

Reasonable Accommodation Process

It is the policy of the Financial Management Service (FMS) to provide reasonable accommodations to qualified employees and applicants for employment with disabilities to ensure full access to equal employment opportunity (EEO). FMS shall provide reasonable accommodations for the known physical or mental disabilities of qualified employees and applicants with disabilities, unless to do so would impose an undue hardship on FMS.

Requesting Reasonable Accommodations

A. The Request

- **The reasonable accommodation process begins** as soon as the request for accommodation is made either orally or in writing. The request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." An individual with a disability may request a reasonable accommodation whenever he/she chooses, even if he/she has not previously disclosed the existence of a disability. The request does not necessarily mean the employer is required to provide the accommodation.
- **The individual's request must be considered** when an employee makes a request with his/her immediate supervisor; a supervisor or manager in his/her immediate chain of command; and/or the Equal Opportunity and Organizational Enhancement Division (EO/OE), who is designated to oversee the reasonable accommodation process. When an applicant makes a request, it will be considered if made to any FMS employee with whom the applicant has contact in connection with the application process or any other individual designated by the bureau.
- **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. To the extent possible, an individual with a disability should be contacted to confirm that he/she in fact wants a reasonable accommodation. The individual may refuse to accept an accommodation.

B. Written Requests for Record Keeping Purposes

- 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 written request 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 form is required only for the first request although appropriate notice may be required each recurring time an accommodation is needed.

C. The Interactive Process

- Communication is a priority throughout the entire process. FMS officials involved in the provision of reasonable accommodation should take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation should also participate, to the extent possible, in helping to identify an effective accommodation. Employees involved in the interactive process should record their activities.
- On-going communication is particularly important where the specific limitation, problem, or barrier is unclear, an effective accommodation is not obvious, or the parties are considering different possible reasonable accommodations. In cases where the disability, the need for accommodation, and type of accommodation that should be provided are clear, extensive discussions are not necessary. Even so, the Deciding Official 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

- **Receiving Officials.** FMS' Disability Program Manager has been designated as the bureau's designated Receiving Official to receive requests, determine who will be responsible for handling requests (the Deciding Official), forward requests to the Deciding Official, and monitor requests through closure. In connection with the application process, any FMS employee with whom the applicant has contact in connection with the application process, or any other individual designated by the bureau, may be the receiving official (e.g., manager/supervisor, or team leader).
- **Deciding Officials.** FMS' Disability Program Manager, in collaboration with the Deciding Official, will identify possible accommodations and determine whether an accommodation will be provided. The Deciding Official may differ depending on whether the request is initiated by an employee or an applicant, or type of accommodation being requested.

- For example, the Deciding Official could be as follows:
 - FMS' Human Resources Specialist responsible for the recruitment and/or selection process if the request for accommodation is from an applicant;
 - FMS' 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;
 - the head of office or his/her designee where the accommodation requested involves personnel actions; or
 - the employee's immediate supervisor or the head of office, if a request is from an employee.
 - FMS 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 established will not be suspended or extended because of the unavailability of the Receiving or Deciding Official.
- **FMS Disability Program Manager.** The Disability Program Manager shall be available, as needed, to provide guidance, direction, and assistance to employees, human resources officials, and Deciding Officials in processing requests for reasonable accommodation.

E. Reassignment and Other Position Changes as an Accommodation

- Reassignment is an accommodation of last resort. Reassignments 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. FMS is not obligated to create a position for the purpose of reassignment. *Note: The inability to work for a particular supervisor is not a disability.*
- If it is determined an employee cannot perform in his or her position with or without a reasonable accommodation, the appropriate FMS officials 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. FMS may establish the time periods during which they will review vacancies, but must do so for a minimum of thirty (30) business days.
- In considering whether there are positions available for reassignment, FMS should identify:
 - all funded vacant positions within FMS for which the employee may be qualified, with or without reasonable accommodation; and

- all funded positions which FMS' Human Resources Division (HRD) has reason to believe will become vacant over the next thirty (30) business days and for which the employee may be qualified.
- FMS may ask the employee to update his/her resume and identify what grade(s) and locations the employee will accept. FMS will first focus on positions which are equivalent to the employee's current job in terms of pay and other relevant factors. If there is no vacant equivalent position, FMS will consider vacant lower graded positions for which the individual is qualified.
- ***FMS is 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.***
- A search for positions should not be limited to the organizational component where the individual is employed. However, before a search is made for positions in other Treasury bureaus, the Director, Equal Opportunity and Organizational Enhancement Division (EO/OE) must provide a signed statement indicating a search was made for vacancies throughout the bureau but was unsuccessful in identifying a funded vacant position for which the employee may be qualified. FMS' Disability Program Manager will assist in the coordination of any Treasury-wide search for a position.
- EO/OE will maintain a record of the search conducted.
- 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, FMS is not required to pay for the employee's relocation costs unless bureau policy provides for such payments for non-disabled employees.
- Once a reassignment offer has been made, the employee has up to fourteen (14) business days to accept or decline the offer.
- If no vacant positions for which the employee is qualified are located within thirty (30) business days, FMS will issue the employee a final decision letter explaining why reassignment as a reasonable accommodation could not be provided.

F. Requests For Medical Information

- 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, FMS may require that the individual provide reasonable medical documentation about the disability and his/her functional limitations.
- If the Deciding Official believes medical information is necessary to evaluate a request for a reasonable accommodation, he/she should consult with the Disability Program Manager for advice and assistance.

- If a determination is made to seek medical information, information will be requested sufficient to substantiate the individual has a disability as defined by laws and regulations. **Documentation unrelated to the claimed disability will not be requested.** FMS 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>.
- The Disability Program Manager 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.
- The Disability Program Manager will evaluate the received medical documentation. If the information provided by the health care professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the FMS to determine whether an accommodation is appropriate, FMS (Disability Program Manager) may ask for further information. The Disability Program Manager 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.
- FMS officials should not contact a health care professional directly. Any contact with a health care professional must be conducted by the Disability Program Manager and/or Chief Counsel.
- Alternatively, the individual requesting the accommodation may agree to sign a limited release, giving the Disability Program Manager permission to submit a list of specific questions to the individual's health care professional or contact the individual's doctor.
- If, after a reasonable period of time, there is still not sufficient information to demonstrate the individual has a disability and needs a reasonable accommodation, the Disability Program Manager, and/or Chief Counsel, may request the individual be examined by a physician chosen by FMS. Such an examination would be performed at FMS' expense.
- In some cases, the individual requesting the accommodation will supply medical information directly to the Disability Program Manager without being asked. In these cases, the Disability Program Manager will consider such documentation.
- Failure by the individual requesting accommodation to provide appropriate documentation or to cooperate in the Disability Program Manager's efforts to obtain such documentation will result in a denial of the reasonable accommodation.

G. Confidentiality and Disclosure

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

- 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.
- First aid and safety personnel, when appropriate, if the disability might require emergency treatment or special arrangements in emergency situations such as building evacuations.
- Government officials when the information is necessary to investigate Departmental or bureau compliance with the Rehabilitation Act.
- In certain circumstances, to workers' compensation offices or insurance carriers.
- Treasury legal counsel in connection with the provision of 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 attached.

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

- **Granting a Reasonable Accommodation Request.** As soon as the Deciding Official, in collaboration with the Disability Program Manager, determines a reasonable accommodation will be provided, the decision should be immediately communicated to the individual by the Deciding Official with a concurrence copy of the determination to the Disability Program Manager. If the accommodation cannot be provided immediately, the Deciding Official, in collaboration with the Disability Program Manager, must inform the individual of the projected time frame for providing the accommodation. A Deciding Official or manager/supervisor, in collaboration with the Disability Program Manager, 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 FMS has determined that the individual is an individual with a disability or that any reasonable accommodation is need.
- **Time Frames for Processing Request.** The time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. At a minimum, however, requests shall be processed as follows:

a. Request **Not Involving Extenuating Circumstances**

- **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 **thirty (30) business days** from the date the request was initially made.
- **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:

The Disability Program Manager will request documentation as soon as possible after his/her receipt of the request for accommodation, but before the expiration of the thirty (30) day period. Thereafter, the thirty (30) day period timeframe is frozen until sufficient medical documentation is received. FMS recognizes the need for documentation may not become apparent until after the interactive process has begun.

Examples of accommodations that can easily be provided within the thirty (30) day time frame includes:

- (i) An employee with diabetes who sits in an open area asks for four breaks a day to test his/her blood sugar levels so that he/she may do these tests in private.
- (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 the agenda be distributed ahead of time because the disability makes it difficult to read and he/she needs more time to prepare.

2. Requests Involving Extenuating Circumstances

- a. 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 FMS officials are expected to act as quickly as reasonably possible in processing requests and providing accommodations. The following are examples of extenuating circumstances:
 - o The purchase of equipment may take longer than thirty (30) business days because of requirements under the Federal Acquisition Regulations and EEOC Order 360.001, Acquisition Policies and Procedures.
 - o Equipment is back-ordered; the vendor typically used by FMS 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.
 - o The employee with a disability needs to try working with equipment on a trial basis to ensure it is effective before FMS buys the equipment.
 - o New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.
 - o There is an outstanding initial or follow-up request for medical information.

- b. Where extenuating circumstances are present, the Deciding Official, in collaboration with the Disability Program Manager, 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.

- c. If there is a delay in providing an accommodation that has been approved, the Deciding Official, in collaboration with the Disability Program Manager, 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, in collaboration with the Disability Program Manager, may authorize measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if:
 - they do not unreasonably interfere with the operations of FMS; and
 - the employee is clearly informed that the relief/alternative is being provided only on a temporary basis.

For example, there may be a delay in receiving adaptive equipment for an employee with vision impairment. During the delay, the manager/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.

- If a delay is attributable to the need to obtain or evaluate medical documentation and FMS has not yet determined the individual is entitled to an accommodation, FMS may also provide an accommodation on a temporary basis. In such a case, the Deciding Official, in collaboration with the Disability Program Manager, will notify the individual **in writing** that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.

- 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 thirty (30) business days discussed above. Examples include:

- **An applicant to apply 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, FMS needs to move as quickly as possible to make a decision and, if appropriate, provide a reasonable accommodation.
- **An employee to attend 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.

Denying Reasonable Accommodation Requests

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 Director, Equal Opportunity and Organizational Enhancement Division (EO/OE). The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial.

- A. Where the Deciding Official has denied a specific requested accommodation, but offered an alternative which was not agreed to during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons the Deciding Official believes the chosen accommodation will be effective.
- B. Reasons for the denial of a request for reasonable accommodation must **include specific reasons for the denial**. Explanation(s) may also include the following:
 - The requested accommodation would not be effective.
 - 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 that FMS may find that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of the bureau's operations. When evaluating budgetary or administrative concerns to determine if undue hardship exists, FMS will follow the standards outlined in the regulations and in the "Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act."
 - Medical documentation is inadequate to establish the individual has a disability and/or needs a reasonable accommodation.
 - The requested accommodation would require the removal of an essential function.
 - The requested accommodation would require the lowering of a performance or production standard.
- C. The written notice of denial must also inform the individual that he/she has the right to file an EEO complaint and may have rights to pursue Merit Systems Protection Board and/or union grievance procedures. The notice must also explain bureau procedures available for dispute resolution.

Dispute Resolution

- A. If an individual wishes reconsideration, he/she should first ask the Deciding Official to reconsider the decision. The individual may present additional information in support of his/her request. The Deciding Official will respond to the request for reconsideration within **five business days**.
- B. If the Deciding Official does not reverse the decision, the individual may appeal the decision. The appeal will be decided by the senior official having programmatic responsibility for the FMS Disability Employment Program. A response to the appeal will be issued to the individual within **ten (10) business days**.
- C. Pursuing dispute resolution procedures, including seeking reconsideration from the Deciding Official and filing an appeal, does not affect the time limits for initiating statutory and collective bargaining claims. An individual's participation in any dispute resolution process does not satisfy the requirements for bringing a claim under EEO, MSPB, or union grievance procedures.

If an individual wishes to file an EEO complaint, or pursue Merit Systems Protection Board (MSPB) and union grievance procedures if applicable, s/he must take the following steps:

- For an EEO complaint pursuant to 29 C.F.R. § 1614, contact an EEO counselor **within forty-five (45) days from the date of this notice of denial of reasonable accommodation**; or
- For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or
- Initiate an appeal to the Merit Systems Protection Board **within thirty (30) days of an appealable adverse action** as defined in 5 C.F.R. § 1201.3.

Information Tracking and Evaluation

- A. FMS will annually evaluate the bureau's reasonable accommodation program. An effective reasonable accommodation program is part of a model EEO program and must be included in the FMS' MD 715 report. The executive summary of the FMS' bureau MD-715 report should include a discussion on the following:
- Accessibility of the reasonable accommodation policy to employees with or without a disability (e.g., posted on the Intranet, disseminated in employee handbooks, or available in alternative formats, such as Braille);
 - The number of reasonable accommodation requests approved; of that, the number approved within the timeframes set out in FMS' procedures; and
 - The number of reasonable accommodation requests denied.

Statutory and Collective Bargaining Claims

- A. Executive Order 13164 does not create, modify or limit the rights of applicants or employees under the Rehabilitation Act or any other law. The policy and requirements described in this process 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:
- **EEO Complaints Process.** Contact an EEO counselor within 45 days from the date of receipt of the written notice of denial;

- **Collective Bargaining Claim.** File a grievance in accordance with the provisions of the controlling Collective Bargaining Agreement; or
- **MSPB Appeal.** Initiate an appeal within 30 days of an appealable adverse action as defined in 5 C.F.R. §1201.3.

For additional information pertaining to the Reasonable Accommodation Process, please contact the Equal Opportunity and Organizational Enhancement Division (EO/OE) at (202) 874-8330, or (202) 874-4167 (TTY). FMS is an equal opportunity employer!