

INTERNAL REVENUE SERVICE



REASONABLE ACCOMMODATION PROCEDURES

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Table of Contents

Subject	1
Purpose	1
Authority	1
Policy	2
Scope	2
Definition of Key Terms	3
Requesting Reasonable Accommodation	6
REQUESTS FOR REASONABLE ACCOMMODATION	
WRITTEN REQUESTS FOR RECORD KEEPING PURPOSES	7
DETERMINING WHICH IRS OFFICIAL WILL HANDLE THE REQUEST	7
THE INTERACTIVE PROCESS	9
REASSIGNMENT AS AN ACCOMMODATION	10
REQUESTS FOR MEDICAL INFORMATION	11
TIME FRAMES FOR PROCESSING REQUESTS AND PROVIDING REASONABLE ACCOMMODATIONS	13
EXPEDITED PROCESSING	16
Granting or Denying a Reasonable Accommodation Request	18
Dispute Resolution	20
Confidentiality and Disclosure	21
Information Tracking and Reporting	22
Relation of Procedures to Statutory and Collective Bargaining Claims	24

Appendices

APPENDIX A: REASONABLE ACCOMMODATION FORM (PARTS I, II, III, AND IV)	A-1
APPENDIX B: IRS REASONABLE ACCOMMODATION RESOURCES	B-1
APPENDIX C: EXTERNAL REASONABLE ACCOMMODATION RESOURCES	C-1
APPENDIX D: FOH MEDICAL RELEASE	D-1

Subject

Internal Revenue Service Procedures for Providing Reasonable Accommodation for Individuals with Disabilities

Purpose

The following establishes the Internal Revenue Service (IRS) procedures for processing reasonable accommodation for employees and applicants with disabilities as required in the Department of Treasury guidance memorandum dated August 10, 2001.

Authority

The Rehabilitation Act of 1973, 29 U.S.C 701, et seq., as amended, requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship.

Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000), requires that Federal agencies establish effective written procedures for processing requests for reasonable accommodation.

Equal Employment Opportunity Commission Policy Guidance on Executive Order 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, Directives Transmittal Number 915.003 (October 20, 2000), explains EO 13164 in detail.

Equal Employment Opportunity Commission Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (March 1, 1999), clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship.

Equal Employment Opportunity Commission regulations at 29 C.F.R. § 1630.

Equal Employment Opportunity Commission final rule, issued May 21, 2002, implementing amendments to Section 501 of the Rehabilitation Act of 1973 and EEOC's regulations found at 29 C.F.R. § 1614.203.

Internal Revenue Service Policy P-1-47

<http://www.hq.irs.gov/neweeo/vf/p1-147.htm>

The Internal Revenue Service shall take positive and persistent actions to recruit, hire, develop, and advance persons with disabilities. The Service shall make reasonable accommodations for all qualified applicants or employees with physical or mental disabilities in accordance with law. The Service shall comply with all appropriate rules, regulations, and directives. Executives, managers, and supervisors shall create a positive work environment that will encourage employees with disabilities to maximize and reach their full potential.

The Internal Revenue Service shall take necessary action to ensure that members of the public with disabilities have an equal opportunity to effectively participate in its programs, activities, and services, in accordance with law. The Service shall comply with all appropriate rules, regulations, and directives.

Scope

The policies and procedures apply to all IRS operating divisions, functional units, offices, and to all employees and applicants for employment with the IRS. These policies and procedures supplement the Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (March 1, 1999), and EEOC Policy Guidance on Executive Order 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (October 20, 2000). Both documents are available on EEOC's internet site at www.eeoc.gov.

Definition of Key Terms

BOD/FU. Business Operating Division/Functional Unit.

Deciding Official. The IRS official designated to identify possible accommodations and determine whether a requested accommodation shall be provided. There are three possible deciding officials: a human resources manager (for applicants only), an employee's immediate supervisor/manager, and a manager in the employee's chain of command. Deciding officials may consult with the appropriate parties (e.g., physician, reasonable accommodation coordinator, etc.) to determine if an individual has a medical condition that substantially limits a major life activity and is eligible for reasonable accommodation.

Disability. A physical or mental impairment that substantially limits one or more of the major life activities.

Disability Compliance Program Manager. Designated official on the staff of the Chief, EEO and Diversity, who has direct administrative responsibility for the program, Servicewide.

Dispute Resolution Process. Any voluntary mechanism through which an individual can request reconsideration of denial of reasonable accommodation, regardless of whether the person has started the EEO complaint process.

EEOD. Equal Employment Opportunity & Diversity.

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 them. 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 them. 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.

Extenuating Circumstances. Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. Limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. For examples, refer to Section VII.b. that discusses extenuating circumstances.

Head of Office. As stated in the IRS Correspondence Manual: Commissioner of IR; Deputy Commissioner Services and Support; Deputy Commissioner Operations Support; Commissioners, LMSB/SBSE/TEGE/W&I; Chiefs, Information Officer/Financial Officer/Agency-Wide Shared Services/Appeals/Communications and Liaison/Criminal Investigation/EEO and Diversity/Human Capital Officer/Mission Assurance; National Taxpayer Advocate; and Chief Counsel.

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 is regarded as having such an impairment.

Interactive Process. Meaningful, cooperative communication between the Deciding Official and the individual requesting an accommodation so that a determination may be made whether an accommodation should be provided and the appropriate accommodation, under the circumstances, to provide.

IRS. The Internal Revenue Service, including its subordinate operating divisions, functional units and offices.

IRS Medical Consultant. Designated physician or health services provider under contract with the IRS to provide medical consultation in cases of an individual request(s) for reasonable accommodation under the Rehabilitation Act of 1973, as amended.

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.

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 (RA). A change or adjustment that enables a qualified person with a disability to apply for a job, perform job duties, or enjoy benefits and privileges of employment. There are three categories of reasonable accommodations:

- modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job (such as, providing application forms in alternative formats like large print or Braille);
- modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job (such as, providing sign language interpreters); and

- modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment (such as, removing physical barriers in an organization's cafeteria).

Reassignment. A form of reasonable accommodation that, absent undue hardship, is provided to an employee who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation, and the agency has determined that (i) there are no other effective accommodations that will enable the employee to perform the essential functions of his/her current position; or (ii) all other accommodations would impose an undue hardship. If the employee is qualified for the position, s/he will be reassigned to the job and will not have to compete for it.

Receiving Official. The IRS person designated to: Officially receive a request for reasonable accommodation from an employee or applicant (or an individual acting on his/her behalf), determine who will handle the request (the Deciding Official), forward the request to the Deciding Official, and monitor the request until it is closed. Typically this is the servicing Equal Employment Opportunity and Diversity (EEOD) manager, a member of the EEOD Office staff, or, in the case of an applicant for employment, a human resources specialist/manager.

Request for Reasonable Accommodation. A statement that an individual needs an adjustment or change at work, in the application for employment process, or in a benefit or privilege of employment for a reason related to a disability.

Requester. A qualified employee or applicant for employment with a disability, or an individual acting on his/her behalf, who requests reasonable accommodation.

Responsible Individual. An EEOD manager or other person designated to assist in the reasonable accommodation process.

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.

Vacant Position. The position is available when the employee asks for reassignment as a reasonable accommodation, or the employer knows that the position will become available within a reasonable amount of time.

Requesting Reasonable Accommodation

I. Requests for Reasonable Accommodation

- A. The reasonable accommodation process begins as soon as an employee or an applicant for employment makes the request for accommodation either orally or in writing. (The IRS Reasonable Accommodation (RA) Form is provided in Appendix A.) 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 that the IRS is required to provide the change or adjustment.**
- B. Generally, an **employee** should notify his/her supervisor or manager that s/he needs a reasonable accommodation. However, the employee's request must be considered if it is made to another supervisor or manager in his/her immediate chain of command; the servicing EEO office; reasonable accommodation coordinator; or, responsible individual.
- C. An **applicant** for employment may request a reasonable accommodation orally or in writing from any IRS employee with whom the applicant has contact in connection with the application process. Talent Hiring and Recruitment Division in conjunction with EEO is responsible for training staff that is involved in the application process to recognize requests for reasonable accommodation and to handle them appropriately.
- D. A **family member, friend, health professional, or other representative** (such as a union steward or coworker) may request a reasonable accommodation on behalf of an employee or applicant with a disability. The request shall be made to one of the same persons to whom the employee or applicant would make the request. 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 that is not needed.

II. **Written Requests for Record Keeping Purposes**

- A. To enable the IRS to keep accurate records regarding requests for accommodation, **employees should follow up an oral request for accommodation** by completing the IRS Written RA Request Form, Part I (provided in Appendix A). If the employee chooses not to complete the written form, the Receiving Official, the EEOD manager, or other responsible individual must complete the form to document the request. While the Written RA Request Form should be completed as soon as possible following the request, it is not a requirement for the request itself. Processing of the request will begin as soon as it is made, whether or not the RA Request Form has been provided.
- B. A **RA Request Form is not required** when an employee 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 must be given each time the accommodation is needed.
- C. For **applicants** for employment seeking a reasonable accommodation, the human resources specialist/management official handling the personnel action must give the RA Request Form to the applicant to fill out. If the applicant requires assistance with this requirement, the human resources official receiving the request will provide that assistance. If an applicant for employment chooses not to complete the form, the human resources official who has received the request must complete the form to document the request. A copy of the form will be provided to the servicing EEOD staff.

III. **Determining Which IRS Official Will Handle the Request**

- A. **Receiving Official.** The servicing EEOD staff or human resources specialist/manager will receive the request, will determine who will be responsible for handling the request (the Deciding Official), forward the request to the Deciding Official, and monitor the request through closure.
- B. **Deciding Officials.** The employee's supervisor/manager, another manager in the employee's immediate chain of command, or human resources manager in the case of an applicant for employment, are responsible for identifying possible accommodations and for determining whether an accommodation will be provided. Deciding officials may consult with the appropriate parties (e.g., physician, reasonable accommodation coordinator, etc.) to determine if an individual has a medical condition that substantially limits a major life activity and is eligible for reasonable accommodation.

- C. **Back-Up.** IRS staffs shall ensure that 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 discussed in Section VII, below, will not be suspended or extended because of the unavailability of the Receiving or Deciding Official.
- D. **IRS Disability Compliance Program Manager.** The Disability Compliance Program Manager shall be available, as needed, to provide assistance to employees, EEOD and human resources officials, and Deciding Officials in processing requests for reasonable accommodation.

IV. The Interactive Process

- A. Communication is a priority throughout the entire process. IRS officials involved in the reasonable accommodation process should take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation (and any chosen representative) should also participate, to the extent possible, in helping to identify an effective accommodation.

Resources, that are available to help both the Deciding Official and the individual requesting the accommodation to identify possible accommodations, are listed in Appendices B and C. See Appendix B for IRS resources for information on sign language interpreters, requests for materials in accessible formats, adaptive technology, ergonomic or special equipment, volunteer assistors, and information on a Desk Reference Guide for Accommodating People with Disabilities. See Appendix C for external resources.

The IRS Disability Compliance Program Manager is also available to provide assistance.

- B. On-going communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation that should be provided are clear, extensive discussions are not necessary. Even so, the Deciding Official and requesting individual should discuss the matter to make sure that there is a full exchange of relevant information.
- C. If after engaging in the interactive process the parties cannot agree on the accommodation to be granted, the deciding official should offer the individual the accommodation that the deciding official has determined to be reasonable and effective and, if the requesting individual does not accept, then proceed to the steps for denial of a requested accommodation.
- D. If through the interactive process the parties agree on an accommodation that is different than what was originally requested, that should be noted on the RA form.

V. **Reassignment as an Accommodation**

A. Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that:

1. there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position;
2. the accommodation does not conflict with a controlling collective bargaining agreement (e.g., the IRS-NTEU National Agreement, mid-term agreements, LOUs or local agreements), absent special circumstances; or
3. all other reasonable accommodations would impose an undue hardship.

However, if both the deciding official and employee **voluntarily** agree that reassignment is preferable, to remaining in the current position with some form of reasonable accommodation, then the employer may reassign the employee.

B. In considering whether there are positions available for reassignment, the Deciding Official shall work closely with the servicing EEOD manager, Embedded EEOD Directors, and Human Resources staff, as well as the individual requesting the accommodation to identify:

1. all vacant positions within the IRS for which the employee may be qualified, with or without reasonable accommodation; and
2. all positions which the embedded Human Resources staff have reason to believe will become vacant over the next **60 business** days and for which the employee may be qualified.

If no suitable vacant position is found within the IRS, EEOD staff in conjunction with Human Resources staff may consult with Main Treasury regarding searching for a suitable vacant position throughout the Department.

The Deciding Official 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, the Deciding Official will consider vacant lower level positions for which the individual is qualified.

- C. 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 reassignments not required by management, the IRS shall not pay for the employee's relocation costs unless IRS policy provides for such payments for non-disabled employees.
- D. For reassignment to a position across business units, the manager in the losing office must coordinate these types of requests with the manager who has authority to effect the employment decision in the gaining office. If agreement cannot be reached, the Head of Office in the gaining organization will be the Deciding Official for reassignment.
- E. Reassignment is available only to employees, not to applicants for employment.

VI. **Requests For Medical Information**

- A. The IRS is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. 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, the IRS may require that the individual provide reasonable documentation about the disability and his or her functional limitations.
- B. If the Deciding Official believes that medical information is necessary in order to evaluate a request for reasonable accommodation for an **employee**, he/she will make a request to the servicing EEO staff to obtain such information that includes a physician's determination that the medical condition does or does not significantly limit one or more major life activities.
- C. The servicing EEO manager, after an initial meeting with the Deciding Official, will make a determination as to whether medical documentation is necessary. If it is, the EEO manager will request the necessary medical information from the employee. If it is not necessary, the request for accommodation will be returned promptly to the Deciding Official to complete the processing.
- D. If the Deciding Official believes that medical information is necessary in order to evaluate a request for reasonable accommodation for an **applicant for employment**, the human resources specialist/manager will make a request to the applicant to obtain such information.

- E. If a determination is made to seek medical information, an employee or applicant will be asked to provide the attached IRS RA Form, Part III, to his/her health care practitioner, social worker, or rehabilitation counselor to substantiate that the individual has a disability and needs the reasonable accommodation requested. (The IRS RA Request Form, Part III, is provided in Appendix A.)
- F. Once the medical documentation is received, the EEOD manager or human resources specialist/manager or his/her designee will evaluate the documentation, in consultation with the IRS medical consultant and Deciding Official or Human Resources staff. If the information provided by the health care professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the deciding official to determine whether an accommodation is appropriate, the EEOD manager or human resources specialist/manager may ask for further information.
 - 1. First, however, the EEOD manager or human resources specialist/manager should explain to the individual seeking the accommodation, in specific terms, why the information provided is insufficient, what additional information is needed, and why the information is necessary for a determination of the reasonable accommodation request.
 - 2. The individual may then ask the health care practitioner or other appropriate professional to provide the missing information.
- G. Alternatively, the EEOD manager or human resources manager or his/her designee and the individual requesting the accommodation may agree that the individual will sign a limited release, and that the IRS may thereafter submit a list of specific questions to the individual's health care professional or may otherwise contact the individual's doctor. (The medical release form is provided in Appendix D.)
- H. 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 Service may request that a physician chosen by the IRS examine the individual. Such a request should be made only after the individual has been notified as to (1) why the submitted information is inadequate, (2) what information is needed, and (3) given the opportunity to provide the specific information.
- I. After consultation with the IRS medical consultant, the EEOD manager or his/her designee will let the Deciding Official know whether the documentation substantiates that the individual has a disability as defined under the Rehabilitation Act of 1973 and provide, if necessary, any additional relevant information about the individual's functional limitations.

- J. In some cases, the individual requesting the accommodation will supply medical information directly to the Deciding Official without being asked. In these cases, the Deciding Official will consider such documentation and if additional information is needed, the Deciding Official will work with the EEO manager or his/her designee as set forth in this section. (See the section on **Confidentiality and Disclosure** for instructions on storage of medical information.)
- K. **Failure by the individual to provide appropriate documentation or to cooperate in the IRS efforts to obtain such documentation can result in a denial of the reasonable accommodation.**
- L. All IRS officials who gain access to an employee or an applicant for employment's personal medical information will be reminded that the Rehabilitation Act of 1973 requires that they keep this information strictly confidential and share it only with others who have a need to know. This information may be disclosed only to those individuals listed in the "Confidentiality and Disclosure" section of this document.

VII. **Time Frames for Processing Requests and Providing Reasonable Accommodations.** 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. **Requests Not Involving Extenuating Circumstances**

1. If the staff person receiving the request is not the Deciding Official, the staff person shall forward the request to the Deciding Official as soon as possible but in no more than **five business days**.
2. **If the request does not require that supporting medical information be obtained**, the request shall be processed and the accommodation, if approved, granted and provided as soon as possible but no more than **15 business days** from the date the Deciding Official receives the request. Since the Deciding Official may need the full 15 days to engage in the interactive process and collect all relevant information about possible accommodations, he/she should not delay beginning this process. Failure to meet this time frame solely because a Deciding Official delayed processing the request is not an extenuating circumstance.

3. **If the request requires that supporting medical information be obtained** to determine whether the individual has a disability and/or to identify the functional limitations, the following will apply:
- a. The Deciding Official will make such request to the servicing EEOD manager as soon as possible after his or her receipt of the request for accommodation, but before the expiration of the 15-day period referred to in paragraph VII.a.2. The 15-day period is frozen. The IRS recognizes that the need for documentation may not become apparent until after the interactive process has begun.
 - b. If the servicing EEOD manager, after an initial meeting with the deciding official, determines that medical information is not needed, the 15-day time period resumes as soon as the initial meeting concludes.
 - c. If the servicing EEOD manager, after an initial meeting with the deciding official, determines that medical documentation is needed, the accommodation, if granted, shall be provided within 15 business days from the date the Deciding Official receives the relevant medical information from the servicing EEOD manager.
 - d. **Examples of accommodations that can easily be provided within the 15-day time frame include:**
 - (1) 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.
 - (2) 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 that he/she be allowed to start work at 10:00 a.m. and still put in an 8-hour day.
 - (3) A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes it difficult to read and he/she needs more time to prepare.

B. Request Involving Extenuating Circumstances

1. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. It is the IRS policy that extensions based on extenuating circumstances should be limited to circumstances where they are strictly necessary. All IRS officials are expected to act as quickly as reasonably possible in processing requests and providing accommodations. The following are examples of extenuating circumstances:
 - a. The purchase of equipment may take longer than 15 business days because of requirements under the Federal Acquisition Regulation and EEOC Order 360.001, Acquisition Policies and Procedures.
 - b. Equipment must be back-ordered, the vendor typically used by the IRS 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.
 - c. The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before the IRS buys the equipment.
 - d. New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.
 - e. There is an outstanding initial or follow-up request for medical information.
 - f. Implementation of the accommodation requires union negotiations.

- C. Where extenuating circumstances are present, the deciding Official 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.

D. If there is a delay in providing an accommodation that has been approved, the Deciding Official 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 may provide measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if:

1. they do not unreasonably interfere with the operations of the IRS, operating divisions and functional unit; and
2. the employee is clearly informed that they are being provided only on a temporary, interim basis.

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

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

F. Deciding Officials who approve such temporary measures are responsible for assuring that they do not take the place of a permanent accommodation and that all necessary steps to secure the permanent accommodation are being taken.

VIII. **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 15 business days discussed above. This includes where a reasonable accommodation is needed:

- A. **To enable 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 in order to ensure that an applicant for employment with a disability has an equal opportunity to apply for a job. Therefore, the IRS needs to move as quickly as possible to make a decision and, if appropriate, provide a reasonable accommodation.

- B. **To enable 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 2 days.

Granting or Denying a Reasonable Accommodation Request

- I. **Granting a Reasonable Accommodation Request.** As soon as the Deciding Official determines that a reasonable accommodation will be provided, that decision should be immediately communicated to the individual. This decision will be documented on the RA Form, Part II, and a copy will be provided to the requesting individual. If the accommodation cannot be provided immediately, the Deciding Official must inform the individual of the projected time frame for providing the accommodation.
- II. **Denial of Reasonable Accommodation Request**
 - A. As soon as the Deciding Official determines that a request for reasonable accommodation will be denied, s/he must fill out the attached IRS RA Form, Part IV, and provide a copy to the individual who requested the accommodation, with a copy to the servicing EEO manager. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial. (IRS RA Form, Part IV, is provided in Appendix A.)
 1. Where the Deciding Official has denied a specific requested accommodation, but offered to make a different one in its place 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 that the Deciding Official believes the chosen accommodation will be effective.
 2. Reasons for the denial of a request for reasonable accommodation **must include specific reasons for the denial; for example, why the accommodation would not be effective or why it would result in undue hardship**, and may include the following:
 - a. The requested accommodation would not be effective.
 - b. 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 can be provided.

A determination of undue hardship means that the IRS finds that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of the IRS operations. When evaluating budgetary or administrative concerns to determine if undue hardship exists, the IRS will follow the standards outlined in the EEOC regulations and in the EEOC publication "*Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act.*" **Note: Undue hardship because of budgetary concerns must be assessed in relationship to the entire IRS budget and workforce, rather than in relationship to the parameters of the budget or workforce of an operating division or functional unit.**

- c. Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
 - d. The requested accommodation would require the removal of an essential function.
 - e. The requested accommodation would require the lowering of a performance or production standard.
3. The written notice of denial must also inform the individual that s/he has the right to file an EEO complaint and may have rights to pursue Merit Systems Protection Board, union grievance procedures, and other statutory processes, as appropriate. The notice will also indicate the applicable time frames for filing such claims. The notice must also explain the IRS procedures available for dispute resolution.

Dispute Resolution

- I. If an individual wishes reconsideration, s/he (or the designated representative) 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 issue a response within **five business days of receipt of the reconsideration request.**
- II. If the Deciding Official does not reverse the decision, the individual may initiate the next level appeal to the Senior Official of the business operating division or functional unit. The authority to decide the appeal is the responsibility of the Division Commissioner or equivalent. However, this authority may be re-delegated as deemed appropriate by each business unit to another Executive or Senior Manager who reports directly to the Division Commissioner within the individual's chain of command. In the case involving reassignment to a specific position in another Business Unit, the gaining Division Commissioner or re-delegated approving official will act as the Deciding Official. A response will be issued to the individual within **five business days of receipt of the reconsideration request.**
- III. If the Senior official or designee of the business operating division or functional unit does not reverse the decision, the individual may initiate a second and final appeal of the decision to the Chief, EEO and Diversity or his/her designee (The Deputy Chief of EEO and Diversity). A response to the final appeal will be issued to the individual within **five business days of receipt of the reconsideration request.**
- IV. Individuals should follow up oral reconsideration requests in writing. If the individual chooses not to submit a written reconsideration request, the request must be documented in writing and dated by the receiving official, the EEOD manager, or other responsible individual.
- V. Pursuing dispute resolution under the IRS Reasonable Accommodation 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 or any other applicable statutory processes.** The time limit for filing such a claim generally begins to run once the requested accommodation is denied.

Confidentiality and Disclosure

- I. 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 personnel file. In addition, employees who obtain or receive such information are strictly bound by these confidentiality requirements. The servicing EEO manager will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. The information may be disclosed **only** to the following individuals:
 - A. Supervisors and managers who need to know (including the Deciding Official who requested that the medical information be obtained) may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s), but medical information should only be disclosed if absolutely necessary.
 - B. Chief Counsel and Labor Relations employees when disclosure is necessary for the provision of legal opinion or advice.
 - C. First aid and safety personnel, when appropriate, if the disability might require emergency treatment.
 - D. Government officials when the information is necessary to investigate compliance with applicable laws and regulations.
 - E. EEO officials may be given the information to maintain records and evaluate and report on the agency's performance in processing requests for reasonable accommodation.
 - F. In certain circumstances, to workers' compensation offices or insurance carriers.
- II. Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that attach to it.

Information Tracking and Reporting

- I. Deciding officials will ensure that the IRS RA Form, all parts, are submitted to the servicing EEOD office within **10 business days** of the decision concerning the reasonable accommodation request. The Deciding officials should attach to the form copies of all information s/he receives as part of processing the request.
- II. The servicing EEOD office will maintain these records for the longer of the employee's tenure with IRS or five years. The servicing EEOD office will divide any records on reasonable accommodation into two categories:
 - A. Records related to a particular individual who has requested an accommodation should be kept for the duration of that individual's employment.
 - B. Cumulative records used to track the agency's performance with regard to reasonable accommodation should be kept for at least three years.
- III. The Division EEOD Directors will prepare and submit to the Office of the Chief, EEO and Diversity annually, by October 5th, a report containing the following information:
 - A. the number of reasonable accommodations, by type, that have been requested in the application process and whether those requests have been granted or denied;
 - B. the jobs (occupational series, grade level, and operating division/function) for which reasonable accommodations have been requested;
 - C. the types of reasonable accommodations that have been requested for each of those jobs;
 - D. the number of reasonable accommodations, by type, for each job that have been approved, and the number of accommodations, by type, that have been denied;
 - E. the number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
 - F. the reasons for denial of requests for reasonable accommodation;
 - G. the amount of time taken to process each request for reasonable accommodation; and

H. the sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations. (Appendices B and C provide a listing of some of the sources of technical assistance available.)

In addition, the report shall provide a qualitative assessment of the reasonable accommodation program, including any recommendations for improvement of the IRS reasonable accommodation policies and procedures.

Relation of Procedures to Statutory and Collective Bargaining Claims

- I. Executive Order 13164 does not create new rights for employees or applicants for employment; nor does it limit an individual's rights under the Rehabilitation Act of 1973. The policies and requirements described in these procedures 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. Requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims, remain unchanged.
- II. An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation must comply with the following:
 - A. **EEO Complaint.** Contact an EEO counselor within 45 days from the date of receipt of the written notice of denial.
 - B. **Collective Bargaining Claim.** File a grievance in accordance with the provisions of the controlling Collective Bargaining Agreement (under the IRS-NTEU National Agreement, Article 41, a grievance must be filed within 15 workdays of the denial); or
 - C. **Merit System Protection Board Appeal.** Initiate an appeal within 30 days of an appealable adverse action as defined in 5 C.F.R. 1201.154.
- III. If a member of the IRS' EEO and Diversity staff has had any involvement in the processing of the request for reasonable accommodation, that staff member shall recuse him or herself from any involvement in the processing of an EEO counseling contact or complaint in connection with the request.
- IV. **Collective Bargaining Obligations**
 - A. As called for in Item 45 of the EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (ADA) (which has also been applied to the Rehabilitation Act of 1973), prior to granting any reasonable accommodation that would violate any collective bargaining agreement between the IRS and NTEU (e.g., the IRS-NTEU National Agreement, mid-term agreements or LOUs, local agreements, etc.) the Service will notify NTEU at the appropriate level and seek to negotiate, in good faith, a variance to the agreement to allow the accommodation. The parties are encouraged to work cooperatively to reach

such agreements, but only if they do not unduly burden the expectations or rights of other workers.

- B. The Service acknowledges that under ADA and Rehabilitation Act case law, accommodations that conflict with collectively bargained seniority systems are unreasonable, absent special circumstances.
- C. The Service will notify and bargain, to the extent required by law, with NTEU prior to implementing any reasonable accommodation that would require more than *de minimus* change in other bargaining unit employees' conditions of employment.
- D. If granting a reasonable accommodation would conflict with a collectively bargained agreement, or would necessitate a change in other employees' conditions of employment, and thus require negotiations, consistent with paragraph IV.c. above, the Service will consider such situations as presenting extenuating circumstances (as defined in the RA procedures) requiring a delay in implementation of the accommodation, and perhaps requiring the Service to take temporary measures.
- E. The Service will consider reasonable accommodations that do not conflict with collective bargaining agreements or require changes to other employees' conditions of employment before proposing or approving reasonable accommodations that would cause such conflicts or changes.