

FS Policy XXX-X, PERSONAL ASSISTANCE SERVICES

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Executive Summary

This chapter provides policy and procedures for the Bureau of the Fiscal Service (Fiscal Service) for providing Personal Assistance Services (PAS) for individuals with targeted disabilities.

Purpose

This Issuance establishes Fiscal Service policy and procedures for providing Personal Assistance Services to qualified employees with targeted disabilities. These are employees who, because of a targeted disability, require assistance to perform basic daily activities in the workplace.

Scope

The policy and procedures contained herein apply to all Fiscal Service. This chapter does not apply to applicants for employment or contractors of the Bureau of the Fiscal Service.

References

- A. 29 U.S.C. 791, Section 501 of the Rehabilitation Act of 1973, as amended.
- B. 29 C.F.R. 1614.203, Rehabilitation Act regulations.
- C. 42 U.S.C. 12101, “Americans with Disabilities Act (ADA) of 1990.”
- D. Public Law 110-325, Sept. 25, 2008, “ADA Amendments Act of 2008 (ADAAA).”
- E. 29 C.F.R. Part 1630, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as Amended.”
- F. CRD-008.1, “Procedures for Processing Personal Assistance Services”, Office of Civil Rights and Diversity Issuance System dated *****.
- G. Questions and Answers: Federal Agencies’ Obligation to Provide Personal Assistance Services (PAS) under Section 501 of the Rehabilitation Act, Equal Employment Opportunity Commission dated September 18, 2017.
- H. Enforcement Guidance for Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act, Equal Employment Opportunity Commission dated July 27, 2000.

This issuance supplements requirements contained in the references cited above; it is not self-contained, and must be read in conjunction with the cited references, any subsequent revisions or successor documents, and any applicable collective bargaining agreements. The references in this document may change without alteration of this policy, in which case the most recent version of the reference in question will apply to this policy and its requirements.

Responsibilities

A. The Equal Employment Opportunity and Diversity Office (EEOD) shall:

- (1) Develop and issue procedures for processing requests for PAS, consistent with governing laws, regulations, executive orders, Equal Employment Opportunity Commission (EEOC) directives, and Departmental policy;
- (2) Ensure supervisors, managers, human resources and Equal Employment Opportunity and Diversity (EEOD) officials understand their obligations with respect to the provision of PAS;
- (3) Ensure that PAS are provided to qualified individuals with targeted disabilities in accordance with the bureau's procedures, i.e., processed in a timely, efficient, and fair manner;
- (4) Ensure the bureau's PAS policy and procedures are readily accessible to all employees. The policy and procedures shall be posted on the bureau's internet, intranet website, and in designated locations such as bureau libraries, EEOD Offices, and human resource offices;
- (5) Ensure policy and procedures are accessible in alternative formats, such as large print or Braille, on request;
- (6) Inform individuals with disabilities about their rights and responsibilities under the Section 501 of the Rehabilitation Act; and,
- (7) Develop systems to track and report on the provision of PAS.

Definitions

- A. Deciding Official. An individual who has authority to approve or deny a PAS request.
- B. Department. The Department of the Treasury, including all of its bureaus and offices.
- C. Dispute Resolution Process. Any voluntary mechanism through which an individual can request reconsideration of denial of a request for PAS, regardless of whether the individual has started the EEO complaint process.

- D. Essential Functions. The basic job duties that an employee must be able to perform, with or without reasonable accommodation. A function can be "essential" if, among other things, the reason the position exists is to specifically perform that function; there are a limited number of other employees who could perform the function; the function is specialized and the individual is hired based on his/her ability to perform it; or the position requires an employee to be physically located in a particular place. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.
- E. Extenuating Circumstances. Factors that could not reasonably have been anticipated or avoided in advance of the request for PAS or situations in which unforeseen or unavoidable events prevent prompt processing and delivery of PAS.
- F. Genetic Information. As defined by the Genetic Information Nondiscrimination Act (GINA) of 2008, includes information concerning the manifestation of disease/disorder in family members ("family medical history"), information about an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.
- G. Interactive Process. The process used between the requesting individual and the Deciding Official to discuss the assistance request. The interactive process is used to determine whether PAS will be provided and examine potential temporary assistance services.
- H. Personal Assistance Services (PAS). Assistance with performing activities of daily living that an individual would typically perform if he or she did not have a targeted disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, drinking, and using the restroom. For example, someone providing PAS might assist someone with getting into or out of a vehicle at the worksite. Fiscal Service is not required to provide PAS to help employees commute to work. ***Note: PAS does not include medical services. For example, it does not include performing medical procedures such as administering injections or medical monitoring (e.g., monitoring blood sugar).***
- I. Personal Assistance Service Provider. An independent contractor whose primary job function is to perform the services requested by the employee entitled to PAS.
- J. Qualified Employee. An employee of the Bureau of the Fiscal Service who requires services because of a targeted disability and who, with or without reasonable accommodation, can perform the essential functions of the employee's position.

- K. Receiving Officials. The employee's first line supervisor or the DEPM are the Fiscal Service personnel designated to officially receive a request for PAS from an employee (or an individual acting on his/her behalf).
- L. Requester. A qualified employee with a targeted disability or an individual acting on his or her behalf who requests PAS.
- M. Targeted Disability. Targeted disabilities are a subset of the larger disability category. The federal government has recognized that qualified individuals with certain disabilities, particularly manifest disabilities, face significant barriers to employment, above and beyond the barriers faced by people with the broader range of disabilities. These barriers are often due to myths, fears, and stereotypes about such disabilities. The federal government calls these "targeted disabilities." Targeted disabilities are:
- Developmental Disability, for example, autism spectrum disorder
 - Traumatic Brain Injury
 - Deaf or serious difficulty hearing, benefiting from, for example, American Sign Language, CART, hearing aids, a cochlear implant and/or other supports
 - Blind or serious difficulty seeing even when wearing glasses
 - Missing extremities (arm, leg, hand and/or foot)
 - Significant mobility impairment, benefiting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other supports
 - Partial or complete paralysis (any cause)
 - Epilepsy or other seizure disorders
 - Intellectual disability
 - Significant Psychiatric Disorder, for example, bipolar disorder, schizophrenia, PTSD, or major depression
 - Dwarfism
 - Significant disfigurement, for example, disfigurements caused by burns, wounds, accidents, or congenital disorders
- N. Undue Hardship. An action requiring significant difficulty or expense when considered in light of factors such as Fiscal Service's size, financial resources, and the nature and structure of the position. Determination of undue hardship is always made on a case-by-case basis, considering factors such as the nature and cost to provide PAS needed and the impact of the PAS on Fiscal Service's operations. An undue hardship based on cost should rarely be an issue.

Policy

This issuance establishes Fiscal Service's procedures for processing requests for Personal Assistance Services (PAS).

1. **PAS Request**. An employee with a targeted disability may request assistance with daily life activities which the individual cannot perform because of the targeted disability. The

process begins as soon as an employee with a targeted disability provides an oral or written request for PAS to his/her immediate supervisor; a supervisor or manager in his/her immediate chain of command; the EEO Office; or, the Disability Employment Program Manager. A family member, friend, health care professional, or other representative may request a PAS on behalf of an employee with a targeted disability; however, the individual with a targeted disability should be contacted to confirm that he/she in fact wants PAS. The request does not have to use any special words, such as "PAS," "Section 501," "disability," "EEOC's regulations" or "Rehabilitation Act." A sample request form is provided in Attachment 1.

a. PAS Provider Preference.

- (1) An employee's preference for a specific PAS provider (e.g., family member or a PAS provider who has worked with them in the past) if granted, must be considered to the extent the law allows. PAS providers must adhere to the applicable security clearance and background investigation requirements.
- (2) PAS request not involving preference for a specific provider, if granted, may be acquired through the established Treasury-wide PAS contract.

b. Routing of Request. Supervisors should immediately notify the Disability Employment Program Manager of employees' PAS requests.

2. The Interactive Process. Communication is a priority throughout the entire process.

- a. Fiscal Service should take a proactive approach in ensuring the PAS providers have the right skills sets for the services required.
- b. The employee requesting the services should participate, to the extent possible, in helping to identify the skill sets required from the PAS provider.
- c. Personnel involved in the interactive process should record their activities. On-going communication is particularly important where the specific need or skill set, or barrier is unclear.
- d. The Deciding Official and the individual requiring the PAS should talk to each other and the DEPM to make sure that there is a full exchange of relevant information.

3. Written Request.

- a. While a written request is preferable, it is not required. To ensure accurate records, supervisors should confirm in writing the receipt of a request for PAS, documenting when the request was received, and nature of the services required. A sample is provided at Attachment 1.

- b. A written confirmation request form is not required when an individual needs PAS on a recurring basis (e.g., assistance with going to the restroom). The written confirmation form is required only for the first request although appropriate notice may be required each time recurring assistance is needed.

4. **Responsibilities.**

- a. **Receiving Official.** The Receiving Official is responsible for receiving the request and forwarding it to the DEPM for processing.
- b. **Deciding Official.** The official responsible for determining what, if any, PAS will be provided. The employee's first line supervisor is normally the designated Deciding Official.
- c. **EEOD Office.** The EEOD Office is responsible for receiving medical documentation from the employee. The EEOD Office may share the employee's functional limitation(s) in performing daily living activities with the Deciding Official in order for the Deciding Official to determine the nature and extent of the limitations, as well as the need for potential assistance to perform those activities.
- d. **Disability Employment Program Manager.** The Disability Employment Program Manager (DEPM) shall be available, as needed, to provide assistance to employees, human resources officials, and Deciding Officials in processing requests for PAS. The DEPM will determine the proper deciding official for the PAS request, and will be responsible for processing, ensuring all parties involved are notified of the request, and implementing a process to monitor requests through closure.

5. **Medical Information.** In most cases, the targeted disability will be obvious or otherwise already known to the Deciding Official. In these cases, further medical information will not be sought. However, when the need for PAS is not obvious or otherwise already known to the Deciding Official, Fiscal Service may require that the individual provide medical documentation about the need for PAS and/or his/her functional limitations. (See Attachment 2). Any request for medical information must comply with the Genetic Information Nondiscrimination Act (GINA) of 2008, as well as the laws, regulations, and guidance referenced in the "Authority" section above, and other applicable confidentiality.

- a. Fiscal Service may require the employee to provide medical information to establish that the employee requires PAS because of his/her targeted disability.
- b. The Disability Employment Program Manager will seek information or documentation about the functional limitations from the employee, and/or ask the employee to obtain such information from an appropriate health care professional, such as a doctor, social worker, or rehabilitation counselor. Once medical documentation is received, the Disability Employment Program Manager and the Deciding Official will evaluate the documentation.

- c. If the information provided by the health care professional (or the information volunteered by the individual requesting the services) is insufficient to enable the bureau to determine whether PAS is appropriate, the Disability Employment Program Manager may ask for further information. The DEPM should explain to employee why the information provided is insufficient, what additional information is needed, and the reason the information is necessary for a determination the need for PAS. The employee is responsible for obtaining the additional information from his or her health care provider.
 - d. In some cases, the individual requesting the PAS will supply medical information directly to the Deciding Official without being asked. In these cases, the Deciding Official will forward the documents in a sealed envelope to the DEPM.
 - e. If the individual requesting the PAS does not provide appropriate documentation or does not cooperate in Fiscal Service's efforts to obtain such documentation, Fiscal Service may deny the requested assistance services.
6. **Confidentiality and Disclosure.** All medical information, including information about functional limitations and PAS needs, obtained in connection with a request for PAS, must be kept confidential and will be stored in the EEOD Office. The information may be disclosed only to the following individuals:
- a. Fiscal Service employees who have a need to know (such as the Deciding Officials, supervisors, Health Unit employees, and managers) may be told about necessary assistance services needed by the employee, but medical information should only be disclosed if absolutely necessary.
 - b. First aid and safety personnel, when appropriate, if the employee receiving PAS might require emergency treatment or special arrangements in emergency situations such as building evacuations.
 - c. Government officials, when the information is necessary to investigate compliance with the Rehabilitation Act.
 - d. In certain circumstances, to workers' compensation offices or insurance carriers.
 - e. Treasury and bureau legal counsel in connection with providing legal advice to agency officials.
 - f. The Disability Employment Program Manager and other EEOD Office staff.
7. **Granting Personal Assistance Services.** As soon as the Deciding Official determines PAS will be provided, the decision should be communicated immediately to the individual by the Deciding Official (See Attachment 3). If PAS cannot be provided immediately, the Deciding Official must inform the individual of the projected time

frame for providing the services. A Deciding Official or supervisor may take temporary action, such as approving a temporary PAS provider (i.e., family member or personal PAS provider) to perform the assistance requested or temporary telework. Where the Deciding Official decides to provide temporary services, the written decision should explain both the reasons why temporary services are being provided and when the Official believes a personal assistance provider will be assigned.

- a. Time Frames for Processing Request. The time necessary to process a request will depend on the nature of the PAS requested. At a minimum, however, requests shall be processed as follows:
 - 1) Requests Not Involving Extenuating Circumstances. If the request does not require obtaining supporting medical information, a security clearance and/or background investigation, the request shall be processed and if granted, PAS provided as soon as possible but typically not more than 30 business days from the date the request was initially made. PAS providers must adhere to the applicable security clearance and background investigation requirements and this process may take more than 30 days.
 - 2) Requests Involving Extenuating Circumstances. When extenuating circumstances are present, the time for processing a request for PAS will be extended as deemed necessary. The following are examples of extenuating circumstances:
 - i. The PAS provider will have access to classified information and will require a specific type of security clearance.
 - ii. The request requires supporting medical documentation.
 - 3) Where extenuating circumstances are present, the Deciding Official must notify the individual, in writing, of the reason for the delay, and the approximate date on which a decision, or provision of the PAS, is expected. Any further developments or changes should also be communicated promptly to the individual.
 - 4) If there is a delay in providing an approved PAS, the Deciding Official must decide whether temporary measures should be taken to assist the employee. This could include providing the requested services on a temporary basis.
 - 5) If a delay is attributable to the need to obtain or evaluate medical documentation and Fiscal Service has not yet determined the individual is entitled to receive PAS, Fiscal Service may also provide services on a temporary basis. In such a case, the Deciding Official will notify the individual in writing that the assistance services are being provided on a temporary basis pending a decision on the PAS request.
 - 6) Deciding Officials who approve temporary measures are responsible for ensuring they do not take the place of a permanent assistance services and that all necessary steps to secure permanent assistance services are being taken.

- 7) The time frames discussed in this section may not be suspended or extended because of the unavailability of the Receiving or Deciding Official.
8. **Denial of Personal Assistance Service.** When a Deciding Official denies a PAS, he/she must issue a written decision to the individual who requested the services and a copy to the DEPM. (See Attachment 4) The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial. Some of the reasons for denying a PAS request may include:
- a. Individual requiring PAS is not an employee;
 - b. Employee does not meet the definition of an individual with a targeted disability;
 - c. The targeted disability does not create a need for PAS;
 - d. Employee is not able to perform the essential functions of the job, even with PAS or other reasonable accommodations;
 - e. Employee would create a direct threat to safety on the job, even with PAS or other reasonable accommodation; or,
 - f. Providing PAS would result in undue hardship. A determination of undue hardship means the bureau finds that providing PAS would result in significant difficulty or expense, or would fundamentally alter the nature of the bureau's operations.
9. **Dispute Resolution.**
- a. If an individual wishes reconsideration, he/she should first ask the Deciding Official to reconsider the decision within **10 business days** of receiving the written denial. The individual may present additional information in support of his/her request. The Deciding Official will respond to the request for reconsideration within **5 business days**. Any request for reconsideration received after **10 business days** of the denial will be treated as a new request for PAS.
 - b. If the Deciding Official does not reverse the decision, the individual may appeal the decision within **10 business days** of receiving the Deciding Official's denial of the request for reconsideration. The appeal shall be decided by the Assistant Commissioner for the Office of Management. A response to the appeal will be issued to the individual within **10 business days**.
 - c. An individual who chooses to pursue other available remedies must comply with the following:
 - 1. **EEO Complaint.** Contact an EEO counselor within **45 days** from the date of receipt of the Deciding Official's written notice of denial; or

2. Grievance. File a grievance in accordance with the provisions of the Master Labor Agreement for Fiscal Service and NTEU.

10. Information Tracking and Evaluation. The DEPM will annually evaluate Fiscal Service's Personal Assistance Services Program. The DEPM will track the effectiveness of the policies, procedures, or practice to implement the PAS requirement, including:

- a. Timeliness of processing request for PAS.
- b. Timeliness of providing approved PAS.
- c. Training for managers and supervisors on providing PAS.
- d. Monitoring request for trends.

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