



## Civil Rights & Diversity Issuance System



## CRD – 009 Interim Voluntary Modification and Reasonable Accommodation Policy

Date: October 23, 2018

1. **PURPOSE.** To establish Departmental policy and procedures for processing requests for reasonable accommodation and, where appropriate, for providing voluntary job modification or reasonable accommodation to employees and applicants with disabilities.
2. **SCOPE.** The provisions of this Chapter apply to all bureaus, offices, and organizations in the Department of the Treasury. The policies and procedures contained herein apply to all bureaus and offices of the Department of the Treasury, and to all employees and applicants for employment with the Department and its bureaus and offices. The authority of the Inspectors General is set forth in Section 3 of the Inspector General Act and the Internal Revenue Service Restructuring and Reform Act, and defined in Treasury Order 114-01 (OIG) and Treasury Order 115-01 (TIGTA), or successor orders. The provisions of this policy shall not be construed to interfere with that authority.

*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), EEOC Policy Guidance on Executive Order 13164, Establishing Procedures for Providing Reasonable Accommodation for Individuals with Disabilities, and 29 C.F.R. 1614.203, Rehabilitation Act. All documents are available on EEOC's internet site at [www.eeoc.gov](http://www.eeoc.gov).*

3. **POLICY.** It is the policy of the Department of the Treasury to provide reasonable accommodations to employees and applicants for employment in order to assure that individuals with disabilities enjoy full access to equal employment opportunity (EEO). The Department shall provide reasonable accommodations for the known physical or mental limitations of otherwise qualified employees and applicants with disabilities, unless the Department can demonstrate that a particular accommodation would impose an undue hardship on the operation of its programs. The Department continues to strive to be an employer of choice that values its employees and applicants. To ensure the Department 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 to do so.

4. **RESPONSIBILITIES.**

a. The Office of Civil Rights and Diversity shall:

- (1) Develop and issue policy and procedures governing the provision of reasonable accommodation;
- (2) Advise Department and bureau officials regarding laws, regulations, executive orders and Departmental policy related to the provision of reasonable accommodation;
- (3) Ensure compliance with the governing laws, regulations, executive orders and Departmental policy related to the provision of reasonable accommodation; and,
- (4) Review each bureau's Reasonable Accommodation policy and forward to EEOC in accordance with Executive Order 13164.
- (5) Ensure a firewall is maintained between the Reasonable Accommodation Program Manager and the EEO Director. If the reasonable accommodation program resides within the EEO Office, the EEO Director cannot be involved in the day to day operations of the bureau RA Program and does not make decisions on granting or denying RA requests. If the EEO Director is not involved in the decision-making process of the reasonable accommodation program, then the agency has established a sufficient firewall.

b. Heads of Bureaus will:

- (1) Develop and issue procedures for processing requests for and providing reasonable accommodation, consistent with governing laws, regulations, executive orders, EEOC directives, and Departmental policy;

- (2) Ensure supervisors, managers, human resources and EEO officials understand their obligations with respect to the provision of reasonable accommodation;
- (3) Ensure that reasonable accommodation is provided to qualified individuals with disabilities in accordance with the bureau's procedures, i.e., processing in a timely, efficient, and fair manner;
- (4) Ensure the confidentiality of medical information, including information regarding functional limitations and reasonable accommodation needs, obtained in connection with a request for reasonable accommodation;
- (5) Ensure the bureau's reasonable accommodation policy and procedures are readily accessible to all employees and applicants for employment. The policy and procedures shall be posted on the bureau's internet, intranet website and in designated locations such as bureau libraries, EEO Offices, and human resource offices;
- (6) Ensure policy and procedures are accessible in alternative formats, such as large print or Braille, on request;
- (7) Inform individuals with disabilities about their rights and responsibilities under the Rehabilitation Act;
- (8) Develop systems to track and report on the provision of reasonable accommodation; and,
- (9) Submit the bureau's policy and procedures (or any modification thereof) for processing reasonable accommodation requests to the Director, Office of Civil Rights and Diversity (OCRD), for review and transmittal to EEOC.

6. **AUTHORITIES.**

- a. 29 C.F.R. §1614.203, "Rehabilitation Act."
- b. 42 U.S.C. §12101, "Americans with Disabilities Act (ADA) of 1990."
- c. Public Law 110-325, Sept. 25, 2008, "ADA Amendments Act of 2008 (ADAAA)."
- d. 29 C.F.R. §1630, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as amended."

7. **REFERENCES.**

- a. 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.
  - b. 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.
  - c. 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.
  - d. Equal Employment Opportunity Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (October 17, 2002), clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship.
  - e. Americans with Disabilities Act Amendments Act (ADAAA) of 2008, Public Law 110-325 ADAAA, effective 2009 focuses on the discrimination at issue instead of the individual's disability. Equal Employment Opportunity Commission issued its final regulations on the ADAAA on March 25, 2011, which became effective on May 24, 2011.
  - f. EEOC Final Rule: Affirmative Action for Individuals with Disabilities in Federal Employment.
9. **CANCELLATION.** HCIS, Chapter 900, Transmittal Number: TN-12-002OEOP, dated November 15, 2011, subject Voluntary Modification and Reasonable Accommodation Policy and Procedures
10. **OFFICE OF PRIMARY INTEREST.** Office of the Assistant Secretary for Management, Office of Civil Rights and Diversity.

## Office of Civil Rights and Diversity Issuance Publication (CRD-009)

### Procedures for Voluntary Modification and Reasonable Accommodation

This issuance of this Civil Rights and Diversity Publication (CRD P) has been authorized by CRD-009, "Policy for Voluntary Modification and Reasonable Accommodation" (TBD).

This CRD P provides further directions to all bureaus, offices, and organizations in the Department of Treasury (Department) for compliance with CRD-009. Contact the Office of the Assistant Secretary for Management and Office of Civil Rights and Diversity for questions and guidance.

1. **PROCEDURES**. This issuance establishes the Departmental procedures for processing requests for Voluntary Modifications and Reasonable Accommodations as established by the CRD-009, dated TBD.
2. **DEFINITIONS**

**Deciding Official.** An individual who has authority to determine whether a requested accommodation will be provided.

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

**Disability.** For the purposes of providing a reasonable accommodation, "disability" is defined as a physical or mental impairment that substantially limits one or more of the major life activities or a record (or past history) of such an impairment.

**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 Function.** Those 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.

**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 (e.g., identified software is not compatible with existing equipment).

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

**Individual with a Disability.** For the purpose of providing a reasonable accommodation, an “individual with a disability” is defined as a person who has a physical or mental impairment that substantially limits one or more of that person's major life activities or who has a record of such an impairment.

**Interactive Process.** The process by which the individual requesting an accommodation and the Deciding Official discuss the request for accommodation, determine whether an accommodation will be provided, and 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, eating, sleeping, communicating, bending, lifting, concentrating, learning, working, and the operation of major bodily functions.

**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.** An adjustment or alteration that enables an otherwise qualified individual with a substantially limiting impairment or a record of such an impairment to apply for a job, perform job duties, or enjoy benefits and privileges of employment. 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).

**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 and for employees who are qualified to fill the vacant position. If the employee is qualified for the position, he/she will be reassigned to the job and will not have to compete. Informing an employee that s/he may apply for or otherwise compete for a position does not satisfy the obligation to reassign.

**Receiving Officials.** Treasury personnel designated to officially receive a request for reasonable accommodation from an employee or applicant (or an individual acting on his/her behalf), determine who will handle the request (the Deciding Official), and monitor the request until it is closed.

**Request for Reasonable Accommodation.** A statement that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition. A reasonable accommodation request may be submitted orally or in writing, by the employee or applicant or by someone associated with the employee or applicant.

**Requester.** A qualified employee, an applicant with a disability, or an individual acting on his or 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'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. When evaluating the cost of an accommodation as a potential barrier to granting a reasonable accommodation, the deciding officials must consider all resources available to the Department of the Treasury as a whole, excluding those funds designated by statute for a specific purpose that does not include reasonable accommodation.

**Voluntary Modification.** An adjustment or alteration granted outside of the reasonable accommodation process without requiring the individual to establish that he/she 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 glare protector. Provisions of a voluntary modification does not mean that the Department considers the individual to be an individual with a disability as defined herein or regarded as such.

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

3. **VOLUNTARY MODIFICATIONS.** Upon request for an accommodation, a manager or any designated official with 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 Department 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.

Typically, a voluntary modification will not require supporting medical documentation. However, if medical documentation is necessary for a voluntary modification, the documentation requirement must be minimal and straightforward in nature. If the medical information provided necessitates interpretation, a medical opinion and/or a medical release, the request shall be considered and processed as a request for a reasonable accommodation.

**NOTE: If a voluntary modification is not granted or if it is not quick and easy with or without minimal medical documentation, the request must be treated as a reasonable accommodation request.**

Making a voluntary modification does not, standing alone, mean, and may not be used to imply, that the Department has determined that the individual is an individual with a disability or that an accommodation is needed.

- a. Examples of voluntary modifications that can easily be provided outside of the reasonable accommodation process include:
  - 1) An applicant requests the vacancy announcement in large print.
  - 2) An employee asks for four breaks a day to test his/her blood sugar levels
  - 3) An employee requests an ergonomic keyboard.
  - 4) An employee requests a footrest to elevate his/her legs to decrease swelling in his/her legs and feet.

#### 4. **REASONABLE ACCOMMODATION REQUEST**

##### 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.) The request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act" nor does the requestor need to have an accommodation in mind before making the request. *For example, an employee may mention 'My back starts hurting whenever I am sitting at my desk.' Although the employee has not directly requested an accommodation, this comment should be considered as a possible request for an accommodation.* An individual with a disability may request a reasonable accommodation at any time, even if he/she has not previously disclosed the existence of a disability. Agency officials must begin processing the request as soon as the request is received, regardless of how the request was made. Each request requires a response, but does not necessarily mean the employer is required to provide the accommodation.
- 2) **The individual's request must be considered** when an employee makes a request to (a) his/her immediate supervisor; (b) a supervisor or manager in his/her immediate chain of command; (c) the EEO Office; or, (d) any office designated to oversee the reasonable accommodation process. When an applicant makes a request, it will be considered if made to any agency employee with whom the applicant has contact in connection with the application process or any other individual designated by the bureau.
- 3) **A family member, friend, health care professional, or other representative 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 II (A)(2). If possible, the individual with a disability should be contacted to confirm that he/she in fact wants a reasonable accommodation. The individual with a disability may decline to make a request or refuse to accept an accommodation.

b. Written Requests for Record Keeping Purposes

- 1) As noted in II (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 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. (A sample is provided at Appendix B-1.)
- 2) **A written confirmation request form is not required** when an individual needs a reasonable accommodation on a recurring basis (e.g., the assistance of sign language interpreters or readers). The written confirmation form is required only for the first request although appropriate notice may be required each time a recurring accommodation is needed.

c. The Interactive Process

- 1) Communication is a priority throughout the entire process. Bureau officials involved in the provision of reasonable accommodation should take a proactive approach in searching for 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 there are 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 and requester should talk to each other to make sure that there is a full exchange of relevant information.

d. Determining Who Will Handle the Request

Bureaus must provide contact information for the individual or program office, e.g., Reasonable Accommodation Coordinator and the Human Resources Office which requesters may contact regarding the status of their request for RA and/or their final decision.

- 1) **Receiving Officials.** Bureaus must: (a) designate a Receiving Official(s) to receive requests, (b) determine who will be responsible for handling requests (typically the Deciding Official), (c) forward requests to the Deciding Official, (d) if applicable, notify the bureau Equal Employment Opportunity (EEO) office, and (e) monitor requests through closure. Typically the Receiving Official is the employee's immediate supervisor, another supervisor or manager in the employee's immediate chain of command, the Equal Employment Opportunity (EEO) office, or another office designated to oversee the reasonable accommodation process. For an applicant, any agency employee with whom the applicant has contact during the application process, or any other individual designated by the bureau, may be the Receiving Official.

- 2) **Deciding Officials.** Each bureau shall designate those officials delegated principal responsibility for identifying possible accommodations and determining whether an accommodation will be provided. The Deciding Official may be different 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 bureau Human Resources Specialist responsible for the recruitment and/or selection process if the request for accommodation is from an applicant;
  - b) the bureau 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;
  - 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.

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

- 3) **Bureau EEO Office.** The EEO Office or any office responsible for obtaining medical documentation shall be available to obtain necessary medical documentation and provide any other assistance required to make an accommodation decision. The EEO Office may share the employee's functional limitation(s) with the Deciding Official in order for the Deciding Official to determine the nature and extent of the limitations, as well as potential accommodation for those limitations. *See Section F for more guidance about medical information.*
- 4) **Bureau 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. Bureaus are not obligated to create a position for the purpose of reassignment. *Note: The inability to work for a particular supervisor is not a disability.*

- 2) If the bureau determines that an employee cannot perform the essential function of his or her position with or without a reasonable accommodation, the appropriate bureau 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 with or without an accommodation. *Note: Reassignment to a vacant position for which an employee is qualified, does not mean providing the employee permission to compete for such a position.* Bureaus may establish the time periods during which they will review vacancies, but must do so for a minimum of **30 business days** before expanding the search to other bureaus.
- 3) Since it may take a minimum of 30 business days to determine whether an appropriate vacant position exists, the employer and employee should discuss the employee's options during that period, i.e., use of accrued leave, use of unpaid leave, or a temporary assignment to a light duty position.
- 4) In considering whether there are positions available for reassignment, the bureau should identify:
  - a) all funded vacant positions within the bureau for which the employee may be qualified, with or without reasonable accommodation; and
  - b) all funded positions which the bureau's Human Resources Office has reason to believe will become vacant over the next **30 business days** and for which the employee may be qualified.

If applicable, a bureau may ask the employee to update his/her resume and identify what grade(s) and locations the employee will accept. The bureau 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 bureau should complete E.5., of this process. If the employing bureau identifies a vacant position at a lower grade level, the Human Resources Office must keep that position vacant until the Department's Disability Program Manager conducts a search in other Treasury bureaus for positions at employee's current grade level.

***Bureaus are not required to 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.***

- 5) Based upon EEOC's guidance, 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 (see sample at attachment C-1):
  - a) 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;
  - b) that no equivalent or lower grade positions were identified or if a lower graded position was identified, that position will be held until a Treasury-wide search is conducted for positions closer to the employee's grade level; and

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

- c) that there are no equivalent vacant positions that HR has reason to believe will become vacant over the next 30 days for which the employee may be qualified.

This information should be forwarded 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 bureau is not holding a position at a lower grade level (see E.4., of this process), the Department will consider vacant lower graded positions for which the individual is qualified. If the bureau is holding a position at a lower grade level, the Department will only search for positions at a higher grade level not to exceed the employee's current grade level (i.e., if the employee is a GS-12 and the bureau is holding a GS-7 position, the Department will only search for positions at the GS-8 thru GS-12 level).

**NOTE: To assist the Agency in conducting a Department-wide search the bureau should provide the employee an opportunity to submit an updated resume or a brief description of his/her current skills and accomplishments. The bureau must explain to the employee that his/her failure to provide such information could result in the agency's inability to identify positions for which he/she may be qualified.**

- 6) The bureau HR, EEO Officer, and the Department's Disability Program Manager should maintain a record of the search conducted.
- 7) 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 bureau is not required to pay for the employee's relocation costs unless bureau policy provides for such payments for non-disabled employees.
- 8) Once a reassignment offer has been made, the employee has up to **14 business days** to accept or decline the offer.
- 9) If no vacant positions for which the employee is qualified are available, the bureau 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.

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 bureau 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, as well as the laws, regulations, and guidance referenced in the "Authority" section above, and other applicable confidentiality requirements.

- 2) If the Deciding Official believes medical information is necessary to evaluate a request for a reasonable accommodation, he/she should contact the bureau EEO Officer or any office designated to obtain the necessary medical documentation to make an accommodation decision.

- 3) If a determination is made to seek medical information, the requested information should be sufficient to establish that the individual has a disability. **Documentation unrelated to the claimed disability should not be requested.** Bureau 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 the 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. 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 such as a position description.
- 5) Once medical documentation is received, the bureau EEO Office and any other appropriate bureau official will evaluate the documentation. The bureau EEO Office may also choose to have the medical information reviewed by a medical expert of the Agency's choosing at the Agency's expense. If the information provided by the health care professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the bureau to determine whether an accommodation is appropriate, the bureau may ask for further information. The EEO Officer or the designee 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.
- 6) Agency officials generally should not contact a health care professional directly. Any contact with a health care professional should be discussed in advance with bureau legal counsel and the EEO Officer as appropriate.
- 7) Alternatively, the individual requesting the accommodation may agree to sign a limited release, giving the EEO Officer or the 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 bureau EEO Officer or any office designated to receive medical information.
- 9) If the individual requesting accommodation does not provide appropriate documentation or does not cooperate in the bureau's efforts to obtain such documentation the bureau may deny the requested 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 and shall be stored in a separate locked cabinet and/or other password-protected 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) Deciding Officials, 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 absolutely 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 and bureau legal counsel in connection with providing legal advice to agency officials.

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

#### 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 communicated immediately 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. Taking such measures does not, standing alone, mean, and may not be used to imply, that the Department has determined that the individual is an individual with a disability or that any reasonable accommodation is needed.

- 1) **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 documentation. As a general rule, the Agency must process requests for reasonable accommodation as expeditiously as possible. Failure to provide an accommodation promptly, without good cause, even when within the maximum amount of time generally permitted, can result in a violation of the Rehabilitation Act. At a minimum, 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 the accommodation, if granted, provided as soon as possible but not more than **20 business days** from the date the request was initially made.

- (a) Examples of accommodations that can easily be provided within the 20-day time frame 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 put in an 8-hour day.
  - (iii) A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes reading difficult and he/she needs more time to prepare.
- (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, the following will apply:
- (a) the EEO Officer or any office designated 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 frozen until sufficient medical documentation is received. The Department 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. However, such extensions should be rare. All bureau 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 business days** because of requirements under the Federal Acquisition Regulations.
  - (b) Equipment is back-ordered; the vendor typically used by the bureau 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 bureau 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 Department and/or bureau; 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 a 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.

- (4) If a delay is attributable to the need to obtain or evaluate medical documentation and the bureau has not yet determined the individual is entitled to an accommodation, the bureau 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.
- (5) Bureau 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 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 bureau needs to move as quickly as possible to make a decision and, if appropriate, provide a reasonable accommodation.

**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 days**.

## 5. **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 bureau 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 decides to provide an alternate accommodation, the written decision should explain both the reasons why the specified accommodation wasn't provided and the reasons the Deciding Official believes the alternate accommodation will be effective.
- b. The written decision must **include specific reasons for the denial of a reasonable accommodation**. 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, and the Americans with Disabilities Act (ADA), as amended by the Americans with Disability Act Amendments Act (ADAAA) or the medical documentation is inadequate to establish the individual has a 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 bureau finds that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of the Department's operations. When evaluating budgetary and administrative concerns to determine if undue hardship exists, the bureau will consider all resources available to the Department as a whole and follow the standards outlined in the regulations and in the "Enforcement Guidance on Reasonable Accommodation; Undue Hardship Under the Americans with Disabilities Act; and, EEOC Final Rule: Affirmative Action for Individuals with Disabilities in Federal Employment".

- 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 decision denying a request for reasonable accommodation 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 bureau procedures available for dispute resolution.

## 6. DISPUTE RESOLUTION

- a. If an individual wishes reconsideration, he/she should first ask the Deciding Official to reconsider the decision within **10 business days** of receiving the written denial to provide reasonable accommodation. The individual may present additional information in support of his/her request. The Deciding Official will respond to the request for reconsideration within **5 business days**. Any request for reconsideration received after **10 business days** of the denial will be treated as a new request for a reasonable accommodation.
- b. If the Deciding Official does not reverse the decision, the individual may appeal the decision within **10 business days** of receiving the Deciding Official's denial of the request for reconsideration. The appeal shall be decided by the next level manager or any other senior official in the Deciding Official's chain of command. A response to the appeal will be issued to the individual within **10 business days**.
- c. Pursuing dispute resolution procedures, including seeking reconsideration from the Deciding Official and filing an appeal, **does not suspend the time limits for initiating claims under any collective bargaining agreement or the EEO complaint process**.

## 7. INFORMATION TRACKING AND EVALUATION

- a. The bureau EEO Officer will annually evaluate the bureau's reasonable accommodation program. An effective reasonable accommodation program is part of a model EEO program and results must be included in the bureau's MD-715 report. The executive summary of the bureau'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) bureau's must collect at a minimum:
    - a. the specific reasonable accommodation requested
    - b. the job (occupational series, grade level, and agency component) sought by the applicant or held by the employee requiring the accommodation
    - c. whether the request was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment
    - d. whether the request was granted or denied. If denied the basis for the denial
    - e. the identity of the deciding official
    - f. the number of days to process the request

8. **RELATIONSHIP OF PROCEDURES TO STATUORY 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. 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 in accordance with the provisions of the controlling 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.

Attachments

- CDR – 009 Voluntary Modification and Reasonable Accommodation Policy
- A1 – Sample Accommodation Request Form
- B1 – Sample Confirmation
- C1 – Sample Reassignment
- D1 – Sample Medical Inquiry