



1. “Accommodation” refers to help needed or provided due to disability to ensure full access to a Department program, including providing assistance to meet a rule or modifying a rule. Accommodation includes help available under Department rules as well as help available because of provisions of the Americans with Disabilities Act.
2. “ADA” refers to the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, as amended.
3. “ADA-1” refers to the form which DTA uses to record a request for accommodation and to notify clients of decisions made on such requests.
4. “Adverse Action” refers to actions taken by the Department to reduce or terminate benefits, some actions to change classification of a case (primarily but not only related to exemption status in the TAFDC program) and to deny applications for benefits.
5. “Auxiliary aids” refers to methods and services designed to ensure that individuals with disabilities have effective communication with DTA and is used in accordance with the definition at 28 C.F.R. § 35.104.
6. “BEACON” refers to the Benefit Eligibility And Control On-line Network, which is the computer system DTA principally relies upon to determine eligibility for benefits and to provide benefits.
7. “Case record” refers to the collection, in written and electronic form, of the information necessary for determining eligibility and providing benefits and referrals for services.
8. “Client” refers to an applicant for, or recipient of, benefits administered by DTA.
9. “CAC” refers to a Client Assistance Coordinator. The Client Assistance Coordinator will fulfill particular roles set forth in this settlement agreement.
10. “DDA” refers to the Director of Disability Access. The DDA is the staff person in DTA’s Central Office responsible for overseeing access to Department programs by clients with disabilities and compliance with the obligations set forth in this settlement agreement.
11. “Disability” is defined in accordance with section 12102 of the ADA: “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3)).” 42 U.S.C. § 12102.
12. “Disabled individual” refers to an individual with a disability as defined in paragraph 11 of this section.

13. “Disability exemption” refers to the provision in the TAFDC program whereby clients can be determined exempt from TAFDC time limit and work requirement rules upon a finding of disability by DTA’s agent for disability determination, Disability Evaluation Services as set forth at 106 C.M.R. 203.530 *et seq.*
14. “DTA” or “the Department” refers to the Department of Transitional Assistance.
15. “EAEDC” refers to the Emergency Aid to the Elderly, Disabled and Children program, administered by DTA.
16. “ESP” refers to the Employment Services Program, the component of the TAFDC program that relates to work, training, and community service, as well as related support services, as set forth at 106 C.M.R. 207.000, *et seq.*
17. “Flagging” refers to a mechanism in BEACON used to identify cases that meet certain criteria as distinct from other cases, such as by use of a non-standard color to highlight the case in BEACON.
18. “Good cause” refers to the DTA policy, including that set forth at 106 C.M.R. 701.380, whereby noncompliance with a rule or program requirement is excused when it is due to a reason acceptable to DTA.
19. “LOQC” refers to Local Office Quality Control, the unit at DTA’s Central Office which, as part of its responsibilities, is charged with special projects, including reviews of local office compliance with policy.
20. “Ongoing accommodation” refers to an accommodation that is provided on a continuing, as opposed to a one-time, basis.
21. “Operations Memorandum” refers to a written directive that DTA’s Central Office uses to disseminate information, guidance and clarification on policies and practices, primarily intended for DTA field offices.
22. “Permanent verification” refers to a verification that only needs to be made once, unless an exception applies. The term is used in accordance with 106 C.M.R. 702.330 and the Department’s Operations Memorandum 2010-55.
23. “Request for accommodation” shall mean any written or oral statement by or on behalf of an applicant or recipient that he or she needs help complying with a Department rule or accessing Department programs due to disability. “Request for accommodation” shall include instances where the caseworker or CAC initiates the offer of assistance and the client accepts the offer, as well as instances where the client initiates the request for assistance. The statement or offer shall be treated as a “request for accommodation” regardless of whether or not the term “accommodation” is used.
24. “SNAP” refers to the Supplemental Nutrition Assistance Program administered by DTA.

25. "TAFDC" refers to the Transitional Aid to Families with Dependent Children program administered by DTA.
26. "TAO" refers to Transitional Assistance Office, the local DTA office for a particular geographic region.
27. "Vendor payments" refers to payments made by DTA on behalf of TAFDC and EAEDC clients to third parties for rent and utilities from funds deducted from those recipients' TAFDC and EAEDC grants.
28. "Verification" refers to the documentation, written or otherwise, which the Department requires to prove eligibility for benefits as defined in 106 C.M.R. 702.300 and 361.600.
29. "Written materials" as used in this settlement agreement refers to all written materials that DTA uses to present information to clients, either to give information to clients or to collect information from clients. Written materials include, but are not limited to, notices, forms, brochures, posters, and content on DTA's website intended for clients.

### **III. General Provisions**

- A. Class Certification: DTA will withdraw its objections to the Report And Recommendation on Plaintiffs' Motion To Certify Class issued by Magistrate Judge Leo T. Sorokin on February 23, 2010. In addition, DTA will not oppose Plaintiffs' motion that the Court certify a class consisting of the following (which is modified slightly from the definition that Magistrate Judge Sorokin recommended):

All individuals with disabilities (as that term is defined in the Americans with Disabilities Act and the Rehabilitation Act) who apply for or receive benefits administered by DTA and who claim a denial of equal access to benefits administered by DTA either because of (1) DTA's alleged failure to implement system-wide procedures and regulations for providing reasonable accommodations and/or (2) DTA's alleged reliance on methods to administer benefits that tend to screen out individuals with disabilities.

- B. Entire Settlement Agreement: This settlement agreement contains all the agreements, conditions, promises and covenants among the Department, Plaintiffs, and their respective counsel regarding matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of this settlement agreement.
- C. Duration:
  1. The obligations established by this agreement will remain in effect for three years from (1) the date that DTA sends written notice to Plaintiffs' counsel that DTA has completed implementation of the Specific Agreements set forth in section IV. of this agreement, or (2) the date that DTA sends written notice to Plaintiffs'

counsel of its determination under paragraph 15 of section IV.H. of this agreement, whichever occurs later. At the end of the three-year term, the agreement shall terminate, by its terms and without the need to seek court approval, and DTA shall have no further obligations hereunder unless the Court extends the agreement under the provisions in section VII.F. in the section entitled *Dispute Resolution*.

2. If, at the end of the three-year term, Plaintiffs' counsel believe that DTA is not in substantial compliance with this agreement, they may petition the court to extend the agreement for only so long as is necessary to achieve substantial compliance, in accordance with section VII. of this agreement, entitled *Dispute Resolution*. On such a petition, the burden shall be on Plaintiffs to demonstrate an entitlement to relief hereunder.

D. Process for seeking modifications to terms of this settlement agreement

1. Either party may seek modification of a particular provision of the settlement agreement if the party believes that, despite good faith efforts, the provisions agreed upon are not adequately meeting the intended objectives or cannot be implemented. The right to seek modification shall only apply to Sections IV. and V. of this settlement agreement.
  2. The party seeking modification shall notify the other party in writing of the modification sought, stating the specific factual and/or legal reasons the change is sought.
  3. After such notification, the parties will meet within thirty days to discuss the proposed modification. If the parties reach agreement, the proposed modification will be memorialized in writing, subject to any necessary court approval, and if approved by the Court, will become an amendment to this settlement agreement.
  4. The process for seeking modifications shall not be used to eliminate any of the requirements of this settlement agreement unless both parties agree.
- E. Revision of subregulatory policies: The Department will revise its sub-regulatory policies as it deems necessary to implement this agreement. The Department will provide drafts of Operations Memoranda used to implement this settlement agreement to the Plaintiffs' counsel for review and comment before finalizing them. The Department will give Plaintiffs' counsel at least 21 days to review and comment.

**IV. Specific Agreements**

The Department shall implement the protocols, procedures, programs, systems, and personnel adjustments set forth in section IV., subsections A. through J., below.

- A. Caseworker inquiry into disability, barriers, and help needed

1. At application, the Department shall make inquiries into the existence of clients' disabilities and whether they pose barriers to complying with Department requirements or otherwise getting the help they may need to access or retain benefits. DTA shall also make these inquiries in connection with a client's request for or renewal of a TAFDC disability exemption or request for EAEDC based on disability, in the course of cash eligibility reviews and SNAP recertifications, and if the client discloses a disability. The caseworker will initiate these inquiries, but the client may choose to discuss these issues with a Client Assistance Coordinator (CAC) at any point. These inquiries will only be made if the client is interacting with the Department by telephone or in person.
2. In making the inquiries at application described in paragraph 1 of this section, the Department will ask whether the client received, within the past sixty days, the benefit for which s/he is now applying and if so, whether the client believes the termination of benefits was related to any disability. If the client responds affirmatively, DTA will consider this information when discussing with the client whether accommodations are needed as described in paragraph 3 of this section.
3. If a disability of the kind described in paragraph 1 of this section is identified, the Department shall make inquiries into whether the client may need assistance, including, as appropriate, a Disability Exemption (in the case of a TAFDC applicant or recipient) or an authorized representative, and whether the client may need other help from the Department, which can include other types of accommodations. This inquiry will include a specific question as to whether any help needed reflects an ongoing need for an accommodation. The Department also shall offer to refer the client to a CAC to learn more about such help and potential solutions to such barriers. In the event the client indicates that he or she does not wish to disclose or discuss a disability or other health-related barrier with the Department, the Department will not inquire further or make any recordings under section IV.B. of this agreement, entitled *Recording of information about disability and related needs*.
4. If the client needs help due to disability that can be provided readily by the client's caseworker, that help will be provided by the caseworker, in addition to the referral to a CAC. Such help will be treated as an accommodation as set forth in the definition of the term "accommodation" and at paragraph 1 of section IV.D. of this settlement agreement, entitled *System for providing individualized accommodations*.
5. If the client accepts the referral, the caseworker shall arrange for the client to meet with a CAC immediately if that is feasible. Otherwise, the caseworker shall work out with the client the best way to speak with the CAC. If the client cannot meet with the CAC on the day of the referral, a TAO employee shall provide to the client in writing the appointment date and time, noting whether it is to be in person or by telephone, and the name and telephone number for the CAC.

6. The inquiries referred to in paragraphs 1 through 3, above, shall be made using a script set forth in Appendix A (“Inquiry”), which will be programmed into BEACON for benefit applications, when requesting or renewing a request for a disability exemption (unless the exemption is requested at application and the script has already been reviewed as part of the application), and SNAP recertifications and cash eligibility reviews. Prior to implementation of the inquiry process, this script will be reviewed by an agency or organization with expertise working with persons with disabilities to increase effectiveness (e.g., a state disability agency, DES, etc.).

B. Recording of information about disability and related needs

1. In implementing the provisions for Section IV.A.(1) of this settlement agreement, entitled *Caseworker inquiry into disability, barriers, and help needed*, the Department will record in BEACON whether or not a client indicates that he or she may need help dealing with the Department because of a disability.
2. The Department shall create in BEACON an “Accommodation/Special Assistance Tab,” which will be used to record in clients’ electronic case records information about disability and accommodations as specified in this section.
3. When a client discloses a disability in response to the inquiries described in paragraph 1 of section IV.A. of this agreement, whether in response to an offer of assistance or at the client’s own initiative, the Department will record information in the BEACON Accommodation/Special Assistance tab in the following circumstances:
  - a. A client discloses to the Department information about his or her disability and states that the disability causes him or her to have trouble accessing Department programs or complying with Department requirements (excepting the TAFDC work requirement), and requests an accommodation.
  - b. A client discloses to the Department information about his or her disability and states that the disability may impact the client’s capacity to deal with DTA, but that s/he does not need accommodation at that point in time (because, for example, the need for help is episodic or because s/he has another source of help). In this situation, DTA will ask whether the client wants his/her potential need for assistance noted in BEACON; if so, DTA will record the information disclosed by the client.
4. The Department will record the following in the BEACON Special Assistance Tab: the type of disability; any resulting difficulties that the client anticipates dealing with the Department; any accommodations requested; and whether the accommodation is requested on a one-time or ongoing basis. The recording will be done in accordance with Appendix B (“Recording”). The Department will not record such information, however, if the provision of a disability exemption was the only request for accommodation made.

5. Any approved, ongoing accommodations will be flagged in BEACON. The Department will begin flagging cases with ongoing accommodations within six months of the Court's entry of an order approving this settlement agreement, for all requests for ongoing accommodations that are approved after flagging is implemented. Cases with no accommodation but a disability exemption will not be flagged. The Department will ensure that all cases with ongoing accommodations that were approved after the implementation of the Recording provisions of this agreement but before implementation of flagging will be "flagged" within 3 months of implementation of the flagging capacity.
6. The information described in this subsection IV.B. will be recorded regardless of which staff person receives the information. The Department will develop protocols for ensuring information is recorded when the information is not disclosed directly to the caseworker or CAC.

### C. Client Assistance Coordinators

1. The Department will appoint at least one Client Assistance Coordinator (CAC) and a backup CAC in each local office, including the Fall River Centralized TAFDC and Malden SSI offices. The Department will appoint a minimum of two CACs as well as a backup CAC in its Dudley, Newmarket Square, Springfield Liberty, Chelsea Center (formerly Revere), Worcester, Brockton and North Shore TAOs. After the completion of the pilot on adverse actions described in section IV.H. of this agreement, entitled *Adverse Action Pilot*, DTA will decide whether such staffing should be adjusted based upon amount of referrals and time spent on CAC duties. Plaintiffs' counsel may provide input to the Department on the adjustment of such staffing. If the Department determines that additional CAC staffing is needed, the Department will train and appoint additional CACs or reduce other duties the CAC may simultaneously have.
2. At implementation, appointed CACs will be DTA Supervisors (BERS/C). To the extent possible under the collective bargaining agreement, they will be selected based on their aptitude for and sensitivity in working with clients with disabilities, and their ability to implement Department policies accurately and in a timely manner.
3. The Department will provide appropriate training to CACs regarding working with clients with disabilities.
4. CACs will have decreased supervisory workloads compared to other DTA supervisors to the extent possible. After six months of implementation and at six month intervals thereafter, the Department will review how the CACs balance their CAC and supervisor duties.
5. CACs will serve the following functions:

- a. Inquire into the possible existence of a disability, when appropriate, such as when a caseworker refers to the CAC a client who has acknowledged having a barrier or needing help;
- b. Review the evidence of a client's disability to determine whether it meets the ADA definition of a qualifying disability and/or the disability warrants the special assistance the client is requesting in accordance with the section IV.D. of this agreement entitled *System for providing individual accommodations*;
- c. Talk with referred clients about barriers to meeting Department requirements and potential solutions; discuss available modes of assistance, including accommodations, Recipient Services, authorized representatives, TAFDC disability exemptions, good cause, and referral to medical providers, if needed;
- d. In conjunction with caseworkers, help clients who request such assistance to seek accommodations, TAFDC disability exemptions, EAEDC disability applications, good cause, or provide other help, including referring clients to medical providers, when appropriate;
- e. In conjunction with caseworkers, help clients learn about and access available and appropriate programs and services offered by DTA or external sources;
- f. Review Learning Disability Assessment Reports from DES completed after the Court's entry of an order approving this settlement agreement, and review the results with the client, regardless of whether a specific learning disability was found. If the Learning Disability Assessment Report identifies possible grounds for eligibility for a TAFDC disability exemption, SSI, or possible accommodations, the CAC will review these options with the client. The CAC will offer to assist the client in pursuing any of these options. If the client is participating in an ESP activity, the CAC will offer to facilitate provision of any accommodation with the ESP provider;
- g. Provide an ongoing accommodation to clients where CAC assistance is preferable to that of the caseworker because of the particular circumstance of a case. Depending upon a client's particular accommodation, such steps could include, but are not limited to, phoning clients who need help understanding written communications, helping clients complete forms, and calling clients to remind them of deadlines. The CAC will have the discretion to determine whether the actions cited in this paragraph are better provided by the caseworker than the CAC;
- h. Review all accommodation requests made by clients in the CAC's TAO, and take part in the approval or denial of accommodation requests as specified in paragraph 8 of section IV.D. of this settlement agreement, entitled *System for providing individualized accommodations*; and serve as a fixed member of the TAO Accommodation Team;

- i. Provide technical assistance to other Department staff (e.g., by serving as a resource to caseworkers on issues related to disability);
  - j. Perform tasks called for by the adverse action pilot as described in section IV.H. of this agreement, entitled *Adverse Action Pilot* and any subsequent procedures related to adverse action, implemented following the pilot, if any;
  - k. Monitor, track, and oversee the TAO's accommodations, including implementation of accommodations not provided by the CACs. If the CAC learns that any approved one-time or ongoing accommodation or modification was not fully implemented, he or she will take remedial steps to address the lack of implementation, the impact on the client, and to prevent future noncompliance. The CAC will notify the Director of Disability Access of significant instances<sup>1</sup> of noncompliance.
6. The Department will draft guidelines for conversations between CACs and referred clients. The Department will solicit input from Plaintiffs' counsel on these guidelines. The guidelines will include suggested scripts intended to put the client at ease and to encourage the client to discuss any barriers with the CAC. Prior to their implementation, these guidelines will be reviewed by an agency or organization with expertise in working with persons with disabilities (e.g., a state disability agency, DES).
7. CACs will be supervised on a day-to-day basis by the local office managers. The Central Office Director of Disability Access, however, will monitor and assist local office management in ensuring that CACs are working in an effective manner consistent with the terms of the settlement agreement.

#### D. System for providing individual accommodations

- 1. The Department will treat all instances in which a client indicates that he or she needs help complying with Department requirements or accessing Department programs due to disability as a request for accommodation subject to the procedures in this section. This shall include instances where the caseworker or CAC initiates the offer of assistance and the client accepts the offer, as well as instances where the client initiates the request for assistance. All requests for accommodation, whether oral or written, will be recorded in BEACON as set forth in the section IV.B. of this settlement agreement, entitled *Recording of information about disability and related needs*. However, requests for a TAFDC disability exemption or applications for EAEDC based on disability in and of themselves are not subject to the procedures in this section. Nothing in this

---

<sup>1</sup> Examples of instances considered significant include: 1) actions which, though they need to be taken infrequently (e.g., semi-annually or annually), when not taken, have an impact on the client, such as delay in processing benefits and 2) actions which need to be taken by staff outside of the TAO that have an impact on the client's benefits.

agreement shall require the Department to provide an accommodation to a client who does not currently have an impairment that substantially limits a major life activity.

2. Notice of rights: The Department will continue to provide notice of the right to an accommodation in multiple formats and at multiple points in working with clients, specifically:
  - a. Oral: The Department will use the script set forth in Appendix A to orally explain the availability of accommodations at each of the points at which the Department conducts the Inquiry set forth in paragraphs 1 and 2 of section IV.A. of this settlement entitled *Caseworker inquiry into disability, barriers, and help needed*.
  - b. Hand-outs: The Department will continue to hand out at in-office application, at SNAP recertification and at cash eligibility reviews, a brochure, currently known as the Do You Have a Disability notice, regarding the availability of accommodations. This notice will be revised in accordance with section IV.F. of this settlement agreement, entitled *Readability of written materials*.
  - c. Notices: If not already provided, the Department will add language, set forth in Appendix C (“Notice Revision – Language for Notices”), to specified notices concerning the availability of accommodations and modifications due to disability; the availability of the CAC to provide assistance; and good cause determinations. The notices to which such language will be added are listed in Appendix D (“Notice Revision – List of Notices”). In addition, the Department will develop “specialized good cause” language for limited situations in which information about good cause must be tailored to the situation. The notices requiring specialized good cause language are listed in Appendix D.
3. Written policies: In accordance with G.L. c. 30A, the Department will revise its regulations and subregulatory materials pertaining to accommodations as necessary to implement this settlement agreement in accordance with section III.E. of this agreement, entitled *Revision of regulatory and subregulatory policies*.
4. The Department will issue written directives to clarify that the Department’s duties under the ADA extend to all parts of DTA and its agents, including the Division of Hearings, the IPV/Recoupment Unit, the Match Unit, Recipient Services, Employment Services Program providers, and Disability Evaluation Services (DES) (or any future organization with which the Department contracts to provide disability determination services). The written directives will also clarify the procedures to be taken in carrying out these duties. Plaintiffs’ counsel will provide the Department with input on drafts of these directives (some of which have already been provided by the Department to Plaintiffs’ counsel) before the Department finalizes them.

5. If, while a request for accommodation is pending for a particular client, the Department becomes aware that an adverse action notice has been issued to that client, then the following protocol will be followed:

As part of the accommodation process, the TAO Accommodation Team will review whether the client's disability affects his or her ability to comply with the Department requirement that is the subject of the adverse action and whether assistance from the Department, including an accommodation, to resolve the issue is appropriate. The adverse action will not occur while the ADA accommodation request is pending if the client makes a credible allegation that a disability affects his or her ability to comply with the Department requirement, unless the Department offers an accommodation or assistance, and the client unreasonably refuses to cooperate. If the client's reason for not complying with the Department requirement is not related to disability, and the Department can take steps to resolve the issue, it should do so.

6. If, in response to an adverse action notice, a recipient requests an accommodation, the following protocol will be followed:

If treating the client's statement as true would mean that under DTA policy the adverse action should not go forward (i.e., the client has good cause for not meeting the requirement), then it should be treated as good cause and the adverse action should not go forward until DTA makes a decision on the accommodation request (or until the necessary action can be taken by the client). However, the action can subsequently go forward if the client unreasonably refuses to take the necessary action and the refusal is unrelated to the disability claimed. If the Department determines that the adverse action can go forward prior to the accommodation request being determined, the Department shall record the reason for doing so in the client's case. Adverse actions connected to both eligibility and disability factors such as EAEDC disability eligibility or TAFDC disability exemptions will not be stopped if a determination has already been made by DES that the client does not meet DTA's disability standards.

7. The Department will revise the form, currently known as the ADA-1, as set forth in Appendix E ("Accommodation System – Revised ADA-1"). The form documents accommodation requests, notifies clients of the Department's decision, and provides information about appeal rights. The Department will provide the ADA-1 to clients as follows:
  - a. The Department will use and provide the ADA-1 form when a client requests an accommodation and when the Department makes a decision on a requested accommodation except as provided in paragraph b of this section.
  - b. The Department is not required to use or provide the ADA-1 form to clients when a one-time accommodation is requested, the requested accommodation is available without regard to the ADA, and is provided immediately. This

shall not be interpreted to include requests for ongoing accommodation, even if some assistance is provided immediately.

8. The processes for acting on a request for accommodation will vary depending on the particular circumstances as follows:

- a. If a client requests an accommodation that can be provided by the caseworker immediately without regard to the ADA, the caseworker will: (1) provide the assistance; (2) record the request and assistance provided in the BEACON Accommodation/Special Assistance Tab; (3) offer the client a referral to the CAC; and (4) inform the CAC of the accommodation. The CAC will review whether the client has a qualifying disability and, if so, whether any other accommodation is needed. If the CAC concludes as a result of this review that a different or additional accommodation may be needed, or that the accommodation may be needed on an ongoing basis, then the CAC or worker will contact the client to discuss it. If the CAC and client agree that an ongoing or modified accommodation is appropriate, the CAC will have authority to approve the accommodation without convening the TAO Accommodation Team.
- b. If a client requests an accommodation that cannot be provided under other existing DTA policy but may be provided through the ADA, the caseworker or CAC will: (1) record the request and accommodation needed in the BEACON Accommodation/Special Assistance Tab; (2) offer the client a referral to the CAC, if the CAC is not already involved; and (3) inform the CAC of the request, if the CAC is not already involved. Before making a decision on the accommodation request, the CAC will convene the TAO Accommodation team and/or have the DDA or Department Legal Division review the request.
- c. If a client requests assistance and the caseworker or CAC concludes the request cannot be approved, can be approved only with changes to the type of accommodation requested, or that the client does not have a qualifying disability, the TAO Accommodation Team will be convened. In addition, the team will engage in an interactive process with the client about the type of accommodation the Department will provide.
- d. The TAO Accommodation Team will also be convened if an adverse action notice issues while an accommodation request is pending as set forth in paragraph 5 of this section, and the caseworker or CAC believes that the adverse action should go forward.

9. Implementation and tracking of accommodations:

- a. The TAO CAC(s) will be in charge of ensuring correct and consistent implementation of accommodations in their TAO.

- b. All CACs will meet at least semi-annually with the Director of Disability Access to develop best practices for implementing accommodations.
- c. Each CAC will keep an updated list on an electronic spreadsheet of all clients in his or her TAO who have approved, ongoing accommodations. The list will include information regarding each client's disability and approved accommodation. This list will not replace, but be in addition to, the disability and accommodation information stored on the client's BEACON file.
- d. The CACs will do a regular check (either weekly or at some other appropriate interval) on BEACON (such as on the Daily View screen) for each client with an ongoing accommodation to determine if there are pending actions on the client's case which might trigger the need for the agreed-upon accommodation.
- e. The CACs will make use of existing Outlook or other available software to notify themselves of upcoming actions they need to take, such as by calendaring predictable and regular actions required to accommodate particular clients (e.g., reminding a client to submit and fill out the SNAP re-evaluation, knowing when an EAEDC disability supplement will expire, or getting an ASL interpreter when the client is scheduled for a recertification interview).
- f. The CACs will annotate a client's BEACON Narrative each time they take an action on that client's accommodation. These Narratives will be easily identifiable (e.g., by starting all Narratives with "ADA").
- g. The Department will also explore the possibility of automating through BEACON as much of the individual accommodation process as is feasible.

#### E. Verification

1. DTA has developed and implemented a BEACON notice that specifies which verifications the Department thinks are outstanding in each particular case. This notice will be sent to clients whose benefits are being denied or terminated due to lack of verification.
2. At application, cash eligibility reviews, and SNAP recertification interviews, caseworkers will continue to discuss with clients which eligibility factors must be proven or are optional, what forms of proof are acceptable, the caseworker's duty to assist in obtaining verification, and whether the client anticipates any difficulty in securing and providing verification to the Department.
3. The Department shall require verification only when necessary as required by law and as provided in current Department policy. The Department shall provide written notice of the specific required verification in a Verification Checklist or comparable form, including situations in which a client reports a change for which verification is required.

4. The Department will continue to include on its Verification Checklist a statement affirming the caseworker's duty to provide assistance to clients who need help obtaining verification.
5. Consistent with current Department policy, the Department will not ask clients to obtain any information that it can timely verify through established data exchanges with other institutions (e.g., SSA and DOR).
6. The Department will continue to have written policies and system edits so that clients are not asked to provide permanent verifications that have previously been provided, whether or not the Department can locate those documents, unless a new copy of the verification is needed for the purposes of an audit or federal review.
7. In accordance with M.G.L. c. 30A and Executive Order 485, the Department will propose to the Executive Office of Administration and Finance that the following underlined language be added to the last sentence of 106 C.M.R. 702.330:

The provisions of this section shall not apply whenever verification of an eligibility factor is required for an audit, Local Office Quality Control (LOQC) review, or investigation because the originally submitted documentation is missing or has been destroyed.

8. The Department will issue an Operations Memorandum that addresses the issue of over-verification, specifying situations in which additional verification of information previously documented is not necessary and therefore should not be requested. The Department will provide a draft of the Operations Memorandum to Plaintiffs' counsel for review and comment before it is finalized. The Department will give Plaintiffs' counsel at least 21 days to review and comment. In addition, the Department will review this guidance in its monthly Transitions Memos and will include it in Department training materials.
9. The Department will take the following additional steps related to verifications:
  - a. Review the results of the quality control reviews described in paragraph 2 of section V.C. of this settlement agreement, entitled *Monitoring and Reporting*, and take remedial steps, if any, that the Department determines are warranted to ensure compliance with policy. Remedial steps shall include, but are not limited to, training of Department staff responsible for handling verifications.
  - b. Further explore plans to implement document management solutions, such as scanning and electronic storage of case documents, including verifications, and fax-to-email technology.

## F. Readability of written materials

1. DTA will continue to review and revise its written materials, including those that have undergone recent revisions, to improve readability according to the provisions in this section. DTA will review written material to (1) assess readability using recognized readability measures of grade-level or related measures, and (2) assess the characteristics listed in “Guidelines for Written Material,” set forth in paragraph 2, below. DTA will then revise the written material as it deems appropriate to better meet the Guidelines for Written Material.

### 2. Guidelines for Written Material

#### a. Grade-level measure of readability:

- i) Whenever reasonable, written material will have a reading grade level between fifth and seventh grade, though a lower grade level is acceptable also;
- ii) Where specific content does not allow for a reading grade level between fifth and seventh grade (e.g., because of a legal requirement to communicate certain information and/or due to the complexity of information), the goal will be for the material to have the lowest possible reading level, as measured by the appropriate readability measure;

b. Use active sentences as much as possible; avoid the use of passive sentences;

c. Use short sentences and simple words as much as possible. When possible, select words likely to be familiar and easily recognizable;

d. Use the first or second person whenever appropriate;

e. Attempt to use concise and clear headings and sub-headings to guide the reader;

f. Avoid long paragraphs wherever possible; instead break down the content of long paragraphs into smaller “chunks;”

g. When information conveys a list of requirements or a sequence of required actions, use bulleted or numbered lists instead of listing the information in paragraph form, leaving space between bullets, if possible;

h. Use bold type and italics sparingly (e.g., to emphasize a word or short phrase, but not a long sentence or entire paragraph);

i. Avoid the use of capital letters for emphasis or other purposes;

- j. Avoid dense text where possible; where dense text exists, insert more white space;
  - k. Explore increasing the use of pictures, symbols, or icons to increase clarity;
  - l. For forms, try to leave adequate space for written responses;
  - m. Where the written material (e.g., notices) contains citations for regulations or laws, move the citations to the end of the main text of the document (i.e., excluding any pages of the document that solely contain financial eligibility calculations) or the end of the first page of the document, provided that this is in conformance with the law and USDA requirements; and
  - n. Use words like “important” sparingly, because overuse can negate the intended effect.
3. DTA staff writers will be responsible for assessing the readability of written materials on an ongoing basis.
  4. DTA will retain a consultant agreed upon by the Plaintiffs’ counsel to provide training to designated staff. The training will cover available review tools and readability principles.
  5. DTA will ensure that a minimum of two staff writers have been trained by a consultant, as described in this section, at any given time. The DTA Central Office Director of Disability Access will be responsible for ensuring that these staffing requirements are met and that the Guidelines for Written Material are being followed to the extent practicable. On a yearly basis, DTA will provide the Plaintiffs’ counsel with the names and positions of the staff who have been trained.
  6. DTA will prioritize review and revision of the following written materials. However, it is understood that due to changes in laws, policies or procedures, some revisions of lower priority items will necessarily occur prior to so-called higher priority items. The parties recognize that revisions to documents noted with asterisks have been completed:
    - a. Notice of TAFDC sanction due to not meeting EDP/work requirement
    - b. Notice of TAFDC termination due to not meeting EDP
    - c. Notice of denial of disability (TAFDC and EAEDC)
    - d. Notice of termination due to missing verification
    - e. Notice of Food Stamps/SNAP expiration and recertification forms
    - f. VC-1 Verification Checklist

- g. Do You Have a Disability notice
  - h. Notice about how to request a hearing \*
  - i. Notice of penalty warnings (part of application for benefits)
7. Before finalization of the revision of written materials listed in paragraph 6, DTA will give the Plaintiffs' counsel at least thirty days to review and provide comments.
  8. Timeline: The parties agree to the following timeline for implementation of this section:
    - a. The parties will agree upon a consultant to train staff within six months of the Court's entry of an order approving this settlement agreement.
    - b. The consultant shall provide training to the identified DTA staff no later than nine months from the Court's entry of an order approving this settlement agreement.
    - c. Written notices described in paragraph 6 shall be reviewed and provided to the Plaintiffs' counsel for comment in accordance with paragraph 7 within one year after the Court's entry of an order approving this settlement agreement.
  9. Within two months of the completion of training, any newly created documents or documents undergoing separate revision shall be reviewed according to the guidelines identified in paragraph 2.
  10. The Department will also continue to work with the Plaintiffs' counsel on revision of notices through its ongoing DTA Notice Workgroup. In addition to its original mandate to revise the "stacked paragraphs" that are used in some notices, the Notice Workgroup will revise other written materials as appropriate. The Notice Workgroup will work with the Plaintiffs' counsel to identify and prioritize other written materials for revision.

#### G. Auxiliary aids

1. DTA will continue to provide auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. This obligation covers local DTA offices, the Fall River and Malden Centralized offices, as well as the Division of Hearings, and any Central Office units or staff persons who communicate directly with clients (including Recipient Services), as well as DTA's agents. The term "auxiliary aids and services" is used in accordance with the definition at 28 C.F.R. § 35.104.
2. When DTA knows that an individual client has a disability that substantially affects his or her ability to see or hear, DTA will make an affirmative inquiry to discuss with the client his or her potential need for auxiliary aids or another type

of accommodation to have effective communication with the Department. For purposes of this settlement agreement, the term “effective communication” is used as the term is used in 28 C.F.R. § 35.160.

3. In determining what type of auxiliary aids and/or services will be provided to an individual with a disability, DTA will give primary consideration to the individual’s requests. The term primary consideration is used in accordance with 28 C.F.R. § 35.160(b)(2) and 28 C.F.R. § 35 App. A. If DTA concludes that it cannot provide the requested auxiliary aid or service, DTA will consult with the individual to find an effective alternative.
4. All Department offices, units, and agents that interact directly with clients will either have knowledge of available auxiliary aids and how to use them, or have access to a knowledgeable person within their office (e.g., the CAC) who can provide that information.
5. When a client requests an auxiliary aid for a disability or functional impairment that is expected to be ongoing, DTA will ask the client whether s/he wishes to treat the request as a request for an ongoing accommodation. The ongoing need for an auxiliary aid or service, once approved, will be recorded and flagged in BEACON.
6. American Sign Language (ASL) interpretation:
  - a. Subject to the terms for services in the contract between EOHHS agencies and the Massachusetts Commission for the Deaf and Hard of Hearing, DTA will provide timely access to qualified sign language interpreters when needed to ensure effective communication. Qualified sign language interpreting services may be provided either by an on-site interpreter or other appropriate and accessible auxiliary aid format.
  - b. DTA will identify one or more appropriate alternatives to on-site ASL interpreters. DTA will take the steps necessary to enable use of the identified alternative(s) in all covered offices, as defined in paragraph 1 of this section. At least one of the alternatives will allow for two-way ASL communication between the Department and deaf or hard of hearing clients who cannot use aids that rely solely on written communication.
7. Identification of available auxiliary aids for deaf or hard of hearing individuals who come to the DTA office:
  - a. DTA will create or use a document that lists, by use of picture illustrations and simple text, auxiliary aids available to assist clients who are deaf or hard of hearing.
  - b. When a client visits a TAO and indicates that s/he is deaf or hard of hearing and needs an auxiliary aid to communicate, or if a TAO employee identifies a likely need for an auxiliary aid because the client appears to be deaf or hard of

hearing, the employee will show the document to the client so that the client may identify an appropriate auxiliary aid, if they haven't already requested a specific type of aid.

- c. The document listing auxiliary aids and services shall list, at a minimum, the following:
  - i) On-site qualified sign language interpreter;
  - ii) Other appropriate alternative to an on-site qualified sign language interpreter, as referred to in paragraph 6(b), above;
  - iii) CART (Communication Access Realtime Translation) Services; and
  - iv) Hand-written notes.
8. Written Policy: DTA will revise its written policies to include more specific information regarding the provision of auxiliary aids in accordance with section III.F. of this settlement agreement, entitled *Revision of regulatory and subregulatory policies*. At a minimum, within 120 days of the Court's entry of an order approving this settlement agreement, DTA will issue an Operations Memorandum to all staff who have contact with clients (including staff at local DTA offices, as well as the Division of Hearings, Recipient Services and any other Central Office units or staff who communicate directly with clients) regarding the provision of auxiliary aids and services. The memorandum will:
  - a. Review DTA's obligation to provide auxiliary aids and services;
  - b. Review possible auxiliary aids and services to which clients may be entitled, including technology that may be used by individuals who are deaf or have hearing loss to communicate with DTA by telephone (e.g., TTY, telephone relay services) and in person;
  - c. Review DTA's responsibility to work with clients to determine what auxiliary aid is appropriate;
  - d. Provide information to increase sensitivity towards individuals who are deaf or have hearing loss (e.g., the ability to communicate in written English may be limited, especially if English is not the client's the first language); and
  - e. Review protocols for using an interpreter to communicate with a client.
9. Training: DTA will amend the existing ADA training that is provided to staff who have direct contact with clients as necessary to provide the information contained in the Operations Memorandum described in paragraph 8(a) through 8(e), above.

## H. Adverse Action Pilot

1. The Department will implement an adverse action pilot program as set forth in this section to evaluate whether the addition of further interventions prior to procedural or behavioral adverse actions reducing or terminating TAFDC and EAEDC benefits will assist a significant number of disabled recipients and whether the time spent is unduly burdensome given available resources.
2. The parties have retained a third party researcher, Carol Tobias in the Health and Disability Working Group at the Boston University School of Public Health, to ensure that the pilot yields data that is statistically valid and/or significant. The researchers have consulted on design of the pilot, and will facilitate implementation, such as by design of checklists and forms to gather information, and consult on evaluating the data.
3. The pilot will be run in at least three offices, including the Springfield State Street and Chelsea (formerly Revere) TAOs, that represent twenty percent of the cash caseload.
4. The pilot will last for at least six months. The duration of the pilot is one of the issues on which the third party consultant will advise.
5. DTA will implement the pilot after substantially implementing the following provisions of this settlement agreement in the offices subject to the pilot: Inquiry, Recording, CACs, System for providing individual accommodations, and training regarding the preceding provisions.
6. The CAC(s) in each local office will conduct the adverse action review and inquiry (“adverse action steps”) described in this section.
7. On a weekly basis, the CAC will access a list of planned terminations and reductions for all caseworkers handling EAEDC and TAFDC cases in his or her TAO. The adverse action steps will only be taken for those adverse actions designated as procedural or behavioral listed at Appendix F (“Adverse Action Reasons for Pilot”) that occur in cases of clients identified as disabled. Clients will be considered identified as disabled if they receive SSI or SSDI, have a TAFDC disability exemption or are presumptively exempt due to disability, receive EAEDC due to disability, or have a need for an accommodation recorded on the BEACON Accommodation/Special Assistance Tab. (This will include clients who have indicated that they have a disability for which they at times may need an accommodation, even if there is not an accommodation in place at that point in time.) The CAC will take the adverse action steps described below with respect to all clients who have a pending adverse action notice subject to the pilot as defined in this paragraph.

8. The Department will develop guidelines and/or scripts<sup>2</sup> for the conversations that are part of the adverse action steps. The Department will solicit input from Plaintiffs' counsel on the guidelines and/or scripts.
9. Adverse actions steps:
  - a. Prior to calling the client, the CAC will review the client's BEACON Accommodation/Special Assistance Tab.
  - b. The CAC will call the recipient within two business days of receiving the list of planned adverse actions.
  - c. If the recipient is not reached, the CAC will leave a message requesting a call back, if possible. Another call will be made the next business day.
  - d. At the same time, the Department will send a letter of introduction stating that the CAC will call or has attempted to call the recipient to offer assistance.
  - e. For clients who are reached by telephone, the CAC will:
    - i) Inform the client of the pending action and reason;
    - ii) Ask about the reasons for the client's apparent lack of compliance or, if applicable, why the client believes s/he did comply;
    - iii) Ask whether the apparent lack of compliance could be related to disability or other barriers;
    - iv) Explain relevant grounds for avoiding the adverse action, which may include good cause, need for accommodation, and TAFDC disability exemption;
    - v) Offer and provide assistance to avoid the adverse action, if appropriate (e.g., not appropriate if client is purposefully closing his case);
    - vi) If the problem underlying the adverse action appears disability-related, explore the need for an accommodation with client and caseworker; and
    - vii) Ask the client whether his/her connection with the CAC was aided by the introductory letter.

---

<sup>2</sup> Use of the term script here is not intended to suggest a script programmed into BEACON, but rather suggested phrasing of questions, which the CACs may use when discussing pending adverse actions with clients.

- f. If the client's case record does not list a phone number, or the phone number listed is not in service, the CAC will record this information. The CAC will send the letter referred to in paragraph d, above, with the annotation that the CAC had tried to call the client, if the letter has not been previously sent.
10. Adverse action steps to be taken if the client contacts the CAC within 60 days after the adverse action has already been implemented. The CAC will:
- a. Ask about the reasons for the client's apparent lack of compliance or, if applicable, why the client believes s/he did comply;
  - b. Ask whether the apparent lack of compliance could be related to disability or other barriers;
  - c. Explain relevant grounds for rescinding the adverse action, including good cause; and explain appeal rights and the right to reapply for benefits;
  - d. Offer and provide assistance to enable rescission of the adverse action, if appropriate;
  - e. If the problem underlying the adverse action appears disability-related, explore the need for an accommodation with client and caseworker;
  - f. Ask the client whether his/her connection with the CAC was aided by the introductory letter; and
11. The CAC will record the following information:
- a. Client and program;
  - b. Type of notice/adverse action;
  - c. Whether the client could be reached and details regarding contact efforts, including whether the client stated that the introductory letter had any effect;
  - d. If the CAC and client connected by telephone:
    - i) Whether the CAC and the client connected by telephone before or after the adverse action took effect;
    - ii) Client's stated reason for the apparent lack of compliance, or if applicable, why the client believes s/he did comply;
    - iii) Whether the client claimed that the apparent lack of compliance was related to disability or other barriers, and if so what was the nature of the disability or other barrier;

- iv) Whether the client requested help/accommodation to avoid or rescind the adverse action, and if so, what type of help/accommodation was requested, and whether the help was provided;
  - v) Whether, due to disability, the client requested any other help or accommodation needed to meet DTA's requirements, and if so, what was requested; and what the outcome was.
- e. Whether the planned adverse action went through, or, if not, why; and
  - f. Time spent following procedures.
12. For each of the offices subject to the pilot, the Department will gather data for six months after it has substantially implemented the provisions identified in paragraph 5 of subsection IV.H, above, but before it implements the pilot, concerning the number of clients identified as disabled as defined in paragraph 7 of this section who are subject to a procedural or behavioral adverse action listed at Appendix F, and whether or not that action occurred.
  13. Department staff will meet with Plaintiffs' counsel at least every two months for the duration of the pilot in order to discuss the progress of the pilot. Prior to each meeting, and upon completion of the pilot, DTA will share with Plaintiffs' counsel the information collected to date regarding the pilot (including the information described in paragraph 11, above, with identifying information deleted and any other information collected as a result of consultation with a third party).
  14. DTA will make a determination regarding whether and, if so, how it intends to implement adverse actions steps in all local offices. In making its determination, DTA will consider the following:
    - a. Whether the pilot enabled a significant number of eligible individuals with disabilities to avoid or reverse adverse actions that resulted from their disabilities.
    - b. Whether the staff time spent taking the adverse action steps is an effective use of DTA resources in relation to the number found in subparagraph a, above, and/or unduly burdensome and why.
  15. DTA will then inform the Plaintiffs' counsel whether it intends to implement adverse actions steps in all local offices, and if so, how.
    - a. If, after the pilot, DTA implements adverse action review and inquiry on an ongoing basis, DTA will evaluate whether it would be more effective to make the telephone calls prior to supervisor authorization of the adverse action (i.e., before the case supervisor has signed off to authorize the adverse action to proceed). In making this evaluation, DTA will review the pilot data to determine the number of instances in which the CAC was unable to take the

prescribed steps or connect with a client before the adverse action was implemented due to lack of time. This evaluation will also take into account whether making the calls prior to supervisor authorization would result in overpayments of benefits.

- b. If, after the pilot, DTA implements adverse action review and inquiry on an ongoing basis, DTA will confer with Plaintiffs' counsel during the settlement agreement period about what data will be recorded as part of ongoing implementation of the adverse action steps, and how the data will be recorded (i.e., in BEACON or an alternative database).

## I. Vendor payments

DTA will take the following steps to address vendor payment discrepancies:

1. Generate a monthly list of those cases coded as having a vendor payment but for whom the voucher payment system (SSPS) did not issue a voucher that month;
2. Issue this list to the relevant TAO's for review and correction. Caseworkers will note on the list the reason the vendor payment was not made and whether and how the situation was corrected;
3. The Department has provided each TAO with information on vendor payment procedures as a reminder of how to correctly implement ongoing vendor payments. This package included all relevant regulations, the BEACON Users Guide (or a print-up of the Online Guide) and samples of relevant forms. TAO Managers will be responsible for ensuring that caseworkers who have clients on vendor payments understand how to process ongoing vendor payments. The Department will provide additional training if the Department determines it is necessary;
4. The Department reviewed vendor payment procedures at a Statewide meeting to inform Directors and Assistant Directors of the procedures the Department will be implementing to address vendor payment problems. The Department will repeat reviews at statewide meetings as necessary;
5. The Regional Directors will review the annotated list of cases referred to in subparagraph 2, above, to determine if further action or training is warranted and will take such action; and
6. The Department will continue to generate the vendor payment discrepancy list monthly as described in paragraph 1 above and follow the procedures until the discrepancies are largely eliminated. Thereafter, the Department will continue to generate the list twice a year or more frequently if vendor payment problems re-occur.

## J. Central Office Director of Disability Access

1. The Department will appoint a Director of Disability Access from executive staff upon the Court's entry of an order approving this settlement agreement.
2. The responsibilities of the DTA Central Office Director of Disability Access shall include:
  - a. Receiving and reviewing reports from CACs of instances of noncompliance with approved accommodations in accordance with paragraph 5.k. of section IV.C. of this agreement, entitled *Client Assistance Coordinators*;
  - b. Providing supplemental technical assistance to CACs regarding their duties in relation to this settlement agreement;
  - c. Reviewing existing and future agency policy and procedures for impact on clients with disabilities;
  - d. Working with Field Operations to improve general access to Department services for the disabled population;
  - e. Overseeing the monitoring of the terms of the settlement agreement and carrying out the terms specified in section V. of this settlement agreement, entitled *Monitoring and Reporting*, including engaging in any reviews conducted pursuant to paragraph B(6) of that section;
  - f. Serving as a resource in the agency for disability-related issues; and
  - g. Working with other state agencies on issues related to disability, as appropriate.
3. In order to help evaluate the functions and capacity of CACs, the Central Office Director of Disability Access will track and monitor the following data, including:
  - a. For each Department office, the number of clients coded as disabled, and the number of clients served;
  - b. For each Department office, the number of clients referred to, or assisted by, the CACs;
  - c. The number of clients served in each Department office who have requested an accommodation in response to the initial script and/or have accepted a referral to the CAC; the type of accommodation; the type of benefits they receive; the nature and type of their disability; the number of approved ongoing accommodations;
  - d. Data related to other assistance provided by the CACs; and

e. Data related to time spent on CAC duties.

4. The Director of Disability Access shall meet with CACs at least semi-annually to gather information for purposes of improving CAC procedures and effectiveness in assisting disabled clients.

K. Time frames for implementation of Specific Agreements: DTA shall implement the protocols, procedures, programs, systems, and personnel adjustments set forth in section IV, subsections A through J, above, within 18 months of the Court's entry of an order approving this settlement agreement, except where a specific time line for implementation is otherwise specified in this agreement. The Department will notify Plaintiffs' counsel when it considers a specific subsection of section IV to be implemented.

## V. Monitoring and Reporting

A. The Department will collect and record information as expressly required in the following sections of this settlement agreement and related appendices: *Inquiry* (section IV.A.), *Recording information about disability* (section IV.B.), *System for providing individual accommodation* (section IV.D.), *Client Assistance Coordinators* (section IV.C.), and *Adverse action pilot* (section IV.H.).

B. From information collected pursuant to this settlement agreement as well as information maintained through its regular operations, the Department will create the following reports, which will be provided to the Plaintiffs' counsel. The Department's reporting obligations will begin after the provisions of section IV.B. of this agreement, entitled *Recording of information about disability and related needs*, have been implemented.

1. Annual reports, broken down by month, showing (a) the overall number of applicants and recipients in each DTA program (TAFDC, EAEDC and SNAP) broken down by Department office and program; and (b) the numbers of applicants and recipients identified as disabled because of receipt of SSI, SSDI, a TAFDC disability exemption or presumptive exemption, or receipt of EAEDC due to disability, or who have a need for assistance recorded in the Accommodation/Special Assistance tab, broken down by Department office, program, and type of disability (if known).
2. Semi-annual reports concerning implementation of provisions for inquiry into disability showing: Total number, for the semi-annual period, of inquiries into disability recorded at the time of disability exemption requests and EAEDC disability requests (initial and renewal), broken down by Department office, and program.
3. Semi-annual reports concerning individual accommodations showing:
  - a. The number of clients who request an accommodation, broken down monthly by Department office, program, type of disability claimed, type of difficulty

interacting with Department claimed, type of assistance needed, if granted, the category of staff who performed or is assigned to perform the accommodation, whether the accommodation is one-time or ongoing, and whether approved or denied, or approved in modified form.

- b. For each Department office, the monthly mean, median, and standard deviation of the number of newly approved accommodations per caseworker broken down by program, and separately by:
    - i) type of disability, and
    - ii) whether the accommodation was one-time or ongoing.
  - c. For all offices, the results of the CACs' monitoring of ongoing accommodations as described in paragraph 5.j. of section IV.C. of this agreement, entitled *Client Assistance Coordinators*. This report will only include ongoing accommodations reliant upon Department-initiated actions.
4. Semi-annual reports concerning adverse actions showing:
- a. The number of instances in which benefits of clients known to be disabled (as defined in paragraph B(1) above) are denied, reduced or terminated, with each of these categories broken down monthly by Department office, program, type of adverse action (i.e., action reason), type of disability (if recorded in keeping with Appendix B), and whether the client had an accommodation in place that was approved after implementation of the recording provisions set forth in section IV.B. of this settlement agreement, entitled *Recording of information about disability and related needs*. These reports will include adverse actions reasons listed in Appendix F and the corollary procedural and behavioral action reasons in the SNAP program listed in Appendix G ("SNAP Adverse Action Reasons for Monitoring").
  - b. For each Department office, the monthly mean, median, and standard deviation of the number of adverse actions covered by paragraph (a) above per caseworker broken down by program.
  - c. The number of clients in the report in paragraph (a) above whose benefits are denied, reduced or terminated but who reapply for benefits within six months, and the outcome of that application.
5. Semi-annual reports concerning Client Assistance Coordinators showing:
- a. The total number of clients referred to CACs each month broken down by Department office, program, referral source (i.e. whether the client was referred to the CAC via a caseworker or as a result of written information provided by the Department), and the juncture at which the referral was made (i.e. scripted inquiry, adverse action, or client's other request for help).



review, the Department will select a statistically valid random sample or use another valid approach to select cases. The reviews will include a review of the client's case record and an interview if possible, with the client to clarify and supplement information in the case record. The client will be informed that the interview is voluntary and that no adverse action will be taken due to nonparticipation. However, the review on vendor payments described in paragraph 3 of this section will not include client interviews.

1. After implementation, and during the term of the settlement agreement, the Department will conduct an annual review of individual case records to determine whether the specific steps required in this settlement agreement regarding inquiry, recording, CACs, accommodation system and related matters have been properly implemented.
  - a. The Department will select cases for this review from the following categories and will report by category: (1) all cases which were opened after the implementation of the settlement agreement; (2) cases of clients with approved accommodations; and (3) and cases of clients known to have disabilities defined as a grantee who receives SSI or SSDI, has a TAFDC exemption, has EAEDC eligibility based on disability or who has a disability need recorded in the Accommodation/Special Need BEACON tab, who, within the last six months, were subject to one of the adverse actions listed in Appendix F and the corollary procedural and behavioral action reasons in the SNAP program listed in Appendix G. The Department shall select a statistically valid random sample or use another valid approach to select cases for review among each category.
  - b. The Department will develop an assessment tool to complete this review and will provide the Plaintiffs' counsel with an opportunity for input and discussion on the tool before it is finalized. The Plaintiffs have developed a list of information to be obtained through these reviews (Appendix I ("Monitoring – Information to be reviewed in case reviews")), which the Department will include when formulating its assessment tool.
2. Annual reviews of a sample of cases that were closed or reduced due to lack of verification. The reviews will attempt to determine why verification was not provided; whether the client was unable to provide the verification due to disability; whether the verification policies were followed; and whether the clients' cases were subsequently reopened or benefits were increased. Client interviews will ask whether clients had difficulties, and if so, what kinds of difficulties, in meeting verification requirements.
3. Annual reviews of cases in which DTA instituted vendor payments to examine implementation of vendor payment policies, including timely payment to the vendor when funds were deducted from the client's cash assistance.

4. Annual reviews of implementation by non-field units of the Department (including the Division of Hearings, the IPV/Recoupment Unit, and the Match Unit) of protocols, procedures, programs or systems under this settlement agreement.
  5. Annual reviews to ensure that each of DTA's agents, including Disability Evaluation Services and Employment Services Program providers, has a written ADA policy in place and will address any complaints that it or the Department receives regarding ADA compliance by these agents related to the services provided to DTA clients. With respect to ESP providers, such reviews will include the existing annual contract review, a component of which is ADA compliance.
- D. Based on all available data, reports, meetings with CACs and other Department staff, as appropriate, and after implementation of the major areas of the settlement agreement, the Director of Disability Access will prepare a written report at least every twelve months and one at least sixty days before the expiration of this agreement which reviews and analyzes implementation of this settlement agreement by DTA office (including non-field units), including potential barriers to full implementation and any issues that specific offices are having. The report will describe any complaints received by the Department's agents or the Department under paragraph V.C.5 of this agreement, as well as any steps taken by the agent or the Department to address the complaint and/or to remedy any issues surfaced by the complaint regarding access for disabled clients to the agent's programs or services. The report will include changes to DTA procedures, policies, and structures, if any, that the Director believes may be warranted to provide better access to Department programs to individuals with disabilities. This report will be provided annually to the Plaintiffs' counsel during the period of the settlement agreement.
- E. The Department will provide the Plaintiffs' counsel with copies of all notices or other written materials revised as provided in section IV.F. of this settlement agreement, entitled *Readability of written materials*, including those that the Department may have revised regardless of this settlement agreement.

## **VI. Court Approval Process**

- A. Promptly after the execution of this settlement agreement, the parties shall jointly move the Court for preliminary approval of this agreement. The motion shall include a copy of the settlement agreement and request that the Court: (a) approve a draft notice of settlement, a draft summary notice, and a proposed order granting preliminary approval to be attached to the motion; (b) provide that the notice of settlement and summary notice state that any class member (other than named class representatives) may object to this settlement agreement by mailing a written objection to the Court and Plaintiffs' counsel at least 10 days before the fairness hearing, and that any class member who does not object in this manner shall be deemed to have waived his or her objections; (c) approve mailing notice of the settlement to advocacy and service organizations working with people with disabilities identified by the Plaintiffs and DTA and the publication of

a summary notice in the major newspapers throughout the state within 10 days after the entry of an order granting preliminary approval, and the posting of notice of the settlement agreement in each TAO and, (d) set a date for a fairness hearing which is no less than 45 days, and no more than 60 days, after the entry of the order granting preliminary approval of this agreement.

- B. Plaintiffs' counsel shall maintain copies of any objections to this settlement agreement and, no more than five days after receipt, shall provide copies of such objections to counsel for DTA. The notice of settlement and the summary notice shall set out the mailing address of Plaintiffs' counsel. Plaintiffs' counsel shall maintain a telephone number which may be called during normal business hours by any class member who has questions about this settlement agreement. The notice of settlement and the summary notice shall set out this telephone number and state that class members with questions about this settlement agreement may call the number during normal business hours.
- C. The parties agree to take such actions as are reasonably necessary to obtain final approval of this settlement agreement by the Court.
- D. At the fairness hearing, the parties shall jointly submit to the Court and request entry of an order that includes, at a minimum, provisions stating that:
  - 1. The form and method of notice given to the class complied with the requirements of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, is the best notice practicable under the circumstances, and constitutes due and sufficient notice of the settlement agreement, the fairness hearing, and other matters referred to in the notice to all persons entitled to receive such notice;
  - 2. The Court has held a hearing to consider the fairness, reasonableness and adequacy of the proposed settlement;
  - 3. Arm's-length negotiations have taken place in good faith between class counsel and DTA counsel, and have resulted in the settlement agreement;
  - 4. The settlement agreement is hereby finally approved pursuant to Fed. R. Civ. P. 23(e) as fair, reasonable and adequate, and the settlement agreement shall be consummated in accordance with its terms and provisions;
  - 5. The class members in this case include all individuals with disabilities (as that term is defined in the Americans with Disabilities Act and the Rehabilitation Act) who apply for or receive benefits administered by DTA and who claim a denial of equal access to benefits administered by DTA either because of (1) DTA's alleged failure to implement system-wide procedures and regulations for providing reasonable accommodations and/or (2) DTA's alleged reliance on methods to administer benefits that tend to screen out individuals with disabilities.

6. The class members, all and each of them (including Plaintiffs), are hereby bound by the terms of the settlement agreement;
  7. In approving the settlement agreement, the Court has considered: (1) whether the proposed settlement was fairly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of the proposed settlement outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the proposed settlement is fair and reasonable;
  8. This class action is complex with many intricate factual and legal issues and the results of litigation, including this one, cannot be predicted with certainty;
  9. The judgment of class counsel is that the proposed settlement is fair, reasonable and adequate;
  10. The class members are deemed to have released and forever discharged DTA with respect to the claims that are released in subparagraph VIII.C. of this settlement agreement, which is incorporated by reference into this order;
  11. The class members are hereby permanently barred and enjoined from instituting or prosecuting, either directly, representatively, derivatively or in any other capacity, any action against the DTA asserting any of the claims released by them in this settlement agreement;
  12. The Court, without affecting the finality of this order entering final judgment, shall retain jurisdiction to hear and adjudicate noncompliance motions filed in accordance with section VII. of this agreement, entitled *Dispute Resolution*; and
  13. The Court orders the entry of final judgment dismissing this case with prejudice.
- E. The obligations in this settlement agreement will become effective upon entry of an order approving the settlement and an order of final judgment as set forth in paragraph 13 of section VI.D. References in this settlement agreement to “the effective date of this agreement” should be construed to refer to the terms of this paragraph.
- F. If the Court does not approve this settlement agreement in all respects, the agreement shall be null and void and of no force and effect, and nothing herein shall be deemed to prejudice the position of any of the parties with respect to the litigation or otherwise, and neither the existence of this settlement agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be admissible in evidence, referred to for any purpose in the litigation or in any other litigation or proceeding, or construed as an admission, presumption or concession by defendants of any liability or the truth of any of the allegations in this litigation.

## **VII. Dispute Resolution**

- A. This settlement agreement may only be enforced as set forth in this Section VII.

- B. No less than thirty days prior to filing any noncompliance motion, the Plaintiffs shall notify the Department of any alleged noncompliance with this settlement agreement and request a meeting for the purpose of attempting to resolve the problems identified by the Plaintiffs regarding the Department's alleged noncompliance. The parties shall meet within thirty days of the notice of dispute.
- C. Should the parties fail to resolve the problems identified by the Plaintiffs, the parties shall request that the Court refer the matter to a Magistrate Judge for mediation.
- D. Should the parties fail to resolve, through mediation, any problems identified by the Plaintiffs, the Plaintiffs may file a motion with the Court seeking a judicial determination that the Department is not substantially complying with the settlement agreement. The Department shall have no less than thirty days to respond to any such motion. If the Court finds that the Department has not substantially complied with the settlement agreement, it may enter an order consistent with equitable principles, but not an order of contempt, that is designed to achieve compliance.
- E. If the Plaintiffs contend that DTA has not complied with an order entered under paragraph D of this section, they may, after reasonable notice to DTA, move for further relief from the Court to obtain compliance with the Court's prior order. In ruling on such a motion, the Court may apply equitable principles and may use any appropriate equitable or remedial power then available to it.
- F. Notwithstanding the requirements in (B), above, if Plaintiffs believe that DTA is not substantially complying with the terms of this agreement when the agreement is expiring, Plaintiffs may file a noncompliance motion with the Court without first going through the dispute resolution steps described above. Plaintiffs must file such a motion at least 30 days prior to the expiration of this agreement. This motion may include a request for an interim order for the extension of the specific provisions of the agreement as to which noncompliance is claimed pending a ruling on the motion for noncompliance. If the Court finds that DTA is not in substantial compliance, the Court may, even after expiration of the agreement, extend the duration of those provisions of the agreement as to which DTA is not in substantial compliance for such time as is necessary for DTA to obtain substantial compliance.

#### **VIII. Miscellaneous**

- A. The parties shall meet at least quarterly to discuss issues relevant to implementation of this settlement agreement. The Department will provide a written summary of such issues at least two business days prior to the meeting.
- B. The parties hereto waive any right to appeal or collaterally attack the final judgment approving this settlement agreement.
- C. Plaintiffs, individually and for and on behalf of all class members, fully, finally and forever release, relinquish, discharge, and waive any and all claims for injunctive and declaratory relief against DTA concerning the subject of this lawsuit, from the beginning of time until the end of the term of this agreement, including any and all

claims for injunctive or declaratory relief arising out of or relating to the facts or subject matter described in the complaint filed in this lawsuit, and all claims for injunctive and declaratory relief under 42 U.S.C. §12131 et seq. (the Americans with Disabilities Act), 29 U.S.C. § 794 (the Rehabilitation Act), or any other federal or state law that addresses the accessibility of DTA's programs and services for individuals with disabilities.

- D. The parties hereto have participated in the drafting of this settlement agreement and, accordingly, any claimed ambiguity should not be presumptively construed for or against any of the parties hereto.
- E. This settlement agreement may be signed in counterparts.
- F. The Plaintiffs and their counsel acknowledge that implementation of the settlement agreement regarding any changing responsibilities of union staff may be delayed or foreclosed by the choice of the union to exercise its bargaining and negotiation rights. However, the Department agrees to exercise all reasonable options available to it under its union contracts to implement the terms of this settlement agreement.
- G. Force Majeure: DTA shall not be subject to any noncompliance motion for failure to perform under this agreement, and any such failure shall not be considered a breach of or non-compliance with any term of this agreement, if such failure results from any act of God, riot, war, civil unrest, flood, or earthquake.

## **IX. Attorneys' Fees, Litigation Expenses and Costs**

- A. Agreement regarding fees and litigation costs:
  - 1. DTA shall pay to the Plaintiffs, by their counsel, the following amounts to compromise and settle the Plaintiffs' claims for attorneys' fees and litigation costs (including, without limitation, expert fees and costs): \$275,000, payable in Fiscal Year 2013; \$350,000, payable in Fiscal Year 2014; and \$350,000, payable in Fiscal Year 2015. DTA shall make reasonable efforts to obtain funds to pay these amounts at the earliest possible date in the respective fiscal years.
  - 2. Except as provided in paragraph IX.B., below, this agreement constitutes the full compromise and settlement of all claims that the Plaintiffs might now or in the future have against the Commonwealth for attorneys' fees and/or litigation costs related to this case, including, without limitation, claims the Plaintiffs might have made for attorneys' fees or costs for activity occurring after the date of this Settlement Agreement to obtain court approval of the Settlement Agreement or to monitor the implementation of, and the Department's compliance with, the Settlement Agreement. This agreement is not an admission or evidence that the Department is liable to the Plaintiffs for payment of attorneys' fees, costs or other expenses in, or related to, this case, but rather represents only the settlement by the parties of a disputed claim.
  - 3. This agreement shall not establish, or be evidence of: (1) a "reasonable" hourly rate for Plaintiffs' or any other counsel; or (2) the compensability of any legal

services or activities performed by counsel in this or any other action, (3) a precedent for including, in future settlement agreements, fees for any legal services or activities, including monitoring of compliance, to be undertaken after the date of settlement, or (4) the compensability of any item of costs or expenses in this or any other action.

B. Fees and costs for future claim of noncompliance:

1. If Plaintiffs' counsel raise a claim of noncompliance through the dispute resolution procedures in section VII. of this agreement and prevail, Plaintiffs' counsel shall be entitled to request reasonable attorneys' fees, litigation expenses and costs related to the claim of noncompliance. Plaintiffs' counsel shall only be considered to have prevailed for purposes of this section if the Court makes a finding of substantial noncompliance under section VII.D. of this agreement.
2. For work done to enforce this agreement in accordance with paragraph B, above, the Plaintiffs' counsel shall submit a request for reasonable attorneys' fees, litigation expenses and costs. If the parties cannot reach agreement on the amount to be paid within 60 days following the submission of the request, the dispute shall be resolved as follows: the parties will request that the Court refer the matter to a Magistrate Judge for mediation; and if the dispute is not resolved through mediation, counsel for the parties will submit the matter to the Court for formal resolution.

**For Plaintiffs:**

/s/ Sarah R. Levy \_\_\_\_\_  
Sarah R. Levy  
Attorney for the Plaintiffs

/s/ Lizbeth Ginsburg \_\_\_\_\_  
Lizbeth Ginsburg  
Attorney for the Plaintiffs

/s/ Daniel S. Manning \_\_\_\_\_  
Daniel S. Manning  
Attorney for the Plaintiffs

/s/ Melanie Malherbe \_\_\_\_\_  
Melanie Malherbe  
Attorney for the Plaintiffs

/s/ Lauren D. Song  
Lauren D. Song  
Attorney for the Plaintiffs

**Dated: January \_\_16\_\_, 2013**

**For Defendant:**

/s/ Daniel J. Curley  
Daniel J. Curley  
Commissioner  
Department of Transitional Assistance

**Dated: January \_\_15\_\_, 2013**