

# ARS □ CSREES □ ERS □ NASS

## Policies and Procedures

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This P&P describes the procedures to be followed by the Research, Education, and Economics (REE) employees when requesting reasonable accommodation at the workplace

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## Introduction

The Department of Agriculture/Research, Education, and Economics (USDA/REE) recognizes that all its employees and applicants need the tools necessary to be productive, and that making reasonable accommodation is simply a way of providing the tools needed to accomplish its mission. An employee with a disability need only request an accommodation of the immediate or firstline supervisor who, in many instances, is authorized via these procedures to provide the accommodation.

This document sets forth the procedures to be used, if necessary, when considering the provision of reasonable accommodation to employees and applicants with disabilities. In the majority of situations, providing a reasonable accommodation is simple, quick, and inexpensive. The procedures set forth in this manual will be used for recordkeeping purposes to document reasonable accommodation requests and grant or deny requests. The procedures will also be used to request documentation in cases when the disability and/or the need for accommodation are not obvious.

Requests for accommodation must be considered on a case-by-case basis, and in the majority of cases, can be resolved between employee and supervisor. It is imperative for the employee with a disability to be involved and consulted regarding specific accommodation needed and other aspects of reasonable accommodation through an interactive process. These procedures outline who may be involved in this interactive process.

USDA/REE agencies have been directed to use discretionary funds for accommodation. Although some accommodation, (e.g., equipment, hardware, software) may cost money, many others (e.g., alternative work schedules, leave, modifying policy or procedures, relocating an office) to name a few, cost little or nothing to implement. **Therefore, using “monetary cost” as a basis for an undue hardship claim is not easily defensible.**

USDA/REE is committed to a simple and streamlined process for providing reasonable accommodation. As a model employer and pursuant to Departmental Regulation (DR) 4300-8, REE may take steps, as appropriate, beyond those required by the reasonable accommodation process.

These reasonable accommodation procedures will help make USDA the “Employer of Choice”.

# 1. PURPOSE

The purpose of this Departmental Manual is to transmit the procedures to implement DR 4300-8, Reasonable Accommodation for Employees and Applicants with Disabilities as required in Executive Order 13164 requiring Federal Agencies to establish procedures to Facilitate the Provision of Reasonable Accommodation; and the Rehabilitation Act of 1973, as amended. This document specifically establishes written procedures to use when implementing DR-4300-8, Reasonable Accommodation for Employees and Applicants with Disabilities. These procedures demonstrate a commitment to a quick, simple means to request and obtain reasonable accommodation.

# 2. DEFINITIONS

**Disability** - With respect to an individual, means:

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual; or,
- A record of such an impairment, or;
- Being regarded as having such an impairment.

An example of “a record of such an impairment” includes having a history of, or having been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

An example of “being regarded as having such an impairment that does not substantially limit major life activity but is treated by USDA as constituting such limitation; being regarded as having an impairment described in this section but being treated by USDA as having a substantially limiting impairment.

In regard to Reasonable Accommodation, **ONLY** those employees or applicants who meet parts one and two of the definition for “Disability” shall be considered eligible for a reasonable accommodation. Reasonable accommodation is not considered for those individuals who are “regarded as” having an impairment. Individuals with a relationship or association with a person with a disability are not entitled to receive reasonable accommodation. However, the protections provided by other aspects of the Rehabilitation Act of 1973 provide for individuals who meet these other definitions.

**Essential Functions** - are the fundamental duties of the employment position the individual with a disability holds or desires. The reason a function may be essential may include but not be limited to:

- the reason the position exists is to perform that function;
- the limited number of other employees who could perform that function; and/or
- the function may be highly specialized so that the incumbent in the position is hired for his/her expertise to perform the particular function.

Determination of the essential functions of a position must be conducted 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.

**Major Life Activities** - are functions such as, but not limited to: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, sitting, standing, reaching, interacting with others, concentrating, lifting, sleeping, reproduction, running, and working.

**Mental Impairment** - any psychological or mental disorder, e.g., mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disability.

**Physical Impairment** - any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, or endocrine.

**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.

**Reasonable Accommodation** - a change in the work environment or the application process that would enable a qualified individual with a disability to enjoy equal employment opportunities. There are three general categories of reasonable accommodation:

- changes to a job application process to ensure that applicants with disabilities will have an equal opportunity to participate in the application process and to be considered for jobs;
- changes to enable an employee with a disability to perform the essential functions of the job or to gain access to the workplace; and
- changes to provide people with disabilities equal access to the benefits and privileges of employment.

**Substantially Limits** - means unable to perform a major life activity that the average person in the general population can perform; or significantly restricted as to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

**USDA Target (Technology Accessibility Resources Gets Employment Today) Center** - the USDA's TARGET Center provides onsite workplace assessments and demonstrations of assistive technology and ergonomic solutions to ensure appropriate implementation of reasonable accommodation for USDA's workforce.

**Undue Hardship** - a specific accommodation requiring significant difficulty or expense. This determination is made on a case-by-case basis and considers the nature, cost of the accommodation, the financial resources of USDA as a whole, and/or impact of the accommodation on the operations of the particular office or facility involved.

### **3. ROLES/RESPONSIBILITIES**

**Employee** - Any employee who wishes to be considered for an accommodation under these procedures may bring to the attention of his/her firstline supervisor, division head or Mission Area Disability Program Manager (DPM), a need for reasonable accommodation. The accommodation would modify or adjust the work environment, the manner or circumstances under which the position held or desired is customarily performed, or that enable the employee to perform the essential functions of the position, or allow the employee to enjoy equal benefits and privileges of employment. The employee must participate in the interactive process or designate someone to do so, and shall provide reasonable documentation in accordance with these procedures, when necessary. Requests for reasonable accommodation may also be made to any agency official proposing to take a performance or conduct action. This request may be oral or written.

**FirstLine Supervisor** - Receives, processes, and documents the reasonable accommodation request and is authorized to approve and provide the accommodation or forward the request to the DPM for consideration; participates in the interactive process; responds expeditiously; maintains confidentially, and; consults with the Employee Relations staff when accommodation is requested in conjunction with an anticipated or pending performance and/or conduct-based action.

**Mission Area Disability Program Manager** - May receive the accommodation request; shall advise managers and staff regarding their rights and responsibilities under this regulation; maintain records for tracking and reporting reasonable accommodation requests and decisions as outlined in Section 12 of these procedures; maintain confidentially, and confer with Employee Relations staff in situations where performance and/or conduct issues are involved. The DPM shall be required to successfully complete training provided by the Department.

**Departmental Disability Employment Program Manager** - Has overall responsibility for employment policy and procedures. Provides guidance, assistance, and

oversight of the disability employment program and serves as a consultant, when appropriate, regarding any aspect of these procedures.

**USDA Medical Officer** - Serves as a consultant, reviews, and interprets medical documentation when necessary, for the purpose of assisting the Mission Area when determining if the individual requesting accommodation is an individual with a disability as defined in these procedures.

**Mission Area Designee/DPM** - Has overall responsibility to ensure Mission Area compliance with its obligations to provide reasonable accommodation to qualified employees. The Mission Area has designated the DPM to make determinations, when necessary, if the individual requesting accommodation is an individual with a disability as defined in these procedures. The designee/DPM shall maintain, review, and interpret all documentation, medical and non-medical, to make this determination and report decisions to appropriate officials. The Designee/DPM shall conduct consultations with the USDA Medical officer when making determinations based on medical documentation, if necessary.

**Decisionmakers** - Those individuals or offices charged with the responsibility of making decisions regarding various aspects of the reasonable accommodation process. There are three possible decisionmakers: an interviewing official, an employee's firstline supervisor, and the Mission Area Designee/DPM.

Request for accommodation form applicants with disabilities will be handled by the Designee/DPM (excluding the interview). Request for accommodation from applicants with disabilities for the interview process will be handled by the interviewing official. Requests for accommodation from employees with disabilities will be handled by employee firstline supervisor. Request for determination, as to whether or not an applicant or employee requesting accommodation has a covered disability, will be handled by the Designee/DPM.

For whatever reason, in the event these offices or individuals designated as "decisionmakers" are unable to fulfill this responsibility, the request for accommodation shall be forwarded to an appropriate office or individual. In these instances, the timeframes outlined in Section 9 are applicable.

**USDA Target Center** - Provides onsite workplace assessments and demonstrations as assistive technology and ergonomic solutions and makes specific recommendations regarding reasonable accommodation. Responsible for collecting data, maintaining records and reporting results as required. The USDA TARGET Center can be reached on 202-720-2600 (voice/tty), or through their website at [www.usda.gov/oo/target.htm](http://www.usda.gov/oo/target.htm).



## 4. REQUESTING AN ACCOMMODATION

**Employee** - Request made by an employee for reasonable accommodation under these procedures may be made orally or in writing to his/her immediate or firstline supervisor, division head, or Mission Area DPM. Request may also be made to any agency official proposing to take a performance or conduct action. The request should outline the kind of accommodation requested, if known.

**Applicant for Employment** - Request made by an applicant for reasonable accommodation under these procedures may be made orally or in writing to the Designee/DPM (name and address listed on all vacancy announcements). This request should identify the accommodation needed, if known. Although an applicant with a disability may request a reasonable accommodation at any time during the application process, the applicant should, to the greatest extent possible, make a request as soon as he/she is aware of a barrier in the process. Applicants with a disability contacted for an interview shall be asked, “is an accommodation needed for the interview?” and if the answer is “yes”, then shall be asked “what type of accommodation?” Accommodation for the interview shall be the responsibility of the interviewing official.

**Family Member, Health Professional, Immediate Supervisor, or Other Representative** - Request made by such a person on behalf of an employee or applicant shall go to the same person to whom the employee or applicant would make the request. The request may be oral or in writing. Where possible, the decisionmaker should confirm with the person with a disability that he/she, in fact, wants a reasonable accommodation.

## 5. WRITTEN REQUEST FOR RECORDKEEPING PURPOSES

To enable USDA and REE to keep accurate records regarding reasonable accommodation, employees seeking a reasonable accommodation, or the receiver of the request, must follow up an oral request either by completing the attached “Request for Reasonable Accommodation” (REE-172) form or otherwise confirming the request in writing including E-mail. While either employee or receiver is responsible for completing written documentation.

Although a written document is required for recordkeeping purposes, the written document is not required to begin processing the request itself. The request, if made orally, shall be processed in accordance with timelines outlined in these procedures.

Regularly occurring accommodation needed on a repeated basis (e.g., sign language interpreter, reader, personal assistant) do not require written confirmation. The initial or subsequent request should contain language describing the accommodation as “recurring and continuing”, and to the greatest extent possible, appropriate notice must be given each time the accommodation is needed.

## 6. INTERACTIVE PROCESS

As stated in the introduction of this document, the interactive process is extremely important. In the majority of situations, the individual with the disability will be able to provide information regarding the type of accommodation needed. Communication is a priority throughout the process. Most accommodation requests can be handled between the employee with the disability and the firstline supervisor. However, either or both parties are permitted to include others in the interactive process if a specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are choosing between different possible reasonable accommodation. The following list of resources, as to who may be included in the process, is not exhaustive and merely listed as an example:

- Employee’s Family member
- Rehabilitation Counselor
- TARGET Center
- Department’s Medical Officer
- Departmental Disability Employment Program Manager
- Mission Area Disability Program Manager
- Employee Relations Office
- Job Accommodation Network
- Employee Representative

The Job Accommodation Network (JAN) is a service of the Department of labor, Office of Disability employment Policy. JAN can provide information free-of-charge about many types of accommodation. JAN can be reached on 1-800-232-9675 (voice/tty), or via their website at <http://janweb.icdi.wvu.edu/>.

There are specific considerations in the interactive process when responding to a request for reassignment. Reassignment will only be considered if no other accommodation are available to enable the individual to perform his or her current duties, or if the only effective accommodation would cause undue hardship. Reassignments are made only to vacant positions and for employees who are qualified for the new position. If the employee is qualified for the position, he/she will be reassigned to the position and will not have to compete for it. The new position can not have greater promotion potential than the position currently held..

In considering whether there are positions available for reassignment, the decisionmaker will work with the agency’s personnel office or the office of Human Resource Management (OHRM) and the individual requesting the accommodation to identify: (1) all vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and (2) all positions which personnel or OHRM has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. The decisionmaker will first focus on positions that are equivalent to the employee’s current position, the decisionmaker will consider vacant lower level positions for which the individual is qualified. Reassignment

will 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, REE is not obligated to pay for the employee's relocation costs.

## **7. DETERMINING IF THE INDIVIDUAL REQUESTING THE ACCOMMODATION HAS A DISABILITY. REQUESTS FOR MEDICAL INFORMATION**

REE is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. **If the individual has an obvious disability or previously documented medical condition that qualifies him/her as an individual with a disability** and the accommodation request is related to the known disability, the accommodation request shall be considered immediately without the need for further medical accommodation.

If the individual does not have an obvious disability or previously documented medical condition that qualifies him/her as an individual with a disability, he/she may be required to provide sufficient and reasonable documentation of his/her medical condition to the Mission Area Designee/DPM, who will determine, in consultation with the USDA Medical Officer, as necessary, whether the requestor is an individual with a disability.

The Designee/DPM will request relevant supplemental medical information if information submitted does not clearly explain the nature of the disability, or need for accommodation will assist the employee to perform the essential functions of the job or enjoy benefits and privileges of the workplace. In the case of an applicant, relevant supplemental medical information may be requested to determine the nature of the disability or how the accommodation will assist with the application process.

The Designee/DPM will seek information or documentation about the disability and the functional limitations from the individual, and/or ask the individual to obtain such information from an appropriate professional. Not all information need be medical, as the appropriate information may be received from a social worker or rehabilitation counselor. The documentation received must be sufficient for the Designee/DPM to determine if the requestor is an individual with a disability. Additional documentation may be requested to make this determination, if necessary. In order for appropriate and useful information to be obtained, all requests should describe the nature of the individual's position, the essential functions and any other relevant information. The Designee/DPM or other decisionmaker shall consult with the USDA medical officer, when necessary, regarding the interpretation of medical documentation.

If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the Designee/DPM to determine if the requestor has a disability, the decisionmaker may ask for further information.

First, however he/she will explain to the individual seeking the accommodation, in specific terms, why the information is needed, and why it 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. Alternatively, the Designee/DPM and the individual requesting the accommodation may agree that the individual will sign a limited release, and the Designee/DPM may thereafter submit a list of specific questions to the individual's health care professional or may otherwise contact the individual's doctor.

If, after a reasonable period of time, there is still not sufficient information to demonstrate that the individual has a disability and needs a reasonable accommodation, the decisionmaker may request that a physician chosen by the Designee/DPM examine the individual, at the Mission Area or Agency expense. The decisionmaker will be advised, by the physician, of the individual's relevant medical condition and any additional relevant information about the individual's functional limitations, if necessary.

The failure to provide appropriate documentation or to cooperate in USDA's efforts to obtain such documentation can result in a denial of the reasonable accommodation.

## **8. CONFIDENTIALLY REQUIREMENTS REGARDING THE REASONABLE ACCOMMODATION PROCESS**

Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all medical information, including information about functional limitations and reasonable accommodation needs, that USDA obtains in connection with a request for a reasonable accommodation must be kept in files separate from the individual's official personnel file. It also means that any REE employee who obtains or receives such information is strictly bound by these confidentiality requirements. Confidentiality applies to all aspects of the reasonable accommodations process.

The Designee/DPM will maintain custody of all medical records obtained or created during the process of a request for reasonable accommodation and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and information regarding these records, or any aspect of the process, may be disclosed only as follows:

- Supervisor and managers who need to know may be told about the determination of eligibility of an individual with a disability, the necessary restrictions on the work or duties of the employee, and about any recommended accommodation, but medical information should only be disclosed if strictly necessary;

- First Aid and safety personnel may be given specific medical information, when appropriate, if the disability might require emergency treatment;
- Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;
- In certain circumstances be disclosed to worker's compensation offices or insurance carriers, in accordance with Equal Employment Opportunity Commission regulations; or,
- The USDA Medical Officer when consulting with him/her regarding the interpretation of medical documents.

Whenever information is disclosed, the individual disclosing it must inform the recipient of the confidentiality requirements as well as the requirement to comply with applicable provisions of the Privacy Act. For bargaining unit employees, where the need for an accommodation is not obvious, information maintained by the agency may be disclosed to the Union having exclusive recognition in conjunction with representation functions related to making reasonable accommodation determinations consistent with the Rehabilitation Act.

## **9. TIMEFRAMES FOR PROCESSING REQUESTS AND PROVIDING REASONABLE ACCOMMODATION**

A reasonable accommodation provides an opportunity for the employees to perform the essential functions, and in most cases all functions of the job, or access a benefit or privilege of employment, and allows an applicant access to the application process. It is expected that the accommodation shall be provided as soon as reasonably possible. Special circumstances may influence timing of this process. In cases such as applying for a job or attending a USDA sponsored function scheduled to occur shortly may require expediting the reasonable accommodation request immediately. Most other accommodation decisions can be made and the accommodation provided within a few days, however, the timeliness indicated below shall be followed:

- The process to consider a reasonable accommodation request should begin immediately upon receipt by the appropriate official of an oral and/or written request by the individual asking for the accommodation, or their representative (requires signed letter/form stating approval to act as representative). However, **the process shall begin no more than five business days from the date of the oral and/or written request;**
- In situations where the individual does not have an obvious or previously documented medical condition that qualifies him/her as an individual with a disability and the accommodation requested is related to limitations caused by that medical condition, the firstline supervisor must determine if the accommodation is effective and, if so, **provide the accommodation in no more than 30 business days from the date of the written or oral request;**

- In situations where the individual does not have an obvious or previously documented medical condition that qualifies him/her as an individual with a disability, the **individual to whom the request is made shall forward the request to the Designee/DPM within three business days from the date of the oral or written request;**
- With permission of the employee, the **Designee/DPM shall request any needed additional documentation from the appropriate source within five business days;**
- Upon receipt of the documentation, the **Designee/DPM shall, within five business days, consult with the USDA Medical Officer, as necessary, and make a decision** regarding whether the employee **is or is not** an individual with a disability and so inform the requestor’s firstline supervisor of the decision within **this same five business day period;**
- Situations where medical documentation is necessary, **the 30 business day period for the firstline supervisor to determine if the accommodation is effective and to provide the accommodation begins on the date the Designee/DPM issued his/her decision identified above.**

It may be necessary to extend the above-mentioned timeframes. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When these circumstances occur, the time for processing a request and providing the accommodation will be extended as reasonably necessary and the Designee/DPM will be notified. All REE decisionmakers are expected to act as quickly as possible to determine eligibility and provide needed accommodations. Below are a few examples of extenuating circumstances:

- The purchase of equipment may take longer than 30 days;
- The employee with a disability needs to try out equipment before purchase can be made;
- New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barrier.

In the event of an extenuating circumstance, the employee’s supervisor shall notify the employee of the reason for the delay, and the approximate date on which a decision, and/or provision of the reasonable accommodation is expected. The supervisor shall investigate whether temporary measures can be taken to assist the employee. A temporary measure can be taken even when the delay is caused by the need to obtain or evaluate medical documentation to determine if the employee has a covered disability. In such a case, the decisionmaker will notify the individual on writing that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.

This in no way obligates USDA to continue or offer further accommodation if the determination is made that the employee does not have a covered disability.

## 10. GRANTING A REASONABLE ACCOMMODATION REQUEST

As soon as a decision to provide a reasonable accommodation is made, that decision shall be immediately communicated to the requestor. The attached **“Reasonable Accommodation Information Reporting Form” (REE-172)** is completed by the decisionmaker. A copy of this completed form shall be given to the individual making the request, the individual’s immediate supervisor, and the Designee/DPM. If the accommodation cannot be provided immediately, the decisionmaker must inform the individual of the projected timeframe for providing the accommodation.

## 11. DENIAL OF REASONABLE ACCOMMODATION REQUEST

As soon as a decision is made that an accommodation is denied, that decision shall be immediately communicated to the requestor using the attached **“Denial of Reasonable Accommodation Request Form (REE-173)**. A copy of this completed form shall be given to the individual’s immediate supervisor and the Designee/DPM. The explanation for the denial should be in writing, clearly stating the specific reasons for the denial. Where a specific requested accommodation was denied, but an offer of a different one in its place is provided, the denial notice will explain both the reasons for the denial of the requested accommodation and reasons that the decisionmaker believes that the offered accommodation will be effective. Reasons for the denial of a request shall include specific reasons, for example, **why the accommodation would not be effective or why it would result in undue hardship.**

The written notice of denial also informs the individual that he/she has the right to file an equal employment opportunity complaint and may have rights to pursue a grievance or Merit Systems Protection Board procedures. The notice also explains procedures available for alternative dispute resolution along with appropriate encouragement to use this process to resolve issues associated with the denial to accommodate.

## 12. INFORMATION TRACKING AND REPORTING

The Designee/DPM is responsible for maintaining the records tracking and reporting all reasonable accommodation decisions. they shall maintain these records for the longer of the employee's tenure with USDA or 5 years. The Designee/DPM will prepare annually a report to the Departmental Disability Employment Program Manager. The report will contain the following, presented in aggregate:

- The number of reasonable accommodation, by type, that have been requested in the application process, and whether those requests have been granted or denied;
- The positions (occupational series, grade level, and agency component) for which reasonable accommodation have been requested;
- The types of reasonable accommodation that have been requested for each of those positions;
- The number of reasonable accommodation, by type, for each position that have been approved, and the number of accommodation, by type, that have been denied;
- The number of requests for reasonable accommodation, by type, that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
- The reasons for denial of requests for reasonable accommodation;
- The amount of time taken to process each request for reasonable accommodation;
- The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodation.

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