appendix 1), and submitting it to their designated Bureau RAC. **Requests for PAS must be addressed promptly even if the requestor does not complete the Form CD 575.**

SECTION 5. PAS DURING WORK-RELATED TRAVEL.

The Department is only required to provide PAS when the employee is working, unless he or she is on work-related travel. When an assignment of work-related travel results in an employee's inability to rely on his or her usual source of PAS during both work and off-work hours, the Department is required to provide PAS at all times during that work-related travel, independent of the new regulations, as a reasonable accommodation (absent undue hardship). Additionally, even if an employee's usual PAS provider is available during work-related travel, the Bureau is required to pay any additional costs related to providing PAS while on travel, such as transportation costs for the PAS provider, as a reasonable accommodation.

SECTION 6. PAS PROVIDERS.

01. PAS must be performed by a personal assistance service provider. Bureaus have the discretion to decide if they want to use Federal employees, independent contractors, or a combination of employees and contractors. For services performed by Federal employees, the Office of Human Resources will consult with the appropriate point of contact (e.g., employee's supervisor, Bureau RAC) prior to determining the terms and conditions of employment. PAS may also be provided by an employee's family member who is hired as a professional PAS provider, either as a contractor or Federal employee.

02. If a Bureau is hiring a PAS provider who will be assigned to a single individual, and if that individual prefers a particular provider (e.g., because the provider has worked with him or her in the past or is of the same gender as the employee), the Bureau must give primary consideration to the employee's choice to the extent permitted by law.

However, it may not be possible to honor the individual's preferences in all cases. A different provider may be chosen if, for example, the individual's preferred provider is not qualified or less qualified than another applicant, if the agency decides to utilize a pool of shared providers instead of dedicated providers, for reasons of cost or convenience, or if the Bureau decides to have appropriate existing employees provide PAS, again, for reasons of cost or convenience.

03. PAS providers may also perform non-PAS work-related tasks, but only to the extent that doing so does not result in failure to provide required PAS in a timely manner. Sometimes these work-related tasks are those that are required as a reasonable accommodation, such as readers who enable employees who are blind or have learning disabilities to read printed text (see Section 3.03). Other times, the work-related tasks are the type that any assistant would provide. However, if additional duties are assigned to the

Bureau's PAS providers, it should ensure that those duties do not interfere with provision of PAS, and that all individuals who are entitled to PAS continue to receive them in a timely manner. Consult with Human Resources or Contracting prior to adding any non-PAS work-related duties.

04. PAS providers may provide services to more than one individual. Bureaus may utilize a pool of PAS providers, rather than assign one PAS provider to each employee who needs one, as long as each individual who is entitled to PAS receives them in a timely manner. If utilizing a pool of providers would foreseeably result in some individuals not receiving services when they are needed, the Bureau should increase the number of available providers or arrange for dedicated PAS providers.

05. An individual may request permission to bring his or her own PAS provider to work as a reasonable accommodation if the individual does not request that the Bureau assume the cost of providing the services. However, if the individual wants the Bureau to assume the cost of providing the services, the Bureau may have reasons to choose a different provider (see Section 6.02.).

06. Bureaus may assign the responsibility to perform personal assistance services to an existing employee only if the employee already performs PAS or a similar service as part of his/her regular job. However, Bureaus that utilize this strategy should ensure that the resulting number of providers is sufficient to provide PAS in a timely manner to any employee who is entitled to them.

07. If the position sought by or held by an individual with a targeted disability requires a security clearance and the individual's PAS provider would have access to classified information, the Bureau should find a provider who has, or who likely could get, the appropriate security clearance. Under some circumstances, finding such a provider may be sufficiently difficult as to constitute an undue hardship. If an individual with a targeted disability is unable to perform essential job functions because an appropriate provider cannot be found, an Agency may consider the individual to be unqualified for the position.

08. If an individual that provides PAS is unavailable, the PAS providers must notify the Bureau POC of any absences as soon as possible, so that they can make alternative arrangements. Such arrangements could include, for example, contracting with different providers on a short-term basis, adjusting the schedules of shared PAS providers if the Bureau utilizes any, or allowing the individual to telework if the employee can work at home without the need for PAS provided by the Bureau.

09. Locating a PAS Provider. Resources for PAS providers include local vocational rehabilitation offices, American Job Centers, centers for independent living, home care agencies, and the individual who requested PAS. Additionally, some contractors are available through GSA Advantage. If a Bureau decides to hire a full-time/part-time PAS provider, applicants for PAS provider positions may be found in the same way that applicants for other positions are located -by advertising the opening on USAJOBS and other job posting boards.

SECTION 7. PAS FUNDING.

01. The cost of PAS will vary depending on the location as well as how much assistance an employee needs. The resources available to the Department as a whole are to be considered when determining if PAS can be provided without undue hardship.

02. When arranging for PAS, Bureaus must consider all available resources, including outside sources that are already providing PAS or are willing to provide PAS at their own expense, such as a state or veterans' rehabilitation agency. However, the Bureau is ultimately responsible for ensuring that the services are provided in a timely manner and cannot rely on the fact that an outside source has promised to, or is otherwise obligated to, provide PAS as a reason for denying an employee's request.

03. Payment to Family Member Providers of PAS. If an employee's family member provides PAS at work, but also performs PAS off the job without compensation, the Bureau is required to pay the family member for PAS provided at work. However, prior to payment, the family member must be hired as a professional PAS provider and compensated as either a contractor or Federal employee in accordance with the terms and conditions of employment (see also Section 6.01.).

SECTION 8. GRANTING REQUESTS FOR PAS.

As with reasonable accommodations, the RAC has the responsibility for advising on and processing requests for PAS. As soon as a decision has been made to provide PAS to an employee, the RAC will assist the deciding official in arranging the service. As a part of the interactive process, and in consultation with Human Resources and/or Contracting, the RAC will assist the deciding official in determining the most appropriate source for PAS based on the employees' needs and available resources. (See Section 6. PAS Providers). The deciding official is responsible for providing the decision in writing to the requestor. The Bureau must maintain a copy of the decision in the same way records are maintained for requests for reasonable accommodations.

SECTION 9. DENIAL OF REQUESTS FOR PAS.

01. Procedures for denying a request for PAS are the same as for reasonable accommodations (see DAO 215-10).

02. The Department is only required to provide PAS if the requesting employee is entitled to them under the regulations. (See Section 3. Eligibility) Therefore, a request for PAS may be denied if:

- a. the requestor is not an employee of the Department;
- b. the requestor does not have a targeted disability;
- c. the targeted disability does not create a need for PAS;
- d. the requester is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations;
- e. the requester would create a direct threat to safety on the job, even with PAS and any reasonable accommodations; or
- f. providing PAS would impose undue hardship on the Department.

03. Undue Hardship. Under the new regulations, the term "undue hardship" has the same meaning that it has in the reasonable accommodation context. Granting a request for PAS will impose undue hardship on an Agency if it would result in "significant difficulty or expense." The regulations emphasize that, as with reasonable accommodation, the determination of whether granting an individual's request for PAS would impose "significant" difficulty or expense must take into account all resources available to the Department as a whole.

03. The number of individuals with the types of disabilities that require assistance in activities of daily living and who will apply for federal employment is very low. However, in the unlikely event that the resources available to the Department as a whole are insufficient to grant a particular individual's request for PAS, the Department may deny the request on the grounds that it would impose an undue hardship.

SECTION 10. CONFIDENTIALITY.

01. As with reasonable accommodations, the Rehab Act prohibits the disclosure of medical information except in certain limited situations. Generally, information that is otherwise confidential under the Rehab Act may be shared only with individuals involved in the PAS process who need to know the information to consider PAS for a specific individual.

02. When submitting a request for PAS, the RAC should encourage employees to voluntarily self-identify their disability status by completing OPM's "Self-Identification of Disability" form (SF-256, Oct 2016) or update their disability status in the Employee Personal Portal (EPP). This information will be kept confidential and only used in the aggregate for statistical reporting purposes. However, an employee is not required to submit this information nor can the Department make completion of the form a condition of receiving PAS. The Department may still be able to count an individual who is receiving PAS in its annual disability workforce analysis, even if the individual does not self-identify as having a disability.