SOUTH DAKOTA NATIONAL GUARD
STANDARD OPERATING PROCEDURES

PROCESSING REQUEST FOR REASONABLE ACCOMMODATIONS OR PERSONAL ASSISTANCE SERVICES STANDARD OPERATING PROCEDURES (SOP)

South Dakota National Guard
2823 West Main Street, Rapid City, SD 57702
1 April 2020

SOUTH DAKOTA NATIONAL GUARD
JOINT FORCE HEADQUARTERS
2823 WEST MAIN STREET
RAPID CITY, SOUTH DAKOTA 57702

SDNG-TAG 1 April 2020

MEMORANDUM FOR All South Dakota National Guard Managers, Supervisors, and Employees

SUBJECT: Standard Operating Procedure (SOP) for Processing Requests for Reasonable Accommodation (RA) or Personal Assistance Services (PAS).

1. This SOP further defines and establishes the RA procedure for all employees of the SDNG.

2. The SOP is in compliance with the *Affirmative Action for Individuals with Disabilities Federal Employment, Rehabilitation Act,* 29 C.F.R. § 1614.203 (January 3, 2017) (Rule). The Rule codifies a variety of obligations currently placed on federal agencies by management directives and Executive Orders. It also adds substantive affirmative action requirements, mandating that federal agencies: (1) adopt employment goals for individuals with disabilities, with sub-goals for individuals with targeted disabilities; (2) provide personal assistance services to certain employees who need them because of a targeted disability; and (3) meet a number of other requirements designed to improve the recruitment, hiring, retention, and advancement of individuals with disabilities in the federal workforce.

3. This SOP includes the procedures for AGR, ADOS or OTOT employee's to request consideration for an accommodation when they have a temporary or permanent physical profile and an adjustments in their work area may be needed on a case by case basis.

4. Further questions you may have concerning RA, PAS or pertinent laws or regulations may be referred to the SDNG-EDI, Carstin Jerzak, SDNG Equal Employment Manager at (605) 737-6635, e-mail: carstin.k.jerzak.mil@mail.mil.

JEFFREY P. MARLETTE
Major General (SD), SDNG
The Adjutant General

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STANDARD OPERATING PROCEDURE

PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION OR PERSONAL ASSISTANCE SERVICES

1. PURPOSE: This standard operating procedure ("SOP") establishes the South Dakota National Guard (SDNG) procedure for current federal employees to request a Reasonable Accommodation (RA) or Personal Assistance Services (PAS). The SOP is focused on, but not limited to, establishing a procedure that will support the prompt, fair, and efficient processing of requests for RA and PAS; and ensuring managers, supervisors and leaders comply with the mandates of the Rehabilitation Act of 1973, as amended.

2. REFERENCES:

2.1 Rehabilitation Act of 1973, as amended.

2.2 ADA Amendments Act of 2008.

2.3 U.S. Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act.

2.4 EEOC Policy Guidance on Executive Order 13164

2.5 AR 40-501, Standards of Medical Fitness, DTD: 14 June 2017

2.6 ANGI 36-101, Air National Guard AGR Program, DTD: 14 August 2014

2.7 AFI 10-203, Duty Limiting Conditions, DTD: 20 November 20014

3. RESPONSIBILITIES:

3.1 SDNG Human Resource Officer (HRO). The Human Resource Officer is responsible for implementation and administration of this RA SOP and ensuring all newly appointed supervisors and managers attend initial supervisor training, required refresher training and any additional training where RA and PAS policy and processing procedures are trained as needed.

3.2 SDNG Labor Relations Specialist (LRS). The LRS is responsible for assisting and advising, HRO, EEM, managers and supervisors in reviewing requests for RA affecting for adjusting the workplace in consideration of all union related agreements.

3.3 SDNG Equal Employment Manager (EEM). The EEM is responsible for the following:

3.3.1 Assisting or providing HRO supervisor and manager RA training programs on an annual basis, as well as making such training a part of newly-appointed or refresher supervisor and manager training and new employee orientation.

3.3.2 Assisting employees with RA requests.

3.3.3 Developing and disseminating information on available RA resources.

3.3.4 As the Disability Program Manager (DPM) or proponent for the Program for Persons with Disabilities (PWD), coordinating RA requests as needed.

3.3.5 Tracking and reporting on RA requests in the annual Individuals with Disabilities Affirmative Action Program Plan.

3.3.6 Submitting RA data for SDNG employees in the annual EEOC MD-715 report.

3.3.7 Ensuring copies of this RA SOP and its applicable procedures are readily available to all SDNG employees. This should be accomplished by maintaining copies on the SDNG public and internal SharePoint sites and providing copies during applicable training. This SOP must be accessible to individuals with disabilities, when necessary, through alternative formats. The EDI office can print hard copies as needed or requested.

3.4 Commanders and Directors: Commanders and Directors at all levels are responsible for providing the necessary resources to support the availability of the RA process, as well as ensuring that all Managers and Supervisors subject to their authority receive annual training on the RA process.

3.5 Managers and Supervisors: Managers and Supervisors are responsible for recognizing requests for RA/PAS and the following:

3.5.1 Assuring all employees are aware the RA process is available to individuals with disabilities.

3.5.2 Receiving, reviewing and processing RA requests from employees.

3.5.3 Forwarding the RA request to EEM to initiate the interactive process to determining whether it is appropriate to approve an employee's RA request, whether to offer an alternative RA, or whether circumstances require the RA request to be denied.

3.5.4 Communicating the status and ultimate disposition of employee RA requests to the requesting employee.

3.5.5 In the case of higher level supervisors, receiving, reviewing and processing requests for reconsideration from employees whose initial RA requests were previously denied

by a subordinate supervisor. Forwarding the request for reconsideration to HRO, LRS and EEM to initiate the interactive process in order to reconsider the request.

3.5.6 In order to recognize when a RA/PAS is needed or being requested, supervisors and managers will attend the initial supervisors training course, all required refresher courses, become familiar with the examples in appendix B of this SOP and review the resources identified in appendix C of this SOP. They will consider any requests to modify or adjust the workplace as potential requests for RA/PAS and immediately consult with HRO or the EDI office to obtain clarification and assistance before continuing to process such requests.

3.6 Subject Matter Experts (SME): The Occupational Health Nurse, Deputy State Surgeon, the Facilities Management Office or other personal as needed may be called on to participate in the interactive process to determine the best course of action necessary to determine the final disposition of a RA request. This is situational dependent and will be considered by the HRO, LRS and EEM as necessary to ensure the consideration of the RA COA's received full consideration to ensure effective implementation if approved. These SME's will provide timely information for COA development as requested.

4. DEFINITIONS:

4.1 Direct threat: a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

4.2 Essential functions: job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function is "essential" if, among other things, the position exists specifically to perform that function, there are a limited number of employees who could perform the function if it were assigned to them, or the function is specialized, so the incumbent is hired based on his/her ability to perform it.

4.3 Extenuating circumstances: factors that could not reasonably have been anticipated or avoided in advance of the request for RA, such as back order of necessary equipment or failure of employee's health care professional to timely provide necessary documentation.

4.4 Person With a Disability or Person With a Targeted Disability (PWD/PWTD): Any person, who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such impairment or is regarded as having such an impairment. Targeted Disabilities are identified by the OPM Standard Form 256. Some targeted disabilities include deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness and distortion of limb and/or spine.

4.5 Major life activities: include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working, as well as the operation of a major bodily function including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive

functions. Furthermore, episodic impairments or medical conditions that are in remission are nonetheless disabilities if they would substantially limit a major life activity when active.

4.6. Qualified Individual: an individual who, with our without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For AGR personnel this is defined as a Soldier with a permanent or temporary profile as authorized by the appropriate chapter in AR 40-501.

4.7 Reasonable Accommodation: a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. This SOP's "undue hardship" standard is different from that applied by courts under Title VII of the Civil Rights Act of 1964 for religious accommodation. There are three categories of RA:

4.7.1 Modifications or adjustments to a job application process to permit an PWD to be considered for a job.

4.7.2 Modifications or adjustments necessary to enable a qualified PWD to perform the essential functions of the job.

4.7.3 Modifications or adjustments that enable PWDs to enjoy equal benefits and privileges of employment.

4.8 Army Military Definition of Physical disability per AR 40-501: Any manifest or latent impairment of function due to disease or injury, regardless of the degree of impairment that reduces or precludes an individual's actual or presumed ability to perform military duty. The presence of physical disability does not necessarily require a finding of unfitness for duty. The term "physical disability" includes mental diseases other than such inherent defects as behavior disorders, personality disorders, and primary mental deficiency.

4.9 Personal Assistance Services (PAS) means assistance with performing activities of daily living an individual would typically perform if they did not have a disability, and is not otherwise required as a reasonable accommodation, including for example, assistance with removing and putting on clothing, eating and using the restroom. These services are not related to job performance.

4.10 Duty Limitation per AFI 10-203: A recommendation resulting from a medical evaluation which, if applied explicitly, limits or restricts an Airman's ability to perform primary and/or additionally assigned duties, deploy (mobility), or participate in fitness activities.

4.11 Duty Limiting Condition per AFI 10-203: A medically-related condition (injury or illness) resulting in a duty limitation. Commonly referred to as a DLC in the AFI, it is often used as an abbreviated term for the AF Form 469, Duty Limiting Condition Report. DLC refers to Duty/Mobility/Fitness Restrictions.

4.12 Army Temporary profile: Soldiers receiving medical or surgical care or recovering from illness, injury, or surgery, will be managed with temporary physical profiles until they reach the point in their evaluation, recovery, or rehabilitation where the profiling officer determines that Medical Retention Decision Point has been achieved but no longer than 12 months. A temporary profile is given if the condition is considered temporary, the correction or treatment of the condition is medically advisable, and correction usually will result in a higher physical capacity.

4.13 Army Permanent Profile: Describes a stable limitation that will persist for a year or longer. The numerical designator for the PULHES indicates the severity of the limitation. All permanent profiles will be reviewed and assessed at every annual PHA.

4.14 Other definitions may be considered within each individual regulation or reference on a case by case basis and within the interactive process by employee status.

5. GENERAL POLICY GUIDANCE ON INDIVIDUALS OR PERSONS WITH DISABILITIES:

5.1 The Rehabilitation Act of 1973 and the. Americans with Disabilities Act of 1990 (ADA) require employers to provide RA to qualified employees or applicants with disabilities, unless doing so would cause undue hardship. This SOP helps to implement the requirement of the Rehabilitation Act, as well as the underlying principles of the ADA, that agencies provide RA to qualified employees and applicants with disabilities.

5.2 Reasonable accommodations serve two fundamental purposes. First, RAs remove barriers preventing PWDs from applying for or performing, jobs for which they are qualified. This SOP is to be interpreted and applied in accordance with those two stated purposes, as well as the spirit of the Rehabilitation Act and the ADA.

6. REASONABLE ACCOMMODATION INTERACTIVE PROCESS:

6.1 Requesting Reasonable Accommodation.

6.1.1 The RA process is initiated when a person with a disability (PWD) or physical profile/waiver indicates a need for an adjustment (or change at work) or in the application process for a reason related to a disability. The requestor does not have to use any particular words, cite the Rehabilitation Act, this SOP, or even use the term "reasonable accommodation." For example, it is sufficient for a vision impaired person to ask for assistance with certain work related materials. This is a request for reasonable accommodation.

6.1.2 A PWD may initiate a request for RA orally or in written form at any time. The interactive process is allowed to be initiated by the person with a disability as well as by a family member, health professional, and other representative who is acting on the individual's behalf *(EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation*, Sec. II (A), Q.6 (Oct.20, 2000). The PWD will be

asked to complete an RA request form for documentation and processing purposes. The Reasonable Accommodation Request Form, which is attached to this SOP at Appendix D, has been developed for this purpose. Despite the requirement the requesting individual complete and submit a request form, the individual's initial request, whether verbal or written, starts the RA process.

6.1.3 Requests for RA should ordinarily be addressed to the individual's direct supervisor so the request can be properly tracked and acted upon. At the individual's discretion, however, the RA request can be made to any of the following: (1) the individual's supervisor; (2) a supervisor or manager in the individual's immediate chain of command; (3) to the EEM in the EDI office; (4) the HRO office, (5) the Occupational Health Nurse, or (6) in the case of an applicant involved in the application process, the POC listed on the vacancy announcement or HRO. Requests for RA made to individuals or offices other than those listed cannot be properly tracked and may not be processed timely or accurately and will be re-routed immediately to any of the individuals identified above in this paragraph.

6.1.4 Where a PWD has requested a type of reasonable accommodation they are likely to need on a repeated basis -for example, the assistance of sign language interpreters or readers -the PWD will not be required to submit a written request for recordkeeping purposes each time the RA is needed. In such cases, the PWD may obtain the RA by notice to their supervisor once the RA is approved the first time.

6.2 Processing Requests for Reasonable Accommodation.

6.2.1 While an employee may request a change due to a medical condition, this request does not necessarily mean the employer is required to provide the change. A request for RA is the first step in an informal, interactive process between the employee and the supervisor. The process is always begun by the employee. Supervisors should not unilaterally ask employees if they have a disability or if they need an accommodation. However, supervisors, managers and leaders are encourage to be proactive to situations when they are made aware of any circumstances that may warrant a change in the workplace.

6.2.2 Upon receipt of a request for RA, Supervisors will direct the requesting employee to complete and submit a Reasonable Accommodation Request Form. The supervisor will scan/email the form to the EEM/EDI office upon receipt. As stated in Section 6.1.2 however, Supervisors will not delay the interactive process while waiting for the form. The Supervisor will then engage in the interactive process by discussing the following with the requesting employee:

(a) The underlying disability or medical issue;

(b) The specific functional limitations resulting from the disability or medical issue and how they relate to or affect the employee's job functions;

(c) Any suggestions the employee may have for a reasonable accommodation.

The supervisor will document the conversation in writing and should take detailed notes. Supervisors are encouraged to seek guidance from the HRO and the EMM at any time during the process. Information obtained from the employee regarding the medical issue and related facts, documents, etc. will be kept confidential to the extent required by applicable law and HIPPA standards but will be shared with those individuals in the SDNG interactive process used to determine whether to grant a request for RA. In situations where the employee's disability and need for an RA are reasonably obvious or there is a military profile, the supervisor will inform the employee of the approval or denial as soon as possible but not later than thirty (30) calendar days, absent extenuating circumstances. Where the employee has not requested a specific accommodation, the supervisor will inform the employee if a RA is approved or denied, again as soon as possible but not later than thirty (30) calendar days. At the close of the initial meeting the supervisor should inform the employee of their right to obtain information on their request and assistance from the EDI office. The supervisor will collect the Reasonable Accommodation Request Form from the employee before the end of this meeting. Failure to provide an accommodation in a prompt manner may result in a violation of the Rehabilitation Act. 29 C.F.R. § 1614.203(d)(3)(i)(O). For example: Ruth's agency prohibits employees from eating or drinking at their workstations. Ruth has insulin-dependent diabetes, and asks her supervisor to permit her to eat a candy bar or drink fruit juice at her desk if necessary to avoid going into insulin shock. The agency's reasonable accommodation procedures state that decisions about whether to grant or deny requests for reasonable accommodation should be made within 15 days of the date of the request. In this case, however, the agency should be able to provide the reasonable accommodation in no more than a day or two, and hopefully sooner. The agency should not wait the full 15 days before responding to Ruth's request.

6.2.3 Decisions on RAs will be expedited where (1) the RA is needed to enable an applicant to apply for a job; or (2) the RA is needed for a specific SDNG activity scheduled to occur shortly. Expedited requests will be actioned as soon as possible but not later than five 5 calendar days and provided as soon as possible or not later than 15 calendar days. See paragraph 6.3.3 if an interim RA is necessary.

6.2.4 The SDNG has a need to know if an employee has a covered disability requiring a RA, especially when the need is not obvious or visible. Thus, when a disability and/or need for an RA are not obvious, the SDNG can require the employee provide documentation about the disability and functional limitations. The requested documentation must come from an appropriate credentialed professional, depending upon the type of claimed disability, such as doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals. The documentation must contain the following information:

(a) The nature, severity, and duration of the employee's impairment;

(b) The activity or activities the impairment limits as well as any specific activities the employee can perform related to the RA.

(c) The extent to which the impairment limits the employee's ability to perform the activity or activities; and/or

(d) Why the employee requires an RA or the particular RA requested, as well as how the RA will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace. Supervisors will not request medical documentation where: (1) both the disability and need for RA are obvious; or (2) the employee has already provided the SDNG with sufficient information to document the existence of the disability and their functional limitations. Supervisors will require only the documentation needed to establish the employee has a disability, and the disability necessitates an RA. Thus, supervisors will not ask for information unrelated to determining the existence of a disability and need for an RA.

6.2.5 Supporting medical documentation must be provided to the requesting official within ten (10) calendar days after the individual is informed it is required, absent extenuating circumstances. Failure to provide necessary documentation where it has been properly requested could result in a denial of RA (29 C.F.R. § 1614.203(d)(3)(i)(N). Medical information will be kept confidential to the extent required by applicable law and HIPPA standards, but will be shared only with those "other agency officials" in the SDNG involved in the interactive process to determine whether to grant a request for RA. These officials include: (1) supervisors and managers who need to know may be told about necessary restrictions and about the necessary accommodation(s); (2) first aid, safety and security personnel may be told if the disability might require emergency treatment or evacuation; (3) government officials to investigate the agency's compliance with the Rehabilitation Act; (4) workers' compensation offices or insurance carriers; (5) agency EDI officials may be given the information to maintain records. EEOC Policy Guidance, Sec. II(D), Q.20, and (6) SDNG Subject Matter Experts such as the Occupational Health Nurse or Deputy State Surgeon.

6.2.6 Additionally, the SDNG may request supplemental documentation when the information already submitted is insufficient to document the disability and/or functional limitations it causes, as well as the need for the RA. In such cases, supervisors or requesting officials should describe for the employee in writing why the submitted documentation is insufficient and identify the information needed. This supplemental medical documentation must be received by the requesting official within seven (7) calendar days of its request. Failure to provide necessary documentation where it has been properly requested could result in a denial of RA.

6.2.7 If the employee requesting an RA still fails to provide sufficient information and supporting documentation, the SDNG may, at its discretion, take the following actions:
(a) have the individual requesting an RA examined by a physician from the SDNG. If the individual does not consent to the examination, deny the request for RA IAW Section 6.3.2 below; or (b) have a military physician from the SDNG review all of the documentation the individual requesting RA submitted to ensure it is, in fact, insufficient. If the SDNG physician concurs the documentation is insufficient, deny the request for RA IAW Section
6.3.2 below.

6.2.8 An PWD does not need to have a particular accommodation in mind before making a request (29 C.F.R. § 1614.203(d)(3)(i)(D). Once it is determined the employee requesting an RA has a qualifying disability (and is therefore a PWD), the supervisor will consult

with the LRS to determine whether the requested RA is appropriate under the circumstances. If the supervisor does not have authority to grant a particular RA (such as the authority to allow the employee to disregard a particular work policy), the supervisor and LRS will consult with the lowest-level supervisor with such authority. RAs will only be provided to individuals or persons with an actual disability, a record of a disability or a record of an impairment. Supervisors are not obligated to provide RAs to employees who have been merely "regarded as" having a disability without confirmation of the disability or a need for a RA.

6.2.9 In considering whether an RA can be provided, supervisors and the LRS should identify the essential job functions (as defined above) of the PWD's position, the PWD's functional limitations to completing the essential job functions, and whether there are any reasonable alternative approaches to meeting essential job functions. Appendix B contains a list of possible accommodations. Appendix C contains a list of resources to help supervisors and LRSs in considering possible RAs.

6.2.10 A modification or adjustment is "reasonable" if it is feasible or plausible under the circumstances. An accommodation must also be effective in meeting the needs of the PWD. This means an RA enables an PWD to perform the essential functions of their position. Finally, an RA allows an PWD an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy.

6.2.11 The SDNG has the authority to choose among possible RAs as long as the chosen RA is effective. Thus, as part of the interactive process, supervisors may offer PWDs alternative suggestions for RA and discuss their effectiveness in removing the workplace barrier impeding the PWD. If there are two possible RAs, and one costs more or is more burdensome than the other, supervisors may choose the less expensive or burdensome accommodation as long as it is effective. Similarly, when there are two or more effective accommodations, supervisors may choose the one easier to provide. In either situation, the supervisor is not required to show it is an undue hardship to provide the more expensive or more difficult accommodation. The preference of the PWD should be given primary consideration, but the supervisor has the ultimate discretion to choose between effective accommodations. Appendix B lists some suggested RAs for supervisors and employees to consider. Appendix C contains resources for supervisors and employees to explore possible RAs.

6.2.12 There are several modifications or adjustments to which supervisors do not have the authority to agree. First, supervisors may not agree to eliminate an essential function, i.e., a fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without reasonable accommodation, is not a "qualified" individual or person with a disability within the meaning of this SOP. A supervisor is also prohibited from agreeing to lower production standards as an accommodation whether qualitative or quantitative that are applied uniformly to other employees with and without disabilities.

6.2.13 The SDNG will not provide personal use items needed in accomplishing daily activities both on and off the job as reasonable accommodations. Thus, the SDNG will not provide an employee with a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job. Furthermore, the SDNG will not provide personal use

amenities, such as a hot pot or refrigerator, if those items are not provided to employees without disabilities. However, items that might otherwise be considered personal may be considered as reasonable accommodations in appropriate cases where they are specifically designed or required to meet job-related rather than personal needs.

6.2.14 RA requests will be denied where the requested RA would cause "undue hardship" to the SDNG. Undue hardship, which generally involves significant difficulty or expense, is to be determined on a case-by-case basis. The analysis focuses on the resources and circumstances of the SDNG in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations unduly extensive, substantial, or disruptive, or those fundamentally altering the nature or operation of the business. The supervisor, HRO, EEM and LRS must assess on a case-by-case basis whether a particular accommodation would cause undue hardship.

6.2.15 The reassignment to a vacant position for which an employee is qualified is a reasonable accommodation; and the agency must consider providing reassignment to a vacant position as a reasonable accommodation when it determines no other reasonable accommodation will permit an employee with a disability to perform the essential functions of their current position 29 C.F.R. § 1614.203(d)(3)(i)(B). SDNG HRO must notify the supervisor, LRS and other officials they are conducting searches for available vacancies when considering reassignment as a RA 29 C.F.R. § 1614.203(d)(3)(i)(C). Allowing or granting an PWD permission to compete for such position does not fit the criteria for reassignment consideration.

6.3 Approval and/or Denial of Requests for Reasonable Accommodation.

6.3.1 The approval level for all RA/PAS requests are made at the Chief of Staff, Director of Joint Staff level for the ARNG and at the Wing Commander level for the ANG. The HRO will facilitate the decision process and provide the official documentation to the supervisor and copies to the EEM, LRS and additional staff as needed. The supervisor will notify the employee by providing a copy of the approval and document the date and circumstances of the notification. This is the same process if the agency makes an offer of an alternate accommodation. The supervisor will make every effort possible to implement an approved RA/PAS within the 30 thirty calendar day time frame. A copy of the supervisor's written notification will go into a separate file for the employee, as discussed below.

6.3.2 When the final decision is made to deny a requested RA the supervisor will notify and provide the employee a copy of the denial in writing and will document the circumstances of the notification. The written notification of denial to the employee must contain: (1) the name of the supervisor who made the decision; (2) the reasons for the denial; (3) a notice if the employee (technician) wants to appeal or file an EEO complaint and that they must contact the SDNG EDI office within 45 days of receiving this letter; or (4) the employee (military/AGR) can appeal the decision to the next supervisor or request assistance from the Inspector General's office since denial of reasonable accommodation isn't a protected basis under the military Equal Opportunity program.

6.3.3 There is any delay in either processing a request for or providing a

reasonable accommodation, the supervisor must notify the employee in writing of the reason for the delay, including any extenuating circumstance justifying the delay 29 C.F.R. § 1614.203(d)(3)(i)(S). If the agency cannot provide the accommodation immediately, the agency must provide an interim accommodation that allows the individual to perform some, or all essential functions of their job, if it is possible to do so without imposing undue hardship on the agency. 29 C.F.R. § 1614.203(d)(3)(i)(Q).

7. INFORMAL RESOLUTION and COMPLAINTS:

7.1 Informal Resolution Process.

7.1.1 An employee can appeal the decision of the request to the Adjutant General (TAG) within seven (7) calendar days of receipt of the original decision. The appeal should be in writing and should contain any additional information or documentation the employee would like the TAG to consider. There is no requirement for the employees to process an appeal before contacting the EDI office or before filing an EEO or IG complaint.

7. 1.2 The TAG will render a decision on the appeal within fourteen (14) calendar days of receipt. The appeal should involve simply reviewing the original request documentation and any additional or new documentation submitted by the employee. There is no requirement for the TAG to meet with the employee unless the TAG believes it is necessary in the interests of fairness. Notice of the TAG's decision will be IAW Section 6.3.2 above, except the notice will remind the employee they must contact the SDNG EDI office within 45 days of receipt of the original supervisor's decision if the employee wishes to file an EEO complaint or if they are military, notify them to contact the IG for further assistance.

7.2 EEO/IG Process.

7.2.1 Regardless of whether or not the employee has utilized the Informal Resolution Process above, the individual must contact the SDNG EDI office within 45 days of receiving the initial denial of the request for RA (not the decision on appeal or reconsideration) if they desire to file an EEO complaint. The EDI office will guide the employee through the EEO pre-complaint process. AGR personnel must contact the IG for further assistance.

8. RECORDKEEPING REQUIREMENTS:

8.1 Tracking Requirements. The proponent for reasonable accommodation is the EDI Office. As a result, at the operational level, the servicing EDI Office is responsible for tracking the following information:

8.1.1 SDNG EDI will assign a Tracking Number to the RA request form. Example: SDNG-RA-FYXX (fiscal year)-XX (number). EDI will notify the individual in writing of their tracking number within 5 calendar days of the RA request. The individual can track their request process by using their tracking number and calling the EDI Office or SDNG HRO. 29 C.F.R. § 1614.203(d)(3)(i)(R).

8.1.2 The number and types of RA requested in the application for employment process and whether those requests were granted or denied.

8.1.3 The jobs (occupational series, grade level, and organization) for which RAs have been requested.

8.1.4 The types of RAs requested for each of those jobs.

8.1.5 By organization, the number and types of RAs approved or denied for each job.

8.1.6 The number and types of requests for RAs related to benefits or privileges of employment, and whether those requests have been granted or denied.

8.1.7 The reasons for denial of RA requests.

8.1.8 The amount of time taken to process each RA request.

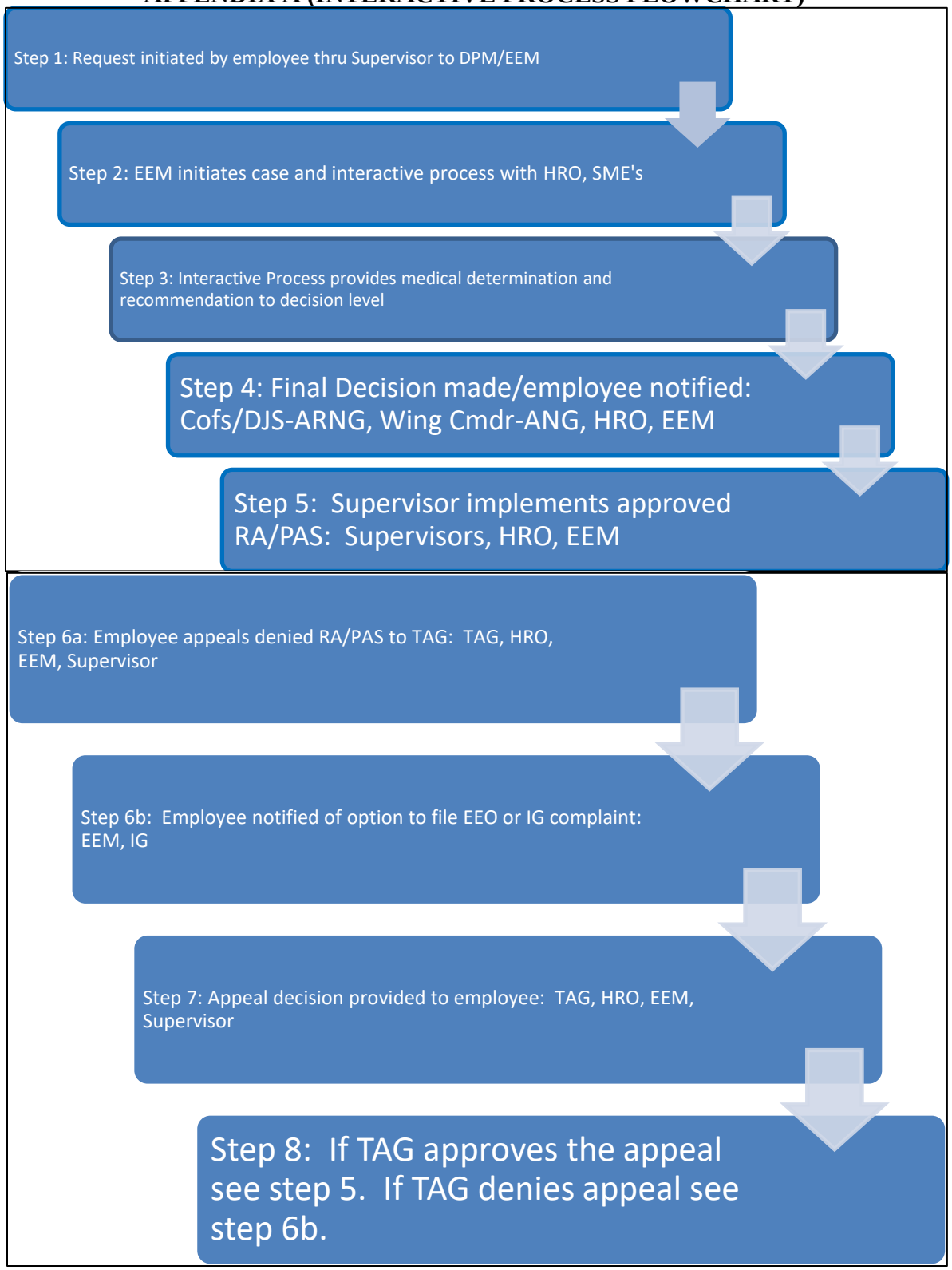
8.1.9 The source of technical assistance consulted in trying to identify possible RAs.

8.2 Dispositions of Reasonable Accommodation Request Data, Including Medical Information.

8.2.1 Documentation related to a particular individual who has requested RA is filed apart from personnel records, safeguarded by law or HIPPA standards, regarded as confidential and maintained for the duration of the employee's employment. Records concerning requests, approval and disapproval are maintained by the Joint Force Headquarters EDI office.

8.2.2 The tracking information data is maintained for a period of 5 years. This data will assist an organization in evaluating its performance regarding the adequate, timely processing of RA requests and their corrective action, as required per EEOC MD-715 and the Installation Status Reporting requirements.

APPENDIX A (INTERACTIVE PROCESS FLOWCHART)



APPENDIX B (EXAMPLES OF REASONABLE ACCOMMODATIONS)

B.1 Job Restructuring involves modifications such as reallocating or redistributing marginal job functions an employee is unable to perform because of a disability, as well as altering when and or how a function, essential or marginal, is performed. Supervisors will not, however, reallocate essential functions as a reasonable accommodation.

B.2 Leave, whether accrued paid leave or unpaid leave, is a form of RA when necessitated by an employee's disability. Supervisors are not required to provide paid leave beyond which is provided to similarly situated employees. When leave is used as an RA, employees will use accrued paid leave before beginning any allotted unpaid leave. Supervisors should remember there may be FMLA implications when considering leave as an RA.

B.3 For certain positions, the time during which an essential function is performed may be critical and a modification may disrupt operations and lead to undue hardship. This could affect whether a supervisor can grant a request to modify an employee's schedule or if reassignment is more appropriate.

B.4 Modified Workplace Policies constitute an RA when necessitated by an employee's disability-related limitations, absent undue hardship. Modification under these circumstances only applies to the PWD and not to other employees in the supervisor's section or working unit.

B.5 Specific to individuals who are deaf or hard of hearing, supervisors should consider amplification devices, closed caption decoders and captioning for training tapes, signaling devices, teletypewriters (TTYs), sign language interpreters, and TTY modems.

B.6 Specific to individuals with visual impairments, supervisors should consider Braille displays, Braille embossers, portable note-takers, print enlargers, scanner/readers, and screen readers.

B.7 Specific to individuals with impaired dexterity, supervisors should consider alternative input systems, alternative keyboards, alternative pointing devices, keyboard enhancement programs, and voice recognition systems.

B.8 Reassignment to a vacant position must be provided to an employee (not an applicant) who, because of a disability, can no longer perform the essential functions of their current position, with or without an RA, unless the supervisor can show reassignment would be an undue hardship. The employee must be qualified for the position, which means they have the requisite skill, experience, education, and other job-related requirements of the position (not necessarily best qualified). The employee must also be able to perform the essential functions of the new position, with or without an RA. The SDNG is not obligated to assist the employee to become qualified for the new position, unless the SDNG would normally provide such training to an individual transitioning into the position. Reassignment is the RA of last resort and is only required if: (1) there are no effective accommodations enabling the employee to perform the essential functions of their current position and (2) all other RAs would impose an undue hardship. "Vacant" means the position is available when the employee asks for reasonable accommodation, or the employer knows that it will become

available within a reasonable amount of time. The employer does not have to bump another employee from a job in order to create a vacancy; nor does it have to create a new position.

B.9 Of the above-cited examples of RA, only Reassignment is mandatory and only under the circumstances stated. The other examples should be considered on a case-by-case basis and may not always be appropriate.

APPENDIX C (SELECTED REASONABLE ACCOMMODATION RESOURCES)

U.S. Equal Employment Opportunity Commission
Phoenix District Office
3300 N. Central Avenue, Suite 690
Phoenix, Arizona 85012-2504
1-800-669-4000
602-640-5071 (fax)
1-800-669-6820 (TTY)
www.eeoc.gov

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA and the Rehabilitation Act. In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship.

Job Accommodation Network (JAN)
1-800-232-9675 (Voice/TT)
http://janweb.icdi.wvu.edu

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)
1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers providing information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf
1-301-608-0050 (Voice/TT)
http://www.rid.org

The Registry offers information on locating and using interpreters and transliteration services.

Computer/Electronic Accommodation Program
1-703-614-8416
http://www.cap.mil/

The Computer/Electronic-Accommodation Program (CAP) was established by DOD to help provide RA to individuals or persons with disabilities. The purpose of the CAP is to ensure that all disabled DOD employers get equipment which best meets their needs at no charge to the employer. The Defense Medical Information Management Office is the executive agent for the

CAP. The CPA is available to advice on ways to provide RA. The CAP serves the DOD community by:

- Buying accommodations to make computer and telecommunications systems accessible to individuals with disabilities, as required by law.

- Providing funds for sign-language interpreters, readers, and personal assistants for employees attending long-term training (two days or more).

- Providing expertise in solving accessibility problems through the use of software, hardware, and other assistive technology.

- Providing training and educational support.

APPENDIX D: REASONABLE ACCOMMODATION REQUEST FORM

Date: _____
Name: _____ Cell #: _____
E-mail: _____ Work #: _____
Position: _____ Grade: _____
Supervisor: _____ Work #: _____
E-mail: _____

I. What specific accommodation are you requesting?

II. Please explain how that specific accommodation will assist you.

III. If you are not sure what accommodation is needed, please list any suggestions regarding options we can consider.

IV. If your accommodation request is time-sensitive explain why and add dates/timelines if needed. (Use the back of the form or add an attachments as needed).

V. What, if any, job functions are you having difficulty completing?

VI. What, if any, employment benefit are you having difficulty accessing?

VII. What is the limitation interfering with your ability to perform your job or access an employment benefit?

VIII. If you have had any accommodations in the past for this same limitation, prove the information or copies with your request.

IX. Please provide any additional information/research that might be useful in considering your request such as # of computer monitors, flooring, etc.

_____ _____
Printed Name of Requestor Signature of Requestor

_____ _____
Date received in EDI office Name of who received request

RA/PAS# _____

Approved/Denied: _____ Appealed: _____