



INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20024

July 29, 2022

TIGTA #22-22
MEMORANDUM FOR ALL TIGTA EMPLOYEES

FROM: J. Russell George
Inspector General

A handwritten signature in black ink that reads "J. Russell George".

SUBJECT: Equal Employment Opportunity (EEO) Program Office Interim
Guidance re: Personal Assistance Services

This Interim Guidance establishes the Treasury Inspector General for Tax Administration's (TIGTA) policy and procedures for providing Personal Assistance Services (PAS) 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, at an approved telework site, during employer-sponsored events and while on job-related travel. TIGTA's Operations Manual will be updated to reflect the information contained in this memorandum.

Authorities

- A. Section 501 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. § 791.
- B. 42 U.S.C. §12101, Americans with Disabilities Act (ADA) of 1990.
- C. Public Law 110-325, ADA Amendments Act of 2008 (ADAAA).
- D. 29 C.F.R. §1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as Amended.
- E. 29 C.F.R. § 1614.203(d)(5), Personal assistance services allowing employees to participate in the workplace.

Requesting Personal Assistance Services (PAS)

An employee (not an applicant) with a targeted disability may request assistance with daily life activities that the individual cannot perform because of the targeted disability. A family member, friend, healthcare professional, or other representative may request PAS on behalf of an employee with a targeted disability. A sample request form is provided as an attachment to this memorandum. While a written request is preferable, it is not required. The request does not have to use any special words, such as "PAS," "Section 501," "disability," "EEOC's regulations," or "Rehabilitation Act."

Requests for PAS may be made to any Receiving Official, who include the employee's immediate supervisor, a supervisor or manager in the employee's chain of command, or TIGTA's EEO Program Office. If possible, the employee with the targeted disability should be contacted to confirm that they in fact want PAS. The employee with the targeted disability may decline to make a request or refuse to accept services.

The Receiving Official to whom a request for PAS is made should immediately refer the request to the Deciding Official, usually the employee's first-level manager, and forward the request to the EEO Program Office. Once the designated Deciding Official receives the request for PAS, they are responsible for: (1) acknowledging the request; (2) explaining to the Requester that they will be making the decision on the request for PAS; and (3) describing what will happen in processing of the request (e.g., delays and/or extenuating circumstances, etc.).

Repeat requests for a recurring PAS are not required (e.g., assistance in the winter putting on and taking off outerwear). While appropriate notice may be required each time recurring assistance is needed, the written confirmation is only required for the first request.

Medical Information

In some cases, the targeted disability will be obvious or otherwise already known to the Deciding Official. In these situations, further medical information will not be sought. However, when the need for PAS is not obvious or otherwise already known to the Deciding Official, the Agency may require that the employee requiring PAS provide medical documentation about the need for PAS and/or their functional limitations.

TIGTA's EEO Program Manager will seek information or documentation about the functional limitations from the Requester, and/or ask the employee to obtain such information from an appropriate health care professional, such as a doctor, social worker, or rehabilitation counselor. Alternatively, the employee requiring assistance may agree to sign a limited release, giving the EEO Program Manager permission to submit a list of specific questions to the employee's health care professional or to contact the employee's doctor. Once medical documentation is received, the EEO

Program Manager and any other appropriate bureau official will evaluate the documentation.

Any request for medical information must comply with the Genetic Information Nondiscrimination Act (GINA) of 2008, and other applicable laws and regulations.

- A. TIGTA may require the employee to provide medical information to establish that the employee requires PAS because of their targeted disability.
- B. If a determination is made to seek medical information, the requested information should be limited to that necessary to establish that the employee requires PAS because of their targeted disability and the nature of the PAS required. Documentation unrelated to the claimed targeted disability should not be requested. Requests for medical information will follow the requirements set forth in the Equal Employment Opportunity Commission's [Enforcement Guidance for Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act](#), dated July 26, 2000.

The Interactive Process

Communication is a priority throughout the entire process. The Deciding Official involved in the PAS process should consult with the EEO Program Office. The employee requesting the PAS (and any chosen representative) should also participate, to the extent possible, in helping to identify the skill set required from the PAS provider. TIGTA's EEO Program Office is available to provide guidance and assistance to the employee, Requester, and/or Deciding Official throughout the interactive process.

Ongoing communication is particularly important where the specific need or skill set, or extenuating circumstance is unclear. In situations where the PAS that should be provided are clear, extensive discussions are generally not necessary. Even so, the Deciding Official and requesting individual should discuss the matter to make sure that there is a full exchange of relevant information. The Deciding Official should document discussions held during the interactive process.

The EEO Program Office will take a proactive approach to ensure PAS providers have the necessary skill sets for the services required.

If through the interactive process the parties agree on a PAS (alternative) that is different than what was originally requested, that should be documented. In addition, if after engaging in the interactive process the parties cannot agree on the PAS that should be provided, the Deciding Official should offer the individual the PAS that they have determined to be effective.

Granting Personal Assistance Services

When the Deciding Official determines PAS will be provided, the decision should be communicated in writing, as soon as possible. If the PAS cannot be provided immediately the Deciding Official shall inform the individual of the projected time frame for providing the PAS. A Deciding Official or supervisor may take temporary action, such as approving a temporary PAS provider (*i.e.*, an employee can request to bring their own PAS provider to work as a reasonable accommodation) to perform the assistance requested, or authorizing temporary telework.

PAS providers may be procured via a Blanket Purchase Agreement established by the Department of the Treasury. A request for a specific PAS provider (*e.g.*, a family member or a PAS provider with whom the employee has previously worked) will be considered and, where the PAS provider is dedicated to a single employee, given primary consideration to the extent permitted by law.

All PAS providers must satisfy applicable security clearance and background investigation requirements. These requirements apply to any PAS provider delivering services on a temporary or indefinite basis if the provider, due to their presence in the workplace (TIGTA facility, telework location, etc.), might see or hear sensitive but unclassified (*e.g.*, return and return information) or personally identifiable information. A non-disclosure agreement may be necessary as well as training, *e.g.*, completion of the Privacy Awareness and Information Privacy briefing.

Note: The Agency will not assume financial responsibility when temporary use of a family member or personal PAS provider is granted as a reasonable accommodation

Time Frames for Processing Personal Assistance Services Requests

The time necessary to process a request will depend on the nature of the request and whether it is necessary to obtain supporting documentation.

Personal Assistance Services Requests Not Involving Extenuating Circumstances

If the manager receiving the request is the Deciding Official, they should immediately engage in the interactive process with the employee. If the management official or other individual receiving the request, is not the Deciding Official, they shall forward the request to the Deciding Official as soon as possible but in no more than two business days.

If the request does not require that supporting medical information be obtained, the request shall be processed and if approved, PAS should be provided as soon as possible but no more than 30 business days from the date the Deciding Official receives the request. Since the Deciding Official may need the full 30 business days to engage in the interactive process and collect all relevant information about possible provided

PAS, they should not delay beginning this process. Failure to meet this time frame solely because a Deciding Official delayed processing the request is not an extenuating circumstance.

If the request requires that supporting medical information be obtained to determine whether the individual has a targeted disability requiring PAS, TIGTA's EEO Program Manager will request medical documentation and the above-referenced 30 business day time frame will be tolled until the needed documentation is received. In some situations, the need for documentation may not become apparent until after the interactive process has begun.

Personal Assistance Services Requests Involving Extenuating Circumstances

When extenuating circumstances (e.g. the PAS provider will have access to classified or sensitive information and will require a specific type of background investigation or the request requires supporting medical documentation) are present, the time for processing a PAS request will be extended as deemed necessary. All TIGTA officials are expected to act as quickly as reasonably possible in processing requests and providing PAS.

Where extenuating circumstances are present, the Deciding Official shall notify the employee requesting PAS, 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 employee.

If there is a delay in providing an approved PAS, the Deciding Official must decide whether temporary measures can be taken to assist the employee. This could include providing the requested services on a temporary basis with limited access to facilities/information by PAS providers.

If a delay is attributable to the need to obtain or evaluate medical documentation and TIGTA has not yet determined the individual is entitled to receive PAS, TIGTA may provide services on a temporary basis. In such a case, the Deciding Official will notify the employee in writing that the assistance services are being provided on a temporary basis pending a decision on the PAS request.

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.

The timeframes discussed in this section may not be suspended or extended because of the unavailability of the Deciding Official.

Expedited Process

In certain circumstances, a request for PAS requires an expedited review and decision in a time frame that is shorter than the 30 business days discussed above (*e.g.*, to enable an employee to attend a meeting scheduled to occur shortly). All bureau officials are expected to act as quickly as reasonably possible in processing requests and providing, if appropriate, PAS.

Denial of Personal Assistance Services Request

Before denying a PAS based on “undue hardship” the decision maker must ensure the EEO Program Manager and the Office of Chief Counsel reviews the denial and the determination that the request poses an undue hardship.

When a Deciding Official decides to deny a request for PAS, they must issue a written decision to the Requester (*i.e.*, employee or representative) and send a copy to TIGTA’s EEO Program Office. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial. When evaluating budgetary or administrative concerns to determine if undue hardship exists, TIGTA will follow the standards outlined in the regulations and in the Equal Employment Opportunity Commission’s [*Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act*](#), dated October 17, 2000. The explanation for the denial should clearly state the specific reasons for the denial. The explanation may include the following:

- A. Individual requiring PAS is not an employee;
- B. Employee does not meet the definition of an individual with a targeted disability, as defined in OPM SF-256, or the targeted disability does not create a need for PAS;
- C. Employee is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations;
- D. Employee would create a direct threat to safety on the job, even with PAS and any reasonable accommodation;
- E. Requestor does not meet the definition of an individual with a disability, as defined in § 501 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA), as amended by the Americans with Disability Act Amendments Act (ADAAA) or the medical documentation is inadequate to establish the individual has a targeted disability and/or needs Personal Assistance Services;

- F. Providing the requested PAS would result in undue hardship. A determination of undue hardship means the agency finds that providing PAS would result in significant difficulty or expense, or would fundamentally alter the nature of the agency's operations. Before reaching this determination, the Deciding Official must have explored whether other effective measures exist which would not impose undue hardship and therefore can be provided. (See definition of undue hardship below); and

A written decision denying a request for PAS must also inform the employee of options to file an appeal, EEO complaint, and/or appeal to the Merit Systems Protection Board.

Dispute Resolution (Appeal Process)

If an individual wishes reconsideration of the denial, 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 their request. The Deciding Official will respond to the request for reconsideration, within five business days. Any request for reconsideration received after 10 business days of the denial will be treated as a new request for PAS.

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 next level manager or any other more senior official in the Deciding Official's chain of command. A response to the appeal will be issued to the individual, within 10 business days.

Pursuing this appeal/reconsideration process will not toll statutory time frames for filing an EEO complaint or Merit Systems Protection Board appeal.

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. The information shall be kept in files separate from the individual's personnel file. In addition, employees who obtain or receive such information are bound by these confidentiality requirements. TIGTA's EEO Program Office will maintain custody of all records obtained or created during the processing of a PAS request, including medical records, and will respond to all requests for disclosure of the records. The information may be disclosed to the following individuals:

- A. Deciding Officials, supervisors, and managers who need to know may be told about necessary restrictions on the work or duties of the employee, but medical information should only be disclosed if absolutely necessary;

- B. First aid and safety personnel, when appropriate, if the disability 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. TIGTA legal counsel in connection with providing legal advice to agency officials; and
- F. Those Agency employees with the need to know the information to carry out official duties of their position.

Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that apply.

Note: The Rehabilitation Act confidentiality obligation is not limited to the medical diagnosis. The fact that someone has requested a PAS, or that something is being provided as PAS, also constitutes confidential medical information.

Nondisclosure of GINA Protected Information

The GINA prohibits employers and other entities covered by GINA Title II from requesting, requiring, or purchasing genetic information of employees or their family members, except as specifically allowed by this law. To comply with GINA, the request for medical information must state that the Agency is asking that genetic information not be provided when responding to the request for medical information, unless the information is allowable as explained below:

The general prohibition against requesting or requiring genetic information does not apply where an employer requests documentation to support a request for PAS as long as the request for documentation is lawful. Such a request is lawful only where the targeted disability and/or the need for PAS is not obvious; the documentation required contains no more information than what is sufficient to establish that an individual has a targeted disability and needs PAS; and the documentation relates only to the impairment that the individual claims to be a targeted disability that requires PAS.

Information Tracking and Reporting

TIGTA's EEO Program Manager will annually evaluate the Agency's Personal Assistance Services Program. Results must be included in Part J (Special Program Plan for the Recruitment, Hiring, and Advancement of Individuals with Targeted

Disabilities) of the bureau's Management Directive (MD) - 715. The Agency must describe in Part J of MD-715 (Section V.D.), the effectiveness of the policies, procedures, or practice to implement the PAS requirement, which includes the following:

- A. Timeliness of processing request for PAS;
- B. Timeliness of providing approved PAS;
- C. Training for managers and supervisors on providing PAS; and
- D. Monitoring request for trends.

Definitions

- A. Deciding Official – An individual who has authority to approve or deny PAS requests. The TIGTA employee's first-line supervisor is normally the designated Deciding Official.
- B. Dispute Resolution Process – Any voluntary mechanism through which an individual can request reconsideration of the denial of a request for PAS.
- C. Essential Functions – The basic duties of the job 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.
- D. 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.
- E. Genetic Information – As defined by the Genetic Information Nondiscrimination Act of 2008 (GINA), 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.

- F. Interactive Process – Discussions between the requester, the Deciding Official and/or TIGTA's EEO Program Office to discuss the assistance request. The information shared during the interactive process is used to determine whether PAS will be provided and to examine potential temporary assistance services.
- G. Personal Assistance Services – 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.
- 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).
- H. Personal Assistance Service Provider – An independent contractor or an employee whose primary job function is to perform assistance with the daily living activities requested by the employee entitled to PAS.
- I. Qualified Employee – A TIGTA employee 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.
- J. Receiving Officials – TIGTA personnel designated to receive a PAS request, *i.e.*, an employee's immediate supervisor, a supervisor or manager in the employee's immediate chain of command, and TIGTA's EEO Program Office.
- K. Requester – A qualified employee with a targeted disability or an individual acting on his or her behalf who requests PAS.
- L. Targeted Disability – A subset of conditions that would be considered disabilities under the Rehabilitation Act. The Department follows the list of targeted disabilities (below) as set forth by OPM on the Standard Form (SF) 256.
1. Developmental Disability, for example, autism spectrum disorder;
 2. Traumatic Brain Injury;
 3. Deaf or serious difficulty hearing, benefiting from, for example, American Sign language, CART, hearing aids, a cochlear implant and/or other supports ;
 4. Blind or serious difficulty seeing even when wearing glasses;

5. Missing extremities (arm, leg, hand and/or foot);
 6. Significant mobility impairment, benefiting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other support;
 7. Partial or complete paralysis (any cause);
 8. Epilepsy or other seizure disorders;
 9. Intellectual disability;
 10. Significant Psychiatric Disorder, e.g., bipolar disorder, schizophrenia, TSD, or major depression;
 11. Dwarfism; and
 12. Significant disfigurement, for example, disfigurements caused by burns, wounds, accidents, or congenital disorders.
- M. Undue Hardship – An action requiring significant difficulty or expense when considered in light of factors such as TIGTA’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 the operations of TIGTA. An undue hardship based on cost should rarely be an issue. The inability to find a PAS provider with the security clearance level of the employee may, under some circumstances, be sufficiently difficult as to constitute an undue hardship.

Attachment:



TIGTA Personal
Assistance Services.dc