

## **Purpose**

The following implements Executive Order 13164 by establishing requirements for processing requests for reasonable accommodation and, where appropriate, for providing voluntary job modification or reasonable accommodation to employees and applicants with disabilities.

## **Authority**

The Rehabilitation Act of 1973 (29 U.S.C 701), as amended, requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship.

Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000), requires that Federal agencies establish effective written procedures for processing requests for reasonable accommodation.

Equal Employment Opportunity Commission Policy Guidance on Executive Order 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, No. 915-003 (October 20, 2000), explains EO 13164 in detail.

Equal Employment Opportunity Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (March 1, 1999) clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship.

## **Policy**

The Office of Chief Counsel is committed to providing reasonable accommodation to employees and applicants for employment in order to ensure that individuals with disabilities enjoy full access to equal employment opportunity (EEO). The Office of Chief Counsel shall provide reasonable accommodations for the known physical or mental limitations of otherwise qualified employees and applicants with disabilities, unless a particular accommodation would impose an undue hardship on the operation of its programs. The Office of Chief Counsel continues to strive to be an employer of choice that values its employees and applicants. To ensure the Office of Chief Counsel maintains an effective and efficient workforce, managers are encouraged to provide voluntary modifications, outside of the reasonable accommodation process, when the request is easy and inexpensive.

## **Scope**

The policies and procedures contained herein applies to all Office of Chief Counsel facilities and offices, and to all employees and applicants for employment with Counsel. These policies and procedures supplement the Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (October 17, 2002), and EEOC Policy Guidance on Executive Order 13164, Establishing Procedures for Providing Reasonable Accommodation for Individuals with Disabilities. Both documents are available on EEOC's internet site at [www.eeoc.gov](http://www.eeoc.gov).

All references to “disability” in the Procedures refer only to those impairments that meet the ADA/Rehabilitation Act definition of “disability” as amended by the ADA Amendments Act of 2008 (ADAAA). The expanded definition of “disability” is to be interpreted broadly and does not require an extensive analysis.

## **Background**

The Rehabilitation Act of 1973 (Act) (29 U.S.C 701), as amended, was the first national law to address employment protection for individuals with disabilities. In part, the Act required an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship.

The Americans with Disabilities Act (ADA) of 1990 prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. It also applies to the United States Congress.

On July 26, 2000, Executive Order (EO) 13164 was signed. The EO required that Federal agencies establish effective written procedures for processing requests for reasonable accommodation. The EO does not create any new enforceable rights for Executive branch employees or applicants for employment.

On October 20, 2000, EEOC issued policy guidance that further explained the effects of EO 13164.

The EEOC issued enforcement guidance on October 17, 2002, which clarified the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship.

The Americans with Disabilities Act Amendments Act (ADAAA) of 2008 was enacted on September 25, 2008, and became effective on January 1, 2009. The law made significant changes to the definition of “disability” under the Americans with Disabilities Act (ADA).

EEOC established its final regulations clarifying the ADAAA on May 24, 2011.

## **PROCEDURES FOR PROVIDING REASONABLE ACCOMMODATION**

Chief Counsel's procedures to facilitate the provision of reasonable accommodation implement Executive Order 13164 by establishing requirements for processing requests for reasonable accommodation and, where appropriate, for providing reasonable accommodation to employees and applicants with disabilities.

The Office of Chief Counsel is committed to providing reasonable accommodation to employees and applicants for employment to ensure individuals with disabilities have equal employment opportunity. The Office of Chief Counsel shall provide reasonable accommodation to the known physical or mental limitations of otherwise qualified employees and applicants with disabilities, unless a particular accommodation would impose an undue hardship on the operation of the Office of Chief Counsel's programs.

### **I. Definitions**

**Office.** The Office of Chief Counsel.

**Department.** The Department of the Treasury, including all of its bureaus and offices.

**Deciding Official.** An individual who has authority to determine whether a requested accommodation will be provided. The Deciding Official is generally the employee's first-level supervisor or any supervisor in the employee's chain of command or servicing Human Resources (HR) Officer for applicants.

**Disability.** A physical or mental impairment that substantially limits one or more of the major life activities; a record (or past history) of such an impairment; or being regarded as having an actual or perceived physical or mental impairment as defined in §501 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), the Americans with Disability Act Amendments Act (ADAAA) and 29 CFR Part 1630.

**Dispute Resolution Process.** Any voluntary mechanism through which an individual can request reconsideration of denial of reasonable accommodation, regardless of whether the individual has started the EEO complaint process.

**Essential Functions.** Job duties that are so fundamental to the position the individual holds or desires that he/she cannot do the job without performing them. A function can be "essential" if, among other things, the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; the function is specialized and the individual is hired based on his/her ability to perform it; or the position requires an employee to be physically located in a particular place. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description. 29 CFR 1630.

**Extenuating Circumstances.** Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation or situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation.

**Genetic Information.** As defined by the Genetic Information Nondiscrimination Act (GINA) of 2008, includes information concerning the manifestation of disease/disorder in family members ("family medical history"), information about an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held an individual or family member receiving assistive reproductive services.

**Individual with a Disability.** A person who has a physical or mental impairment that substantially limits one or more of that person's major life activities, has a record of such impairment, or is regarded as having such an impairment.

**Interactive Process.** The process by which the individual requesting an accommodation and the Deciding Official discuss the request for accommodation, the Deciding Official determines whether an accommodation will be provided, and the parties examine potential alternative accommodations.

**Major Life Activities.** Basic activities that the average person in the general population can perform with little or no difficulty, i.e., caring for oneself, performing manual tasks, walking, seeing, standing, hearing, speaking, breathing, reading, bending, concentrating, learning, working, and the operation of major bodily functions. Major bodily functions include, but are not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

**Mental Impairment.** Any mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

**Physical Impairment.** Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine.

**Qualified Individual.** An individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or seeks, and who, with or without reasonable accommodation, can perform the essential functions of such position.

**Reasonable Accommodation.** Any adjustment or alteration to the job application process, work environment, or the way things are customarily done that enables an otherwise qualified individual with a disability to apply for a job, perform job duties, or enjoy equal benefits and privileges of employment. Reasonable accommodation may include, but is not limited to, making existing facilities accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of training materials or policies; providing qualified readers or interpreters; modifying the method or means of transmitting or communicating information; and other similar accommodations for individuals with disabilities. There are three categories of reasonable accommodations:

- accommodations that are required to ensure equal opportunity in the application process to permit an individual with a disability to be considered for a job (such as providing application forms in alternative formats like large print or Braille);
- accommodations that enable employees with disabilities to perform the essential functions of the position held or desired (such as providing sign language interpreters); and
- accommodations that enable employees with disabilities to enjoy equal benefits and privileges of employment as enjoyed by employees without disabilities (such as removing physical barriers in an organization's cafeteria, reducing oral communications to writing, or allowing an employee flexible starting and stopping times, etc.).

**Reassignment.** Reasonable accommodation of last resort, that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to funded vacant positions at or below the employee's current grade and for employees who are qualified to fill the vacant position. If the employee is qualified for it, and can perform the essential functions of the position with or without reasonable accommodations, then unless the agency can show reassignment would cause undue hardship, it will offer the position to the employee without competition.

**Receiving Officials.** Personnel designated to officially receive a request for reasonable accommodation from an employee or applicant (or an individual acting on his/her behalf). Counsel has designated all supervisors and the EEO Office (including EEO Manager and staff) to receive requests from all employees. For applicants, the HR Specialist with whom the applicant has contact in connection with the application process is designated to initially receive the requests and forward them to the EEO Office.

**Requester.** A qualified employee or applicant with a disability, or an individual acting on his/her behalf, who requests reasonable accommodation.

**Undue Hardship.** An action requiring significant difficulty or expense when considered in light of factors such as the Department of Treasury's size, financial resources, and the nature and structure of the position. Determination of undue hardship is always made on a case-by-case basis, considering factors such as the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the Department of Treasury.

**Voluntary Modification.** An adjustment or alteration granted outside of the reasonable accommodation process without requiring the individual to establish that s/he has a disability. Such a modification is particularly appropriate where the modification is easy and inexpensive, i.e., a request for an ergonomic computer mouse or a screen magnifier.

**NOTE:** Nothing in this policy prohibits providing accommodations beyond those required by the ADA or the Rehabilitation Act as amended by the ADAAA

## II. Voluntary Modification

Upon request for an accommodation, a manager or any designated official with the principal responsibility for identifying possible accommodations may choose to grant a voluntary modification outside of the reasonable accommodation process. When applicable and when the requested accommodation is easy and/or inexpensive, this option allows managers/designated officials to grant a modification **without first establishing that the individual has a disability**. As the Office of Chief Counsel strives to be an employer of choice, managers or designated officials are encouraged to provide applicants and employees with a modification that will allow them to apply for a job, perform job duties, or enjoy the benefits and privileges of employment.

**NOTE: The modification must not require obtaining supporting medical information.**

**If a modification is not granted or if it is not quick and easy, the request must be treated as a reasonable accommodation request.**

Voluntary modifications that can easily be provided outside of the reasonable accommodation process might include:

- a. An applicant requests the vacancy announcement in large print.
- b. An employee asks for four breaks a day to test his/her blood sugar levels.
- c. An employee requests a footrest to elevate his/her legs to decrease swelling in his/her legs and feet.

## III. Requesting a Reasonable Accommodation

### A. The Request

1. **The reasonable accommodation process begins** as soon as the request for accommodation is made either orally or in writing. (A sample request form is provided in Appendix A-1.) In accordance with 29 CFR 1614, an individual does not need to have an accommodation in mind before making the request. The request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." An individual with a disability may request a reasonable accommodation whenever he/she chooses, even if he/she has not previously disclosed the existence of a disability. The request does not necessarily mean the employer is required to provide the accommodation.
2. **The individual's request must be considered** when an employee, or someone on his or her behalf, makes a request for any change in working conditions to his/her immediate supervisor, a supervisor or manager in his/her immediate chain of command, or any Receiving Official designated to oversee the reasonable accommodation process. When an applicant makes a request, it will be considered if made to any Human Resources Division employee or any other individual designated by the Office.
3. **A family member, friend, health care professional, or other representative, such as a union representative or a private attorney, may request a reasonable accommodation** on behalf of an employee or applicant with a disability. The request shall be made to one of the persons listed in III (A)(2). To the extent possible, the individual with a disability should be contacted to confirm that he/she in fact wants a reasonable accommodation. The individual may refuse to accept an accommodation.

## **B. Written Requests for Record Keeping Purposes**



1. As noted in III (A)(1), requests may be written or oral. While a written request is preferable, it is not required. To ensure accurate records, the Receiving Official, which includes but is not limited to any supervisor in the employee's supervisory chain of command or anyone from the EEO function, should confirm in writing the receipt of a request for reasonable accommodation, documenting when the request was received and the nature of the accommodation requested. If management reduces a request to writing, the employee making the request will be given an opportunity to review the writing for accuracy. For requests from applicants, the HR Specialist must contact the EEO Office for record keeping purposes. Any failure by a receiving official to reduce the request to writing shall in no way harm the employee who made such a request.
2. Accommodations on a recurring basis (e.g., the assistance of sign language interpreters or readers) do not require a request form for each request. The reasonable accommodation request form is required only for the initial request, although appropriate notice may be required each time a recurring accommodation is needed.

### C. The Interactive Process

1. The reasonable accommodation process is interactive, meaning the Requester, his or her representatives, if any, and the Deciding Official will discuss the accommodation request, the functional limitations of the disability, and possible accommodations that effectively meet the individual's disability-related needs. Communication is a priority throughout the entire process. Counsel officials involved in the reasonable accommodation process should take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The employee or applicant requesting the accommodation should also participate, to the extent possible, in helping to identify an effective accommodation. Personnel involved in the interactive process should record their activities.
2. On-going communication is particularly important where the specific limitation, problem, or barrier is unclear, an effective accommodation is not obvious, or the parties are considering different possible reasonable accommodations. In cases where the disability, the need for accommodation, and type of accommodation that should be provided are clear, extensive discussions are not necessary. Even so, the Deciding Official, the requester, and his or her representatives should talk to each other to make sure that there is a full exchange of relevant information.

### D. Determining Who Will Handle the Request

1. **Receiving Officials.** Typically the Receiving Official is the employee's immediate supervisor, another supervisor or manager in his/her immediate chain of command, the EEO office, or other office designated to oversee the reasonable accommodation process. In connection with the application process, the HR Specialist or any agency employee with whom the applicant has contact during the application process, or any other individual designated by the Office, may be the Receiving Official.

2. **Deciding Officials.** An individual who has authority to determine whether a requested accommodation will be provided. The Deciding Official is generally the employee's first-level supervisor or any supervisor in the employee's chain of command or servicing Human Resources (HR) Officer for applicants. The Deciding Official may differ depending on whether the request is initiated by an employee or an applicant, or type of accommodation being requested. For example, the Deciding Official could be as follows:
  - a. the Human Resources Specialist responsible for the recruitment and/or selection process if the request for accommodation is from an applicant;
  - b. the Counsel Disability Program Manager if the accommodation requested is for adaptive equipment, a reader or sign language interpreter, removal of an architectural barrier, accessible parking, or materials in alternative formats. Call the EEO Office's Main Line at (202) 317-6858;
  - c. the head of office or his/her designee where the accommodation requested involves personnel actions; or
  - d. the immediate supervisor or the head of office if the accommodation requested is within the scope of their authority, such as granting an alternate work schedule, purchasing an ergonomic keyboard, or granting extended breaks.

Receiving and Deciding Officials shall ensure procedures are in place to provide back-up coverage to continue receiving, processing, and providing reasonable accommodations when they are unavailable. The time frames discussed in section H will not be suspended or extended because of the unavailability of the Receiving or Deciding Official.

3. **Counsel EEO Office.** The EEO Office shall be available to obtain necessary medical documentation and provide any other assistance required to make an accommodation decision.
4. **Counsel Disability Program Manager.** The Disability Program Manager shall be available, as needed, to provide assistance to employees, human resources officials, and Deciding Officials in processing requests for reasonable accommodation.

## E. Reassignment and Other Position Changes as an Accommodation

1. Reassignment is an accommodation of last resort. Reassignment will only be considered if a determination is made that no other reasonable accommodations are available to enable the individual to perform the essential functions of his or her current job, or if the only effective accommodation would cause undue hardship. The Office is not obligated to create a position for the purpose of reassignment.
2. If it is determined an employee cannot perform the essential functions of his or her position with or without a reasonable accommodation, the appropriate agency officials<sup>1</sup> must review vacancies for which the employee is qualified to determine if there is another position at the same or lower grade which the employee can perform. Reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such a position, is a reasonable accommodation. The Office will review vacancies for **30 business days** before expanding the search to other bureaus. See E.4., of this process.
3. In considering whether there are positions available for reassignment, the Office should identify:
  - a. all funded vacant positions within the Office for which the employee may be qualified, with or without reasonable accommodation; and
  - b. all funded positions which the Counsel Human Resources Office has reason to believe will become vacant over the next **30 business days** and for which the employee may be qualified.

The Office may ask the employee to update his/her resume and identify what grade(s) and locations the employee will accept. The Office will first focus on positions which are equivalent to the employee's current job in terms of grade, pay and other relevant factors. If there is no vacant equivalent position, the Office should complete E.4 of this process. If the employing office identifies a vacant position at a lower grade level, the Human Resources Office must hold that position until the Office of Chief Counsel's Disability Program Manager conducts a search in other Treasury bureaus for a position at the employee's current grade level.

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<sup>1</sup> The Bureau's Human Resources Office is responsible for reviewing qualifications and making the final decision on whether an employee has the requisite qualifications for a position.

***The Office may not consider positions at a higher grade or positions with known promotional potential greater than the employee's current position. The employee is entitled to apply for such a position under any competitive process.***

4. As required by law, a search must be conducted Treasury-wide; however, before a request is sent to the Department's Disability Program Manager for assistance in a Treasury-wide search, the "employing" bureau HR Official must certify in writing:
  - that a search for all funded vacant positions for which the employee is qualified, with or without a reasonable accommodation, was conducted for a period of 30 business days;
  - that no equivalent position was identified or a position at a lower grade was identified; and
  - that there are no equivalent vacant positions that HR has reason to believe will become vacant over the next 30 business days for which the employee may be qualified.

In addition, the employing bureau must request and submit the employee's updated resume to the Department's Disability Program Manager, who will coordinate a search for a position for an additional **30 business days**. If there is no vacant equivalent position and the Office of Chief Counsel is not holding a position at a lower grade level (see E.3, of this process), the Department will consider vacant lower graded positions for which the individual is qualified.

**NOTE: The employee must provide an updated resume to assist the Agency in conducting a Department-wide search. The Office must explain to the employee that his/her failure to provide an updated resume could result in the agency's inability to identify positions for which s/he may be qualified.**

5. Counsel's HR and the EEO Officer should maintain a record of the search conducted.
6. Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, the Office is not required to pay for the employee's relocation costs.

7. Once a reassignment offer has been made, the employee has up to **14 business days** to accept or decline the offer.
8. If no vacant positions for which the employee is qualified are located, the Office has **30 business days** from the date of the Department's notification to issue the employee a final decision letter explaining why reassignment as a reasonable accommodation could not be provided.
9. In accordance with 29 CFR 1614.203 (d)(3)(i)(B), reassignment to a vacant position for which an employee is qualified and not just permission to complete for such a position, is a reasonable accommodation.

**F. Requests For Medical Information**

1. In some cases, the disability and need for accommodation will be obvious or otherwise already known to the Deciding Official. In these cases, further medical information will not be sought. However, when a disability and/or need for reasonable accommodation is not obvious or otherwise already known to the Deciding Official, the Office may require that the individual provide reasonable medical documentation about the disability and his/her functional limitations.

**PLEASE NOTE:** Any request for medical information must comply with the Genetic Information Nondiscrimination Act (GINA) of 2008.

<http://www.eeoc.gov/laws/types/genetic.cfm>

2. If the Deciding Official believes medical information is necessary to evaluate a request for a reasonable accommodation, he/she should contact the Counsel EEO Officer, who will obtain the necessary medical documentation to make an accommodation decision.
3. If a determination is made to seek medical information, information will be requested sufficient to substantiate the individual has a disability as defined by laws and regulations. **Documentation unrelated to the claimed disability should not be requested.** Requests for medical information will follow the requirements set forth in EEOC's Enforcement Guidance: "*Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act,*" available at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>.

4. The EEO Officer or his/her designee will seek information or documentation about the disability and/or functional limitations from the individual, and/or ask the individual to obtain such information from an appropriate health care professional, such as a doctor, social worker, or rehabilitation counselor. When deciding whether it is necessary to seek any or additional medical information from an employee's health care provider, agency officials may first consider that the employee him or herself is qualified to discuss his or her limitations and his or her medical conditions. To get the most helpful information, all requests for information should describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information.
5. Once medical documentation is received, the EEO Office and any other appropriate Office of Chief Counsel official will evaluate the documentation. If the information provided by the health care professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the Office to determine whether an accommodation is appropriate, the Office may ask for further information. The EEO Officer should explain to the individual seeking the accommodation, in specific terms, why the information provided is insufficient, what additional information is needed, and the reason the information is necessary for a determination of the reasonable accommodation request. The individual may then ask the health care or other appropriate professional to provide the missing information.
7. Agency officials generally should not contact a health care professional directly. Any contact with a health care professional should be discussed in advance with General Legal Services, Labor and Employee Relations, and the EEO Officer as appropriate. Alternatively, the individual requesting the accommodation may agree to sign a limited release, giving the EEO Officer or designee permission to submit a list of specific questions to the individual's health care professional or contact the individual's doctor.
8. In some cases, the individual requesting the accommodation will supply medical information directly to the Deciding Official without being asked. In these cases, the Deciding Official will adhere to III (G) of this process, and forward documents in a sealed envelope to the EEO Officer.
9. Failure by the individual requesting accommodation to provide appropriate documentation or to cooperate in the efforts to obtain such documentation may result in a denial or delay of the reasonable accommodation.

## G. Confidentiality and Disclosure

All medical information, including information about functional limitations and reasonable accommodation needs, obtained in connection with a request for reasonable accommodation, **must be kept confidential**. The information shall be kept in files separate from the individual's official personnel file. In addition, employees who obtain or receive such information are strictly bound by these confidentiality requirements. The information may be disclosed only to the following individuals:

1. Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and the necessary accommodation(s), but medical information should only be disclosed if necessary.
2. First aid and safety personnel, when appropriate, if the disability might require emergency treatment or special arrangements in emergency situations such as building evacuations.
3. Government officials when the information is necessary to investigate compliance with the Rehabilitation Act.
4. In certain circumstances, to workers' compensation offices or insurance carriers.
5. Treasury or IRS Office of Chief Counsel officials in connection with the provision of legal advice to agency officials.
6. Where the Office determines that it needs a diagnosis or prognosis, the Office will provide the name and contact information of the Designated Medical Information Official (DMIO), who will be a medical professional, and will inform the employee that he or she has the option to provide that information to the DMIO. The DMIO is authorized to share only the relevant facts with the appropriate manager. NTEU 2018 Agreement, Article 20, Section 9. The DMIO is chosen and paid at the agency's expense.



Whenever medical information is disclosed, the individual disclosing the information must inform each recipient of the information about the confidentiality requirements attached.

## H. **Granting Reasonable Accommodations and Time Frames for Processing Requests.**

**1. Granting a Reasonable Accommodation Request.** As soon as the Deciding Official determines a reasonable accommodation will be provided, the decision should be immediately communicated to the individual by the Deciding Official. If the accommodation cannot be provided immediately, the Deciding Official must inform the individual of the projected time frame for providing the accommodation. A Deciding Official or supervisor may take temporary or permanent measures, such as providing assistive technology or altering the physical layout of an office, to facilitate the work of an employee.

**2. Time Frames for Processing Request.** The time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. At a minimum, however, requests shall be processed as follows:

### a. **Requests Not Involving Extenuating Circumstances**

(1) **If the request does not require obtaining supporting medical information**, the request shall be processed and a decision to grant or deny the request must be provided as soon as possible but not more than **twenty (20) business days**, absent extenuating circumstances, from the date the request was initially made.

(a) Accommodations that might easily be provided within the 20-day time frame may include:

(i) An employee with HIV infection must take medication on a strict schedule. The medication causes extreme nausea about one hour after ingestion, and he/she requests two 20 minute breaks a day when the nausea occurs.

(ii) An employee who takes anti-depressants that make it hard for him/her to get up in time to get to the office at 9:00 a.m., requests he/she be allowed to start work at 10:00 a.m. and still work a full day.

(iii) A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks the agenda be distributed ahead of time because the disability makes reading difficult and he/she needs more time to prepare.

Note: In accordance with 29 CFR 1614.203(d)(3)(i)(O), when a particular accommodation can be provided in less than the maximum amount of time permitted, failure to provide the accommodation in a prompt manner may result in a Rehabilitation Act violation.

(2) **If the request requires obtaining supporting medical information** to determine whether the requesting individual has a disability and/or to identify the functional limitations, then:

(a) The Receiving Official will request documentation as soon as possible after his/her receipt of the request for accommodation, but before the expiration of the 20-day period. Thereafter, the 20-day period timeframe is suspended until sufficient medical documentation is received. The Office of Chief Counsel recognizes the need for documentation may not become apparent until after the interactive process has begun.

#### **b. Requests Involving Extenuating Circumstances**

(1) When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as deemed necessary. All officials are expected to act as quickly as reasonably possible in processing requests and providing accommodations. The following are examples of extenuating circumstances:

(a) The purchase of equipment may take longer than **20 (twenty) business days** because of requirements under the Federal Acquisition Regulations and EEOC Order 360.001, Acquisition Policies and Procedures.

- (b) Equipment is back-ordered; the vendor typically used for goods or services has unexpectedly gone out of business; or the vendor cannot promptly supply the needed goods or services, and another vendor is not immediately available.
  - (c) The employee with a disability needs to try working with equipment on a trial basis to ensure it is effective before the Office buys the equipment.
  - (d) New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.
- (2) Where extenuating circumstances are present, the Deciding Official must notify the individual, in writing, of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes should also be communicated promptly to the individual.
- (3) If there is a delay in providing an accommodation that has been approved, the Deciding Official must decide whether temporary measures can be taken to assist the employee. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. In addition, the Deciding Official may authorize measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if:
- (a) they do not unreasonably interfere with the operations of the Office of Chief Counsel; and
  - (b) the employee is clearly informed that the relief/alternative is being provided only on a temporary basis.

For example, there may be a delay in receiving adaptive equipment for an employee with vision impairment. During the delay, the supervisor might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.

- (c) If a delay is attributable to the need to obtain or evaluate medical documentation and the Office has not yet determined the individual is entitled to an accommodation, the Office may also provide an accommodation on a temporary basis. In such a case, the Deciding Official will notify the individual **in writing** that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.
- (d) Deciding Officials who approve such temporary measures are responsible for ensuring they do not take the place of a permanent accommodation and that all necessary steps to secure the permanent accommodation are being taken.

#### **I. Expedited Processing.**

In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a time frame that is shorter than the **20 (twenty business days)** discussed above. Examples include:

1. **An applicant applying for a job.** Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure an applicant with a disability has an equal opportunity to apply for a job. Therefore, the Office needs to move as quickly as possible to make a decision and, if appropriate, provide a reasonable accommodation.
2. **An employee attending a meeting scheduled to occur shortly.** For example, an employee may need a sign language interpreter for a meeting scheduled to take place in **5 (five) days**.

#### **IV. Denying a Reasonable Accommodation Request**

**Denial of Reasonable Accommodation Request.** When a Deciding Official decides to deny a request for reasonable accommodation, he/she must issue a written decision to the individual who requested the accommodation, with a copy to the Counsel EEO Officer. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial.

- A. Where the Deciding Official has denied a specific requested accommodation, but offered an alternative which was not agreed to during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons the Deciding Official believes the chosen accommodation will be effective.
- B. A denial of a request for reasonable accommodation must **include specific reasons for the denial**. Explanation(s) may include the following:
1. Requestor does not meet the definition of an individual with a disability, as defined in §501 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), as amended by the Americans with Disability Act Amendments Act (ADAAA) or medical documentation is inadequate to establish the individual has a disability and/or needs a reasonable accommodation.
  2. The requested accommodation would not be effective.
  3. Providing the requested accommodation would result in undue hardship. Before reaching this determination, the Deciding Official must have explored whether other effective accommodations exist which would not impose undue hardship and therefore could be provided.  
  
A determination of undue hardship means the Office finds that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of the Office of Chief Counsel's operations. When evaluating budgetary or administrative concerns to determine if undue hardship exists, the Office will follow the standards outlined in the regulations and in the "Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act".
  4. The requested accommodation would require the removal of an essential function.
  5. The requested accommodation would require the lowering of a performance or production standard.
- C. The written notice of denial must also inform the individual that he/she has the right to file an EEO complaint and may have rights to pursue Merit Systems Protection Board (MSPB) and/or union grievance procedures. The notice must also explain Counsel procedures available for dispute resolution.

## V. Dispute Resolution

- A. Pursuing dispute resolution procedures, including seeking reconsideration from the Deciding Official and filing an appeal, **does not toll the time limits for initiating claims under any collective bargaining agreement or the EEO complaint process.**
- B. Employees may pursue the “informal” dispute resolution process in Section V.C and V.D below, and/or elect to pursue the matter formally through a grievance or EEO complaint procedures. **If an employee elects informal resolution under V.C and V.D below, they should be aware that the informal process does not toll the time limits for initiating claims under any collective bargaining agreement or the EEO complaint process.** Failure to adhere to the timeframes in the grievance or EEO complaint process may result in a waiver of the employee’s right to avail himself or herself of those procedures.
- C. Under Counsel’s procedures for dispute resolution, the individual may first ask the Deciding Official to reconsider the decision within **10 (ten) business days** of receiving the written denial to provide reasonable accommodation (informal dispute resolution). Any request for reconsideration received after 10 (ten) business days of the denial will be treated as a new request. The individual may present additional information in support of his/her request. The Deciding Official will respond to the request for reconsideration within **5 (five) business days.**
- D. If the Deciding Official does not reverse the decision, the individual may appeal the decision within **10 (ten) business days** of receiving the Deciding Official’s denial of the request for reconsideration. The appeal shall be decided by the Associate Chief Counsel and Deputy Associate Chief Counsel, Finance and Management. A response to the appeal will be issued to the individual within **10 (ten) business days.**

## VI. Information Tracking and Reporting

A. Information Tracking. The EEO Office will maintain current records related to an individual's request for a reasonable accommodation for the duration of the employee's tenure with Counsel. The Receiving Official or appropriate management official will be provided with electronic access to the individual's reasonable accommodation request and be able to track the request until fulfillment.

1. Employees may track their request by contacting the EEO Office or their assigned Office Manager or Administrative Officer.
2. Applicants may track their request by contacting the EEO Office.

B. Record Keeping

1. The agency collects and maintains the following information with respect to reasonable accommodation requests: The specific reasonable accommodation requested, if any;
2. The job (occupational series, grade level, and agency component) sought by the requesting applicant or held by the requesting employee;
3. Whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment;
4. Whether the request was granted (which may include an accommodation different from the one requested) or denied;
5. The identity of the deciding official;
6. If denied, the basis for such denial; and
7. The number of days taken to process the request.

B. Reporting. The Counsel EEO Officer will annually evaluate and report on the reasonable accommodation program. An effective reasonable accommodation program is part of a model EEO program and must be included in the MD-715 report. The executive summary of Counsel's MD-715 report should include a discussion of the following:

1. accessibility of the reasonable accommodation policy to employees and applicants with or without a disability, e.g., posted on the Internet, Intranet, disseminated in employee handbooks, or available in alternative formats, such as Braille;

2. the number of reasonable accommodation requests approved; of that, the number approved within the timeframes set out in Counsel procedures; and
3. the number of reasonable accommodation requests denied.

## **VII. Relationship of Procedures to Statutory and Collective Bargaining Claims**

- A. Executive Order 13164 does not create, modify or limit the rights of applicants or employees under the Rehabilitation Act or any other law. The policy and requirements described in these procedures are in addition to statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. The requirements governing statutory and collective bargaining claims, including time frames for filing such claims, remain unchanged.
- B. For bargaining unit employees, this reasonable accommodation policy is to be interpreted in accordance with the Counsel – NTEU 2018 Agreement.
- C. An individual who chooses to pursue other available remedies must comply with the following:
  1. **EEO Complaint.** Contact an EEO counselor within **45 days** from the date of receipt of the Deciding Official's written notice of denial;



2. **Collective Bargaining Claim.** File a grievance **within 30 days after the incident giving rise to the grievance or within 30 days after the grievant became aware of the matter**, in accordance Collective Bargaining Agreement; or
3. **MSPB Appeal.** Initiate an appeal within **30 days** of an appealable adverse action as defined in 5 C.F.R. §1201.3.

Appendix A—Reasonable Accommodation Request Form

Appendix B—Reasonable Accommodation Decision Form

(For EEO Office use only)  
RA Number:

Return Form to EEO Office

### Reasonable Accommodation Request Form

To be completed by employee, applicant, representative, or receiving official.

Note: Employee is not required to fill out form.

Request Date

Name

Phone Number

Email

Business Unit

Occupational Series

Grade

Post of Duty

Work Address

Supervisor's name

Phone Number

Email address

Office Manager or Administrative Officer's Name

Phone Number

Email address

Briefly describe the specific accommodation requested, if known, and whether it will likely be a repeated request, e.g. sign language interpreter. Be as specific as possible, e.g. computer equipment, modified furniture, schedule change. If the requested accommodation is time sensitive, please explain.

Briefly describe the medical reason for the requested accommodation.  
Attach your medical documentation to support your request, if any.

Employee/Applicant/Representative's Signature

(For EEO Office use only)  
RA Number:

Return Form to EEO Office

**Reasonable Accommodation Decision Form**

(To be completed by the Deciding Official, but only after speaking to EEO Office.)

Accommodation approved as specifically requested

Accommodation approved but different from original request. Alternative accommodation offered was

Accepted

Rejected

Please describe the alternative accommodation provided. Explain why the original accommodation requested was not provided and why the alternative accommodation would be more effective.

Accommodation denied because (check all that apply):

Individual does not meet the definition of an individual with disability as defined under the Rehabilitation Act and the Americans with Disabilities Act Amendments Act (ADAAA)

Accommodation ineffective/inappropriate

Accommodation would cause an undue hardship

Employee rejected an alternative accommodation

Medical documentation inadequate

Accommodation would require removal of essential functions of the job

Accommodation would require lowering of performance or production standard

Other (please explain)

Detailed reason(s) for the denial of reasonable accommodation (e.g. explain specifically why an accommodation would be ineffective or cause undue hardship) Please seek advice from EEO Office before finalizing these detailed reasons:

If the individual did not accept an alternative accommodation, explain how the alternative accommodation addresses the limitation, and why you believe the chosen accommodation would be effective.

#### Deciding Official's Signature

If an individual wishes reconsideration, he/she should first ask the Deciding Official to reconsider the decision within 10 (ten) business days of receiving the written denial to provide reasonable accommodation. Any request for reconsideration received after 10 (ten) business days of the denial will be treated as a new request. The individual may present additional information in support of his/her request. The Deciding Official will respond to the request for reconsideration within 5 (five) business days. If the Deciding Official does not reverse the decision, the individual may appeal the decision within 10 (ten) business days of receiving the Deciding Official's denial of the request for reconsideration. The appeal shall be decided by the next level manager in the Deciding Official's chain of command or other senior official in the Deciding Official's chain of command. A response to the appeal will be issued to the individual within 10 (ten) business days.

An individual who chooses to pursue other available remedies must comply with the following:

- EEO Complaint—Contact the EEO Office within 45 days from the date of receipt of the Deciding Official's written notice of denial;
- Collective Bargaining Claim—File a grievance within 30 calendar days in under the provisions of the current effect Counsel/NTEU Agreement; or

- MSPB Appeal—Initiate an appeal within 30 days of an appealable adverse action as defined in 5 C.F.R. §1201.3. If you wish to file an EEO complaint, you must contact your local EEO Office within 45 calendar days from the date of receipt of the Deciding Official's written denial of accommodation.