GAO EMPLOYEES ORGANIZATION
IFPTE Local 1921

P.O. Box 50236 Washington, DC 20091-0236
(202) 512-2760 • www.gaoemployees.org

Craig Kimball
Labor Relations Specialist
GAO Labor Relations Office

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Dear Mr. Kimball,

The GAO Employees Organization appreciates the opportunity to provide comments on GAO draft Order 2306.1, Reasonable Accommodation of Individuals with Disabilities. The comments presented here are on behalf of employees in the APSS and Analyst bargaining units.

Congress enacted the Americans with Disabilities Act in recognition "that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers" and that accommodation will enable them to perform their jobs effectively. Getting a reasonable accommodation at GAO should be a relatively simple, unburdensome process that supports employees with disabilities. This approach is consistent with the recognition in GAO's Diversity Plan that employees with disabilities bring valuable perspectives to our work.

The difficulty that employees with disabilities have had in securing reasonable accommodations continues to be a major concern of the GAO Employees Organization: We have reported on this concern both to the comptroller general and to Congress -- with mixed success. We have seen highly regarded, talented employees who found employment elsewhere because they could not secure appropriate and effective accommodations—even though those accommodations could have been provided by GAO with little burden. We believe that the agency sincerely intends "to create a work environment where all employees are valued, treated fairly, and given opportunities to develop to their full potential" and provide these comments in support of these goals. Because many aspects of GAO's reasonable accommodation procedures and arrangements are negotiable, here we summarize the major concerns from the comments expressed by employees with the intent of delving into more detail in negotiations.

We appreciate provisions in the draft order that appear designed to reduce potential conflicts of interest. For example, removing a representative of the Office of Opportunity and Inclusiveness as one of three members of the reasonable Accommodations Committee is an important change in reducing conflict of interest between decision maker and appeal process for the accommodation decision. Making it clear that no special language is required to be used by an employee requesting accommodation and that the request can be either oral or written can make the process less burdensome.

While these changes move in the right direction, we continue to have significant concerns with the order, including potential conflicts of interest between those overseeing the provision of accommodations and discrimination complaints, internal inconsistencies within the order, lack of accountability on the part of decision makers, potential for undue bureaucratic burden on employees, and inadequate controls to ensure confidentiality.

Conflicts of Interest

We are particularly concerned about the potential for conflicts of interest. An example is the Office of Opportunity and Inclusiveness (O&I) role that is described in Chapter 2, section 12. The order identifies O&I as the office "providing certain reasonable accommodations for employees and applicants who are deaf or hard of hearing." Within the same sentence the order identifies this office as having the role of "informal resolution or mediation for employees who allege discrimination based on disability and processing employee complaints…." No information is provided to explain why accommodations for this disability are administered separately from all others. Furthermore, the provision leaves the employee in the position of having to appeal to the same office that determined what accommodations were appropriate and administered them with handling a complaint that it did so in an ineffective or discriminatory manner. We heard from many employees describing significant problems with O&I's administration of these accommodations as well as an inability to get concerns addressed. Employees reported that this had resulted in ineffective accommodations that had a significant impact on their ability to do their work, and often directly, the work processes of their coworkers. We are appending one such letter of comment verbatim with regard to Chapter 2, section 12.

Internal Inconsistencies within the Order

The role of the manager in the provision of reasonable accommodations as discussed in the order is confusing and appears inconsistent. For example, it is not clear why the order has a provision (section 3(4)(b)(2) on p. 12) for notifying line management officials about Accommodations Committee (AC) meetings and about the basis for bringing an employee's request to the AC when the order implicitly acknowledges that these officials are not part of this decision-making process and would likely violate the requesting employee's confidentiality rights.

The paragraph on managers' responsibilities needs to be revised to clearly show that managers' responsibilities in the reasonable accommodations process are limited to implementing approved accommodations, forwarding requests for accommodations when an employee chooses to make a request to a manager, and participating in the interactive process, as appropriate. Also, the order should clearly state that managers cannot deny requests and generally are not involved in the decision about whether to approve an employee's request for a reasonable accommodation, unless it is a known or obvious disability where it makes sense for the manager to provide an accommodation using existing flexibilities.

The current draft paragraph creates further confusion and inappropriately suggests that managers may need to know employees' medical conditions and other medical information.

The order should make clear that employees do not need to share information about their medical conditions with their managers and that managers are not permitted to ask employees to provide medical documentation. Also, if a manager receives medical

documentation from an employee, the manager should be told to forward it to the RAC, not retain a copy of the documentation, and should treat the medical information as confidential, not sharing it with anyone outside the RAC. The order should clarify that apart from the Reasonable Accommodation Office or the Reasonable Accommodation Committee, managers will almost never have a need to know an employee's medical conditions or other medical information.

Imbalance in Accountability

In many places, the order imposes strict requirements on employees but fails to do so for management.

The order as worded, fails to provide accountability for those administering the accommodations process. This is most apparent in the frequent use of the word "should" in Chapter 3 of the draft order. For example, the reasonable accommodations coordinator is not required to acknowledge receipt of accommodations requests in writing, decide requests and notify employees as soon as feasible or take steps to promptly implement the accommodation. The draft only suggests that the RAC "should" take these steps using a term the agency has advised the union in the past was a suggestion rather than a requirement. For example, on p, 8 (Chapter 3, section 1), in the sentence "All requests for reasonable accommodations should be treated as confidential", the word "should" needs to be changed to "will." Similarly, on p. 5 (Chapter 2, section 1), in the sentence "Managers also strive to … maintain the confidentiality of any medical information", the phrase "strive to" needs to be changed to "will."

Further, the responsibilities in the order need to be reassessed because those applying to the agency could be interpreted as vague and relaxed (such as, "As soon as practical" (p. 10, section 3(3)(c)) and "As soon as feasible" (p. 11, section 3(4)(a.)), while those applying to employees requesting reasonable accommodations are strict and specific ("The requester shall be given 5 calendar days to provide a response …" (p. 12, section 3(4)(b)(2)).

Due to the difficulty and delays inherent in obtaining medical documents and the stress employees are typically under when dealing with medical problems for which an accommodation is not yet in place, we suggest incorporating more time flexibility for employees seeking those accommodations. Further, we suggest specifying that a request for reasonable accommodations will be referred to the AC if the RAC has not yet completed a review of the request within a specific number of days.

Medical Documentation

The order needs substantial revisions regarding the role of medical documentation requirements in approving and putting an accommodation in place. The ADA's reasonable accommodation provisions, as amended, are intended to minimize the burden to employees with disabilities. The Act directs that the definition of "disability" be construed broadly and that the determination of whether an individual has a "disability" generally should not require extensive analysis. The draft order raises concerns about overly burdening employees in terms of the provision of medical documentation. The draft includes a statement that is overly burdensome in that it states that "In most circumstances, medical documentation is necessary" while the Act requires documentation only when the disability or the need for accommodation is not known or obvious. In fact, Department of Labor guidance states that in many cases a disability will be obvious.

In cases where medical documentation is required, the final order needs to remove inconsistencies about the need for medical documentation and to clearly limit the required medical documentation to that which is necessary to show an individual has a disability.

The order needs to limit the medical documentation required to the type of documentation typically found in medical records. There should be no suggestion in the order that employees might routinely be required to obtain unusual documents that require doctors to opine about needed modifications to the GAO work environment, which they know little about. See specific comments in the technical section of this letter.

The fifth paragraph of the subsection implies that, unless the RAC uses discretion to decide otherwise, medical documentation must be obtained addressing the specific changes to work arrangements requested for the reasonable accommodation. But this should only be required in exceptional circumstances, rather than being the norm. That is, employees who can provide medical documentation that they have a disability should not normally need to get a medical professional to prepare documentation that a specific reasonable accommodation is needed. This is because

- GAO should be open to providing workplace accommodations to requesters who obviously have a disability or can document that they have a disability;
- typical medical documentation provides diagnostic information, but not information related to workplace accommodations;
- medical doctors are typically not knowledgeable about the work requirements for GAO employees and are not trained in workplace accommodations needed for GAO work; and
- obtaining documentation from medical doctors can be very time-consuming and expensive.

Confidentiality

It is essential that employees have confidence that information about their medical condition will be kept confidential. We have had extensive experience with employees with disabilities who refuse or hesitate to request necessary accommodations because of confidentiality concerns. GAO has made efforts to provide training in the prevalence of unconscious biases. The stigma of mental illness is one significant example. The idea that medical conditions may be made much more severe due to stress is another. Employees with cancer often fear that knowledge of their diagnosis will limit their chances for certain work opportunities and for promotion.

Given the importance of protecting the confidentiality of employee's medical information and requests for reasonable accommodations, we are concerned that the draft order contains limited mention of internal controls over such information.

We suggest providing an internal control over the sharing of confidential information by requiring that GAO provide written notification to the requester of names and positions of any employees who are provided medical information about the employee or information about the request for reasonable accommodation. Further the order should state that anyone who violates the confidentiality requirements is subject to personnel action.

Given the sensitivity of employee information related to reasonable accommodations, this section should be more specific and restrictive about who can receive information on reasonable accommodation requests and what information they can have access to. The section should specify that:

- All requests for reasonable accommodations are confidential.
- All information related to reasonable accommodations remains confidential even after a request has not been approved.
- After a request for reasonable accommodation has been approved, the requester's managers may have a need to know about approved changes in the workplace in order to ensure that the reasonable accommodation is carried out.
- Only the RAC, members of the Accommodations Committee, and General Counsel and Counseling Services staff who provide advice on specific reasonable accommodations typically have a need to know the requester's medical diagnosis and other related medical information, and even these officials do not always have a need to know.
- The requesting employee's managers and coworkers almost never have a need to know the requester's medical diagnosis and other related medical information or even that the employee has a reasonable accommodation.

We have included a section of technical comments that offer more specificity as well as the letter of comment presented verbatim (Attachment I). We look forward to reviewing the proposed final version of Order 2306.1 and being provided the opportunity to bargain to the extent provided by law.

Sincerely,

Ronald La Due Lake

cc Rhonda Mayfield, Director of Labor Relations

Technical comments
Attachment I Letter of comment in support of the deaf community at GAO

Technical Comments

Chapter 1. Section 3. Policy

- In paragraph 3, beginning with "Reasonable accommodations may include …", the phrase "providing assistance during travel" should be revised to include providing alternatives to travel. Some medical conditions and circumstances make it very difficult for employees to safely travel, and GAO has a variety of options for accommodating these employees such as providing virtual access to remote meetings and assignments that do not involve travel.

Chapter 1. Section 4. Definitions

Additional definitions are needed:

- Because the term "manager" is used throughout this order and it is unclear what is meant by the term, it would be helpful to include a definition of "manager".
- It would be instructive for the finalized order to define the term "interactive process".

Chapter 2. Responsibilities.

2. Human Capital Office.

a. Reasonable Accommodations Director

The delineation of responsibilities of the RAD should more specifically reference essential elements of the ADA including helping to ensure diversity in GAO's workforce, working with employees in an interactive process to resolve reasonable accommodation requests, and strictly protecting the privacy of employees' reasonable accommodations requests, medical conditions and other medical information.

(1) the term "relevant managers" should be deleted from the current sentence because relevant managers (if they have a need to know) should only be informed of an approved reasonable accommodations request. Managers should not be informed about any unresolved or disapproved reasonable accommodations request, except when the managers are involved in the interactive process. Including managers in the chain of information about a reasonable accommodations request could violate confidentiality requirements and put an employee in jeopardy of discrimination.

(5) this subsection should also state that the data reported on GAO's reasonable accommodation program should be designed in a way to protect the identity of employees and prevent unintended confidentiality breaches due to contextual information.

e. Recruitment Coordinator

This subsection should include a provision that the Recruitment Coordinator will coordinate with all offices within GAO involved in recruiting, including field offices and any teams or offices that recruit independent of the HQ Human Capital Office.

3. Accommodation Committee

This section needs to contain a provision stating that, the members of the Accommodation Committee involved in the review of any RAC denial of request for reasonable accommodations, must be outside the chain of command for the requester of the reasonable accommodation and not previously involved in the consideration of the request for reasonable accommodations.

5. Chief Learning Officer
This section needs to be revised to provide for training on reasonable accommodations for all employees, rather than just "recently promoted managers." Employees who might need a reasonable accommodation need to understand their confidentiality rights and the reasonable accommodation process, and managers need to understand how to respond to requests for reasonable accommodations. Managers especially need training to help them understand why they should almost never have access to an employee's medical information. This is because, in spite of the confidence they may have in their own rationality and good judgment, humans often have unconscious biases and negative assumptions about people with disabilities. For example, in past decades, our society stigmatized and condemned individuals with an AIDS diagnosis.

6. Infrastructure Operations Managing Director
This should include a provision for a contact person for all employees, including those in field offices, with adaptive equipment to help ensure that employees have a place to get issues addressed. An employee noted that field office ISTS staff are so overburdened with work that they cannot provide adequate support for specialized equipment and appear to resent requests from disabled employees for help with adaptive equipment.

14. Employees and Applicants

It needs to be clarified that employees and applicants who request reasonable accommodations only need to provide information to support their requests when they receive a written request for the information. We suggest adding "when they receive written instruction to do so" at the end of the sentence.

Chapter 3 Reasonable Accommodation Process and Procedures

- Chapter 3, section 1 of the draft order states that the reasonable accommodations coordinator will determine when GAO staff need to know confidential medical information. The draft order refers to only sharing with those with the "need to know" without providing any further information about what that means. Unfortunately, the GAO culture and the practice of working in teams that can change with each engagement fosters the idea that many people believe they have a need to know about their colleagues, including even their medical information. This need has been articulated from the level of managing director to co-worker. In fact, absent the threat of imminent harm, no one but the people making or reviewing the determination that an employee has a covered disability under the ADA has a right to medical information and only those identifying and administering reasonable accommodations have the right to know that an employee has such an accommodation.

- Chapter 3, section 2. Making requests
  a. Individuals who can make requests.
  A sentence should be added to this section stating that bargaining unit employees may receive assistance from the GAO Employees Organization in making requests for reasonable accommodations.

- Chapter 3, section 3(a). Interactive process.
  This subsection needs a provision stating that employees in a bargaining unit may receive assistance from the exclusive representative in pursuing their request for reasonable accommodations.

- Chapter 3, section 3(c). Initial discussion
  A specific number of days should be given for the time period within which the initial discussion with the employee will occur.

- Chapter 3, section 3(e). Provisional accommodation
  The phrases "limited time" and "periodically" needed to be defined with specific time frames, and a provision for extending those time frames should be included.

- The ADA's reasonable accommodation provisions, as amended, are intended to minimize the burden to employees with disabilities. The draft order raises concerns about overly burdening employees in terms of the provision of medical documentation. Revise the order to remove inconsistencies about the need for medical documentation and to clearly limit the required medical document to that necessary to show an individual has a disability. For example, the sentence on the bottom of p. 10 (Chapter 3, section 3(d)) that states "In most circumstances, medical documentation is necessary …" is inconsistent with provisions regarding determining whether medical documentation is needed. Further, the order should limit the medical documentation required to the type of documentation that is in typical medical records, that is, documentation about the employee's medical condition. Remove suggestions that employees might routinely be required to obtain unusual documents that require doctors to opine about needed modifications to the GAO work environment that the doctors are unfamiliar with.

- In the fourth paragraph of the subsection (Chapter 3, section 3(d)), everything before the phrase "additional medical documentation may be required" should be changed to "in circumstances where the employee claims to have an additional (previously undisclosed) disability and requests changes in their reasonable accommodation based on such additional disability". This change is needed because it is normal for disabilities to change over time, such as moving into and out of remission or being aggravated due to stress, and these changes should not result in a requirement for more medical documentation. Employees who request changes to their reasonable accommodation because the original reasonable accommodation is not working well should not be required to provide additional medical documentation for the same disability they have previously documented.

- Chapter 3, section 4. Decisions on Reasonable Accommodation.
  a. Timeliness. This section should specify the number of days within which the RAC will
    - inform the requester about whether medical documentation is necessary
    - inform the requester about the RAC's decision on whether the reasonable accommodation request should be granted

Further, the subsection should also provide that when the RAC does not make a decision within the specified time period, the request for reasonable accommodation will be referred to the AC.

b. Accommodations Committee.

- We recommend adding provisions stating that a requesting employee has the right to
  present their request to the AC,
  submit materials directly to the AC, and
  have a representative (including a union representative, if a member of a bargaining unit) at meetings with the AC.

- b(2) The phrase "management officials" should be removed from this provision because informing management officials about meetings and the basis for bringing the request to the AC would likely violate employees' privacy rights.

  The number of days that the requester is given to respond to the RAC should be revised from "5 calendar days" to at least 60 calendar days with the opportunity to receive an extension, if needed.

- b(4) Instead of providing that the RAC will notify the requester of the decision "as soon as practical", the order should require the notification occur within a specific number of days. Further, the order should specify that the notification must be written.

- c. Implementing reasonable accommodation.
  To provide clarification in the first sentence of this subsection, "it" should be changed to "the accommodation".

- c(3) The language about when the RAC will notify unit staff responsible for coordinating with the RAC after the decision should be revised to state "absent exigent circumstances, no later the 5 calendar days after the decision."

- c(4) The timeframe language "in a timely manner" should be revised to be a specific number of days.

Attachment I

Letter of comment in support of the deaf community at GAO

Comments on Draft Order 2306.1:
Reasonable Accommodation of Individuals with Disabilities

RE: Section 2.12 on Office of Opportunity and Inclusiveness

We are writing to request changes to Section 2.12: Office of Opportunity and Inclusiveness (OI) in Draft Order 2306.1. Specifically, we are concerned with the addition of language formally assigning to OI the responsibility for providing "certain reasonable accommodations for employees and applicants who are deaf or hard of hearing." The 2006 Employment of Individuals with Disabilities Order does not contain this language, and we believe the new order should not, either.[1]

When GAO transferred responsibility of all other reasonable accommodations to the Reasonable Accommodations Team within HCO, a decision was made to leave management of sign language interpreting services within OI. We believe that this decision has impacted the quality of service and deaf staff's experience at GAO. We also believe the 2017 draft order offers GAO the opportunity to reconsider this decision and reassign this responsibility to the Reasonable Accommodations Team and/or initiate a thorough review to evaluate the current structure and identify how existing challenges in this area can best be resolved. We discuss below several reasons we strongly feel the current approach should change, and we offer several recommendations for your consideration.

I. Challenges of Actual and Perceived Conflicts of Interest

Combining the functions of EEO, inclusion efforts, and providing reasonable accommodations to deaf staff has the potential to create real and perceived conflicts of interest as well as impact OI's ability to effectively carry out all three functions. GAO's Inspector General previously identified potential for conflicts of interest in GAO's integration of discrimination complaint processing and diversity efforts.[2] Specifically, the IG's report stated that "PAB has reported about the potential for a real or apparent conflict of interest because the OI Managing Director is responsible for overseeing discrimination complaints while having a substantial role in GAO's human capital activities, including diversity programs—which is a personnel function." Specifically, the OI Managing Director's role in reviewing employee ratings could be problematic: "If an employee were to file a discrimination complaint because of a rating, the OI Managing Director would have been involved in a review for potential EEO concerns and still would be responsible for the fair and impartial processing of the complaint."

As this example pertains to our comments on 2301.6, a single individual within OI is responsible for managing the EEO program and inclusion activities as well as serving as the contracting officer's technical representative (COR) on the sign language interpreting contract. We believe that having the same individual—and the same office—responsible for all three areas further increases the risk of conflict of

[1]GAO, *Employment of Individuals with Disabilities Order, 2306.1* (Washington, D.C.: March 27, 2006). http://info1.gao.gov/orders/2306_1.pdf

[2]GAO, *Diversity at GAO: Sustained Attention Needed to Build on Gains in SES and Managers*, GAO-08-1098 (Washington, D.C.: September 2008). http://www.gao.gov/products/GAO-08-1098

interest. For example, combining inclusion activities with reasonable accommodations—as when OI selected an on-site interpreter to teach ASL classes—created a perceived conflict of interest. Generally, sign language interpreters should not be involved in inclusion or other non-interpreting activities for ethical and logistical reasons. Interpreters perform a specific and strict role as communication facilitators between deaf staff and their hearing colleagues and supervisors. Stepping out of this role alters the dynamics necessary for successful facilitation of communication and interferes with the interpreter's availability for interpreting needs. The Registry of Interpreters for the Deaf's Code of Professional Conduct, with which all certified interpreters are required to comply, advises that interpreters should avoid "performing dual or conflicting roles in interdisciplinary or other settings."[3] Therefore, selecting one of the on-site interpreters to teach ASL classes was a problematic decision exacerbated by (1) the decision to exclude all deaf staff from any participation in or involvement with the classes, in turn denying them opportunities to be included and to connect with their hearing colleagues,[4] and (2) the fact that deaf staff had long struggled to have this particular interpreter replaced due to her inadequate skills for GAO's specific needs.[5] This decision appears to contradict GAO's order on Opportunity and Inclusiveness, which states that the Office of the Comptroller General shall "promote programs which develop and use the skills and abilities of all employees to the fullest extent practicable."[6] Deaf staff are a valuable resource for any activities related to deafness, Deaf Culture, and American Sign Language, yet their offers to contribute their expertise were rejected.[7] Their colleagues' requests that they be invited to the classes were also rejected.

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[3]Registry of Interpreters for the Deaf, *NAD-RID Code of Professional Conduct* (2005). https://drive.google.com/file/d/0B-_HBAap35D1R1MwYk9hTUpuc3M/view. The CPC also outlines ethical guidelines related to interpreting skills and recognizing when level of skill is not an appropriate for specific assignments and circumstances.

[4]Some colleagues have commented that they felt the classes were less than fully effective due to this exclusion. Thus, this overlap of responsibilities hampered OI's ability to effectively manage both its diversity activities and interpreting services.

[5]Beginning in 2010 and continuing into the present, deaf staff identified that this on-site interpreter did not have the skills necessary to provide effective communication access at GAO. GAO staff and external individuals submitted multiple complaints to OI over the years, without success. Additionally, deaf staff asked for the ability to request replacement of on-site interpreters during the 2015 rebid of the interpreting contract, without result. A log of these complaints is available on request.

[6]GAO, *Opportunity and Inclusiveness in the Government Accountability Office Order, 2713.1* (Washington, D.C.: March 23, 2005). http://info1.gao.gov/orders/2713_1.pdf

[7]In an e-mail to one deaf staff, OI stated, "The classes are informal and are not intended to provide any professional level proficiency in the language. Just an introduction in the hope that a person would pursue further learning on their own. So you do not have to provide any recommendation(s)." In another e-mail, OI stated, "I would prefer, at this time that you not attend the classes. The classes allow your co-workers, in a very informal and relaxed environment, to learn ASL at their own pace. This may not occur if you are present."

Secondly, the combination of responsibilities for EEO and inclusion activities creates a risk of conflict of interest. When OI designs or executes its inclusion activities in an exclusionary or discriminatory manner, deaf staff who want to speak out, consult an EEO counselor, and/or file an EEO complaint could have plausible concerns that their complaints will result in adverse impacts on their reasonable accommodations. Similar concerns would apply to any complaints about sign language interpreting services and management of the interpreting contract. For example, complaints about interpreting services in part led to deaf staff's exclusion from OI's inclusion activities, according to remarks by OI.[8] Without separating management of deaf staff's reasonable accommodations from its EEO and inclusion activities, GAO cannot ensure that conflicts of interest do not exist, or that deaf staff can feel safe regarding consulting OI on EEO issues, especially regarding their accommodations.

II. Lack of Expertise to Effectively Manage Deaf Accommodations

Provision of accommodations—sign language interpreting and computer-assisted real-time captioning services—to deaf and hard of hearing staff is intended to provide them with effective communication access in the workplace as mandated by law. Management of these accommodations, particularly sign language interpreting services, requires a minimum of specialized experience and training in reasonable accommodations and, ideally, sign language interpreting. In the absence of sufficient expertise in the latter, it is necessary to rely on the end-user's own expertise—meaning, the staff who use these services—to gauge the quality and effectiveness of the services. However, GAO currently uses staff with very limited expertise in these areas, particularly in deaf issues and sign language interpreting, to manage its interpreting contract. Additionally, OI has not demonstrated positive receptivity to end-user feedback. Therefore, GAO faces management challenges with its interpreting contract that result in ineffective communication access for its staff, both hearing and deaf, as well as potential inefficiencies that may be unnecessarily increasing the costs of providing this service relative to the quality of services it receives from the contractor.

First, we feel that OI lacks the specialized experience needed to effectively manage reasonable accommodations for deaf and hard of hearing staff, applicants, and visitors at GAO. For example, in one instance, the interpreting agency sent an uncertified and unqualified interpreter for a meeting with technical and complex subject matter. [9] This was a potential violation of GAO's contract with the interpreting agency, particularly since the COR has not demonstrated the expertise

[8]In a December 2016 meeting to discuss the ASL classes, OI staff told deaf staff that they were excluded in order to protect the on-site interpreter due to the history of complaints the deaf staff had made regarding her interpreting skills. OI construed constructive and professional feedback regarding skill and quality to be personal attacks on the interpreter. Deaf staff had to agree to be silent about the on-site interpreter in return for inclusion in the second offering of classes. However, this second offering has since concluded and deaf staff were not invited or included.

[9]The statement of work for the 2010 interpreting contract stated, "All interpreters provided under this contract must be able to interpret any complex subject matter, especially those related to financial management, accounting, auditing, and electronic data processing (EDP); and must be certified by the Registry of Interpreters for the Deaf (RID), or able to interpret to the satisfaction of the contracting officer's technical representative (COR)." Deaf staff have been unable to review the 2015 contract to ascertain whether it utilizes the same language and appropriately represents their communication needs at GAO. However, it is reasonable to assume the 2015 contract contains similar, if not the same, language requiring RID certification.

necessary to evaluate and approve uncertified interpreters for use at GAO.[10] Furthermore, other end-users had previously provided negative feedback multiple times regarding this particular interpreter and requested that he not return to GAO. When the contractor returned this particular interpreter for at least a fifth time, the end-user submitted a complaint, to which OI responded in an e-mail, "There are going to be times when there is going to be no control over that situation and someone that may not have the amount of skill you need may not be available and that need to have sign language service takes precedence." This is contradictory to Americans with Disabilities guidance from the U.S. Department of Justice's Civil Rights Division, which states, "The goal is to ensure that communication with people with these disabilities is equally effective as communication with people without disabilities."[11] It also is contradictory to the U.S. Equal Employment Opportunity Commission's enforcement guidance, which states, "An accommodation also must be effective in meeting the needs of the individual."[12] This incident demonstrates less than adequate understanding of the standard required under law for reasonable accommodations.

Additionally, OI has not demonstrated a minimum of understanding of the sign language interpreting profession. For example, the COR does not have (1) fluency in American Sign Language, (2) the ability to evaluate interpreters' skills, or (3) a working understanding of interpreting agency operations. Furthermore, there is no system or process to replace this absence of experience that would enable GAO to independently evaluate the contractor's quality of service. End-user input frequently goes unheeded, and the perception exists that OI is relying on the contractor to assure quality of service—a conflict of interest when the contractor has vested interest in maximizing its profit margin.[13] For example, as discussed above, the contractor has sent an uncertified and unqualified interpreter multiple times, as well as other interpreters who do not have the necessary ability to interpret complex subject matter. Despite multiple individuals providing negative feedback about these interpreters' skills, OI has permitted the contractor to repeatedly return them, which adversely impacts deaf staff's participation in meetings and their overall work performance. Without a staff member with appropriate qualifications or receptivity to end-user input, GAO cannot ensure it is appropriately holding the contractor accountable for supplying interpreters who have the skills to provide effective communication access for its staff.[14]

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[11]U.S. Department of Justice, Civil Rights Division, Disability Rights Section, *ADA Requirements: Effective Communication* (January 2014). https://www.ada.gov/effective-comm.htm.

[12]U.S. Equal Employment Opportunity Commission, *Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act* (Updated October 2002). https://www.eeoc.gov/policy/docs/accommodation.html#general.

[13]See attached testimony from a staff interpreter who serves as COR on another federal agency's interpreting contract.

[14]As another example, OI has not shown familiarity with RID's Code of Professional Conduct (CPC); when deaf staff attempted to point out potential CPC violations by an interpreter, rather than evaluating the complaint on its merits, OI stated in an e-mail, "Please do not disrespect the interpreter(s) by suggesting that she or they have stepped outside of their boundaries."

Additional examples exist of how OI's resistance to feedback or advisement from end-users has resulted in ineffective communication access for both deaf and hearing GAO staff. For example, a staff member organizing a Deaf Gain panel in summer 2016 requested four sign language interpreters—the minimum necessary to achieve effective communication access when both audience and panel contain deaf individuals (a team of two for the audience and a team of two for the panel). OI denied this request and arranged for three interpreters, despite strong objections from the organizer, who thoroughly explained the rationale behind this best practice. OI responded in an e-mail that "You have an experienced group of interpreters and transcriber, I think they should be able to handle this event," without demonstrating the expertise to evaluate the interpreters' skills and appropriateness for the event.[15] During the event, the interpreters sent by the contractor did not have adequate voicing skills, to a degree that was observable to hearing attendees and that led to an attendee, who was an interpreter from another federal agency, voluntarily stepping in to take over voicing, without compensation for his services. Without the expertise to hold the interpreting agency accountable, GAO risks being unable to provide the accommodations its deaf staff need "to perform at their highest potential and advance in accordance with their demonstrated abilities."[16]

III. Separation of Deaf and Hard of Hearing from Other Disabilities

The singling out of accommodations for deaf and hard of hearing staff has the potential to create perception of inequitable treatment. The 2006 reasonable accommodations order did not include language specifically assigning responsibility to OI for managing accommodations for deaf and hard of hearing staff. However, this language has been inserted in the 2017 draft order, with the result that deafness is the only disability category specifically named in the order. We believe that this language, as well as assigning responsibility to OI for deaf accommodations while assigning responsibility for all other reasonable accommodations to HCO, essentially separates and singles out one disability category from the others. This risks creating a perception of isolating deaf staff from staff who have other disabilities for "special treatment." This separation also can have other effects, including (1) a lack of consistency in how staff with disabilities are treated and accommodated, (2) a lack of centralizing and streamlining the provision and management of reasonable accommodations, and (3) the creation of a perception that accommodations for deaf staff differ from other reasonable accommodations in that, by virtue of being managed by OI, they are a diversity and inclusion effort more than a legally mandated reasonable accommodation directly tied to job performance and other aspects of human capital management. We feel that other language in the draft

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[15]Additionally, OI stated in another e-mail, "Everyone will be speaking one at a time, not at the same time, so that should not tax the interpreters," which demonstrates a lack of basic understanding of the demands involved in interpreting such events.

[16]To borrow language from GAO's *Opportunity and Inclusiveness in the Government Accountability Office Order*. Not having effective communication access risks (1) diminishing deaf staff's ability to fully contribute to engagements, (2) adversely impacting supervisors' perceptions of deaf staff's performance, (3) harming deaf applicants' ability to accurately represent their abilities during interviews, and (4) creating potential for inaccurate translation of verbal information, such as testimonies, from deaf individuals interviewed by GAO analysts.

order is sufficient to define deafness as a qualifying disability and sign language interpreting and real-time captioning as reasonable accommodations.

IV. Examples of Other Agencies' Practices

Federal agencies have taken varying approaches to managing interpreting services but a number of them have taken steps to avoid assigning management of reasonable accommodations to offices that manage EEO and/or inclusion efforts. Furthermore, some have hired at least one staff interpreter to perform sign language interpreting duties as well as serve as COR on the interpreting contract.[17] The benefits of assigning responsibility for interpreting services to offices that do not manage EEO or inclusion activities include the ability to avoid any real or perceived conflicts of interest and centralize and streamline their provision of reasonable accommodations. Additionally, some agencies' choice to hire a staff interpreter who also serves as COR on interpreting contracts ensures the person who oversees and coordinates accommodations has the necessary expertise and is accountable to the agency rather than to the contractor.

Some examples:

- **National Institutes of Health** – Within NIH's Office of Director, the Office of Management and Office of Equity, Diversity, and Inclusion are separate offices. The Office of Equity, Diversity, and Inclusion is responsible for equal opportunity efforts. Separately, within the Office of Management, generally responsible for administrative and financial functions, the Office of Research Services manages NIH's interpreting services.
- **Census Bureau** – Under the Census Bureau's Chief Administrative Officer, the Human Resources Division's Reasonable Accommodations Office manages the bureau's interpreting services. The Equal Employment Opportunity Office is a separate and independent office under the bureau's Deputy Director. Separately, the Diversity Programs Office manages the bureau's diversity efforts. The bureau retains a staff interpreter within its RA Office to manage interpreting services and serve as COR on the interpreting contract.
- **Federal Communications Commission** – Within the Consumer and Governmental Affairs Bureau, the Consumer Affairs and Outreach Division retains a staff interpreter who coordinates interpreting services and serves as COR on the interpreting contract.
- **Office of Secretary of Defense, Washington Headquarters Services** –This office has a staff Sign Language Coordinator who is a certified interpreter and serves as COR for one of the interpreting contracts housed in the Human Resources Directorate.

[17]Examples of position descriptions are available on request. Furthermore, see attached testimony from a staff interpreter who serves as COR on a federal agency's interpreting contract.

- **U.S. Forest Service** – USFS retains a staff interpreter who is certified and serves as COR on the interpreting contract.

V. Recommendations

We recommend GAO take the following actions:

1. Remove language from Chapter 2, Section 12 of the draft order regarding responsibilities of the Office of Opportunity and Inclusiveness. Specifically, remove "by providing certain reasonable accommodations for employees and applicants who are deaf or hard of hearing."
2. Transfer management of the interpreting/CART contract—and COR responsibilities—to the Reasonable Accommodations Team.
3. Establish a committee to review policies and processes related to GAO's provision of sign language interpreting services, including but not limited to reviewing the interpreting contract and bidding process, establishing minimum standards for interpreters and a quality control process, increasing the efficiency of the request processing system, and exploring potential areas of cost savings or efficiency. Require that deaf staff be included, and consider the inclusion or consultation of external experts. Task this committee with collecting information on best practices[18] and making recommendations for how GAO can improve its management of accommodations for deaf and hard of hearing staff, applicants, and visitors.

[18]GAO, *Human Capital: A Self-Assessment Checklist for Agency Leaders*, GAO/OCG-00-14G (Washington, D.C.: September 2000). http://www.gao.gov/special.pubs/cg00014g.pdf. See attached relevant excerpt from this checklist.

Unofficial Testimony from staff interpreter/COR at a federal agency
Via e-mail, June 14, 2017

Having a knowledgeable and experienced interpreter on staff as coordinator and contract manager of interpreting services is the key point for having the best service delivery. It's like having a skilled expediter in a restaurant to coordinate the food orders and finished plates between the wait staff and the cooks.

For example, in the past, [large-size agency] had their COR for interpreting services stationed at an [agency] office in West Virginia. She was a desk jockey, who had zero knowledge of Deaf culture or the needs of interpreters. She was often unavailable to respond to calls regarding time sensitive interpreting situations being communicated from the interpreter to the interpreting agency, to her in the West Virginia office, to the [agency's] on-site coordinator at the [agency] building in DC, to the deaf employee. What should happen is for someone involved in the meeting being interpreted to directly contact an on-site coordinator with the skills and knowledge to step in and make authoritative decisions and, if necessary, roll up their sleeves and interpret for a last-minute request, or while the agency hustles to cover a snafu with one of their interpreters. Over the past 8 1/2 years, I have covered literally hundreds of last-minute requests that no agency would've ever been able to respond to.

And the cost savings and coordination of all of the requests cannot be overlooked. This is one of the problems with having end-users directly inputting their own requests. Not that the freedom to get interpreters is the problem, but the coordination of those request adds costs at some point in the process. Suppose you request an interpreter for a meeting tomorrow from 9 to 10 (at emergency rates and with the 3-hour minimum - about a $350 cost) and another deaf colleague requests an interpreter from 10:30-11 for a mid-year review (another $350) and a third requests a staff lunch from 11-12 (another $350). The interpreting agency will happily send three different interpreters for $1,050 instead of one for $350 to cover all three assignments. And if you ask the agency to coordinate these requests, they will charge you a fee to do so - usually a supervising interpreter to be on-site all day at a high hourly rate. Don't forget that ***they will have an inherent conflict of interest in providing the agency with good service at a cost savings***.

A better model is to have someone like me on staff for 8 hours to cover all the assignments plus whatever else pops up during the day and to coordinate any future assignments and do the billing and process invoices all for about the same $350 you just spent for one interpreter for three hours of work. In fact, I have been able to document that I earn my entire salary back in cost savings for interpreting services with my COR and

reasonable accommodation coordinator duties thrown in for free as a bonus to the [agency]. ***I understand the preferences of both the deaf and hearing clients and can make better matches or advocate for those preferences with the interpreting agency. I can also monitor the interpretation in real time and dismiss or replace interpreters who are not processing the information correctly***, as I have done with more than two dozen interpreters since I have been here.

5. Job processes, tools, and mission support. Are job processes, tools, and mission support structures tailored to help employees effectively, economically, and efficiently pursue their work?

Look for: Indications that decisions involving new core business processes, strategies, and tools have been designed to support quality, productivity, and accountability. Evidence that the agency has considered alternative approaches and tools drawn from "best practice" organizations with similar missions. Objective measures of quality and productivity and testimonial evidence from employees that their job processes and tools effectively support their efforts. Mission support structures and strategies that are based on input from managers and staff both in mission and mission support roles and that recognize the contributions of all agency employees in building the value of the organization to its clients.