

REASONABLE ACCOMMODATIONS PROGRAM

1. PURPOSE

This Directive establishes Marketing and Regulatory Programs (MRP) policy, procedures, and guidance for disabled employees eligible to receive a reasonable accommodation from their agencies. It provides procedures to implement DM 4300-002, Reasonable Accommodation Procedures, and its revisions, along with the Americans with Disabilities Act (ADA), the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), and relevant case law. Reasonable accommodations are meant to remove workplace barriers that prevent qualified disabled employees or applicants from enjoying the same rights, benefits, and privileges of employees without a disability.

MRP is committed to an inclusive workplace environment where disabled employees and applicants for employment can quickly and easily request and obtain reasonable accommodations to reach their full potential.

2. AUTHORITIES

- a. Memorandum for Managers and Supervisors: Preventing Complaints of Disability Discrimination by Understanding the ADAAA, dated June 15, 2009.
- b. The ADAAA of 2008, effective January 1, 2009.
- c. 29 U.S.C. Sections 791, 792, and 793.
- d. 29 CFR Sections 1611, 1614, and 1630.
- e. 29 CFR 1630.1-16 (1997), Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act.
- f. The Rehabilitation Act of 1973, Section 504, as amended, (June 20, 2002 – ADA Standards Apply).
- g. The Americans with Disabilities Act of 1990; 42 U.S.C. 12101-12117, 12201-12213 (1994) (codified as amended).

- h. Executive Order 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation.
- i. Executive Order 13548, dated July 26, 2010, Increasing Federal Employment of Individuals with Disabilities.
- j. USDA DR 4300-008, Reasonable Accommodations for Employees and Applicants with Disabilities, dated March 9, 2000.
- k. USDA DM 4300-002, Reasonable Accommodation Procedures, dated July 5, 2002.

3. POLICY

- a. Reasonable accommodations remove workplace barriers that prevent a qualified disabled employee or applicant for employment from enjoying the same rights, benefits, and privileges as non-disabled employees.
- b. Any qualified disabled applicant or employee (as defined by the ADAAA, to include part-time, full-time, and probationary employees) may receive a reasonable accommodation. Family members are not included in this coverage.
- c. An agency will provide a reasonable accommodation unless it causes undue hardship to the agency. An undue hardship would significantly disrupt operations or pose a significant financial burden.
- d. MRP will provide sufficient resources for program implementation to ensure efficient and successful processing of requests for reasonable accommodations. If a program lacks the financial resources to provide a reasonable accommodation, the program is expected to contact the Deputy Administrator or Administrator of its agency to determine if additional funding is available prior to any request for reasonable accommodation being denied due to financial reasons.
- e. MRP will maintain the records related to an employee's request for accommodation in accordance with applicable Federal regulations. MRP personnel will ensure that medical records are kept confidential and maintained in files separate from the individual's official personnel file.
- f. Exceptions to the confidentiality as outlined in DM-4300-002 include the following:
 - (1) Supervisors 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 any recommended accommodations;
 - (2) First aid and safety personnel may be given specific medical information, when appropriate, if the disability might require emergency treatment;

- (3) Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;
 - (4) The USDA medical officer or agency medical officer when consulting with the employee requesting a reasonable accommodation regarding the interpretation of medical documents; and
 - (5) Certain circumstances related to the worker's compensation or insurance carriers, in accordance with the Equal Employment Opportunity Commission (EEOC) regulation.
- g. MRP Human Resources Division (HRD) will ensure that all vacancy announcements include a statement of reasonable accommodation to ensure compliance with Executive Order 13078, and to support the Office of Personnel Management initiatives to increase the representation of people with disabilities in the Federal workforce.

4. DEFINITION OF REASONABLE ACCOMMODATION

- a. A reasonable accommodation is a change in the work environment or the application process that enables qualified individuals with disabilities to enjoy the same rights, benefits, and privileges of non-disabled employees, including:
 - (1) Modifications or adjustments to a job application process;
 - (2) Modifications or adjustments to the work environment or manner of circumstances under which a position is held or desired;
 - (3) Modifications or adjustments that enable those covered to enjoy equal rights, benefits, and privileges of employment.
- b. Rights, benefits, and privileges of employment include, but are not limited to:
 - (1) Access to restrooms, credit union, and cafeteria;
 - (2) Recreational activities;
 - (3) Social activities on and off-site; and
 - (4) Training opportunities.
- c. The ADAAA does not entitle a qualified individual with a disability to an accommodation of choice, but rather to an "effective accommodation."
- d. A reasonable accommodation will not remove an essential function of the employee's position, nor will a reasonable accommodation alter conduct, performance, or production standards of the employee's position.

5. PROCEDURES

- a. Determining what accommodations are effective will involve an “interactive process” between the manager and his/her employee or applicant and other parties deemed appropriate to resolve issues around accommodation (i.e., Disability Employment Program Manager, Reasonable Accommodations Specialist, Physician, USDA TARGET Center, etc.).
 - (1) During the “interactive process,” the supervisor and the employee will identify and consider:
The essential functions of the employee’s job;
 - (2) The employee’s functional limitations and needs; and
 - (3) Possible accommodations to address the limitations and needs identified above.
- b. Reasonable accommodations do not excuse an employee from discipline or from having the responsibility to adhere to his/her program policies relating to performance and conduct.
- c. If an employee cannot be accommodated in his/her position of record, consideration for voluntary reassignment to another position of equal or lower grade is the accommodation of last resort. (See Section 7. g. below).
- d. If an applicant for employment needs an accommodation to allow him/her to participate in the application or interview process, he/she should inform the Human Resources Specialist listed on the job announcement as quickly as possible.

6. RESPONSIBILITIES

- a. **Employee.**
 - (1) The employee, or applicant, is responsible for requesting a reasonable accommodation.
 - (2) The employee is encouraged to request a reasonable accommodation before his/her condition has a negative impact on performance or conduct at work.
 - (a) The request for an accommodation may be made orally or in writing.
 - (b) The request does not need to specifically use the term “reasonable accommodation.”
 - (c) The request may be made to the requester’s supervisor, the Reasonable Accommodations Specialist, Office of Civil Rights,

Special Emphasis Program Manager for Disabilities, or other appropriate persons.

- (3) The employee must provide sufficient information and documentation, such as a description of the accommodation requested, and an explanation of how it would enable him/her to perform the job or assist him/her in the selection process.
- (4) When requested, the employee must provide relevant medical information related to the functional impairment and the requested accommodation when the disability and/or need for accommodation is not obvious.
- (5) The employee must participate in the interactive process with his/her supervisor.

b. The **Supervisor** will:

- (1) Upon receipt of a request for reasonable accommodation, promptly (within 3 business days) engage the employee in the interactive process.
- (2) Contact the reasonable accommodations specialist with the information in the request and ask for assistance in determining the employee's eligibility for possible accommodations.
- (3) Provide informal assistance to the employee outside of the formal process. If the supervisor chooses to provide informal assistance, he/she will document his/her actions, including, but not limited to the employee's limitations and request, dates of conversations, what assistance was provided, and any other actions taken.
- (4) Determine the appropriate accommodation.
- (5) Provide the appropriate accommodation.
- (6) Contact HR, Labor Relations staff, for guidance on notifications and negotiations with the union, if the requested accommodation will affect working conditions of an employee(s) covered by a collective bargaining agreement.

c. The **Reasonable Accommodations Specialist** will:

- (1) Enter the request in the internal reasonable accommodations database and assign a request number;
- (2) Send the employee appropriate information regarding the process as well as requests for medical information, if needed, to determine if the employee has a disability and is eligible to receive a reasonable accommodation;

- (3) Review medical documentation to determine if the employee has a disability as defined by the ADAAA, and if needed, consult with the appropriate medical officer;
 - (4) Provide written communication to the employee and first-line supervisor indicating whether the employee is eligible to receive an accommodation, or is not eligible to receive an accommodation;
 - (5) Assist the supervisor and employee with the Interactive Process, if needed; and
 - (6) Assist the employee and manager if the accommodation requires assistive technology from the USDA TARGET Center. The Reasonable Accommodations Specialist will complete the necessary paperwork to assist with this process.
- c. The **Employee Relations Specialist** will:
- (1) Assist the Reasonable Accommodations Specialist, if requested;
 - (2) Assist the supervisor in cases involving employee performance or misconduct issues; and
 - (3) Provide assistance, as requested, in cases involving possible reassignment, removal, or other action because of the employee's inability to perform the essential functions of his/her job.

7. REASSIGNMENT AS ACCOMMODATION OF LAST RESORT

- a. Reassignment is considered only if no other accommodations are available to enable the individual to perform the essential functions of his/her job, or if the only available accommodation would cause an undue hardship to the Agency.
- b. A reassignment will be made only to a vacant position and for an employee who is qualified for the new position, upon consent of the employee.
- c. The agency is not required to create a new position for the employee as part of this process.
- d. The reassignment process is generally set forth below:
 - (1) The Reasonable Accommodations Specialist will contact the employee to determine his/her interest in being reassigned and provide the employee with:
 - (a) MRP Form 30, Reasonable Accommodation Reassignment Request, (see Attachment 1) including the employee's preference regarding the geographic scope of search.

- (b) Reassignment Fact Sheet, which includes a statement that if a reassignment is outside of the current commuting area, the agency is not obligated to pay relocation costs, and if the employee agrees to accept a position at a lower pay grade, there is no pay retention provided.
- (2) The initial search will be conducted within the employee's current program for up to 30 calendar days. This allows the program to identify any current or anticipated vacancies that have not been formally announced and represents the best chance to effectively reassign an employee to a different position. It is important that this step be supported by the highest level of management possible to ensure the greatest probability of success.
- e. If no positions exist within the employee's program area, HR Operations will conduct a broader search of vacant positions within the employee's current agency, and in the other MRP agencies (AMS, APHIS, or GIPSA), over a 6 calendar week period. This will include vacancies currently open, and vacancies anticipated to be opened within the 6 week period of the search, based on requests for recruitment actions.
- f. Four searches are to occur over 6 calendar weeks with a search being conducted in the beginning, at the 2 week mark, at the 4 week mark, and at the 6 week mark.
- g. The search for a reassignment will focus on positions which are equivalent to the employee's current job in terms of pay, status, grade level, and other relevant factors. The appropriate personnel in HR Operations also will determine if the employee is qualified for positions or job series other than his/her current position or series, as determined by his/her education, experience, current resume, functional limitations as they relate to the knowledge, skills, and abilities to perform the job. While the employee's interest should be considered, it is the agency who determines the appropriate position for reassignment among existing vacant and funded positions for which the employee is qualified.
- h. The search for vacant positions will be conducted for vacancies existing or identified through the HR electronic system used for Standard Form (SF) 52 requests for recruitments for the geographic location(s) specified by the employee, and the job series and position(s) for which the employee is deemed qualified by Human Resources.
- i. If a vacant position is located in the employee's current agency, but outside of his/her current program, HRD will contact the program Deputy Administrator/Staff Director and/or designee to discuss the potential reassignment and/or other information.
- j. If a vacant position is located in an MRP agency other than the employee's current agency, the office of the Administrator for that agency will be contacted to discuss possible reassignment of the employee.

- k. If an available position is identified for which the employee is qualified, as determined above, he/she will be reassigned to the position non-competitively, subject to the approval of the selecting official for the reassigned position and the acceptance by the employee.
- l. Reasonable accommodation 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, MRP will **NOT** pay for the relocation costs.
- m. If no positions are available for which the employee is qualified, or the employee chooses not to accept a reassignment, the employee may be separated from Federal service for a medical inability to perform his/her job.

8. WHEN EMPLOYEE CAN NOT BE ACCOMMODATED OR REASSIGNED

- a. The employee may contact the Human Resources Benefits Section for information on a medical disability retirement, if it appears that he/she is no longer able to perform efficient and useful service and that his/her medical condition will continue for more than 1 year.
- b. If an employee decides to apply for a medical disability retirement, the Reasonable Accommodations Specialist will complete Section D of SF 3112, Agency Certification of Reassignment and Accommodation Effort, if requested. The Reasonable Accommodations Specialist will also provide a completed copy to the employee and the appropriate Benefits Specialist.

9. AVENUES FOR REDRESS OF DENIALS

If an employee or applicant is denied a reasonable accommodation, he/she has the following options:

- a. **Request for Reconsideration.** Upon receipt of the denial from the decision maker, the employee or applicant has 7 calendar days to request reconsideration. After receiving a request for reconsideration, the decision maker has 7 calendar days to render a decision and notify the requestor, in writing.
- b. **Alternative Dispute Resolution (ADR).** The employee or applicant is encouraged to participate in informal resolution processes available to address the reasonable accommodation outcome. The individual may participate in ADR as part of the above avenues of redress or independently by utilizing the Collaborative Resolutions staff or the equivalent.
- c. **Employee Grievance Process.** This is an internal grievance process that is administrative in nature, not related to a union grievance or an EEO complaint.
- d. **Negotiated Grievance Procedure.** Employees covered by collective bargaining agreements should consult their collective bargaining agreements for applicability of the negotiated grievance process for reasonable accommodation denials.

- e. **EEO Complaint.** To file an EEO complaint, the applicant or employee must contact an EEO counselor within 45 days of notice of the denial, pursuant to 29 CFR Part 1614. Contact the local Civil Rights Office for further information.

10. INQUIRIES

- a. Inquiries regarding reasonable accommodations should be directed to the Servicing Disability Program Managers or Reasonable Accommodations Specialists as listed below:

- (1) **Disability Program Managers**

- AMS – 202-720-8407
 - APHIS – 301-734-5366
 - GIPSA – 202-690-3192

- (2) **Reasonable Accommodations Specialists**

- 301-734-3162
 - 301-734-8299

- b. This Directive can be accessed on the Internet at:

- (1) The AMS home page at:
<http://www.ams.usda.gov/AMSV1.0/amsissuances>
 - (2) The APHIS Library at: www.aphis.usda.gov/library
 - (3) The GIPSA home page at:
<http://www.aphis.usda.gov/library/gipsa/GIPSA.shtml>

/s/
Joanne Munno
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MRP Business Services

Attachment