

OEOP- 006-01

MEMORANDUM FOR BUREAU EEO OFFICERS

FROM: Marcia H. Coates
Director
Office of Equal Opportunity Program

SUBJECT: Procedures to Facilitate the Provision of Reasonable
Accommodation

- I. **Purpose.** The following constitutes the Department of the Treasury's policy governing the development and implementation of bureau plans for processing requests for reasonable accommodation from employees and applicants with disabilities.
- II. **Authority**
 - a. Equal Employment Opportunity Commission Policy Guidance on Executive Order 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, dated October 20, 2000
 - b. Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation, dated July 26, 2000
 - c. Equal Employment Opportunity Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the American's with Disabilities Act, dated March 1, 1999
 - d. The Rehabilitation Act of 1973 (29 U.S.C 701), as amended
- III. **Background.** On July 26, 2000, Executive Order 13164 was issued. The Order required Federal agencies to establish effective procedures for processing requests for reasonable accommodation. The Order helps to implement the requirement of the Rehabilitation Act of 1973 that agencies provide reasonable accommodation to qualified employees and applicants with disabilities. It is an important part of the government's national policy to create additional employment opportunities for people with disabilities

IV. **Definitions**

- a. **Disability.** An impairment that substantially limits one or more of the major life activities.
- b. **Essential Function.** Those job duties that are so fundamental to the position that the individual holds or desires that he/she cannot do the job without performing those duties. A function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform the function. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.
- c. **Individual with a Disability.** A person who has a physical or mental impairment that substantially limits one or more of that person's major life activities, has a record of impairment, or who is regarded as having such an impairment.
- d. **Major Life Activity.** Basic activities that the average person in the general population can perform with little or no difficulty, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- e. **Qualified Individual with a Disability.** An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.
- f. **Reasonable Accommodation.** An adjustment or alteration that enables a qualified person with a disability to apply for a job, perform job duties, or enjoy benefits and privileges of employment.
- g. **Reassignment.** A form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to vacant positions and to employees who are qualified for the new position. If the employee is qualified for the position, he/she will be reassigned to the job and will not have to compete.

- h. **Request for Reasonable Accommodation.** A statement that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition. The reasonable accommodation process begins as soon as the request for accommodation is made. A 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.
- i. **Undue Hardship.** An action requiring significant difficulty or expense when considered in light of factors such as the agency's size, financial resources, and the nature and structure of the position. Determination of undue hardship is always made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the agency.

V. **Requirements**

- a. Bureaus shall develop and issue procedures for processing requests for reasonable accommodation from any qualified employee or applicant with a disability, unless doing so would cause undue hardship.
- b. Bureau procedures shall be consistent with governing laws, regulations, executive orders, EEOC directives, and the policies and procedures contained in the Office of Equal Opportunity Program's (OEOP) *"Policy Guidance for the Processing of Request for Reasonable Accommodation,"* herein after referred to as "the Department's Procedures," which is provided as enclosure (1).
- c. The minimum requirements governing the development of bureau procedures are specified in enclosure (2). Unless indicated otherwise, the requirements contained in the enclosure supplement but do not take the place of the requirements defined in the Department's Procedures.
- d. **General Standards.** Bureau procedures must meet the following general standards:
 - (1) They must permit flexibility in the processing of requests and assure that bureau officials act expeditiously in providing reasonable accommodations.

- (2) They must inform individuals with disabilities about their rights and responsibilities under the Rehabilitation Act. Therefore, they must explain relevant terms and be written in plain English so that they can be understood by those not familiar with the law.
 - (3) They must encourage discussion between the individual requesting the accommodation and the bureau official rendering a decision on the individual's request, particularly in those cases 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.
 - (4) They must be designed to expand employment opportunities for people with disabilities.
 - (5) They must enable the Department and the bureau to meet its obligations under the Rehabilitation Act.
- e. **Time Frames.** Bureau procedures must identify specific time frames associated with the processing of requests for accommodations. Those time frames should be as short as reasonably possible. Except where there are extenuating circumstances (e.g., factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation), the time frames shall not exceed those specified in the Department's Procedures. In addition, recognizing that there are situations where an accommodation is needed immediately--where, for example, an applicant needs a modification to the application process in order to apply for a job--bureau procedures should also provide for expedited processing of the request.
- f. **Collective Bargaining.** Bureaus are required to notify their collective bargaining representatives, and to bargain over their reasonable accommodation procedures, to the extent required by law.
- g. **Confidentiality Requirements Regarding Medical Information Obtained in the Reasonable Accommodation Process.** Each bureau's plan shall identify the official or organization responsible for maintaining custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and that will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and the requirements of 29 C.F.R. 1611 and EEOC Order 150.003.

- h. **Education and Training.** Bureaus must ensure that employees are educated about the bureau's reasonable accommodation procedures, and that they have sufficient information to understand their roles and obligations in the reasonable accommodation process.
- i. **Dissemination of Procedures**
 - (1) Bureaus must make their reasonable accommodation procedures available to all bureau employees. The procedures can, among other things, be posted on the bureau's website and included in employee handbooks. They should also be available in designated locations such as bureau libraries, EEO offices, and/or human resource offices.
 - (2) Bureau procedures must be accessible to individuals with disabilities. Where the procedures are posted on the bureau's website, the website must be accessible. Bureaus should also make their procedures available in alternative formats, such as large print or Braille, on request.
- j. **Departmental Review.** Each bureau is required to submit its procedures for processing reasonable accommodation requests to the Director, Office of Equal Opportunity Program (OEOP), for review and approval, not later than 60 days from the date of this policy memorandum. In addition, anytime the bureau's procedures are modified, they must be resubmitted to OEOP.

Attachment

DISTRIBUTION: Deputy Assistant Secretary (HR); Director, Office of Personnel Policy; Bureau EEO Officers; General Counsel; Human Resource Officers; Treasury Complaint Center Directors.

INQUIRIES: Carlotta B. Grinage, Assistant Director, Program, Policy and Evaluation, (202) 622-0341 or email carlotta.grinage@do.treas.gov

EXPIRES: When Superseded

Requirements Governing Bureau Procedures for Processing Requests for Reasonable Accommodation

Bureau procedures for processing request for reasonable accommodation must address all of the following:

1. Explain the procedures to be followed by employees and applicants, or a third party on behalf of an employee or applicant, to initiate a request for accommodations orally or in writing. If the bureau procedure requires that the individual complete a request form, the form must be provided as an attachment to the bureau's procedures.
2. Explain how the bureau will process requests for reasonable accommodation, including the bureau officials authorized to receive the request and from whom the individual will receive a final decision. Time frames for processing and providing reasonable accommodations will not be suspended or extended because of the unavailability of the deciding official. Therefore, bureaus are encouraged to designate back-ups to continue receiving, processing, and providing reasonable accommodation when the designated deciding official is unavailable.
3. Specify the time frame during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances.
4. Explain the individuals responsibility 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.
5. Explain the bureau's 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 in performing the essential function of the job or to enjoy the benefits and privileges of the workplace.

6. Explain the bureau's right to have medical information reviewed by a medical expert of the bureau's choosing at the bureau's expense.
7. Provide that reassignment will be considered as an accommodation if the bureau determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his/her current position.
8. Provide that denials of reasonable accommodation will be in writing and specify the reasons for the denial.
9. Describe the process to be used for tracking requests for reasonable accommodation and maintaining the confidentiality of medical information received.
10. Provide for the use of dispute resolution processes to allow for prompt reconsideration of denials of reasonable accommodation.
11. Inform individuals with disabilities of their right to file complaints in the Equal Employment Opportunity (EEO) process and other statutory processes, as appropriate, if their requests for reasonable accommodation are denied.