



USAID
FROM THE AMERICAN PEOPLE

OFFICE OF INSPECTOR GENERAL

AUDIT OF USAID's REASONABLE ACCOMMODATION POLICIES AND PROCEDURES

AUDIT REPORT NO. 9-000-06-003-P
DECEMBER 13, 2005

WASHINGTON, DC



USAID
FROM THE AMERICAN PEOPLE

December 13, 2005

MEMORANDUM

TO: Director, Office of Equal Opportunity Programs, Jessalyn L. Pendarvis

FROM: Director, Performance Audits Division, Steven H. Bernstein /s/

SUBJECT: Audit of USAID's Reasonable Accommodation Policies and Procedures (Report No. 9-000-06-003-P)

This memorandum transmits our final report on the subject audit. In finalizing the report, we considered your comments on our draft report and have included your response in their entirety as Appendix II.

The report includes five recommendations. Three of these recommendations concern revising, submitting and publishing USAID's reasonable accommodation policies and procedures in its Automated Directives System to comply with Executive Order 13164 and the Equal Employment Opportunity Commission guidance. The remaining two recommendations concern Equal Opportunity Program's need to establish a timeframe to update tracking information on a periodic basis to accurately reflect requests, elapsed processing time, final dispositions, and impact; and establish a schedule to periodically review management reports on reasonable accommodation requests to determine whether processing is occurring within required timeframes.

We consider that final actions have been taken to address our concerns regarding Recommendation Nos. 1 and 2. Regarding Recommendations Nos. 3, 4, and 5, we determined that the planned actions, when implemented, will address these recommendations. Accordingly, management decisions have been reached on each of these recommendations. Please coordinate final action on Recommendation Nos. 3, 4, and 5 with the Bureau for Management's Office of the Chief Financial Officer, Audit, Performance and Compliance Division.

I appreciate the cooperation and courtesy extended to each member of my staff throughout the audit.

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SUMMARY OF RESULTS

The Performance Audits Division of USAID's Office of Inspector General designed this audit to determine if USAID's reasonable accommodation policies and procedures were in compliance with Executive Order 13164 and Equal Employment Opportunity Commission guidance. (see page 3).

Over the past three years, USAID's reasonable accommodation policies and procedures had not been in compliance with Executive Order 13164 and Equal Employment Opportunity Commission guidance. Although USAID's Office of Equal Opportunity Programs (EOP) had drafted its reasonable accommodation guidance, and begun operating internally under the new guidance, EOP had not submitted the revisions to the Equal Employment Opportunity Commission for review or published the new reasonable accommodation guidance in USAID's Automated Directives System (ADS) in a timely manner. Further, EOP had not established a schedule to periodically review management reports on reasonable accommodation requests to determine whether processing is occurring within prescribed timeframes and had not updated or maintained their reasonable accommodation tracking report on a periodic basis to accurately reflect the status and disposition of the reasonable accommodation requests.

We made five recommendations to address the issues identified in this report. We recommended that EOP: revise USAID's guidance to comply with Executive Order 13164 and Equal Employment Opportunity Commission guidance (see page 6); submit USAID's revised reasonable accommodation policies and procedures to the Equal Employment Opportunity Commission for final review (see page 7); publish USAID's revised reasonable accommodation policies and procedures in the ADS (see page 7); establish a timeframe to update its tracking information on a periodic basis to accurately reflect requests, elapsed processing time, final dispositions and impact (see page 8); and establish a schedule to periodically review management reports of reasonable accommodation requests to determine whether compliance is occurring within required timeframes (see page 10).

In response to the draft report, EOP officials concurred with the findings and recommendations. EOP officials have taken final action on Recommendation Nos. 1 and 2 prior to the issuance of this report and management decisions have been reached for Recommendation Nos. 3, 4 and 5 (see page 12).

Management comments are included in their entirety in Appendix II.

BACKGROUND

On July 26, 2000, President William Jefferson Clinton signed Executive Order 13164 that required each Federal agency to establish effective written procedures for processing requests for reasonable accommodation. A reasonable accommodation is defined as a change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities. As an important part of the government's national policy to create additional employment opportunities for people with disabilities, Executive Order 13164 strengthens the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), as amended.¹

The Equal Employment Opportunity Commission (Commission), as the cognizant Federal agency, issued the *Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation* on October 20, 2000. The Commission identified three categories of reasonable accommodations as follows:

- Modifications or adjustments to a job 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);
- Modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job (such as providing sign language interpreters); and
- Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment, such as removing physical barriers in an office or other work-related environment.

The Commission also issued, *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*, which it revised October 17, 2002. This enforcement guidance clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship. The Commission defines "undue hardship" as significant difficulty or expense that focuses on the resources and circumstances of an employer as compared to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but also to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business. Among other things, the guidance examines the following attributes:

- What a "reasonable accommodation" means;
- Who is entitled to receive a "reasonable accommodation;"
- What constitutes a "reasonable accommodation request;"
- The form and substance of a "reasonable accommodation request;" and
- The employer's ability to ask questions and seek documentation for a "reasonable accommodation" request.

¹ The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) prohibits discrimination of individuals with disabilities in the federal sector. The Americans with Disabilities Act amends definitions of the Rehabilitation Act and further, requires an employer to provide reasonable accommodations for individuals with disabilities.

USAID, through its Office of Equal Opportunity Programs (EOP), published USAID's guidance on reasonable accommodations in its Automated Directives System (ADS) 110 and, in 2001, updated it to comply with the Executive Order. However, the Commission reviewed USAID's guidance in January 2002 and determined that USAID was not fully compliant with the Executive Order.

From June 1999 to June 2005, EOP processed 62 requests for reasonable accommodations. These requests fall into the general categories of computer equipment, travel accommodations, work schedule or work place changes, and mobility-related accommodations and/or office furniture modifications.

AUDIT OBJECTIVE

This audit was a part of the Office of Inspector General's Performance Audits Division's fiscal year 2005 audit plan and was conducted to answer the following question:

- Are USAID's reasonable accommodation policies and procedures in compliance with Executive Order 13164 and Equal Employment Opportunity Commission guidance?

Appendix I contains a discussion of the audit's scope and methodology.

AUDIT FINDINGS

For over three years, USAID's reasonable accommodation policies and procedures had not been in compliance with Executive Order 13164 and Equal Employment Opportunity Commission (Commission) guidance. Although USAID's Office of Equal Opportunity Programs (EOP) had drafted its reasonable accommodation guidance, and begun operating internally under the new guidance, EOP had not submitted the revisions to the Commission for review or published the revisions to the reasonable accommodation guidance in USAID's Automated Directives System (ADS) in a timely manner.

Specifically, the Commission identified seven subject area elements where USAID's proposed revisions did not appear to properly address requirements of the Executive Order regarding processing requests for reasonable accommodation, as shown in Appendix V. The Commission suggested revisions to these seven areas of USAID's guidance that included: (1) initiating the reasonable accommodation process; (2) establishing time limits; (3) requesting and receiving medical information; (4) granting reassignments; (5) denying reasonable accommodation requests; (6) tracking information; and (7) resolving disputes informally. The Commission also suggested several clarifications to USAID's proposed changes to its ADS guidance that may help to simplify language that could be misunderstood or confusing to a requestor in some of the subject areas. The revisions to USAID's guidance are discussed below.

EOP processed 52 reasonable accommodation requests between June 2002 and June 2005.² Of the 52 requests, EOP granted 26 requests and denied 11 requests because some requestors did not properly satisfy requirements for some of the subject area elements, such as for medical information. Specifically, EOP denied some of the accommodations requests because the requests were either not essential for the described medical condition; the medical condition did not qualify as a disability; medical documentation was insufficient; or because the accommodation would cause undue hardship or disruption to USAID's operations. For the remaining 15 requests for reasonable accommodation, 11 requestors withdrew their applications for EOP consideration and EOP's tracking report was incomplete for four of the requests as illustrated in Appendix III.³

EOP has experienced difficulties in the following four problem areas: 1) complying with Executive Order 13164 and the Commission guidance; 2) timeliness of processing accommodation requests; 3) updating and maintaining its reasonable accommodation tracking report; and 4) updating Information in USAID'S Automated Directives System, as discussed below.

² The Office of Equal Opportunity Programs processed 62 reasonable accommodation requests. Of the 62 requests, we excluded six requests that were upgrades to existing accommodations, three requests that were completed prior to 2002, and one request that was pending further adjudication by EOP, resulting in our review of 52 requests.

³ According to the EOP case files, some requestors withdrew their applications for reasonable accommodations because their issues were resolved before the EOP review process was completed. In a few other cases, the EOP files did not include information about the reasons that some requestors withdrew their reasonable accommodation requests.

The Office of EOP Should Revise, Submit for Review, and Publish USAID Guidance to Comply with Executive Order 13164 and Equal Employment Opportunity Commission Guidance

Summary: Although Executive Order 13164 required Federal agencies to establish effective written procedures to facilitate the provisions for reasonable accommodations and submit these procedures to the Commission within a year, EOP had not met this requirement because they had not updated its guidance and submitted it to the Commission for a subsequent review within the required timeframe. This occurred because of insufficient staffing and other competing priorities, according to EOP officials. As a result, USAID has not fully complied with Executive Order 13164 and the Equal Employment Opportunity Commission guidance for processing requests for reasonable accommodations for more than three years.

In July 2000, Executive Order 13164 (Executive Order) required Federal agencies to establish effective written procedures to facilitate the provisions for reasonable accommodations and submit the procedures to the Equal Employment Opportunity Commission (Commission) for review within one year. U.S. Government lawmakers envisioned that the Executive Order, among other things, would promote a model Federal workplace that provides reasonable accommodation for (1) individuals with disabilities in the application process for Federal employment; (2) Federal employees with disabilities to perform the essential functions of a position; and (3) Federal employees with disabilities to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

EOP submitted USAID's proposed policies and procedures to the Commission, as required. However, the Commission identified areas where USAID's proposed language did not meet the requirements of the Executive Order or the Commission's guidance. Specifically, the Commission indicated that in several instances, USAID guidance improperly required some documentation and/or actions from applicants and did not fully explain some requirements which may mislead USAID officials to incorrect conclusions. Although EOP received the Commission's comments on USAID's proposed revisions to its reasonable accommodation policies and procedures in January 2002, EOP had not revised, updated and published USAID's guidance, as of September 2005. After receiving the Commission's comments to USAID's reasonable accommodation policies, EOP forwarded the revised policy to the Bureau for Management, Administrative Services, Information and Records Division.⁴ The Information and Records Division (IRD) performed its review and subsequently sent its comments back to EOP for resolution in 2003. However, EOP did not expeditiously resolve the editorial or substantive changes recommended by the IRD or submit the updated information for a final revised reasonable accommodation policy to the Commission or publish the revised information in the Automated Directives System (ADS). Moreover, although IRD requested annual certification for updates to information contained in USAID's ADS from all USAID offices, in FY 2002 and FY 2004 EOP did not respond or provide any updated information, resulting in USAID's guidance not being revised or published.

⁴ This division is responsible for reviewing substantive changes and format changes to USAID's Automated Directives System guidance.

According to EOP officials, they did not revise and issue the reasonable accommodation policies and procedures because of insufficient staffing and other competing work priorities. Over the past three years, USAID authorized EOP eight full-time staff positions. However, as shown in Appendix IV, in FY 2002, EOP was understaffed by one; in FY 2003, EOP was understaffed by three; and again in 2004, EOP was understaffed by three positions. Although the EOP Director stated that the office aggressively pursued efforts to increase the staff during the annual budget justification process, EOP was not successful in obtaining the staff necessary to conduct many of the office functions. Furthermore, although EOP interviewed and hired several employees during the last three years, they have not been able to retain many of the new employees for long periods of time. To manage processing reasonable accommodation requests as well as other priorities, EOP augmented its staff by hiring a contractor and “borrowing” one employee, on detail, from the Department of State to complete much of the office work. Currently the office is actively recruiting and interviewing qualified applicants to fill three vacancies.

Although EOP drafted revisions to USAID’s reasonable accommodation policies and procedures, USAID has not complied with Executive Order 13164 and the Equal Employment Opportunity Commission guidance for processing requests for reasonable accommodations. In its January 2002 review, the Commission cited several examples where the USAID guidance did not appear to properly address such issues that included initiating the reasonable accommodation process, establishing time limits, and requesting and receiving medical information. In fact, the Commission cited examples wherein wording as well as incomplete information in the USAID guidance could mislead USAID officials and requestors of reasonable accommodations. For example, USAID required a reasonable accommodation request to be written. According to the Executive Order, a reasonable accommodation request may be oral or written. In another example, USAID required requestors to submit administratively acceptable medical documentation with the written request for reasonable accommodation. In accordance with the Commission Guidance, the request for reasonable accommodation is a statement that an individual needs an adjustment or a change at work. Additional information may be obtained through the interactive process which follows the request. Since reasonable accommodation is a fundamental statutory requirement, USAID should eliminate any barriers that could cause foreseen delays. Furthermore, due to the highly sensitive nature of reasonable accommodation requests, noncompliance could be misinterpreted as discrimination against an applicant or employee with a disability. The resulting exposure of USAID to time-consuming and costly litigation for an alleged impropriety can be eliminated or reduced by adhering to statutory requirements. The lack of consistency or incomplete information contained in USAID guidance, as compared to information in the Executive Order, does not provide the necessary basic foundation to eliminate ambiguities and misinterpretation of legal requirements that could cause, at a minimum, the unnecessary delay in processing requests and providing reasonable accommodations.

Recommendation 1: We recommend that the Office of the Equal Opportunity Programs revise USAID’s reasonable accommodation policies and procedures to comply with Executive Order 13164 and Equal Employment Opportunity Commission guidance.

Recommendation 2: We recommend that the Office of Equal Opportunity Programs submit USAID's revised reasonable accommodation policies and procedures to the Equal Employment Opportunity Commission for final review.

Recommendation 3: We recommend that the Office of Equal Opportunity Programs publish USAID's revised reasonable accommodation policies and procedures in the Automated Directives System.

The Office of Equal Opportunity Programs Should Update and Maintain its Reasonable Accommodation Tracking Report

Summary: Executive Order 13164 requires Federal agencies to ensure that their system of record-keeping tracks the processing of requests for reasonable accommodations and includes specific information. Although EOP developed a tracking report, as shown in Appendix III, it did not update some of the attributes in its report with relevant information. This occurred because management did not periodically review the report to ensure that it was updated. Accordingly, the tracking report did not provide management with the most up-to-date and relevant information on the status of the program that would allow managers to calculate processing time or identify other attributes such as the number and type of requests, and reasons for denials that would indicate any need to modify USAID's operations in processing reasonable accommodations.

Executive Order 13164 also requires Federal agencies to ensure that their system of record-keeping tracks the processing of requests for reasonable accommodations and include specific information. To assist agencies in meeting the tracking requirements, the Commission published two documents: *Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation* and *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act*. The Commission's policy guidance requires all agencies to be able to identify the following information:

- The number and type of reasonable accommodations that have been requested in the application process and whether those requests have been granted or denied;
- The reasons, if denied, and the amount of time taken to process reasonable accommodation requests;
- The sources of technical assistance consulted identifying possible reasonable accommodations;
- The jobs and types of reasonable accommodations that have been requested for the jobs, as well as the number and types of reasonable accommodations for each job, by USAID component, that have been approved and denied; and
- The number and types of requests for reasonable accommodations that relate to the benefits of privileges of employment, and whether those requests have been granted or denied.

Although EOP prepared a tracking report, as shown in Appendix III, it did not update the report with relevant information on a consistent basis. In 48 instances, EOP had not updated information on important attributes such as the decision dates, processing times, and final disposition.

According to EOP officials, a staff member was responsible for updating the tracking report. However, EOP management did not review the report to determine that it was updated with critical information necessary to provide management and other stakeholders with valuable program information. Subsequently, the staff member left EOP employment and EOP management could not easily update the tracking information to provide accurate management reports.

The tracking report provides invaluable management information by which USAID officials plan their work, set priorities, and review progress to improve their operations. Moreover, tracking information provides management and other stakeholders with information necessary to make informed management decisions that can improve a program. Without updated information, USAID management could not calculate the processing time for reasonable accommodation requests to determine if requests were processed within established timeframes or identify other attributes such as the use of medical consultants, the number and type of requests, and reasons for denials.

Recommendation 4: We recommend that the Office of Equal Opportunity Programs establish a timeframe to update its tracking information on a periodic basis to accurately reflect requests, elapsed processing time, final dispositions, and impact.

The Office of Equal Opportunity Programs Should Process Reasonable Accommodation Requests in a Timely Manner

Summary: Executive Order 13164 requires time limits for decision making to be as short as reasonably possible. USAID's Automated Directives System 110.3.5.6, Section G, states that a decision will be made on a reasonable accommodation request within 30 days of a request for an accommodation that includes all necessary medical documentation. However, EOP's processing time for reasonable accommodation ranged from seven days to 415 days. Although EOP case files indicated that it solicited additional information from some of the requestors, EOP did not process 21 out of 52 accommodation requests within USAID's established processing timeframe. In many cases, according to EOP officials, this occurred because of EOP's insufficient level of staffing and because some applicants did not provide information in a timely manner. Consequently, in some cases, employees may have been unable to perform their work effectively while waiting on a reasonable accommodation request to be processed.

Executive Order 13164, Section 1, Establishment of Effective Written Procedures to Facilitate the Provision of Reasonable Accommodation, Subpart 3, requires time limits for decision making to be as short as reasonably possible. USAID's Automated Directives System 110.3.5.6, Section G, stipulates, among other things, that a decision will be made on a reasonable accommodation request within 30 days of a request that

includes all necessary medical documentation. Additionally, a requester is entitled to receive a written EOP response within five working days after a USAID decision.

Of the 52 reasonable accommodation requests that we reviewed on EOP's tracking report, 13 requests were processed within the established 30-day timeframe.⁵ Of the 52, 21 of the reasonable accommodation requests were not processed within USAID's established timeframe. The processing time for all of the reviewed requests, ranged from seven to 415 days, as illustrated in Appendix III. For the remaining 18 requests, EOP officials did not determine whether the requests were processed in a timely manner and did not indicate whether it requested additional medical documentation or whether other additional documentation was necessary for review. In one case, an employee made an initial contact regarding an accommodation directly to his/her supervisor. It took approximately three and a half months for the request to reach EOP for consideration. To EOP's credit, it processed this request within two weeks. But, the employee received his/her accommodation approximately four months after his/her initial request. In another example, for unknown reasons, an employee indicated he/she had also tried to obtain a reasonable accommodation for approximately four months before receiving final resolution for a specific reasonable accommodation.

Since USAID staffing levels have continued to decline since the 1990's, the challenge to managers continues to be to better prioritize the workload and mandatory tasks. According to EOP officials, EOP did not process many of the reasonable accommodation requests in a timely manner, because of its level of staffing and in some cases; some requestors did not provide information in a timely manner. EOP case files showed that despite its efforts to solicit needed information for further review, some of the applicants did not always submit requested additional medical documentation, as required. In one example, EOP initiated communication requesting appropriate medical documentation for three consecutive months before receiving the medical support after approximately four months. The decision to approve the accommodation took an additional two months. Although the EOP was not timely in processing some of the requests, officials believed they were able to address the majority of requests that required immediate attention despite its staffing shortages or other priorities. However, EOP did not document or record exceptions as required by the Executive Order to indicate whether requestors suffered any negative effects resulting from excessive processing times.

Without documenting or recording exceptions to USAID's processing times in its management reports, USAID management cannot be assured that requests for reasonable accommodations are processed in a timely manner, as required. The Executive Order stipulates that the specific time limitation for data submissions, and the review process after the Office of Equal Opportunity Programs obtains sufficient data by which to conduct its review and make an ultimate determination, be as short as reasonably possible. In some instances, requestors may be denied an opportunity to apply for a job or participate in an USAID activity that is scheduled to commence in a short time. As a result, management cannot decisively conclude that requests are handled expeditiously and that the lack of timeliness does not leave USAID vulnerable to, at minimum, complaints by requestors who are adversely impacted by lengthy processing times.

⁵ See footnote number 2.

Recommendation 5: We recommend that the Office of Equal Opportunity Programs establish a schedule to periodically review management reports on reasonable accommodation requests to determine whether processing is occurring within required timeframes.

**The Office of Equal Opportunity Programs
Should Update Information in USAID'S
Automated Directives System**

Summary: Automated Directives System (ADS) 501.3.6 identifies the lines of authority and responsibility as well as the process by which new information and revisions are incorporated into the ADS. Despite this annual certification requirement, the Office of Equal Opportunity Programs did not respond to the Bureau for Management, Administrative Services, Information and Records Division request for the annual certification for updates to information contained in the ADS for FY 2002 and FY 2004. According to EOP officials, insufficient staffing levels, staff changes, and other competing work priorities caused them not to respond to requests for annual certification and/or not to provide their revisions to the Information and Records Division for review. As a result, USAID officials were not aware that EOP did not respond to requests for updated information, even when updates to information were needed and warranted to comply with Executive Order 13164.

Automated Directives System (ADS) 501.3.6 stipulates that the Bureau for Management, Administrative Services, Information and Records Division conduct an annual review of USAID's ADS material by sending a request for certification to appropriate management officials. Each management official or its designee must conduct a review and notify the Information and Records Division as to whether its office's policies and procedures are still current and effective.

On an annual basis USAID officials certify that their ADS chapters are current or submit changes to revise the published information. Despite the certification requirement, the Office of Equal Opportunity Programs did not respond to the Information and Records Division regarding the annual certification for updates to EOP information contained in the ADS for FY 2002 and 2004. However, in FY 2003, EOP responded indicating that it had revisions that it would submit by September 2003. But, EOP did not submit the revised policy to the Information and Records Division for review and ultimate publication.

According to EOP officials, staffing levels, staff changes, and other competing work priorities caused them not to respond to requests for annual certification and/or not to provide their revisions to the Information and Records Division for review. For these reasons, USAID's policies and procedures for reasonable accommodation have not been updated since FY 2002. Accordingly, USAID's reasonable accommodation policies and procedures have not been updated to comply with Executive Order 13164 and Equal Employment Opportunity Commission guidance.

Compliance with the fundamental statutory requirement is necessary so that USAID maintains its best effort to ensure that discrimination faced by individuals with disabilities is discouraged. If it does not achieve that goal, USAID has not fulfilled the basic requirement to publicize the best available information regarding reasonable accommodation. The ultimate goal for USAID should be to draft a policy that publicizes the proper requirements and provides complete and clear information so that requestors or others can easily understand what actions to take.

Although we did not make a formal recommendation, USAID's Bureau for Management, Administrative Services, Information and Records Division drafted policies and procedures to address non-responses to USAID's annual certification process, as of November 18, 2005. The division has proposed that USAID respond to annual certification delinquencies by using elevation procedures so that USAID management, up to the USAID Administrator, are notified and provided an opportunity to resolve any issues. These draft policies and procedures are presently undergoing a review by senior management.

EVALUATION OF MANAGEMENT COMMENTS

In their response to the draft report, EOP officials concurred with all five recommendations, and described actions taken and planned to address the recommendations. As a result, we consider that final action has been taken on Recommendation Nos. 1 and 2 and management decisions have been reached on Recommendations Nos. 3, 4 and 5.

To address Recommendation No. 1, EOP officials revised USAID's reasonable accommodation policies and procedures. We believe that this action brings USAID's Automated Directives System into compliance with both Executive Order 13164 and Equal Employment Opportunity Commission guidance. Accordingly, EOP officials have taken final action on this recommendation prior to our report issuance.

To address Recommendation No. 2, EOP officials submitted the proposed revisions to ADS Chapter 110 on reasonable accommodations to the Equal Employment Opportunity Commission on October 14, 2005. We reviewed the proposed revision and determined that an omission occurred regarding "reassignment" language. EOP subsequently submitted its revised documentation on "reassignment" to the Equal Employment Opportunity Commission on November 14, 2005. Accordingly, EOP officials have taken final action on this recommendation prior to our report issuance.

To address Recommendation No. 3, EOP officials: 1) submitted to the Bureau for Management, Administrative Services, Information and Resource Division, a revised reasonable accommodation policy for approval and publication; 2) posted the approved interim reasonable accommodation policy update to the Agency's notice system for agency-wide dissemination; and 3) plan to update the Automated Directives System within 30 days after approval of the revised policy from the Equal Employment Opportunity Commission. We reviewed the revised reasonable accommodation policy, confirmed the dissemination of the policy update in an Agency-wide notice and concurred with their plan to update the Automated Directives System within 30 days after receiving approval from the Equal Employment Opportunity Commission. Accordingly, a management decision has been reached on this recommendation.

To address Recommendation No. 4, (was Recommendation No. 5 in the draft report) EOP officials plan to designate a staff person to update and maintain the office's reasonable accommodation tracking system on a monthly basis effective March 1, 2006. Accordingly, a management decision has been reached on this recommendation.

To address Recommendation No. 5, (was Recommendation No. 4 in the draft report) EOP officials plan to redesign their current reasonable accommodation tracking system to capture the actual processing time beginning with the receipt of all required information and terminating with the requestors' notification of approval or denial. A target completion date of March 1, 2006 has been established to place the redesigned tracking system into operation. In addition, starting in January 2006, the EOP Director,

or designee, shall conduct a quarterly review of the Agency's reasonable accommodation tracking system. Accordingly, a management decision has been reached on this recommendation.

Additionally, the order of Recommendation Nos. 4 and 5 has been changed since EOP reviewed the draft report. Consequently, EOP comments regarding the draft Recommendation No. 4 relates to Recommendation No. 5 in the final report. Conversely, EOP comments regarding draft Recommendation No. 5 refers to Recommendation No. 4 in the final report.

Management's comments are included in their entirety (without attachments) in Appendix II.

SCOPE AND METHODOLOGY

Scope

The Office of Inspector General's Performance Audits Division conducted this audit in accordance with generally accepted government auditing standards to determine whether USAID's reasonable accommodation policies and procedures are in compliance with Executive Order 13164 and Equal Employment Opportunity Commission (Commission). We conducted the fieldwork for this audit at USAID's Office of Equal Opportunity Programs (EOP) in Washington D.C. from May 12, 2005 to September 1, 2005.

In planning and performing the audit, we obtained an understanding of the management controls related to documentation, accurate and timely recording of transactions and events, and supervision for the Office of Equal Opportunity Program's processing of 62 reasonable accommodation requests reported from June 1999 to June 2005. We reviewed however, 52 reasonable accommodation requests which were completed between June 2002 and June 2005.

During our initial planning, we considered the significance or noncompliance rate for the entire universe of reasonable accommodation requests that EOP reviewed. We did not establish a materiality threshold for this audit because Commission officials informed us at the start of the audit that USAID's Automated Directives System guidance on reasonable accommodation was not in compliance with Executive Order 13164 and Equal Employment Opportunity Commission guidance.

Methodology

To answer the audit objective, we conducted interviews with staff from the Commission, USAID's Equal Opportunity Program (EOP), and USAID's Bureau for Management's, Office of Administrative Services, Information and Records Division. We reviewed Executive Order 13164; *the Equal Employment Opportunity Commission's Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*; and *Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate The Provision of Reasonable Accommodation*; the Americans With Disabilities Act; the Rehabilitation Act of 1973 (29 U.S.C. 701) et seq.). Additionally, we reviewed the Office of Equal Opportunity Program's 2000-2004 Federal Managers Financial Integrity Act, annual assessments, staffing, budget and funding data from FY 2002 – 2005, tracking information, case files, and applicable USAID guidance. We also reviewed the Bureau for Management, Office of Administrative Services, Information and Resource Division's response tracking information and applicable correspondence with the Office of Employment Opportunity Programs for the annual update to the Automated Directives System certification process for fiscal years 2002, 2003, and 2004.

To illustrate the differences between the pertinent Federal guidance being used and the interpretation of the Executive Order, we prepared a comparative analysis, as shown in Appendix V, that list the differences between the current USAID guidance on reasonable accommodations, the Commission's guidance on reasonable accommodations, and review of USAID's proposed revisions to its reasonable accommodation guidance.

Using the Office of Equal Opportunity Programs' accommodation request tracking report to determine whether EOP was processing its accommodation requests in accordance with the

Commission's guidance, we determined the processing times from the point of initial contact to EOP's final determination date for each request where data was available.

MANAGEMENT COMMENTS



MEMORANDUM

To: Steven H. Bernstein, IG/A/PA

From: Jessalyn L. Pendarvis, D/EOP /s/

Subject: Response to Audit of USAID's Reasonable Accommodation Policies and Procedures (Report No. 9-000-06-00X-P)

This memorandum transmits the Office of Equal Opportunity Programs response to the OIG's draft report on the Audit of USAID's reasonable accommodation policy. Per your instructions, EOP has stated its position on each of the recommendations and included its action plan for implementation.

Please feel free to contact me or Carolyn Mackey-Bryant, Deputy Director, with any questions regarding this document. I can be reached at X21110.

Recommendation 1: We recommend that the Office of Equal Opportunity Programs revise USAID's reasonable accommodation policies and procedures to be in compliance with Executive Order 13164 and Equal Employment Opportunity Commission guidance.

The Office of Equal Opportunity Programs (EOP) concurs with this recommendation. EOP's action to comply with this recommendation includes:

- Modify USAID's reasonable accommodation policy to properly address elements required by EO 13164 and the Equal Employment Opportunity Commission's (EEOC) guidance, as identified in the January 3, 2002 letter from the EEOC.

Target Completion date: This action was completed on August 26, 2005.

A copy of the following document is included at Tab 1 for your review and records:

1. A copy of the email message transmitting the revised policy to M/IRD for review and approval.

Recommendation 2: We recommend that the Office of Equal Opportunity Programs submit USAID's revised reasonable accommodation policies and procedures to the Equal Employment Opportunity Commission for final review.

The Office of Equal Opportunity Programs concurs with this recommendation. EOP's actions to comply with this recommendation include:

- Revise USAID's reasonable accommodation policies and procedures to be in compliance with Executive Order 13164 and the EEOC's guidance and submit to the EEOC for final review.

Target Completion Date: This action was completed on October 14, 2005.

- Resubmit to the EEOC, USAID's reasonable accommodation policy and include the section on Reassignment.

Target Completion Date: This action was completed on November 14, 2005.

- Make all revisions to the reasonable accommodation policy to ensure the Agency's compliance with EO 13164 and EEOC's guidance resulting from subsequent EEOC reviews.

Target completion Date: Within 30 days of request

Copies of the following documents are included at Tab 2 for your review and records:

1. A copy of EOP's letter dated October 14, 2005, transmitting to EEOC the reasonable accommodation policy for final review.
2. A copy of EOP's letter dated November 14, 2005, transmitting to EEOC the section of USAID's reasonable accommodation policy that references reassignment.

Recommendation 3: We recommend that the Office of Equal Opportunity Programs

publish USAID's revised reasonable accommodation policies and procedures in the Automated Directives System.

The Office of Equal Opportunity Programs concurs with this recommendation. EOP's actions to comply with this recommendation include:

- Submit USAID's revised reasonable accommodation policy to M/IRD for approval.

Target Completion Date: This action was completed on August 26, 2005.

- Submit USAID's approved interim reasonable accommodation policy to M/IRD for inclusion in the Automated Directive System. (ADS)

Target Completion Date: This action was completed on October 03, 2005.

- Post the approved interim reasonable accommodation policy update to the Agency's notice system for agency-wide dissemination.

Target Completion Date: This action was completed on October 12, 2005.

- Update the ADS to include the EEOC approved reasonable accommodation policy.

Target Completion Date: Within 30 days after approved reasonable accommodation policy is received from EEOC.

Copies of the following documents are included at Tab 3 for your review and records:

1. Revised reasonable accommodation policy submitted to M/IRD on August 26, 2005
2. Posted reasonable accommodation policy dated October 3, 2005, as published in ADS.
3. Agency wide notice transmitting the revised reasonable accommodation policy interim update

Recommendation 4: We recommend that the Office of Equal Opportunity Programs establish a schedule to periodically review management reports of reasonable accommodation requests to determine whether processing is occurring within required timeframes.

The Office of Equal Opportunity Programs' current tracking system is designed to capture information on all employees' contacts requesting reasonable accommodation. These contacts are captured regardless of the employee's final decision to pursue their request. The tracking system's current design fails to track the actual processing time. The actual processing time begins on the date the employee provides the Disability Review Committee with all required documentation through the date the employee is advised of the Committee's determination.

The Office of Equal Opportunity Programs concurs with this recommendation. EOP's actions to comply with this recommendation include:

- Revise the reasonable accommodation tracking system to capture the actual processing time for reasonable accommodation requests as beginning with the receipt of all required information and ending with the mailing of the Disability Review Committee's Notice of Determination to the requestor.

Target Completion Date: March 1, 2006

- The EOP Director or designee shall conduct a quarterly review of the Agency's reasonable accommodation tracking system.

Target Completion Date: Beginning January 1, 2006, and ongoing

Recommendation 5: We recommend that the Office of Equal Opportunity Programs updates its tracking information on a periodic basis to accurately reflect requests, elapsed processing time, final dispositions, and impact.

The Office of Equal Opportunity Programs concurs with this recommendation. EOP's action to comply with this recommendation includes:

- Designate an EOP staff person to maintain and update the Agency's reasonable accommodation tracking system on or before the 15th of each month.

Target Completion Date: Beginning March 1, 2006, and ongoing

Equal Opportunity Program's Reasonable Accommodation Requests

No	Contact Initiated	Decision Date	Type	W/D	GR	DN	INC	Denial Reasons	Processing Time (Days)
1	12/18/2001	2/6/2003	Ergonomic Keyboard & Mouse		1			n/a	415
2	3/18/2003	4/29/2004	Medical Clearance			1		4	408
3	12/3/2003	10/21/2004	Reassignment - File reopened 09/27/04 after medical documentation received			1		2	323
4	6/18/2002	2/12/2003	Standing Authorization for Business Class Travel		1			n/a	239
5	11/8/2004	5/3/2005	Ergonomic Keyboard & Mouse	1				n/a	176
6	8/27/2002	2/12/2003	Obus Forme Ergonomic Chair		1			n/a	169
7	9/29/2003	1/13/2004	Ergonomic Workstation & Chair		1			n/a	106
8	3/31/2003	6/17/2003	Air Purifier with Hepa Filter & Vacuum Cleaner			1		1	78
9	1/24/2005	4/12/2005	Ergonomic Workstation				1		78
10	3/28/2005	6/9/2005	Ergonomic Mouse				1	1	73
11	1/10/2003	3/19/2003	Ergonomic Keyboard & Mouse		1			n/a	68
12	11/20/2002	1/22/2003	Ergonomic Keyboard Tray		1			n/a	63
13	11/10/2004	1/11/2005	Ergonomic Work Station		1			n/a	62
14	8/21/2002	10/21/2002	Standing Authorization for Business Class Travel		1			n/a	61
15	1/21/2003	3/20/2003	Standing Authorization for Business Class Travel			1		2	58
16	1/21/2003	3/19/2003	Standing Authorization for Business Class Travel		1			n/a	57
17	12/4/2002	1/21/2003	Flexible Work Schedule & Telecommute			1		3	48
18	8/18/2003	9/29/2003	Ergonomic Workstation and Office Furniture		1			n/a	42
19	1/4/2005	2/11/2005	Standing Authorization for Business Class Travel		1			n/a	38

Equal Opportunity Program's Reasonable Accommodation Requests

No	Contact Initiated	Decision Date	Type	W/D	GR	DN	INC	Denial Reasons	Processing Time (Days)
20	3/12/2003	4/17/2003	Ergonomic Manager's Chair		1			n/a	36
21	8/24/2003	9/29/2003	Interpreter		1			n/a	36
22	6/16/2005	7/13/2005	Ergonomic Keyboard		1			n/a	27
23	2/26/2003	3/20/2003	Ergonomic Manager's Chair		1			n/a	22
24	12/20/2004	1/11/2005	Ergonomic Keyboard		1			n/a	22
25	10/20/2004	11/9/2004	Reassignment			1		2	20
26	10/6/2004	10/21/2004	Computer Monitor		1			n/a	15
27	4/29/2005	5/13/2005	Ergonomic Workspace		1			n/a	14
28	5/27/2003	6/9/2003	Ergonomic Manager's Chair		1			n/a	13
29	5/4/2005	5/17/2005	Ergonomic Keyboard		1			n/a	13
30	4/11/2003	4/23/2003	Disability Retirement		1			n/a	12
31	7/1/2004	7/13/2004	Ergonomic Chair		1			n/a	12
32	4/8/2003	4/17/2003	Ergonomic Manager's Chair		1			n/a	9
33	5/11/2005	5/19/2005	Special Chair	1				4	8
34	1/31/2003	2/7/2003	Ergonomic Manager's Chair		1			n/a	7
35	10/9/2002		Wheelchair			1		1	
36	4/2/2003		Disability Parking Permit			1		6	
37	8/27/2003		Motorized Wheelchair			1		4	
38	4/20/2004		Flat Screen Monitor			1		1	
39	12/3/2004	1/16/2004	Reassignment & Telecommute			1		4	
40	10/29/2002		Flexible Work Schedule & Telecommute	1				n/a	
41	12/20/2002		Ergonomic Workstation					n/a	
42	6/11/2003		Ergonomic Manager's Chair		1			n/a	
43	8/7/2003		Standing Authorization for Business Class Travel		1			n/a	
44	9/10/2003		Obus Forme Ergonomic Chair	1				n/a	

Equal Opportunity Program's Reasonable Accommodation Requests

No	Contact Initiated	Decision Date	Type	W/D	GR	DN	INC	Denial Reasons	Processing Time (Days)
45	9/29/2003		Computer Monitor	1				n/a	
46	6/22/2004		Ergonomic Manager's Chair	1				5	
47	8/2/2004		Ergonomic Chair and Mouse	1				n/a	
48	8/5/2004		Ergonomic Chair and Footrest	1				n/a	
49	12/14/2004		Zoom text Software				1	n/a	
50	12/20/2004		Ergonomic Chair	1				n/a	
51	1/12/2005		Ergonomic Keyboard and Mouse	1				n/a	
52	1/25/2005		Large Screen Monitor	1				n/a	
	TOTALS			11	26	11	4		

Table Key:

Req – Request

W/D – Withdrawn

Ben – Benefits

GR – Granted

DN – Denied

Process – Calendar Days

INC – Information Incomplete

Denial Reasons

1 = Incomplete Documentation

2 = Accommodation Not Essential for Medical Condition

3 = Undue Hardship to USAID Operations

4 = Medical Condition Not Qualified as Disability

5 = Submitted in Error

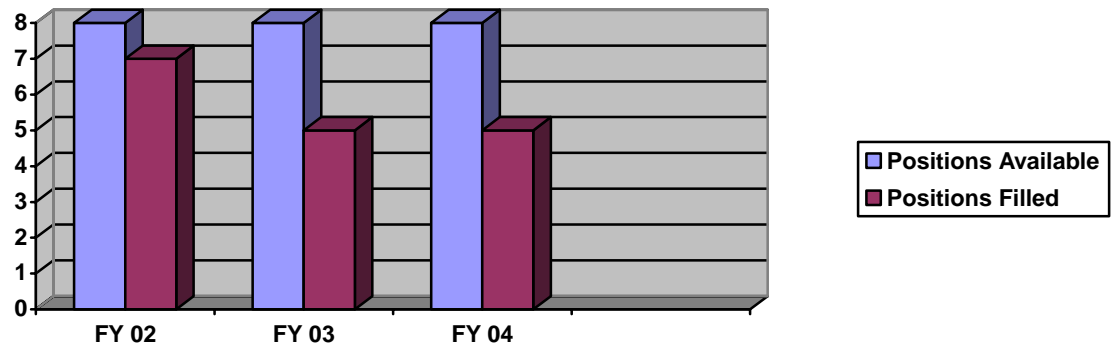
6 = Required More In-Depth EOP Review

EOP did not complete or update information

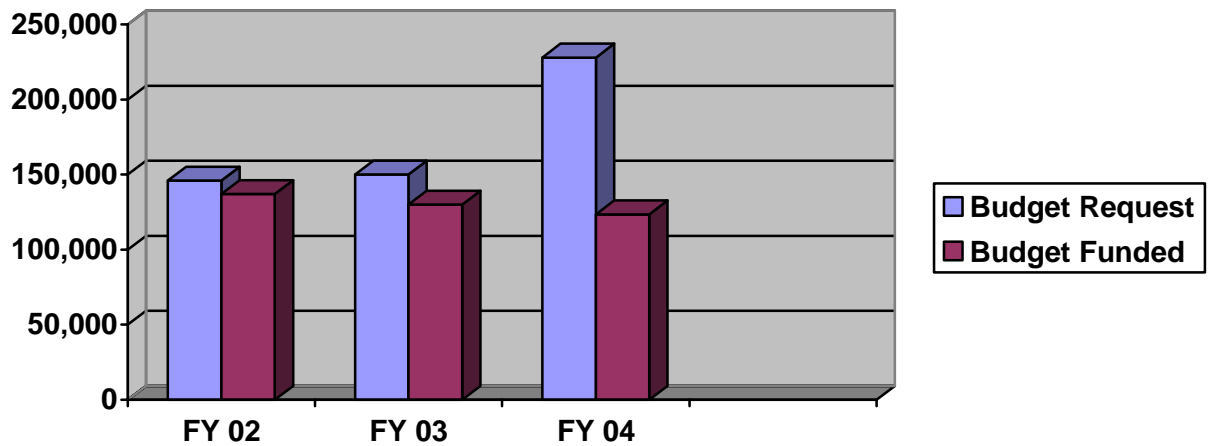
Source: Unaudited Office of Equal Opportunity Programs' data

**EOP Staffing, Budget and Funding Requests
FY 2002 – FY 2004**

**Equal Opportunity Programs Staffing Positions
Available and Filled FY 2002 – FY 2004**



**Equal Opportunity Programs Budget Request
and Funding FY 2002 – FY 2004**



Source: Unaudited Office of Equal Opportunity Programs' Programs' Data.

**Comparison of
EEOC Guidance, USAID Reasonable Accommodation Policies/Procedures, and EEOC Review**

(1) Initiating the Reasonable Accommodation Process		
EEOC Guidance on Reasonable Accommodation	ADS 110.3.5.6	EEOC Review January 2002
<p>II.A Each Agency's procedures must: "Explain that an employee or job applicant may initiate a request for reasonable accommodation orally or in writing. If the Agency requires an applicant or employee to complete a reasonable accommodation request form for recordkeeping purposes, the form must be provided as an attachment to the Agency's written procedures. <i>Executive Order Section 1(b)(1)</i>"</p>	<p>Subpart 6(a) If reasonable accommodation is desired, an applicant or employee must request reasonable accommodation by filing a written request describing the disability that necessitates the reasonable accommodation and describing the required accommodation, including administratively acceptable medical documentation of the condition. The medical documentation must address the requirements set forth in 5 CFR 339.101-104. This written request must be made to the Director, EOP or to the Disability Employment Program Manager in EOP, or, if the request is made through the employee's supervisor(s), the Director, EOP or the Disability Employment Program Manager in EOP must be notified by the supervisor or Bureau/Office management within five working days of the request. <i>Mandatory Reference 5 CFR 339.101-104</i></p>	<p>With respect to initiating the reasonable accommodation process, the following element(s) required by the Executive Order do not appear to be addressed properly in your procedures.</p> <p>The procedures must explain that an employee or job applicant may initiate a request for reasonable accommodation either orally or in writing. (<i>Policy Guidance Section II.A</i>) ADS 110.3.5.6 (a) allows only written requests.</p>
<p>II A.1 A request for accommodation is a statement that an individual needs an adjustment or a change at work or in the application process for a reason related to a medical condition. Agencies may not require, for example, that individuals mention the Rehabilitation Act or use the phrase "reasonable accommodation." The Agency's procedures should make this point clear. Additional information, as appropriate, may be obtained through the interactive process which follows the request. <i>Executive Order Section 1(b)(1)</i></p>	<p>See 110.3.5.6(a) Above</p>	<p>The procedures may not require applicants or employees making requests to use specific words (like reasonable accommodation) before the request will be accepted. (<i>Policy Guidance Sec II.A</i>) ADS procedures do not make this clear and improperly require that a request must describe the required accommodation.</p>
<p>II A.1 A request for accommodation is a statement that an individual needs an adjustment or a change at work or in the application process for a reason related to a medical condition. Agencies may not require, for example, that individuals mention the Rehabilitation Act or use the phrase "reasonable accommodation." The USAID's procedures should make this point clear. Additional information, as appropriate, may be</p>	<p>See 110.3.5.6(a) Above</p>	<p>ADS procedures improperly require that the request must automatically include all manner of medical documentation. A request for accommodation is a statement that an individual needs an adjustment or a change at work or in the application process for a reason related to a medical condition. (<i>Policy Guidance, Section II.A.1.</i>) Additional information as appropriate may be obtained</p>

**Comparison of
EEOC Guidance, USAID Reasonable Accommodation Policies/Procedures, and EEOC Review**

(1) Initiating the Reasonable Accommodation Process		
EEOC Guidance on Reasonable Accommodation	ADS 110.3.5.6	EEOC Review January 2002
<p>obtained through the interactive process which follows the request. <i>Executive Order Section 1(b)(1)</i></p> <p>II.B.10 To ensure that all effective accommodations have been considered, Agency procedures should require that decision makers talk to the individual requesting the accommodation where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are choosing between different possible reasonable accommodations.</p> <p><i>EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (March 1, 1999) Question 5.</i> The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.</p> <p>The exact nature of the dialogue will vary. In many instances, both the disability and the type of accommodation required will be obvious, and thus there may be little or no need to engage in any discussion. In other situations, the employer may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation. While the individual with a disability does not have to be able to specify the precise accommodation, she/he does need to describe the problems posed by the workplace barrier. Additionally, suggestions from the individual with a disability may assist the employer in determining the type of reasonable accommodation to provide. Where the individual</p>	<p>See 110.3.5.6(a) Above</p>	<p>through the interactive process which follows the request. <i>Policy Guidance, Section II.B.10 (See also EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (March 1, 1999) Question 5.</i> ADS wording may mislead a USAID official to incorrectly conclude that the referenced medical documentation or other information is required in order to constitute an accommodation request which triggers the interactive process.</p>

**Comparison of
EEOC Guidance, USAID Reasonable Accommodation Policies/Procedures, and EEOC Review**

(1) Initiating the Reasonable Accommodation Process		
EEOC Guidance on Reasonable Accommodation	ADS 110.3.5.6	EEOC Review January 2002
or the employer are not familiar with possible accommodations, there are extensive public and private resources to help the employer identify reasonable accommodations once the specific limitations and workplace barriers have been ascertained.		
II.A.2 Although an Agency can, for recordkeeping purposes, ask an applicant or employee to fill out a form, an individual's oral request will start the reasonable accommodation process. Accordingly, the time limits set by the Agency's procedures (see also <i>Section C, Time Limits</i>) must also run from the date of the oral request. Of course, a request can be initiated in writing if the individual prefers.	See 110.3.5.6(a) Above	The procedures may not allow an USAID to wait until after a written request or record-keeping request form is received before processing an oral request for reasonable accommodation. <i>Policy Guidance, Section II.A.2</i> ADS procedures do not make this clear.
II A 3 Where an employee has requested a type of reasonable accommodation that she/he is likely to need on a repeated basis, for example, the assistance of sign language interpreters or readers – an agency may not require that the individual submit a written request for recordkeeping purposes each time the accommodation is needed. Agency procedures should provide that once the reasonable accommodation is approved the first time, the employee may obtain the accommodation by notice to an appropriate individual or office (e.g., his/her supervisor or a centralized accommodation office).	See 110.3.5.6(a) Above	The procedures may not require that once an employee requests and is granted a type of accommodation he or she is likely to need on a repeated basis (e.g. a sign language interpreter), the employee nevertheless has to submit a written request for recording purposes each time the accommodation is needed. <i>Policy Guidance, Section II.A.3.</i> ADS procedures do not make this clear
An agency's obligation to consider an individual's request begins when the individual makes that request to any of the following: his/her supervisor; a supervisor or manager in his or her immediate chain of command; the EEO office; any other office designated by the agency to oversee the reasonable accommodation process; or, in connection with the application process, any agency employee with whom the applicant has contact. Agencies may also designate others, in addition to those identified above, to whom requests may be made.	See 110.3.5.6(a) Above	The procedures may not require that a request for accommodation must be made to only one particular USAID official. (<i>Policy Guidance Section II.A.5</i>). ADS procedures appear to limit to whom an individual can make a request for accommodation and is not consistent with the range of USAID officials set forth in the <i>Policy Guidance at Section II.A.5</i> .
Agency procedures should advise the employees		

**Comparison of
EEOC Guidance, USAID Reasonable Accommodation Policies/Procedures, and EEOC Review**

(1) Initiating the Reasonable Accommodation Process		
EEOC Guidance on Reasonable Accommodation	ADS 110.3.5.6	EEOC Review January 2002
who are designated to receive reasonable accommodation requests to then notify, if necessary, any other agency personnel who will be involved in the decision making.		
II.A.6 A family member, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. Where possible, the agency should then confirm with the person with a disability that she/he in fact wants a reasonable accommodation.	See 110.3.5.6(a) Above	The procedures must allow a request for reasonable accommodation to be made not just by the individual with a disability, but also by a family member, health professional, or other representative who is acting on the individual's behalf. <i>(Policy Guidance, Section II.A.6)</i> ADS procedures do not make this clear.

(2) Time Limits		
EEOC Guidance on Reasonable Accommodation	ADS 110.3.5.6	EEOC Review January 2002
II.C Each Agency's procedures must: designate a time period during which reasonable accommodations requests will be granted or denied, absent extenuating circumstances. Time limits for decision making should be as short as reasonable possible. <i>Executive Order, Section 1(b)</i>	Subpart 6(g) The Disability Review Committee (DRC) must make a decision on the request, by majority vote if necessary, within 30 days of a request for accommodation that includes all necessary medical documentation, and must prepare and deliver a written response to the requestor within 5 working days of the decision.	<p>With respect to time limits, the following element(s) required by the Executive Order do not appear to be addressed properly in your procedures.</p> <p>The procedures must designate a time period during which reasonable accommodation requests will be granted or denied absent extenuating circumstances. (Policy Guidance Section II.C). USAID procedures, at Section 110.3.5.6(g), provide that an individual will be issued a written decision within 35 days of receipt of all necessary medical documentation. However, since ADS procedures improperly require that all accommodation requests automatically be supported by all manner of medical documentation to which the USAID may not be entitled to in many cases, the 35-day time frame set forth in your procedures as currently drafted commences at an insufficiently specific point in time. Any time limit should commence from receipt of the request itself.</p> <p>To address the possible effect of delayed receipt of medical documentation on compliance with the time frame, you may wish to provide, for example, that the time limit will</p>

**Comparison of
EEOC Guidance, USAID Reasonable Accommodation Policies/Procedures, and EEOC Review**

(2) Time Limits		
EEOC Guidance on Reasonable Accommodation	ADS 110.3.5.6	EEOC Review January 2002
		be tolled if the USAID requests medical documentation, but will recommence running upon receipt of sufficient documentation.

(3) Medical Information		
EEOC Guidance on Reasonable Accommodation	ADS 110.3.5	EEOC Review January 2002
<p>II.D As the Executive Order states, each Agency's procedures must:</p> <ul style="list-style-type: none"> • Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation where the disability and/or need for accommodation is not obvious. • Explain the Agencies right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, or the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace. • Explain the Agency's right to have medical info reviewed by a medical expert of USAID's choosing at USAID expense. <i>Executive Order Section 1(b)(4-6)</i> <p>II.D.16 An agency is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. Thus, when a disability and/or need for accommodation is not obvious, the Agency may, if it chooses, require that the individual provide reasonable documentation about the disability and his/her functional limitations. Additionally, the Agency may request supplemental documentation when the information already submitted is insufficient to document the disability and/or the functional limitations it causes. The</p>	<p>Subpart 6(a) If reasonable accommodation is desired, an applicant or employee must request reasonable accommodation by filing a written request describing the disability that necessitates the reasonable accommodation and describing the required accommodation, including administratively acceptable medical documentation of the condition. The medical documentation must address the requirements set forth in 5 CFR 339.101-104. This written request must be made to the Director of EOP or to the EOP Disability Employment Program Manager in EOP, or, if the request is made through the employee's supervisor(s), the Director EOP or the Disability Employment Program Manager must be notified by the supervisor or Bureau/Office management within five working days of the request. <i>See Mandatory Reference 5 CFR 339.101-104</i></p> <p>Subpart 6f(6) In approving an accommodation, or disapproving an accommodation based on undue hardship, the Disability Review Committee must consider the following factors:</p> <ol style="list-style-type: none"> (1) The nature and cost of the accommodation requested, and its impact on the Agency; (2) The mission of the organization, which the accommodation would impact; (3) The structure and composition of the organization; 	<p>With respect to medical information, the following element(s) required by the Executive Order do not appear to be addressed properly in your procedures.</p> <p>The procedures may not require the USAID to obtain medical documentation in support of every accommodation request, regardless of the circumstances. (<i>Policy Guidance, Section II.D</i>). <i>ADS procedures sections 110.3.5.6.a and 110.3.5.6f(6)</i> appear to require medical documentation for all requests, improperly requiring that the USAID is entitled to obtain, and the individual must automatically submit, any information defined in 5 CFR.339.102</p> <p>To the contrary, the procedures should make clear that, under the Rehabilitation Act, the USAID may only obtain medical documentation in support of an accommodation request where the disability and/or need for accommodation is not obvious or already known. In those instances, the USAID may require reasonable accommodation necessary to establish that the individual has a disability and needs the accommodation. [<i>Policy guidance Section II.D.16-19; EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act (July 27, 2000) 7 & 10]</i></p>

**Comparison of
EEOC Guidance, USAID Reasonable Accommodation Policies/Procedures, and EEOC Review**

(3) Medical Information		
EEOC Guidance on Reasonable Accommodation	ADS 110.3.5	EEOC Review January 2002
<p>agency is not required to request documentation in such cases. The Agency's procedures should, however, explain that failure to provide necessary documentation, where it has been properly requested, could result in a denial of reasonable accommodation.</p> <p>If it chooses to seek medical information, an Agency must, of course, conform to the requirements of the Rehabilitation Act. Under the Act, an Agency may not request medical information where (a) both the disability and the need for reasonable accommodation are obvious; or (b) the individual has already provided the Agency with sufficient information to document the existence of the disability and his/her functional limitations.</p>	<p>(4) Any pertinent legal or Agency precedents;</p> <p>(5) The function, with or without accommodation, of the employee/applicant requesting the accommodation;</p> <p>(6) Whether the medical documentation met the requirements of <i>5 CFR 339.104 (Mandatory Reference, 5 CFR 339.104)</i>; and</p> <p>(7) Any written input by the supervisor.</p>	
<p>See II.D.16 Above</p>	<p>Subpart 6(a) If reasonable accommodation is desired, an applicant or employee must request reasonable accommodation by filing a written request describing the disability that necessitates the reasonable accommodation and describing the required accommodation, including administratively acceptable medical documentation of the condition. The medical documentation must address the requirements set forth in 5 CFR 339.101-104. This written request must be made to the D/EOP or to the Disability Employment Program Manager in EOP, or, if the request is made through the employee's supervisor(s), the D/EOP or the Disability Employment Program Manager in EOP must be notified by the supervisor or Bureau/Office management within five working days of the request. [<i>Mandatory Reference 5 CFR 339.101-104.</i>]</p>	<p>The procedures must explain that, it is the responsibility of the employee or applicant requesting reasonable accommodation to provide appropriate medical information related to the functional impairment and the requested accommodation where the need for a reasonable accommodation is not obvious. [<i>Policy Guidance, Section II.D.16</i>]</p>
		<p>The procedures must explain that, the USAID has a right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, or the need for the reasonable accommodation or does not otherwise clarify</p>

**Comparison of
EEOC Guidance, USAID Reasonable Accommodation Policies/Procedures, and EEOC Review**

(3) Medical Information		
EEOC Guidance on Reasonable Accommodation	ADS 110.3.5	EEOC Review January 2002
See II.D.16 Above	Not Addressed in ADS	how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace, or, in the case of an applicant, assist him or her with the application process. <i>(Policy Guidance, Section II.D.16)</i>
<p>II.D.17 When the standards set forth above are met, an Agency may request information or documentation regarding:</p> <ul style="list-style-type: none"> • the nature, severity & duration of the individual's impairment; • the activity or activities that the impairment limits; • the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or • why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the RA will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace. <p>II.D.18 Where an Agency is entitled to request medical info under the standards set forth above, the Agency may have that info reviewed by its own medical expert at its' own expense.</p>	Not Addressed in ADS	The procedures must explain the USAID's right to have medical information reviewed by a medical expert of USAID's choosing at USAID's expense. <i>(Policy Guidance, Section II.D.17-18)</i>

(4) Reassignment		
EEOC Guidance on Reasonable Accommodation	ADS 110.	EEOC Review January 2002
<p>II.E.23 Agency procedures must explain the circumstances in which reassignment is required. They must also clearly notify supervisors and other relevant Agency employees about how and where they are required to conduct a search for available vacancies. Agency procedures should identify the personnel who are responsible for conducting the search and require these individuals to consult with the affected employee as necessary to determine whether there are limits on the search the employee</p>	<p>Subpart 5.4 Pursuant to 29 CFR 1614.203(g), Reassignment, when a non-probationary employee becomes unable to perform the essential functions of an encumbered position, even with reasonable accommodation due to a disability, USAID is required to reassign the individual to a funded vacant position for which the individual is qualified located in the same commuting area and serviced by the same appointing authority, and at the same grade or level, the essential functions of which the</p>	<p>With respect to reassignment, the following element(s) required by the Executive Order do not appear to be addressed properly in USAID procedures.</p> <p>The procedures must explain the circumstances in which reassignment will be required as a reasonable accommodation if USAID determines that no reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position. <i>(Policy</i></p>

**Comparison of
EEOC Guidance, USAID Reasonable Accommodation Policies/Procedures, and EEOC Review**

(4) Reassignment		
EEOC Guidance on Reasonable Accommodation	ADS 110.	EEOC Review January 2002
would like the Agency to conduct; whether the employee is qualified for a particular job; or whether the employee would need a reasonable accommodation to perform the essential functions of a new position.” [Executive Order Section 1(b)(7)]	<p>individual would be able to perform with reasonable accommodation if necessary. Such an offer will not be required if USAID can demonstrate that the reassignment would impose an undue hardship on the operation of its program. [See <i>Mandatory Reference, 29 CFR 1614.203(g)</i>]</p> <p>In the absence of a position at the same grade or level, an offer of a reassignment to a vacant position, for which the individual is qualified, at the highest available grade or level below the employee’s current grade or level will be required. The availability of such a vacancy will not affect the employee’s entitlement, if any to disability retirement pursuant to 5 USC 8337 or 5 USC 8451. (See <i>Mandatory References, 5 USC 8337 and 5 USC 8451</i>)</p> <p>If USAID has already posted a notice or announcement seeking applications for a specific vacant position at the time it is determined that an employee is disabled, the USAID does not have an obligation to offer such reassignment, but the individual must be considered on an equal basis with other applicants for the position.</p>	<i>Guidance, Section II.E.23)</i>

(5) Denial of Reasonable Accommodation		
EEOC Guidance on Reasonable Accommodation	ADS 110.	EEOC Review January 2002
<p>II.F Each Agency’s procedures must provide that reasonable accommodation denials be in writing and specify the reasons for denial.</p> <p>Where an Agency denies an individual’s request for a reasonable accommodation, it must notify the individual in writing of the denial and the reasons for it. The denial should be written in plain language with as much specificity as possible, and should identify the</p>	<p><i>Subpart 6(G)</i> The Disability Review Committee must make a decision on the request, by majority vote if necessary, within 30 days of a request for accommodation that includes all necessary medical documentation, and must prepare and deliver a written response to the requestor with five working days of the decision.</p> <p><i>Subpart 6(j)</i> An employee/applicant may file an</p>	<p>With respect to denials of reasonable accommodation, the following element(s) required by the Executive Order do not appear to be addressed properly in your procedures.</p> <p>The procedures must provide that denials of requests for reasonable accommodation will be in writing and specifically explain the reasons the request was denied; (e.g. why the medical documentation is inadequate to</p>

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<p>employee or office that made the decision.</p> <p>Where an Agency has denied a specific requested reasonable accommodation but offered to make a different one in its place, the Agency's notice should explain both the reasons for the denial of the requested accommodation and the reasons that it believes that the chosen accommodation will be effective.</p> <p>All agency denials must notify the individual that she/he has a right to file an EEO complaint. The Agency must also identify and explain any Agency procedures that are available for informal dispute resolution.</p> <p>Where the Agency grants an individual's request for reasonable accommodation, there is no requirement that the decision is in writing or that reasons for the decision be provided to the individual. Because the Agency is required to track its processing of reasonable accommodation requests, however, the Agency should monitor its disposition of each request.</p>	<p>EEO complaint with EOP if he or she is not satisfied with the accommodation decision or if the reasonable accommodation is not implemented. A copy of the request and response, and any implementation documents, must remain on file in EOP.</p>	<p>establish that the individual has a disability or needs reasonable accommodation, why the requested accommodation would not be effective, or why the accommodation would pose an undue hardship)</p>
<p>Provide that reasonable accommodation denials be in writing and specify the reasons for denial. Where an Agency denied an individual's request for a reasonable accommodation, it must notify the individual in writing of the denial and the reasons for it. The denial should be in plain language with as much specificity as soon as possible, and should identify the employee or office that made the decision.</p> <p>Where an Agency has denied a specific requested reasonable accommodation but offered to make a different one in its place, the Agency's notice should explain both the reasons for the denial of the requested accommodation and the reasons that it believes that the chosen accommodation will be effective.</p>	<p align="center">See 3.5.6(j) above</p>	<p>The procedures must provide that denials of requests for reasonable accommodation must include information about the individual's right to file an EEO complaint and to invoke other statutory processes as appropriate, as well as the availability of the informal dispute resolution process.</p>

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Where the Agency grants an individual's request for reasonable accommodation, there is no requirement that the decision be in writing or that reasons for the decision be provided to the individual. Because the Agency is required to track its processing of reasonable accommodation requests, see Section G, however, the Agency should monitor its disposition of each request.	Not addressed in ADS	See Above

(6) Information Tracking		
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<p>II.G. Each Agency's procedures must: "Ensure that Agencies' systems of recordkeeping track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information received in accordance with applicable law and regulation." <i>[Executive Order, Section 1(b)(9)]</i></p> <p>II.G.24 The order does not require that Agencies maintain particular recordkeeping systems, documents, or databases. Nonetheless, all agencies must be able to identify at least the following information:</p> <ul style="list-style-type: none"> • The number and types of reasonable accommodations that have been requested in the application process and whether those requests have been granted or denied, • The jobs (occupational series, grade level, and Agency component) for which reasonable accommodations have been requested; • The types of reasonable accommodation that have been requested for each of those jobs; • The number and types of reasonable accommodation for each job by Agency component, that have been approved, and 	Not Addressed in ADS	<p>With respect to information tracking, the following element(s) required by the Executive Order do not appear to be addressed properly in your procedures.</p> <p>The procedures must ensure that the USAID's systems of record keeping track the processing of requests for RA and maintain the confidentiality of medical information received in accordance with applicable law and regulations, so as to permit the USAID to identify at least the following information. <i>[Policy Guidance, Section II.G.24]</i></p> <ul style="list-style-type: none"> • Number of reasonable accommodations requested, by type & whether granted or denied, The jobs that reasonable accommodations have been requested for, • Types of reasonable accommodations for each of those jobs, • Number of reasonable accommodations, by type for each job approved and denied, Number of reasonable accommodation requests by type related to benefits or privileges of employment and whether approved/denied, Reasons for denial of reasonable accommodation request,

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<p>the number and types that have been denied;</p> <ul style="list-style-type: none"> • The number and types of requests for reasonable accommodations that relate to the benefits or privileges of employment, and whether those requests have been granted or denied; • The reasons for denial of request for reasonable accommodation; • The amount of time taken to process each reasonable accommodation; and • The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations. 		<ul style="list-style-type: none"> • Amount of time taken to process each reasonable accommodation request, and • Source of technical assistance consulted in identifying reasonable accommodations.
<p>II.D.20 The Rehabilitation Act requires that all medical information be kept confidential. This means that all medical information that an Agency obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. In addition, individuals who have access to information necessary to make a decision about whether to grant a requested accommodation may not disclose this information except as follows:</p> <ul style="list-style-type: none"> • Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s); • First aid and safety personnel may be told if the disability might require emergency treatment; • Government officials may be given information necessary to investigate the Agency's compliance with the Rehabilitation Act; • The information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers; and • Agency EEO officials may be given the information to maintain records and 		<p>The procedures must detail how the USAID will ensure that medical records are kept confidential, meaning maintained in files separate from the individual's official personnel file, and to whom and under what circumstances medical information may be disclosed, pursuant to the exceptions listed in the <i>Policy Guidance, Section II.D.20 & II.G.26</i></p>

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<p>evaluate and report on the Agency's performance in processing reasonable accommodation requests.</p> <p>Where medical information is disclosed to any of the foregoing officials, the Agency must inform those individuals about the confidentiality requirements that attach to the information.</p> <p>II.G.26 Records that contain medical information about a particular individual with a disability are fully subject to the confidentiality restrictions discussed above in Section D. Thus, the USAID's recordkeeping systems must contain safeguards to ensure that those restrictions are fully observed. The Agency's procedures should detail how the Agency will ensure that medical records are segregated from official personnel files and to whom and under what circumstances medical information may be disclosed. Agency procedures should make clear that the EEOC has the right to review all relevant records upon request to evaluate the efficacy of the Agency's reasonable accommodation procedures.</p> <p>If an Agency creates tracking records that contain merely aggregate information – information that does not, and cannot be used to, identify any particular individual with a disability – the records will not be subject to the confidentiality restrictions of the Rehabilitation Act. Records that identify, for example, the number and types of requests for reasonable accommodation made by job category, will likely not contain medical information about specific employees or applicants with disabilities.</p>	<p>Not Addressed in ADS</p>	

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(7) Informal Dispute Resolution		
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<p>II.H. Each Agency's procedures must: "Encourage the use of informal dispute resolution processes to allow individuals with disabilities to obtain prompt reconsideration of denials of reasonable accommodation. Agencies must also inform individuals with disabilities that they have the right to file complaints in the Equal Employment Opportunity process and other statutory processes, as appropriate if their requests for reasonable accommodation are denied. [Executive Order, Section 1(b)(10)]</p>	<p>Not Addressed in ADS</p>	<p>With respect to informal dispute resolution, the following element(s) required by the Executive Order do not appear to be addressed properly in your procedures.</p> <p>The procedures must encourage the use of informal dispute resolution processes to allow individuals with disabilities to obtain prompt reconsideration of denials of reasonable accommodation. (<i>Policy Guidance, Section II.H</i>)</p>

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