

## SMG 3130.2

### FDA Staff Manual Guides, Volume III - General Administration

#### Personnel - Reasonable Accommodation and Accessibility

#### Procedures for Providing Reasonable Accommodation for Individuals with Disabilities

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#### 1. Purpose

The Food and Drug Administration ("FDA") has developed these reasonable accommodation procedures in compliance with Equal Employment Opportunity

Commission (EEOC) guidance and issuances and consistent with the Department of Health and Human Services (DHHS) policy and procedures for reasonable accommodation.

## 2. Policy Statement on Reasonable Accommodation

The policy of the FDA is to provide equal employment opportunities to all qualified individuals with disabilities in accordance with the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 to ensure that all aspects of the application process and employment are fully accessible to all applicants and employees. No qualified employee with a disability may be denied the benefits of a program, training, or activity conducted, sponsored, funded, or promoted by the FDA, or otherwise be subjected to discrimination. To this end, reasonable accommodations will be provided to qualified individuals with disabilities unless doing so poses an undue hardship to the Agency.

To fulfill its commitment to assure that individuals with disabilities enjoy full access to equal employment opportunity, FDA provides reasonable accommodations:

- a. When an applicant with a disability needs an accommodation in order to apply or be interviewed for a job;
- b. When an employee with a disability needs an accommodation to enable them to perform the essential functions of the job or to gain access to the workplace; and
- c. When an employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment.<sup>i</sup>

FDA employees may refer to the EEOC's "Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act" (available on EEOC's website) for additional information on the rights and responsibilities of applicants and employees requesting reasonable accommodation, and the responsibilities of personnel involved in responding to those requests.<sup>ii</sup>

- d. When requested, the Agency will make a copy of these procedures available to job applicants and employees in an accessible format that meets an individual's particular need, including braille, large print, etc.<sup>iii</sup>

## 3. References

Legal Authority	Purpose
<a href="#">The Rehabilitation Act of 1973</a>	Prohibits discrimination based on disability and encourages employment within the federal sector.

Legal Authority	Purpose
<a href="#">The Americans with Disabilities Act of 1990</a>	Prohibits discrimination and encourages employment for individuals who have disabilities within both the private and public sector.
<a href="#">American with Disabilities Amendments Act of 2008</a>	Expanded the definition of what was covered as a disability to allow more people to be covered under the law.
<a href="#">29 C.F.R. 1614</a>	Final rule to amend the regulations that require federal agencies to engage in affirmative action for individuals with disabilities.
<a href="#">29 C.F.R. 1630</a>	Regulations to implement the equal employment provisions of the Americans with Disabilities Act.
<a href="#">Executive Order 13164</a>	Requires each federal Agency to establish effective written procedures for processing requests for reasonable accommodation.
<a href="#">HHS System of Records Notice (SORN) 09-90-2103</a>	Department wide system of records, 09-90-2103, Accommodation Records About HHS Civilian Employees, Contractors and Visitors.

#### 4. Reasonable Accommodations Overview

A reasonable accommodation is any change or adjustment in the work environment or in the way that things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities. For Requestors, (see definition on page 4) there are three categories of reasonable accommodations. These are:

- a. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position;
- b. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a [disability](#) who is [qualified](#) to perform the [essential functions](#) of that position; or
- c. Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment that are enjoyed by other similarly situated employees without disabilities.

Common types of reasonable accommodations can include, but are not limited to, accessible facilities and parking, assistive devices, interpreters, readers and telework.

A family member, friend, health professional, or other representative, may request a reasonable accommodation on behalf of an employee or applicant (individual with a disability hereinafter referred to as “Requestor”). Requests are typically communicated directly to a first-line supervisor, who usually acts as the Decision-Maker, or someone in the Requestor’s chain of command. However, in some instances, the request will be made directly to the FDA’s Reasonable Accommodations Office (RAO). A Reasonable Accommodation Specialist (RAS) will identify the appropriate Decision-Maker and forward the request to that person.

When the Decision-Maker (the Management Official who the Agency has identified as the individual to determine the accommodation request) receives the request, they must acknowledge receipt as soon as possible, but no later than 5-calendar days after receiving the notification. The Decision-Maker will then engage in a dialogue with the Requestor to clarify, if not already known, the Requestor’s needs and potential accommodations to overcome their limitations. This process is known as the interactive process. When the disability is obvious, and the accommodation is simple and straightforward, the determination of a suitable accommodation may be provided as soon as possible, but within timeframes set forth in this Staff Manual Guide (SMG), absent extenuating circumstances. When the disability or need for accommodation is not obvious, additional time may be necessary to gather and review medical documentation.

During the interactive process, the Requestor’s disability or limitations may remain unclear, or assistance is needed to identify an appropriate accommodation; in this case the Decision-Maker should engage the RAS to obtain appropriate information concerning the Requestor’s medical limitations. If a medical review is required, the RAS will facilitate the process and provide an analysis of the medical review. The RAS will maintain confidentiality and not disclose the Requestor’s medical information such as diagnosis or prognosis to anyone who does not have a business need to know, except when required by federal law.

As soon as possible, the Decision-Maker will render a decision either alone or in consultation with their Center/Office Reasonable Accommodation (RA) Liaison and RAS or consult with Employee and Labor Relations (ELR) Specialist as needed. The Decision-Maker may grant the Requestor’s proposed accommodation, provide an effective alternate accommodation, or deny the request. The Decision-Maker may decide to offer an alternate accommodation; in this case, they should consult with their Center/Office RA Liaison and RAS to ensure that the proposed alternate accommodation complies with applicable regulations or procedures. All denials require consultation with the RAO or Center/Office RA Liaison. If a request is denied, a Requestor may ask for the Decision-Maker to reconsider the request or appeal to their next-level supervisor, as applicable.

It is important to note that a Requestor is not entitled to the accommodation of their choosing. Generally, when there are two or more effective accommodations, the

employer may choose the easier one to provide. An individual with a disability is not required to accept an accommodation offered. However, if such individual rejects a reasonable accommodation, that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, because of that rejection, perform the essential functions of the position, the individual will not be considered qualified.

Requests for Readers and sign language interpreters may be made directly to the RAO.

Phases of Reasonable Accommodation Requests: All requests for reasonable accommodation will move through each of the following 4 basic phases:

- a. The Request
- b. The Interactive Process
- c. The Decision
- d. The Provision

## 5. Definition of Additional Key Terms

- a. **Disability:** The Americans with Disabilities Act Amendments Act of 2008 (ADAAA or ADA), as amended, establishes a three-part definition of "disability." An individual with a disability is a person who:
  - i. has a physical or mental impairment that substantially limits one or more of their major life activities;
  - ii. has a record of such an impairment; or
  - iii. is regarded as having such an impairment.

Examples of major life activities include, but are not limited to, caring for oneself, walking, seeing, hearing, speaking, breathing, learning, sitting, standing, lifting, working, thinking, concentrating, communicating, and bodily function, including functions of the immune, bladder, digestive, and reproductive systems.<sup>iv</sup>

- b. **Essential Functions:** The essential functions of a job are those job duties that are so fundamental to the position that the individual cannot do the job without being able to perform 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 if it were assigned to them, or the function is specialized, and the incumbent is hired based on their (their) ability to perform it.<sup>v</sup>

Determination of essential functions 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. Evidence of whether a particular function is essential includes, but is not limited to:

- i. The employee's position description;
  - ii. The critical elements as outlined in the employee's Performance Management Appraisal Program (PMAP) evaluation;
  - iii. The daily/weekly amount of time performing the function; and
  - iv. The consequences of not requiring the employee to perform the function.<sup>vi</sup>
- c. **Extenuating Circumstances:** "Extenuating circumstances" are factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation. These can include situations in which equipment must be backordered or the vendor typically used by an Agency has unexpectedly gone out of business. In addition, an Agency will not be expected to adhere to its usual time frames if an individual's health professional fails to provide needed documentation in a timely manner.
- d. **Interactive Process:** To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. The employer may ask the individual relevant questions that will enable the employer to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed. In many instances, both the disability and the type of accommodation required will be obvious, and thus there may be little or no need to engage in any discussion. In other situations, the employer may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation. While the individual with a disability does not have to be able to specify the precise accommodation, they need to describe the problems posed by the workplace barrier. Additionally, suggestions from the individual with a disability may assist the employer in determining the type of reasonable accommodation to provide.<sup>vii</sup>
- e. **Mental Impairment:** Any psychological or mental disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- f. **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 (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin or endocrine.<sup>viii</sup>

- g. **Qualified Individual with a Disability:** An individual with a disability is qualified if they:
  - i. Satisfy the requisite skill, experience, education, and other requirements of the position; and
  - ii. Can perform the essential functions of the position, with or without reasonable accommodation.
- h. **Reassignment:** Reassignment is a form of reasonable accommodation that may be provided to an employee [not an applicant] who, because of a disability, can no longer perform the essential functions of their current job, with or without reasonable accommodation. A reassignment is made only to a vacant position that has been authorized to be filled at the time of the accommodation request. Where possible, reassignment is to an equivalent position, but if no equivalent position is available, may be to a lower-level position that is as close as possible to the employee's current position. If the employee is qualified for such a position and the Agency chooses to offer it as an accommodation, the employee will be reassigned to the new job and will not have to compete for it). Applicants are not eligible for reassignment.
- i. **Reasonable Accommodation:** A reasonable accommodation is any change to the application or hiring process, to the job, to the way the job is done, or the work environment that allows a person with a disability who is qualified for the job to perform the essential functions of that job and enjoy equal employment opportunities. Accommodations are considered "reasonable" if they do not create an undue hardship or a direct threat.
- j. **Substantially Limited:** To have an "actual" disability, (or to have a "record of" a disability) an individual must be (or have been) substantially limited in performing a major life activity as compared to most people in the general population. Consistent with the ADAAA, the final regulations adopt "rules of construction" to use when determining if an individual is substantially limited in performing a major life activity. These rules of construction include the following:
  - i. An impairment need not prevent or severely or significantly limit a major life activity to be considered "substantially limiting." Nonetheless, not every impairment will constitute a disability. The term "substantially limits" should be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. The determination of whether an impairment substantially limits a major life activity requires an individualized assessment.
  - ii. In keeping with Congress' direction that the primary focus of the ADA is on whether discrimination occurred, the determination of disability should not require extensive analysis. Although determination of whether an impairment substantially limits a major life activity as compared to most people will not

usually require scientific, medical, or statistical evidence, such evidence may be used, if appropriate. An individual need only be substantially limited, or have a record of a substantial limitation, in one major life activity to be covered under the first or second prong of the definition of "disability."

- k. **Undue Hardship:** In general, 29 C.F.R. 1630 defines undue hardship, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of the factors set forth in section 7.3 of this SMG.

## **6. Roles and Responsibilities**

It is the responsibility of the Agency to provide reasonable accommodation in accordance with the requirements and guidelines prescribed by the ADA, the Rehabilitation Act, and the EEOC.

The responsibility of each role involved in the Reasonable Accommodation process is as follows:

### **a. The Commissioner of Food and Drugs will:**

- i. Provide an updated Reasonable Accommodation Statement to all FDA staff on an annual basis.

### **b. The Chief Operating Officer will:**

- i. Ensure that an effective process for responding to all requests for reasonable accommodations is established; and
- ii. Provide sufficient resources to ensure effective implementation and management of the process for responding to requests for reasonable accommodation.

### **c. The Director, Office of Enterprise Management Services (OEMS) will:**

- i. Plan, develop, and oversee the reasonable accommodation program, policies, and procedures within FDA;
- ii. Advise the Commissioner and Executive Leadership on the plans, procedures, regulations, and any other matters pertaining to the FDA's reasonable accommodation program;
- iii. Provide an annual report on all reasonable accommodation and disability program activities to the FDA Commissioner and to the Chair of the EEOC, as requested, in accordance with EEOC Management Directive 715; and
- iv. Ensure training for all managers, supervisors, team leaders, Center/Office Liaisons, and designated Lead Reasonable Accommodation Specialists (LRAS) and RAS regarding their roles in processing requests for reasonable accommodations including the need to maintain a neutral and impartial role throughout the accommodation process.



**d. The Director, Division of Compliance and Conflict Prevention will:**

- i. Coordinate with and advise the OEMS Director on the planning, development, and day-to-day management of the reasonable accommodation program, policies, and procedures within FDA;
- ii. Provide guidance to and coordinate with the LRAS on processing reasonable accommodation requests and ensure accurate and complete tracking and reporting of program data;
- iii. Coordinate with OEMS Director by providing information as requested for the annual report on all reasonable accommodation and disability program activities, in accordance with EEOC Management Directive 715; and
- iv. Coordinate with OEMS Director to ensure training for all managers, supervisors, team leaders, Center/Office Liaisons, and designated LRAS and RAS regarding their roles in processing requests for reasonable accommodations.

**e. The Office of Talent Solutions (OTS) will:**

- i. Coordinate reasonable accommodation requests for applicants with a disability during any part of the application or hiring process;
- ii. Ensure that vacancy announcements (a) contain all legally required language (b) provide instructions and contact information for applicants in need of an accommodation;
- iii. Identify vacancies and anticipated vacancies when a reassignment is being considered as an appropriate reasonable accommodation;
- iv. Ensure OTS staff members who are involved in related job search are familiar with related reassignment process outlined in this SMG, as applicable;
- v. Make official reassignment job offers, as applicable;
- vi. Ensure training of all OTS staff members (employees and supervisors) who are involved in the application process, on how to recognize requests for reasonable accommodation and to respond appropriately; and
- vii. Reach out to other Operating Divisions (OpDivs) for available positions and assist in making official reassignment job offers, as applicable.

**f. The Office of Equal Employment Opportunity (OEEO) will:**

- i. Coordinate with OEMS Director to incorporate all reasonable accommodation and disability program activities, as requested, in accordance with EEOC Management Directive (MD) – 715.

**g. The Office of Human Capital Management (OHCM) will:**

- i. Provide an ELR Specialist to provide technical advice, guidance, and assistance to the RAS and Decision-Maker, as needed. The OHCM-ELR

Specialist will provide customer support about matters regarding reasonable accommodations with potential ELR issues/implications on a case-by-case basis, as needed.

**h. Reasonable Accommodation Office (RAO) will:**

- i. Manage and oversee day to day operations of the FDA reasonable accommodation process;
- ii. Direct and oversee all reasonable accommodation policy, procedures, training, reporting and coordination for FDA to ensure consistency, compliance, and the efficient processing of requests;
- iii. Ensure staff possesses and develops expertise in the requirements of the Rehabilitation Act, potential accommodations, and available resources, and serves as a resource for individuals with disabilities and Agency Decision-Makers;
- iv. Administer the reasonable accommodation program by providing advisory services to the Center/Office RA Liaison's, supervisors, employees, and applicants;
- v. Oversee and provide training to all FDA employees, to include Center/Office RA Liaisons, and supervisors/managers on reasonable accommodation policy, procedures, respective roles, and responsibility;
- vi. Review reasonable accommodation requests with Center RA Liaisons, supervisors, and employees for completeness, as appropriate;
- vii. Manage FDA's Sign Language Interpreting Program/ Communication Access Real-time Translation (CART) Services;
- viii. Write and distribute procedures on how to request an interpreter;
- ix. Maintain an e-mail account, telephone number, and/or electronic database for staff to contact to request reasonable accommodations, including interpreting services; and
- x. Provide information to FDA's Office of Equal Employment Opportunity for annual data reporting requirements.

**i. The Lead Reasonable Accommodation Specialist (LRAS) will:**

- i. Review and oversee timely and compliant processing of requests for accommodation;
- ii. Develop and provide, or designate for the provision of, training as needed related to the provision of reasonable accommodation;
- iii. Answer questions from Requestors and provide guidance to Decision-Makers on the policy and procedures provided in this SMG and the applicable laws and regulations governing reasonable accommodation;

- iv. Provide guidance and instruction to RAS, as appropriate, and assist with drafting correspondence and the selection of effective accommodation(s) for the Requestor;
  - v. Secure confidentiality of Requestor's medical information/history throughout the reasonable accommodation process;
  - vi. Ensure appropriate and complete written documentation throughout the processing of accommodation requests;
  - vii. Track reasonable accommodation requests;
  - viii. Oversee staff to ensure compliant requests of medical records; and
  - ix. Collect, prepare, and report on accommodation data to the Director, OEMS on an annual basis, and identify and eliminate barriers as required by EEOC Management Directive 715 (MD 715).
- j. **The Reasonable Accommodation Specialist (RAS) will:**
- i. Provide accommodation information to, and answer questions from, employees and applicants for employment regarding the reasonable accommodation process;
  - ii. Assist supervisors and management officials at all levels with processing reasonable accommodation requests; interpreting regulations and statutes; and reviewing existing policies and procedures;
  - iii. Advise Decision-Maker when medical information is needed;
  - iv. Ensure that medical documentation requested is necessary and narrowly tailored based on the specific request on a case-specific basis;
  - v. Inform the Decision-Maker whether the individual has a disability covered by the Rehabilitation Act and describe the functional limitations caused by the disability;
  - vi. Refrain from sharing specific medical information or documentation with the Decision-Maker or other supervisory officials;
  - vii. Maintain the confidentiality of reasonable accommodation requests and related documentation (e.g., keeping medical records separate from personnel records) and maintain records at their facility in a locked file cabinet and within a secure database;
  - viii. Ensure that all requests outside the authority of the normal Decision-Maker, such as parking, facility renovations, information technology, etc., go to the appropriate individual and are processed timely;
  - ix. Assist and guide the Center/Office RA Liaison, Decision-Maker, and Requestor throughout the interactive process, as appropriate.

- x. When the immediate supervisor cannot clearly identify the appropriate person authorized to respond to the request, the RAS will assist to identify the appropriate Decision-Maker in responding to the following, but not limited to:
  - 1. Requests for a reader, sign language interpreter, or other personal assistant to enable Requestors to perform their job functions, where the accommodation cannot be provided by current staff;
  - 2. Requests for removal of architectural barriers, including reconfigured workspaces;
  - 3. Requests for assigned parking; however, each Supervisor will be responsible for assigning parking through the parking office and/or internal facilities team. Information on these accommodations shall be documented and included in the reports of all reasonable accommodation;
  - 4. Requests for materials in alternative formats (e.g., Braille) which cannot be provided by the supervisor or Office Director;
- xi. Consult with the Computer/Electronic Accommodations Program (CAP), the Job Accommodation Network (JAN), or other resources to identify alternatives to the requested reasonable accommodation, if needed;
- xii. Track and report all requests for reasonable accommodation and the disposition of those requests by using the Agency approved system; and
- xiii. Attend reasonable accommodation training to remain current on the applicable laws regulations as identified in this SMG.
- k. **FDA Centers/Offices will:**
  - i. Ensure employees and managers are educated on internal Center/Office-specific and Agency reasonable accommodation procedures;
  - ii. Consult with reasonable accommodation Training Coordinator to identify workforce training needs related to the provisions of the reasonable accommodation process;
  - iii. May appoint a Center/Office's RA Liaison (Center/Office RA Liaison) to assist with the management of this program, including the review and processing of requests and the preparation of data and reports relating to this program;
  - iv. Consult with Center/Office RA Liaison, as appropriate, on reasonable accommodation requests and coordination of any Center/Office programs; and
  - v. Communicate training requirements for employees and supervisors as necessary.
- l. **Center/Office Reasonable Accommodation (RA) Liaison will:**

- i. Coordinate and provide basic assistance to Center/Office supervisors and management in navigating the reasonable accommodation process, as necessary;
- ii. Coordinate and provide basic assistance to supervisors in evaluating the position description and other relevant factors to determine the essential functions of the position. This assistance will not supersede the Decision-Makers' individual responsibility under this SMG;
- iii. Coordinate and provide basic assistance to Decision-Makers in documenting and providing necessary information to be forwarded to the FDA RAO, if needed. This assistance will not supersede the Decision-Makers' individual responsibility under this SMG;
- iv. Stay abreast of new FDA, DHHS and EEOC policies and procedures regarding reasonable accommodation;
- v. Provide the Decision-Maker with guidance regarding effective reasonable accommodations and implementing them within the timeframes set forth in this SMG;
- vi. Coordinate with RAO to facilitate any Center/Office specific training;
- vii. Prepare internal Center/Office reports as needed; and
- viii. Be available to coordinate requests for adaptive equipment, including information technology and communications equipment, or specially designed furniture. Each FDA Center/Office shall designate the process for coordination with the appropriate information technology, procurement, and other offices within their Center/Office as necessary.

**m. The Medical Consultant will:**

- i. Review medical documentation from the employee's medical provider to determine:
  - 1. If the medical condition rises to the level of a disability under the law; and
  - 2. The employee's specific functional limitations, and how those limitations impact the essential functions of the position, if applicable.
- ii. Advise how the requested reasonable accommodation will help the employee perform the essential functions of the job;
- iii. Advise on alternatives to the requested reasonable accommodation that would also be effective, as applicable; and
- iv. Determine the expected duration of the employee's functional limitations.

**n. Supervisors and Managers (Decision-Makers) will:**

- i. Upon receipt of a request for accommodation, acknowledge the receipt of the request from the Requestor as soon as possible, but no later than 5-calendar days from receipt of the request;
- ii. Notify and seek consultation with the RAS to discuss the request and determine the appropriate next steps in the process, as soon as possible, but no later than 3-calendar days from receipt of the request;
- iii. Actively participate in the process and expeditiously review and evaluate accommodation requests in accordance with the procedures specified in this SMG;
- iv. Maintain knowledge of the reasonable accommodation process and resources available to employees;
- v. When the request is unclear, consult with the Center RA Liaison, or RAO and notify the employee as soon as possible, or within 5-calendar days, that the request will need to be submitted to the FDA RAO.
- vi. Implement an interim accommodation, if feasible, until the final decision is made. Decision-Maker will ensure interim accommodation is properly documented using FDA Approval of Interim Reasonable Accommodation FDA Form- 5046.
- vii. In consultation with the RAS, initiate and engage in an interactive dialogue with the Requestor, as needed, to discuss and clarify precise workplace restrictions or barriers, their impact on the employee's ability to perform the essential functions of their position, and the identification of possible and effective reasonable accommodations;
- viii. In consultation with the RAS and OHCM-ELR Specialist, establish, in writing, the essential functions of the Requestor's job when needed for the purpose of requesting medical documentation or evaluating the potential effectiveness of proposed accommodations;
- ix. Document oral requests for accommodation using FDA Form - 3526 and forward the completed form to the RAS for processing;
- x. When the need for the reasonable accommodation is obvious, the request is simple and straightforward, and no medical documentation is needed, the Supervisor should issue a decision and implement the requested accommodation within 10-calendar days, or if extenuating circumstances exist, as soon as possible;
- xi. Absent extenuating circumstances, provide written decisions to grant or deny an accommodation no later than 15-calendar days from receipt of the RAS analysis;
- xii. When extenuating circumstances exist that will prevent a final decision and/or implementation of reasonable accommodation within —15-calendar days

- after receipt of the RAS analysis, notify the Requestor in writing of the circumstances for the delay and the estimated date of completion;
- xiii. Consult with the RAS to ensure appropriate documentation and processing of the request so that the reasonable accommodation is in place as soon as possible;
  - xiv. Work with the RAS in consultation with the Center/Office Liaison, as necessary, to complete and issue a decision letter to promptly communicate the determination regarding the request for accommodation;
  - xv. Maintain confidentiality of requests for reasonable accommodation and maintain records consistent with the guidance in this SMG; and
  - xvi. Designate an alternate or back-up to process requests in the absence of the Decision-Maker.
- o. Employee will:**
- i. Submit requests for reasonable accommodation, either orally or in writing (FDA Form -3526) to their supervisor, another supervisor or manager in their supervisory chain, or the RAS;
  - ii. Cooperate in the interactive process throughout the reasonable accommodation process (failure on the part of the employee to cooperate in the interactive process may result in a denial of the reasonable accommodation request);
  - iii. Where the disability or need for an accommodation is not obvious or previously recorded, provide sufficient medical documentation, or other relevant documentation, to support the request;
  - iv. Promptly provide supporting justification or rationale for the requested reasonable accommodation and requested medical information concerning the disability, limitations, and need for accommodation;
  - v. Submit any requests for reconsideration on reasonable accommodation decisions within 5-calendar days;
  - vi. Participate in a needs assessment for assistive technology when recommended by the RAS or other authorized Agency officials; and
  - vii. Learn to use and maintain skills required for using any assistive technology provided as a reasonable accommodation, including upgraded versions of assistive technology, if applicable.
- p. Applicant will:**
- i. Communicate requests for reasonable accommodation relating to the hiring process to the OTS representative designated in the vacancy announcement;

- ii. Participate in an informal interactive process with Agency officials and the RAO, as requested, to clarify the request and what is needed, to include the functional limitation(s) resulting from the disability, the problems posed by any application and hiring process, and the identification of an accommodation; and
- iii. Upon receipt of a job offer, if in need of an accommodation, will follow procedures laid out in this SMG.

q. **Family Member, Health Professional, or Other Representative:**

- i. May request reasonable accommodation on behalf of an employee or applicant.
- ii. Will communicate the request to the appropriate Agency official:
  - 1. Employee - to their supervisor, another supervisor or manager in their supervisory chain, or the RAS;
  - 2. Applicant - the OTS representative designated in the vacancy announcement; and
  - 3. May also submit request directly to the RAO.
- iii. Whenever possible, the FDA will confirm the request with the employee or applicant with the disability.<sup>ix</sup>

## 7. The Reasonable Accommodation Policy and Procedure

### 7.1 The Request

A request for reasonable accommodation is a statement that an individual requires an adjustment or change at work, in a benefit or privilege of employment, or the application process, for a reason related to a medical condition. The reasonable accommodation process begins as soon as a request for the change or the identification of a barrier is communicated, whether orally or in writing.

A request for a reasonable accommodation does not have to use any particular words, such as “reasonable accommodation,” “disability,” or “Rehabilitation Act.” An individual with a disability may request a reasonable accommodation whenever they choose, even if they have not previously disclosed the existence of a disability. In addition, an individual need not have a particular accommodation in mind before making a request<sup>x</sup>. **Any FDA Requestor or applicant may consult a member of the RAO for further information or assistance** in requesting or processing a request for reasonable accommodation.

#### a. Requesting an Accommodation



- i. **An Applicant:** Should request reasonable accommodation orally or in writing from the OTS representative designated in the vacancy announcement with whom the applicant has contact with the application process.

The Human Resources Specialist handling the request will provide the FDA Form 3526 - Confirmation of Request for Reasonable Accommodation to the applicant. Although the request is not required to be in writing, if the applicant requires assistance completing this form, the staff member receiving the request will provide help as appropriate.

- ii. **An Employee:** May request reasonable accommodation orally or in writing from their supervisor, another supervisor or manager in their immediate chain of command, the OEEO, or a member of RAO at any time during their employment. Any FDA supervisor or Director may consult a member of the RAO or other designee for further information or assistance in connection with a request or processing a request for reasonable accommodation.

To maintain accurate records related to requests for accommodation, FDA will ask Requestor seeking a reasonable accommodation to document oral requests in writing. Documentation may be either by completing the FDA Form 3526 - Confirmation of Request for Reasonable Accommodation or otherwise confirming the request in writing (including by e-mail) to a RAS or another manager designated as the Decision-Maker.

Written confirmation is not necessary when an individual requires a reasonable accommodation on a repeated basis (e.g., the assistance of sign language interpreters or readers). While appropriate notice must be given each time accommodation is needed, a written form is requested only for the first request. (See Appendix A for information on requesting sign language interpreters.)

- iii. **A Family Member, Health Professional, or other Representative:** May request a reasonable accommodation on behalf of an individual with a disability and submit it to the Requestor's supervisor or the RAO. Whenever possible, the FDA will confirm the family member's, health professionals, or other representative's request directly with the person with the disability.

- b. **Documentation:** All forms may be obtained on FDA's internal web portal or by contacting the RAO directly at: [ReasonableAccommodation@fda.hhs.gov](mailto:ReasonableAccommodation@fda.hhs.gov)

- i. FDA Form 3526 - Confirmation of Request for Reasonable Accommodation;
- ii. If the disability or the need for accommodation is not obvious, the RAO will request completed applicable medical release form;

- iii. Medical documentation/note from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor, which clearly defines each of the following:
  - 1. the nature, severity, and duration of the individual's impairment;
  - 2. the activity or activities that the impairment limits;
  - 3. the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or
  - 4. why the individual requires reasonable accommodation, or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.
- iv. Once completed, all documentation related to the accommodation request should be submitted directly to the Reasonable Accommodation email box by the supervisor and employee, as applicable:  
[ReasonableAccommodation@fda.hhs.gov](mailto:ReasonableAccommodation@fda.hhs.gov).
- c. **Identifying the Decision-Maker:** The person authorized to respond to the accommodation request will be referred to as the "Decision-Maker." Decision-Makers can be:
  - i. For applicant's: The Human Resources Specialist, in coordination with RAO, as appropriate will serve as the Decision-Maker; Or
  - ii. For employee's: In general, whenever possible, a Requestor's first line supervisor will serve as the Decision-Maker. If circumstances arise which prevent this individual from serving as Decision-Maker, the supervisor will notify the employee and the RAO immediately in writing. The notification will also identify the Agency official who is authorized to decide on the request.
- d. **Processing the Reasonable Accommodation Request:** Time limits established within this policy for either providing or denying an accommodation start as soon as the accommodation is first requested<sup>xi</sup>. While written confirmation should be made as soon as possible following the initial request, the FDA will begin processing the request as soon as it is made, whether the written confirmation has been provided. As soon as possible, but no more than 5 - calendar days, the request should be forwarded to the appropriate person or office as listed below, who will document and take necessary actions to respond to the request:
  - i. **Requestor's First-line Supervisor:** may promptly respond, determine, and implement the request where the Requestor's disability is obvious, and the accommodation is simple and straight forward. As the Decision-

Maker, they will consult with the RAO, Center/Office RA Liaison, as appropriate. However, if medical documentation or further clarification of the request is necessary, they will then forward the request to the RAO.

- ii. **Reasonable Accommodation Office:** Upon receipt of a request will as soon as possible, but within 3-calendar days, initiate processing of the request.
- iii. **Office of Talent Solutions:** Upon receipt of a request will as soon as possible, initiate processing of the request 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 to ensure that an applicant with a disability has an equal opportunity to be considered for a job. Therefore, OTS staff need to act as quickly as possible to decide and, if appropriate, provide reasonable accommodation.
- iv. **Assistance Required:** In many instances where the medical condition or disability is not obvious, it has not been previously documented, or regardless of whether the Decision-Maker is considering denying or granting the request for an accommodation, the Decision-Maker may seek additional assistance. The Decision-Maker may opt to reach out to their Center/Office Reasonable Accommodation Liaison, or the RAO for guidance. An RAS will assist the Decision-Maker in determining whether the Requestor is a person with a disability as defined by the Rehabilitation Act and is eligible for an accommodation. All guidance provided by the RAO will be that of a neutral facilitator and will adhere to personal privacy laws including those governing medical confidentiality as set forth under Title I of the Americans with Disabilities Act.
- v. **Request for Medical Information:** There are instances when a Decision-Maker may need additional information regarding a Requestor's limitations or to determine if the Requestor has a disability covered by the Rehabilitation Act of 1973. A request for medical information must be narrow and focus on understanding:
  - 1. the nature, severity, and duration of the individual's impairment;
  - 2. the activity or activities that the impairment limits;
  - 3. the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or
  - 4. why the individual requires reasonable accommodation, or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job,

perform the essential functions of the job, or enjoy a benefit of the workplace.

While these questions may be asked and answered during the interactive process, it may be appropriate when the disability and need for accommodation are not obvious, to request medical information to answer these questions. FDA is not required to obtain medical documentation and may not request it when the disability and need for accommodation are obvious or already on file at the Agency. Decision-Makers should not request this information directly from a Requestor's physician. If a Decision-Maker believes that medical information is necessary to render a decision, they must reach out to the RAO. The RAS will work with the Requestor to obtain medical documentation, if appropriate. The FDA has the right to request relevant documentation about the disability, functional limitations related to the duties at issue, and the need for accommodation. The request should be limited to the job-related functions for the accommodation requested. In most situations, the FDA may not request access to a person's complete medical records because they are likely to contain information unrelated to the disability issue and the need for accommodation.

FDA may request that an individual be examined by its own physician only if the individual has provided insufficient documentation from his/her own health care or other appropriate professional to substantiate the existence of a disability and the need for reasonable accommodation. If the individual requesting an accommodation is still unable to provide sufficient information in support of the request, the Agency may request that the individual be examined by a health care professional of the Agency's choice at the Agency's expense<sup>xii</sup>. (Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision)

**vi. The process for requesting medical information is as follows:**

1. If the medical condition and need for accommodation are not obvious, the Decision-Maker will request the RAS to obtain the information.
2. The RAS will determine whether medical documentation is necessary.
3. If necessary, see Section 6.3 (v) for documentation required
4. If not necessary, the Decision-Maker will be notified with instructions to complete the processing.
5. If, after 10-calendar days, the individual's health care professional has not provided sufficient information to demonstrate the Requestor has a disability and needs reasonable accommodation, the RAS may request a medical review by a medical consultant chosen by the FDA, at the Agency's expense.<sup>xiii</sup>

6. In some cases, the individual requesting the accommodation will supply medical information directly to the Decision-Maker without being asked. In these cases, the Decision-Maker will consult with the RAO to determine appropriate next steps.
7. If the RAS determines that the initial medical documentation submitted or medical documentation available in the FDA records is insufficient, the RAS will request relevant supplemental medical information.<sup>xiv</sup>
8. Failure to provide sufficient documentation or to cooperate with the FDA's efforts to obtain such documentation can result in a denial of the reasonable accommodation.<sup>xv</sup>

**vii. Confidentiality Requirements Regarding Medical Information and the Reasonable Accommodation Process:**

Under the Rehabilitation Act of 1973, information obtained in connection with the reasonable accommodation process must be kept confidential. Therefore, the existence of an accommodation request, details of the request, whether it is approved, and information about functional limitations, all must remain confidential. Confidentiality requirements include all medical information that the Agency obtains in connection with a request for reasonable accommodation, which must be kept in files separate from the individual's personnel file. Whether this information is in a file drawer or a computer file, it must be stored so that only the RAS or a designated backup has access to it. These confidentiality requirements strictly bind any employee who obtains or receives such information.

The RAS may share certain information with a Requestor's supervisor or other Agency staff as necessary to make appropriate determinations on a reasonable accommodation request. For example, Information Technology (IT) staff may need certain information to advise about equipment or staff in the Office of the Chief Financial Officer. When the RAS must reveal the individual's name requesting a reasonable accommodation, the RAS will inform the recipient about these confidentiality requirements. However, the information disclosed by the RAS will be no more than is necessary to obtain assistance/advice from other staff. In many situations, the RAS will not need to reveal the Requestor's name or the office that the Requestor works, or even the disability. Confidentiality is maintained when sharing the Requestor's name or any other identifying information, including functional limitations.

In addition to disclosures of information needed to process a request for accommodation, other disclosures of medical information are permitted as follows:

1. supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the Requestor and the necessary accommodation(s);
2. first aid and safety personnel may be told if the disability might require emergency treatment or assistance in evacuation;
3. worker's compensation officials may receive medical information to process or evaluate claims for this benefit; and
4. government officials may be given information necessary to investigate the Agency's compliance with the Rehabilitation Act.

Any medical documentation that someone other than the RAS receives as part of the reasonable accommodation process (for example, a letter from a health care provider to a supervisor or DRM), must be sent to the RAS to become part of the file on this request. Only the RAS should retain copies of this documentation, and it shall be placed in the confidential medical files, not in the Requestor's personnel file.

If the Decision-Maker discloses information related to the request to another individual, the Decision-Maker is responsible for informing the recipients of the information about the confidentiality requirements.<sup>xvi</sup>

## 7.2 The Interactive Process

The interactive process is the continuous dialogue between the Decision-Maker and the Requestor to determine what, if any, accommodation should be provided. As soon as a Requestor makes their need for an accommodation to help them perform their duties, the interactive process has begun and should continue throughout the entire accommodation process and beyond after an accommodation or alternative accommodation is determined. All communication related to the request between the supervisor and the Requestor should be documented in writing.

- a. **Proactive Engagement:** The Requestor and Decision-Maker are responsible for identifying appropriate accommodations<sup>xvii</sup>. Decision-Makers should make a good faith effort to engage in the interactive process with the Requestor and take a proactive approach in researching and considering possible accommodations, including consulting appropriate resources for assistance.

A Requestor who can participate in the interactive process must do so. A Requestor unable to fully participate in the process must do so to the extent possible and help to identify an effective accommodation. Engaging in the interactive process does not entitle a Requestor to receive their chosen accommodation. Appendix A lists available resources to help both the Decision-Maker and the Requestor identify possible accommodation

solutions. The RAS or other official designated by the FDA should also be available to assist in any way.

- b. **Initial Dialogue:** As the first step to promoting a positive dialogue, the FDA Decision-Maker should:
- i. Acknowledge the request in a timely manner;
  - ii. Explain to the applicant or Requestor whether they can grant the accommodation, or if not, that the request will be referred to the RAO for processing (RAO will advise whether additional medical documentation will be necessary;
  - iii. Keep an open line of communication with the Requestor throughout the reasonable accommodation process; and
  - iv. When a third party makes an accommodation request, the Decision-Maker should, if possible, confirm with the Requestor that they require a reasonable accommodation before proceeding. In addition, the RAO will confirm authorization from the Requestor to communicate with the third-party using FDA Form- 5050. It may not be possible to confirm the request if the Requestor, for example, is hospitalized. In this situation, the FDA will process the third party's request and consult directly with the individual needing the accommodation as soon as circumstances allow.
- c. **Ongoing Communication:** Ongoing communication is essential when the specific limitation, problem, or barrier is unclear; an effective accommodation is not obvious, or the parties are considering different possible reasonable accommodations. In cases when the disability, the need for accommodation, and the type of accommodation to be provided are clear, a discussion may not be necessary. However, every reasonable accommodation request is unique and provided on a case-by-case basis. An accommodation that suits one individual may be unsuitable for another, even when the disability is the same. Therefore, the Decision-Maker and requesting individual should communicate, as necessary, to ensure a full exchange of relevant information.

The Decision-Maker or any other FDA official who receives information in connection with a request for reasonable accommodation may share information connected with that request with other Agency officials **only when a business needs to know**. The Decision-Maker should notify the RAS to obtain guidance, as necessary, to ensure compliance with proper Agency procedures. See Section 6.3 (g) on confidentiality of medical information.

For example: consultation with the FDA office that manages information resources or information technology may be necessary for computers' adaptive equipment. However, this office would not need to know the medical

condition of the person seeking the accommodation. It only needs to know the individual's functional limitations and how they affect technology needs.

- d. **Interim Accommodation:** some instances, before rendering a decision, it may be appropriate to grant an interim accommodation. This situation is most common when the initial facts of the request indicate that a reasonable accommodation will likely be granted, the case is complex, it may take time to implement the accommodation, or the limitations of the Requestor are unclear and may require a medical review to determine the appropriate accommodation. When all the facts and circumstances known to the Agency make it reasonably likely that an individual will be entitled to a reasonable accommodation, but the accommodation cannot be provided immediately, the Agency shall provide an interim accommodation. The interim accommodation should allow the individual to perform some or all of the essential functions of their job if it is possible to do so without imposing undue hardship on the Agency<sup>xviii</sup>. It is also advisable to grant an interim accommodation when additional time is needed to decide on the accommodation request or when extra time or funding is required to implement the accommodation. The granting of an interim accommodation does not entitle a Requestor to the approval of the official accommodation, nor does it mean that an interim accommodation cannot be modified to another effective accommodation. The general timeframes for processing an accommodation are suspended while an interim accommodation is in place; however, the interim accommodation is not indefinite. Every effort must be made to resolve the matter and put the signed reasonable accommodation agreement in place as soon as possible. Written documentation of the interim accommodation is necessary, including the time for which it will begin and end and the action that will take place at the end of the interim period.

### 7.3 The Decision

The Decision-Maker is vested with the responsibility of rendering a prompt decision to the Requestor. After engaging in an interactive process with the Requestor, the Decision-Maker determines that medical documentation or clarification is necessary to render a decision, they will consult with RAO (see section 7.d.i). The designated RAS will gather the required documentation and provide the Decision-Maker with a reasonable accommodation analysis. The Decision-Maker has 15-calendar days from receipt of the reasonable accommodation analysis to evaluate and make a determination. The Decision-Maker will use, as applicable, information gathered through the interactive process, reasonable accommodation analysis, and any other relevant resource to evaluate and decide on the request. The decision to accommodate, offer alternative accommodation, or deny the request entirely rests with the decision-maker.



**a. Granting the Reasonable Accommodation Request:** When the Decision-Maker decides to grant the accommodation, details of what is granted, or where alternative accommodation is offered, it will be reduced to writing and issued in a Reasonable Accommodation Decision Memorandum to the Requestor. If the accommodation is granted/partially granted/, or alternative accommodation is offered but is not immediately available the Decision-Maker must inform the Requestor of the projected time frame for providing the accommodation. (See Section 6.3 (c) for additional information on requests for reconsideration of decisions).

**b. Approval Without Consultation With RAO:** Generally, when the disability or medical condition is obvious, or Agency documentation already exists, and the request is simple and straightforward, the Decision-Maker may not require assistance or consultation from the RAO to approve the request. If no additional information nor consultation is necessary, the Decision-Maker has 10- calendar days to decide. The Decision-Maker should document their decision in writing, capturing all related actions, and send this to the RAO for recordkeeping. The documentation should include the following information at a minimum:

- i. The date the request was received.
- ii. The type of accommodation requested.
- iii. The date the request was approved.
- iv. The date the request was provided.
- v. The deciding official.
- vi. The type of accommodation provided.

Ensuring that the above information has been captured allows for effective recordkeeping and provides for continuity should a Decision-Maker leave the Agency or the Requestor's chain of command.

**c. Denial of the Reasonable Accommodation Request:**

- i. The Decision-Maker must consult with the RAS before moving forward to deny a request.
- ii. If the Decision-Maker decides to deny the accommodation requested, they will evaluate and offer the Requestor, if feasible, an alternative accommodation. If the accommodation is denied, the Requestor has 5- calendar days to submit a request for reconsideration to the Decision-Maker.
- iii. If the Requestor rejects the offered alternative accommodation or the Decision-Maker decides that the accommodation should be denied for other reasons, as outlined below, they must provide the denial in writing

and accessible format when requested<sup>xix</sup>. The Decision-Maker must also complete the FDA Form -3527 - Denial of Reasonable Accommodation Request and give the completed form to the Requestor with a copy to the RAS. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial. The denial notice should explain the reasons for the denial of the requested accommodation and an explanation of why the Decision-Maker believes the offered accommodation would be effective. The denial document must include specific reasons for the denial, for example:

1. The requested accommodation would not be effective;
  2. Providing the requested accommodation would result in undue hardship. A determination of undue hardship means that the FDA finds that a specific accommodation would result in significant difficulty or expense or would fundamentally alter the nature of DHHS' operations. To determine whether an accommodation would result in undue hardship, the standards cited in the regulations and in the "Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act" (ADA, Rehabilitation Act, 29 CFR Part 1630, 29 CFR Part 1614) should be followed;
  3. Medical condition does not rise to the level of a disability pursuant to the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) and the Rehabilitation Act of 1973;
  4. Failure of the Requestor to provide sufficient documentation or cooperate with the efforts of the RAS to obtain necessary information to address the request for reasonable accommodation;
  5. The requested accommodation would require the removal of an essential function of the Requestor's job;
  6. Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation; and
  7. The requested accommodation would require the lowering of a performance or production standard.
- iv. The written notice of denial shall inform the individual that they have the right to file an Equal Employment Opportunity (EEO) complaint and that they may have rights to pursue Merit Systems Protection Board (MSPB) and union grievance procedures. The notice shall also explain the procedures available for a request for reconsideration of a denial of reasonable accommodation.<sup>xx</sup> (See FDA Form-3527)

**d. Undue hardship:**

- i. If a specific requested reasonable accommodation would cause significant difficulty or expense to DHHS, FDA is not required to provide that particular accommodation. 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 organization's operations.
- ii. However, generalized conclusions will not suffice to support a claim of undue hardship. Instead, undue hardship must be based on an individualized assessment of current circumstances shows that a specific reasonable accommodation would cause significant difficulty or expense to the Agency. A determination of undue hardship may be based on several factors, including:
  - 1. the nature and cost of the accommodation needed;
  - 2. the overall financial resources of the facility making the reasonable accommodation;
  - 3. the number of persons employed at this facility;
  - 4. the effect on expenses and resources of the facility;
  - 5. the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
  - 6. the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer; and
  - 7. the impact of the accommodation on the operation of the facility.
- iii. Undue hardship is determined based on the net cost to the employer.
- iv. If an employer determines that one particular reasonable accommodation will cause undue hardship, but the second type of reasonable accommodation will be effective and will not cause undue hardship, then the employer may provide the second accommodation.
- v. An employer cannot claim undue hardship based on employees' (or customers') fears or prejudices toward the individual's disability. Nor can undue hardship be based on the fact that the provision of a reasonable accommodation might have a negative impact on the morale of other employees. Employers, however, may be able to show undue hardship where the provision of a reasonable accommodation would be unduly disruptive to other employees' ability to work.

- vi. Most undue hardship assessments involve non-financial considerations, such as the timely performance of job duties and the ability to serve the public effectively. The employer must consider the resources of the Agency as a whole, not simply the budget of a specific office when determining whether an accommodation imposes significant cost; however, the employer does not have to include any funding Congress designates for a specific purpose that does not include the provision of reasonable accommodation. The Agency also must consider money available through a centralized fund to pay for many forms of reasonable accommodation.
- e. Reconsideration:** If an employee wishes to request reconsideration of this decision, they may take the following steps:
- i. Within 5-calendar days, submit a request for reconsideration to the original Decision-Maker, who will respond to the request within 10- calendar days.
  - ii. If the original Decision-Maker denies the request for reconsideration, the Requestor may, within 5-calendar days, submit a request for reconsideration to the next level supervisor (2nd level), who will respond to the request within 10-calendar days; and
  - iii. If the original decision is not reversed, the request for reconsideration may be elevated to the next management official (3rd level) within the chain of command, who will, in turn, respond within 10- calendar days. The 3rd level of review is the final reconsideration available in the process.
  - iv. After a decision has been rendered, including seeking reconsideration from the Decision-Maker's chain of command, does not affect time limits for initiating statutory, and collective bargaining claims to pursue any informal dispute resolution procedures identified below. An individual's participation in these informal dispute resolution processes does not achieve the Requestor's desired results. The Requestor may pursue statutory or collective bargaining remedies for denial of reasonable accommodation through any of the following:
    - 1. For an EEO complaint: contact an EEO counselor in the Office of Equal Employment Opportunity (OEEEO) within 45- days from the date of receipt of the written resolution notice which must be provided at the same time the Decision-Maker communicates the denial. An applicant or Requestor who claims that the RAO has unreasonably delayed deciding on a request for reasonable accommodation may contact an EEO counselor prior to receiving written or verbal notification of a decision;
    - 2. For a collective bargaining claim: file a written grievance in accordance with the provisions of the Collective Bargaining Agreement;

3. Submit a dispute filing under the Administrative Grievance Procedure, within the specified time frame;
4. For adverse actions over which the Merit Systems Protection Board has jurisdiction: initiate an appeal to the MSPB within 30- days of the appealable adverse action as defined in 5 C.F.R. § 1201.3.<sup>xxi</sup>

**f. Documenting the Reasonable Accommodation Determination:** When the Decision-Maker arrives at a decision, they must capture the outcome of the reasonable accommodation request in writing.

Once the Decision-Maker has determined the outcome, the RAS will advise the Decision-Maker to document the determination in writing based on the draft decision letter provided by the RAS or some similar version of the memorandum that is amenable to the Decision-Maker. A decision letter signed by the Decision-Maker serves to clarify and document the exact nature of the accommodation granted. Reasons for having a decision Memo include the possibility that:

- i. In some cases, the accommodated Requestor's functional limitations might increase or decrease, thus requiring periodic reviews and adjustments to the approved accommodation(s). Having a written record of accommodation granted makes it easier to fine-tune changes and adjustments;
- ii. A disability may improve to the point that an approved accommodation can be moderated or removed;
- iii. There may be a need to have a verifiable record of employee's accommodation throughout their tenure at the FDA and DHHS; and
- iv. Once an accommodation is determined, the RAS will review the draft decision letter before issuance to the Requestor. The Decision-Maker will make the final determination whether any suggested changes are needed. The decision letter should contain the following:
  1. An accurate description of the accommodation outcome;
  2. The responsibilities and expectations of both parties; and
  3. The need for periodic evaluations/review, as applicable.

*Note: Once the Agency documents a permanent (long-term) impairment, there has been no change in the impairment, and a reasonable accommodation granted, further requests for medical information should be limited. However, limited updated medical information may be necessary, especially if a Requestor's condition has changed, and they may require modifications to existing accommodation. The further review of medical information in the event of an additional reasonable accommodation request should be limited to the RAO, the medical contractor, and the Requestor's physician(s).*

## 7.4 Provision of Accommodation

- a. **Funding:** The Center/Office level should provide the funding source for reasonable accommodation requests. Decision-Makers are responsible for seeking out funding for the provisions of accommodations within their respective area.<sup>xxii</sup>
- b. **Acquisition:** Decision-Makers are accountable for coordinating purchases of required reasonable accommodation equipment, as applicable.
- c. **Implementing:** Decision-Makers are responsible for coordinating and putting in place required accommodation upon determination of the reasonable accommodation request, but no later than 20-calendar days, absent extenuating circumstances.
- d. **Review:** Center management and the RAO are responsible for periodic evaluation of accommodation granted to determine continued effectiveness or continued need for accommodation if applicable.
- e. **Reassignment:** Reassignment to a vacant, funded position is the accommodation that may be provided, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of their current position, with or without reasonable accommodation.
  - i. Before considering reassignment as a reasonable accommodation, the Decision-Maker should consider those accommodations that would enable the employee to remain in their current position. Reassignment is the reasonable accommodation of last resort and only required after the determination that:
    - 1. there are no effective accommodations that will enable the employee to perform the essential functions of their current position, or
    - 2. all other reasonable accommodations would impose an undue hardship. However, if both the Decision-Maker and the employee voluntarily agree that transfer is preferable to remaining in the current position with some form of reasonable accommodation, then the Decision-Maker may reassign the employee.
  - ii. Neither DHHS nor FDA is required to create new positions or move employees from their jobs to create a vacancy; thus, reassignment must be to a vacant and funded position. Before conducting a vacancy search for reassignment, the following steps must occur:
  - iii. The employee must provide in writing within 10-calendar days an updated resume and completed reasonable accommodation Questionnaire (see FDA Form - 5048) identifying whether the employee is willing to:
    - 1. Accept a reassignment outside the local commuting area;

2. Accept a job series that is different;
  3. Accept a lower grade (to include what is the lowest grade they are willing to accept) if no vacant positions are identified at the same grade; and
  4. Accept a part-time position.
- iv. The RAS will work with the Supervisor/Manager/Executive Officer to identify a vacant position(s) within the Center to transfer the employee directly if they meet the minimum qualifications. The vacancy must meet the criteria noted on the FDA Reasonable Accommodation Reassignment Questionnaire (see FDA Form- 5048).
  - v. The RAS will work with both the OTS designee and the individual employee requesting the accommodation to identify:
    1. All vacant positions within the Agency for which the employee meets the minimum qualifications, with or without reasonable accommodation; and
    2. Positions that OTS has reason to believe will become vacant over the next 60-calendar days for which the employee may be qualified. When related to Reasonable Accommodation Reassignment, the term 'Agency' refers to DHHS to include all OpDivs.
  - vi. OTS will conduct the job search based on the information provided by the individual through the FDA Reasonable Accommodation Reassignment Questionnaire (see FDA Form - 5048) and their resume. At a minimum, the RAS will give a status update every 15-calendar days on the vacancy job search to the employee and supervisor.
  - vii. When applicable, the RAS will provide OTS with the employee's limitations to be addressed to the hiring manager for that position. OTS will communicate and inquire with the designated HR Specialist and the hiring manager to determine whether the employee meets the minimum qualifications for the position. \*NOTE: At no time will the HR Specialist refer to reasonable accommodation when conducting the job search inquiries.
  - viii. If a position for which the individual is qualified is found at any time during the 60-calendar day search, OTS will forward the position information to the RAS so they can work with the employee to determine whether the employee can perform the essential functions of the position with or without accommodation.
  - ix. During a search for reassignment, if there are multiple vacancies of the same position, all positions shall be placed on hold until OTS and the RAO receive a written notification from the Center's Executive Officer stating

that funding is available for the position. Upon receipt, OTS will place only one position on hold for reassignment, and all other positions will be released to be filled by the Center.

- x. OTS will certify and document in writing that it conducted a thorough Agency-wide.
- xi. If a vacant position for which the employee is qualified is located, the reasonable accommodation reassignment process will be concluded. The Center will notify the employee in writing of the vacancy. After notifying the employee, the Center will notify OTS to extend the job offer (see FDA Form- 5049).
- xii. If the employee accepts the position:
  - 1. The employee will be placed in the position non-competitively; and
  - 2. The employee will work with the RAS and the new supervisor to determine what, if any, reasonable accommodation(s) are necessary for the new position.
- xiii. If the employee declines the position or no vacancies are identified, the Decision-Maker, in consultation with the ELR Specialist or Human Resources Specialist, will determine the subsequent appropriate administrative actions to be taken outside of the reasonable accommodation process.

## 8. Timeframes for Processing Requests and Providing Reasonable Accommodation

**FDA will process requests and provide reasonable accommodation in as short a time frame as possible.** FDA recognizes that the time necessary to process a request will depend on the nature of the accommodation requested and whether there is a need to obtain supporting information.

Note: The timeframes in this SMG are suspended from the time that medical documentation is requested from the employee to the time it is provided or when a medical review by the FDA Medical Consultant is necessary to respond to the request.

**Table 1:**

<b>Timeframes for Processing Reasonable Accommodation Requests</b>
<b>Day 0 – Initial Request</b> An employee, applicant for employment, or individual acting on behalf of the employee or applicant, requests an accommodation, either verbally or in writing.
<b>Within 5-calendar days of receiving initial request</b>



Timeframes for Processing Reasonable Accommodation Requests
<p>The individual (Supervisor, RAO, OTS) who received the request confirms receipt of the request in writing as soon as possible, but no later than 5-calendar days. When processing the request through the RAO, the Decision-Maker responds to the Requestor in writing, acknowledging receipt of reasonable accommodation request via email. They will provide a copy of that response to the RAS. The Decision-Maker begins the interactive process with the Requestor.</p>
<p><b>Within 10-calendar days of receiving initial request</b>  If medical documentation is not required, the Decision-Maker will make a determination to provide or deny the accommodation request as soon as possible, but within 10-calendar days, absent extenuating circumstances.  <b>For Employees:</b> If the employees' supervisor receives the request, and the disability or need for accommodation is not obvious or additional clarification is necessary, they will be forwarded to the RAO as soon as possible. The RAS will request and facilitate collection of medical information, as applicable. If an interim workplace adjustment is feasible at this time, it should be made (see FDA Form - 5046).  <b>For Applicants:</b> OTS should make every effort to process requests from applicants as soon as possible for them to be able to participate in the application process. OTS should notify the applicant in writing of the denial within 10-calendar days of the initial request and inform the applicant of possible avenues of redress (see Form FDA-3527). If the disability or need for accommodation is not obvious and FDA has no documentation of the disability, and the applicant does not provide medical documentation OTS will request medical documentation. If the applicant fails to produce sufficient medical documentation, FDA is not required to provide accommodation.</p>
<p><b>Within 15-calendar days of receiving initial request</b>  If the RAS requests medical documentation or medical consultation is necessary, the RAS will prepare the RA analysis and provide it to the Decision-Maker within 5-calendar days. Upon receipt of the reasonable accommodation analysis, the Decision-Maker will determine to grant or deny the accommodation request as soon as possible, but within 15-calendar days.  <i><b>* Note: In accordance with EEOC's Policy Guidance on Executive Order 131694, "an Agency will not be expected to adhere to its usual time frames if an individual's health professional fails to provide needed documentation, in a timely manner." Therefore, when waiting for the Requestor to submit medical documentation or for FDA's Medical Consultant's medical review, timeframes established herein will be suspended.</b></i></p>
<p><b>Within 20-calendar days of written decision of an approved accommodation</b>  Decision-Makers are responsible for coordinating and/or putting in place required accommodation upon determination of the reasonable accommodation request, but no later than 20-calendar days, absent extenuating circumstances. The Decision-Maker or Requestor should provide to the RAS confirmation of completed action (s).</p>

<b>Timeframes for Processing Reasonable Accommodation Requests</b>
Documentation may include telework agreement, manufacturer/vendor information and total associated cost, or invoice.
<b>Within 45-calendar days (or sooner) of receiving initial request</b> Total time for processing the accommodation request to implementation, absent extenuating circumstances.

- a. **Standard Processing:** If the Requestor’s supervisor can process a request for an accommodation, and no medical review or supporting medical information is required, and no extenuating circumstances apply, they will give the decision to the Requestor as soon as possible, but no more **than 10- calendar days from** the date the individual made the request. Accommodation granted should be implemented within 10-calendar days from the approval date, absent extenuating circumstances. However, officials should move quickly to comply with requests because failure to respond promptly to a request may violate the Rehabilitation Act. Failure to meet this timeframe solely because a Decision-Maker delayed processing the request is not an extenuating circumstance. (See Section 7 (c) for information on “extenuating circumstances.”)
- b. **Expedited Processing:** In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a shorter timeframe than the 10-calendar days. Circumstances include where reasonable accommodation is needed to enable a Requestor to attend a meeting or event scheduled to occur shortly. For example, a Requestor may need a sign language interpreter for a meeting within a short time frame.
- c. **Extenuating Circumstances:** Extension to process a request for reasonable accommodation and provide the accommodation may be necessary under extenuating circumstances. Extenuating circumstances include but are not limited to obtaining follow-up medical documentation, ordering equipment, etc.  
  
“Extenuating circumstances” covers limited, unforeseen, or unavoidable events occurring outside of FDA's control, which prevent prompt processing and delivery of an accommodation. FDA may not delay processing or provision of accommodation because a particular staff member is unavailable. (See Section 4 for information on designating back-ups to respond to requests when the Decision-Maker is unavailable).

When extenuating circumstances exist, the Decision-Maker 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 developments or changes should also be communicated promptly to the Requestor by the Decision-Maker. The following are examples, not intended to be exhaustive, of delays and possible temporary measures taken, ergonomic

equipment is ordered but waiting on vendor shipment; IT needs to assess and adequately install technology equipment.

- d. **Delays:** If there is a delay in providing an accommodation, the Decision-Maker must determine if temporary measures can assist the Requestor. Measures could include providing the requested accommodation as an interim accommodation or temporarily or providing a less effective form of accommodation (see FDA Form - 5046). In addition, the Decision-Maker may provide measures that do not constitute reasonable accommodation within the meaning of the law (e.g., temporary removal of an essential function) if:
  - i. They do not interfere with the operations of the Agency; and
  - ii. The Requestor is clearly informed that they are being provided only on a temporary, interim basis.
  - iii. For example, there may be a delay in receiving adaptive equipment for a Requestor with a vision disability. The supervisor might arrange for other employees to act as readers as a temporary measure. This may not be as effective as the adaptive equipment, but it will allow the Requestor to perform as much of the job as possible until the equipment arrives.

An accommodation may be provided on an interim basis when a delay is attributable to the need to obtain or evaluate medical documentation. The FDA has not yet determined that the individual is entitled to an accommodation. In such a case, the Decision-Maker will notify the individual in writing that the accommodation is on a temporary basis pending a Decision on the accommodation request.

FDA Decision-Makers who approve such temporary measures are responsible for assuring that they do not take the place of permanent accommodation and to take all necessary steps to secure permanent accommodation.<sup>xxiii</sup>

- e. **Extended timeframes due to Requests for Medical Information** FDA recognizes that the need for documentation may not become apparent until after the interactive process has begun. The Decision-Maker will request to the RAO as soon as possible, but no more than 5-calendar days after receiving the request for accommodation, when they believe it is necessary to obtain medical information to determine whether the requesting individual has a disability and to identify the functional limitations accommodation.

If the Decision-Maker requests that the RAS obtain medical information, the period for the decision process is tolled/paused until the medical information is provided.

If the RAS determines that medical information is not needed, they will notify the Decision-Maker and the 15-calendar day-time period for deciding the request resumes. If the RAS determines that medical documentation is necessary, the

Decision-Maker shall make a determination within 15-calendar days from the date from receipt of the RAS analysis.

## **9. Information Tracking and Reporting**

Reasonable accommodation records will be collected and maintained in accordance with applicable nondiscrimination and affirmative action requirements as imposed under HHS system of records, SORN [09-90-2103](#), Accommodation Records About HHS Civilian Employees, Contractors and Visitors; as well as section 501 of the Rehabilitation Act and make such records available to EEOC upon EEOC's request<sup>xxiv</sup>.

- a. FDA's RAO will be responsible for coordinating the annual report production, which will also be provided to the DHHS EEO Programs Group, Office of Human Resources with the annual Affirmative Action Program for Individuals with Disabilities Report<sup>xxv</sup>.
- b. The RAS shall be responsible for tracking all reasonable accommodation requests via an internal reasonable accommodation tracking system and utilizing applicable forms contained in this SMG.
- c. Applicants and employees may track the processing of their request for reasonable accommodation by contacting the designated RAS. They may also contact the RAO by email at [ReasonableAccommodation@fda.hhs.gov](mailto:ReasonableAccommodation@fda.hhs.gov) or phone (240) 402-1650 to obtain processing status.
- d. The RAO will maintain records in accordance with applicable privacy regulations and Accommodation Records About HHS Civilian Employees, Contractors, and Visitors SORN. RAO will retain records pertaining to a Requestor's accommodation request for three years after employee separation from the FDA or after the conclusion of all appeals, whichever is later. These records must be kept separate from the individual's personnel file. After the applicable time period, the medical documentation and other information regarding the Requestor's accommodation should be disposed, as instructed by the SORN.
- e. Pursuant to records compliance, the Agency is required to document the following information: the specific reasonable accommodation; the job (occupational series, grade level, and Agency component) sought by requesting applicant or held by the employee; whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment; whether the request was granted or denied; the identity of the deciding official; the basis of the denial; and the number of days taken to process the request<sup>xxvi</sup>.

## **10. Policies for Readers Interpreters and Other Personal Assistants**

It is FDA's policy to make readers, interpreters, and other personal assistant service providers available, as appropriate. In no case should a staff assistant be called

upon - by management or by the Requestor(s) to whom they are assigned - to perform the job's essential functions held by the Requestor with the disability.

**a. Personal Assistant Services (PAS):**

As set forth by 29 CFR § 1614.203(a)(5), Personal Assistance Services (PAS) is an "assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation; examples include, assistance with removing and putting on clothing, eating, using the restroom, and pushing a wheelchair or assistance with getting into or out of a vehicle at the worksite." These examples are non-exhaustive and serve to identify self-care-type activities for which a PAS may be employed.

- i. PAS does not include, performing medical procedures (e.g., administering shots) or medical monitoring (e.g., monitoring blood pressure).
- ii. The Agency will provide PAS to employees who need them because of certain disabilities during work hours and job-related travel if:
  1. The employee requires such services because of a targeted disability;
  2. Provision of such services would, together with any reasonable accommodations required under the standards set forth in part 1630 of 29 C.F.R. Chapter XIV, enable the employee to perform the essential functions of his or her position; and
  3. Provision of such services would not impose undue hardship on the Agency.
- iii. Examples of PAS include assistance with removing and putting on clothing, eating, using the restroom, and pushing a wheelchair or assistance with getting into or out of a vehicle at the worksite. These examples are non-exhaustive and serve to identify self-care type activities for which a PAS may be employed.
- iv. PAS does not include performing medical procedures (e.g., administering shots) or medical monitoring (e.g., monitoring blood pressure).
- v. PAS will not help individuals with disabilities perform their specific job functions, such as reviewing documents or answering calls; and differ from services that assist an individual to perform job-related tasks, such as sign language interpreters. Employees or applicants needing medically based reasonable accommodations to assist them in the workplace, or to apply for employment, may request reasonable accommodation through the Agency's reasonable accommodation procedures.
- vi. The FDA will provide PAS to employees with qualifying disabilities to ensure they enjoy equal employment opportunity and benefits of employment. Upon request, PAS will be provided for all FDA sponsored events, including

orientations, meetings, functions, training, office parties, or other events during regular business hours.

- vii. Requests for PAS will be processed in accordance with reasonable accommodation procedures set forth in this SMG.
- viii. An employee, or office, in need of PAS is responsible for directing the request to the RAO.
- ix. Additional information regarding PAS may be found on the FDA Intranet at:  
<https://fda.sharepoint.com/sites/OC-Intranet-OC-OO-OEMS-DCCP/SitePages/Reasonable-Accommodations.aspx>

- b. **Interpretive Services / Captioning Services:** Sign Language interpreting is a reasonable accommodation that may be necessary by individuals who are deaf or hard-of-hearing, including FDA Requestors wanting to participate equally in the workplace, visitors entitled to access to FDA's programs offered to members of the public, or applicants applying for a position within the FDA. Upon request, RAO will provide sign language interpreters for an employee or applicant to any FDA-sponsored events, including applicant interviews, orientations, meetings, functions, training, office parties, or other events during regular business hours. Interpreting services will be provided for the Washington Metro Area and throughout the Regions, using Service Level Agreements.

The RAO will provide Communication Access Realtime Translation (CART) services for those deaf or hard of hearing employees who do not know sign language. Generally, a CART reporter - via a laptop – electronically provides a complete translation of all spoken words and environmental sounds for the employee's benefit. Requests for interpreters/CART services may be made by e-mailing [interpreting.services@oc.fda.gov](mailto:interpreting.services@oc.fda.gov). Requests should be made as early as possible; However, two weeks in advance is generally needed to guarantee interpreters will be available.

- i. **Scheduling Interpreter Services:** The individual or office scheduling a meeting or event which will require interpreting services (staff meeting, training, office function, etc.) is responsible for directing the request to the FDA RAO or other designated office to arrange for interpreting services. An individual who knows sign language or takes a sign language class is not an acceptable substitute for a sign language interpreter.

Advance scheduling – preferably one to two weeks – is strongly encouraged, to the extent possible. Failure to schedule interpreting services well in advance may necessitate rescheduling meetings until interpreter services are available.

- ii. **Work Events Outside the Workplace:** RAO will provide an interpreter for a Requestor who is deaf or hard of hearing, which attends a meeting or event outside of the workplace as part of their job. If they attend a conference or

training program sponsored by an outside organization, the sponsoring organization is responsible for providing interpreters. HOWEVER, the FDA will provide interpreting services if the sponsoring Agency fails to do so.

- c. **Hiring Authority:** Readers, interpreters, or other personal assistant service providers hired to fill approved positions may be appointed under the non-competitive Schedule A authority, 5 C.F.R. § 213.3102 (II) [“I” is lower case, double “L”]. Persons with disabilities hired as readers, interpreters, or assistants may also be appointed under the § 213.3102 (u) authority.

## 11. Effective Date

The effective date of this guide is September 26, 2023.

## 12. Document History – SMG 3130.2, “Procedures for Providing Reasonable Accommodation for Individuals with Disabilities”

Status (I, R, C)	Date Approved	Location of Change History	Contact	Approving Official
Initial	01/11/2006	N/A	OOEODM/DMS (HFA-715)	Georgia Coffey, Director OEEODM
Revision	09/25/2023	N/A	OO/OEMS	Tiffany Branch, Director, OEMS
Changed	06/26/2025	Amend tables pp.2 & 32	OO/OMES/ODIGA/ DCPA	Anaury Angeles, Supervisory Reasonable Accommodation Specialist, OO/OMES/ODIGA/DCPA

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## Appendix A - Selected Reasonable Accommodation Resources

### a. DoD Computer Electronic Accommodations Programs (CAP)

<https://www.cap.mil/>

The Department of Defense (DoD) and the DHHS have an InterAgency Agreement with the Computer/Electronic Accommodations Program (CAP). CAP provides assessments of assistive technology to DHHS employees with disabilities at no cost, as granted by the National Defense Authorization Act.

### b. Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TTY)

<https://askjan.org/>

A service of the Department of Labor’s Office of Disability Employment Policy. JAN is a source of free, expert, and confidential guidance on workplace accommodations and disability employment issues. JAN’s consultants offer one-on-one guidance on workplace accommodations, the Americans with Disabilities Act (ADA) and related legislation, and self-employment and entrepreneurship options for people with disabilities. Assistance is available both over the phone and online.

**c. National Captioning Institute (NCI)**

1900 Gallows Road, Suite 3000

Vienna, VA 22182

703-917-7600

<https://www.ncicap.org/>

Provides captioning services, develops and funds the continuing development of captioning, subtitling and other media access services for the benefit of people who require additional access to auditory and visual information. NCI supports services to people who are deaf or hard of hearing and others who are limited in their ability to participate fully in the world of auditory or visual communications.

**d. Registry of Interpreters for the Deaf**

333 Commerce Street

Alexandria, VA 22314

(703) 838-0030 V

(703) 838-0459 TTY

(703) 838-0454 Fax

<https://rid.org/>

The Registry of Interpreters for the Deaf, Inc. (RID) is a national membership organization of professionals who provide sign language interpreting/transliterating services for Deaf and Hard of Hearing persons. RID's mission is to provide international, national, regional, state, and local forums by providing an organizational structure for the continued growth and development of the professions of interpretation and transliteration of American Sign Language and English.

**e. RESNA Technical Assistance Project**

(703) 524-6686 (Voice)

(703) 524-6639 (TT)

<http://www.resna.org/>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities.

Services may include:

1. Information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products);



2. Centers where individuals can try out devices and equipment;
3. Assistance in obtaining funding for and repairing devices; and
4. Equipment exchange and recycling programs.

**f. U.S. Equal Employment Opportunity Commission**

1-800-669-3362 (Voice)

1-800-800-3302 (TTY)

<http://www.eeoc.gov>

The EEOC is responsible for enforcing federal laws that govern the Reasonable Accommodation process. Published guidance on federal laws, regulations, statutes, and resources, including The ADAAA and the Rehabilitation Act of 1973, are available through the EEOC website.

**g. USDA TARGET Center**

1400 Independence Ave.

Room 1006 S

Washington DC 20250 9876

(202) 720 2600 (Voice/TTY)

(202) 720 2681 (FAX)

<https://www.targetcenter.dm.usda.gov/>

The Target Center has a wide variety of services, including assistive technology evaluation, available for Federal employees to assist in determining the technology solution that best fits the needs of the individual and job function.

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<sup>i</sup> See 29 C.F.R. § 1630.2(o) (definition of "reasonable accommodation"). Under Title I of the Americans with Disabilities Act of 1990 (the "ADA") (1) requires an employer (2) to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship. "In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities." (3) There are three categories of "reasonable accommodations".

<sup>ii</sup> (See footnote i above).

<sup>iii</sup> 29 C.F.R. § 1614.203(d)(3)(i)

<sup>iv</sup> To be eligible for a reasonable accommodation, an individual must either have a physical or mental impairment that substantially limits one or more major life activities or must have a record (a history) of such an impairment. An individual who is only regarded as having a disability is not entitled to reasonable accommodation. See 29 C.F.R. § 1630.2(o)(4). Determination of disability under this SMG will comply with the requirements of the ADA and the Rehabilitation Act, which require a broad interpretation of the term and generally do not require an extensive analysis. See 42 U.S.C. § 12102; 29 C.F.R. § 1614.2.

<sup>v</sup> 29 C.F.R. § 1630.2(n) and Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation. Also, see the EEOC Reasonable Accommodation

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Guidance available on the EEOC's website at <https://www.eeoc.gov/>. The reasonable accommodation standards of the Americans with Disabilities Act apply to the Rehabilitation Act as well. 29 U.S.C. § 791(g).

<sup>vi</sup> (See footnote iv above).

<sup>vii</sup> <https://www.eeoc.gov/laws/guidance/reasonable-accommodations-attorneys-disabilities>

<sup>viii</sup> See 29 C.F.R. § 1630.2(h)(1).

<sup>ix</sup> See Americans with Disabilities Act & SMG 3130.2

<sup>x</sup> See 29 C.F.R. § 1614.203(d)(3)(i)(D)

<sup>xi</sup> See 29 C.F.R. § 1614.203(d)(3)(i)(M)

<sup>xii</sup> See 29 C.F.R. § 1614.203(d)(3)(i)(J).

<sup>xiii</sup> (See footnote ix above).

<sup>xiv</sup> See 29 C.F.R. § 1614.203(d)(3)(i)(J).

<sup>xv</sup> See Americans with Disabilities Act and SMG 3130.2

<sup>xvi</sup> See 29 CFR § 1630.14 (i)

<sup>xvii</sup> See 29 CFR Part 1602

<sup>xviii</sup> See 29 C.F.R. § 1614.203(d)(3)(i)(Q)

<sup>xix</sup> See 29 C.F.R. § 1614.203(d)(3)(iii)

<sup>xx</sup> See 29 CFR § 1614.203 (3) (iii)

<sup>xxi</sup> See 29 CFR § 1614.203 (3) (iii)

<sup>xxii</sup> See 29 CFR § 1614.203 (3) (iii)

<sup>xxiii</sup> See 29 CFR § 1614.203 (3) (iii)

<sup>xxiv</sup> See 29 C.F.R. § 1614.203(d)(8)

<sup>xxv</sup> See 29 C.F.R. § 1614.203(d)(8)

<sup>xxvi</sup> See 29 C.F.R. § 1614.203(d)(8)(vi)(A)-(G)