

**FDA STAFF MANUAL GUIDES, VOLUME III - GENERAL ADMINISTRATION**

**PERSONNEL**

**REASONABLE ACCOMMODATION AND ACCESSIBILITY**

**PROCEDURES FOR PROVIDING REASONABLE ACCOMMODATION FOR  
INDIVIDUALS WITH DISABILITIES**

Effective Date: 01/11/2006

1. Purpose
  2. Policy on Reasonable Accommodation
  3. Definition of Key Terms
  4. Responsibility
  5. Procedures
  6. Determining Which Official Will Respond to Request
  7. Time Frames for Processing Requests and Providing Reasonable Accommodation
  8. Procedures for Responding to Requests for Reasonable Accommodation
  9. Written Requests for Record Keeping Purposes
  10. Requests for Medical Information
  11. Confidentiality Requirements Regarding Medical Information and the Accommodation
  12. Provisions of Accommodation - Funding
  13. Reassignment
  14. Granting Reasonable Accommodation Requests
  15. Reasonable Accommodations Agreement
  16. Denial of the Reasonable Accommodation Request
  17. Appeal of a Denial of Reasonable Accommodation - Reconsideration
  18. Information Tracking and Reporting
  19. Relation of Procedures to Statutory and Collective Bargaining Claims
  20. Distribution and Inquiries
  21. Effective Date
  22. Document History
- APPENDIX A - Readers, Interpreters and Other Personal Assistants

APPENDIX B - Selected Reasonable  
Accommodation Resources  
APPENDIX C - Form FDA 3526, Confirmation  
of Request for Reasonable Accommodation  
APPENDIX D - Form FDA 3527, Denial of  
Reasonable Accommodation Request  
APPENDIX E - Form FDA 3528, Reasonable  
Accommodation Information Tracking

## **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”) document, ‘Procedures for Providing Reasonable Accommodation for Individuals with Disabilities’.

## **2. POLICY ON REASONABLE ACCOMMODATION**

It is the policy of the Food and Drug Administration to provide equal opportunity to all qualified individuals with disabilities in accordance with the Rehabilitation Act of 1973 and to fully comply with other legal and regulatory requirements to ensure that all aspects of employment are made fully accessible to all employees, and all aspects of the application process are fully accessible to all applicants. 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 accommodation:

- when an applicant with a disability needs an accommodation in order to apply or be interviewed for a job;
- when an employee with a disability needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace; and
- when an employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment.

FDA employees may refer to the Equal Employment Opportunity Commission's ("EEOC") *"Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act"* (available on EEOC's Web Site) for additional information on the rights and responsibilities of applicants and employees requesting reasonable accommodation, and the responsibilities of FDA personnel involved in responding to those requests.

**FDA may take steps, when appropriate, beyond those required by the reasonable accommodation process in this document or in the EEOC guidance.**

### 3. DEFINITION OF KEY TERMS

- **Reasonable Accommodation:** Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.
- **Disability:**
  - Has a physical or mental impairment that substantially limits one or more of his/her major life activities;
  - Has a record of such an impairment; or
  - Is regarded as having such 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, and mental and emotional processes such as thinking, concentrating, and interacting with others.

This list is constantly changing based on statutory changes and case law.

- **Qualified Individual with a Disability:** An individual with a disability is qualified if s/he (1) satisfies the requisite skill, experience, education, and other job related requirements of the position; and (2) can perform the essential functions of the position, with or without reasonable accommodation.
- **Essential Functions:** The job duties that are so fundamental to the position that the individual holds or desires that s/he cannot do the job without performing them. A function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to

perform it. 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.

- **Reassignment:** Reassignment is a form of reasonable accommodation that is provided to employees who, because of a disability, can no longer perform the essential functions of their current position, even with reasonable accommodation. Reassignment is available only to an employee who is qualified for the new position; it is not available to applicants. Reassignment is made only to existing positions in DHHS as a whole. An employee qualified for the position can be reassigned to the job without competing for it.
- **Undue Hardship:** If a specific type of reasonable accommodation causes *significant difficulty or expense to the Agency, meaning 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.

#### 4. RESPONSIBILITY

It is the responsibility of the Agency to provide Reasonable Accommodation in accordance with the guidelines as prescribed by the ADA and EEOC.

The responsibility of each part involved in the Reasonable Accommodation is specifically under the Procedures section of this document.

#### 5. PROCEDURES

##### **Procedures for Responding to Requests for Reasonable Accommodation**

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

A request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." An individual with a disability may request a reasonable accommodation whenever s/he chooses, even if s/he has not previously disclosed the existence of a disability. **Any FDA employee or applicant may consult a member of the Reasonable**

**Accommodation Team or other designee<sup>1</sup> for further information or assistance** in connection with requesting or processing a request for reasonable accommodation.

- An **employee** may request reasonable accommodation **orally or in writing** from his/her supervisor; another supervisor or manager in his/her immediate chain of command; his/her Office Director; or a member of Reasonable Accommodation Team or other designee. Note: Accommodation will be provided in recurring situations without requiring a new request from the employee each time.
- An **applicant** may request reasonable accommodation orally or in writing from any FDA employee with whom the applicant has contact in connection with the application process.
- The Office of Human Resource Management will train staff members who are involved in the application process to recognize requests for reasonable accommodation and to respond appropriately. **All staff** that has contact with applicants need to know how to recognize and respond to requests for reasonable accommodation.
- A **family member, health professional, or other representative** may request reasonable accommodation on behalf of an employee or applicant. The request should go to one of the same persons to whom the employee or applicant would make the request. Whenever possible, the FDA will confirm the request with the person with the disability.

## **6. DETERMINING WHICH OFFICIAL WILL RESPOND TO THE REQUEST**

As the first step in processing a request for reasonable accommodation, the FDA staff member who receives the request must determine who will be responsible for handling it and forward it, if necessary. **The person who responds to the request for accommodation will be referred to as the “decision maker.”** There are four possible decision makers: a Personnel Management Specialist (for applicants), an employee’s supervisor, an employee’s Office Director or other official in that chain of command, or the appropriate support official i.e. Facilities, Parking, IT. A staff member receiving a request for accommodation should follow the instructions below to determine which of these individuals should receive the request.

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<sup>1</sup> The FDA Reasonable Accommodation Team or other designee has specific responsibilities as part of the reasonable accommodation process, including processing certain requests, making determinations on the need for medical information, and preparing annual reports on the FDA’s reasonable accommodation process.

The request should be forwarded to the appropriate person **as soon as possible but in no more than five business days.**<sup>2</sup>

- **Requests for accommodation from applicants will be processed by the Personnel Management Specialist (PMS) responsible for the recruitment and/or selection process.** The PMS acting as decision maker must document and track all reasonable accommodation requests and activities.
- **Requests for accommodation from employees will be processed by the immediate supervisor** unless the request is one which should be referred to the Office Director or a member of the Reasonable Accommodation Team or other designee for a decision, as explained below.

**Certain requests for accommodation will be referred to the Office Director or his or her designee.** These include requests involving personnel actions (other than reassignment). In this case, the decision maker should document and track all reasonable accommodation activities.

**Certain requests for accommodation will be referred to a member of the Reasonable Accommodation Team or other designee.** This individual will respond to the following and identify the appropriate decision maker to refer the request to:

- Requests for **adaptive equipment, including information technology and communications equipment, or specially designed furniture.** FDA shall designate the process for coordination with the appropriate information technology, procurement and other offices.
- Requests for a **reader, sign language interpreter, or other personal assistant to enable employees to perform their job functions, where the accommodation cannot be provided by current staff.**
- Request for removal of architectural barriers, including reconfigured work spaces.<sup>3</sup>

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<sup>2</sup> In certain circumstances, referring and processing a request will have to be made very quickly. For example, an applicant may need an accommodation, such as help filling out an application form immediately. See Section V Time Frames for Processing Requests and Providing Reasonable Accommodation for more information, including when a request must be expedited.

<sup>3</sup> If a request that involves removal of an architectural barrier(s) is not feasible, the employee should be provided a reasonable accommodation until or in lieu of removal of the barrier.

- Requests for **accessible parking** will be handled through each Office/Center's internal procedures. Information on these accommodations shall be documented and included in the reports of all reasonable accommodation.
- Requests for **materials in alternative formats (e.g., Braille) which cannot be provided by the supervisor or Office Director.**
- Requests for **reassignment to another job in coordination** with the FDA Office of Human Resources Management.
- In addition, the Reasonable Accommodation Specialist, or other designee, will be available, as needed, **to provide assistance to employees and decision makers** in processing requests. At no time will the Reasonable Accommodation Specialist be the Decision Maker for any reasonable accommodation request.
- All decision makers, as well as the Reasonable Accommodation Specialist, must have designated back-ups to continue receiving and processing requests, and providing reasonable accommodations when the decision maker is unavailable. Decision makers should ensure that individuals know who has been designated as back-up. The time frames discussed in Section V will not be suspended or extended because of the unavailability of a decision maker.
  - The back-up for a supervisor is his/her Office Director.
  - The Personnel Management Specialist (for applicants), the Office Director, and the Reasonable Accommodation Specialist assigned to the case or other manager designated by the Reasonable Accommodation Specialist must each designate a back-up.

## **7. TIME FRAMES FOR PROCESSING REQUESTS AND PROVIDING REASONABLE ACCOMMODATION**

**FDA will process requests and provide reasonable accommodation, as appropriate, 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.

**A. Expedited processing:** In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in

a time frame that is shorter than the ten business days discussed below. This includes where a reasonable accommodation is needed:

- **to enable an applicant to apply for a job.** Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, the Office of Human Resources Management staff needs to act as quickly as possible to make a decision and, if appropriate, provide reasonable accommodation.
  - **to enable an employee to attend a meeting or event scheduled to occur shortly.** For example, an employee may need a sign language interpreter for a meeting within a short time frame.
- B. If a request for an accommodation can be processed by the requesting **employee's supervisor or office director**, no supporting medical information is required, and no extenuating circumstances apply, the decision should be given to the employee as soon as possible, but no more than **fifteen business days** from the date the individual made the request. The accommodation, if granted, should be provided within ten business days from the date of the approval unless there are extenuating circumstances. Items that must be ordered from non-local sources may take longer than the ten-day limit. **However, officials should move quickly to comply with requests because failure to respond promptly to a request may result in a violation of the Rehabilitation Act.** Since decision makers may need the full 15 business days to engage in the interactive process and collect all relevant information about possible accommodations, they should not delay beginning this process. Failure to meet this time frame solely because a decision maker delayed processing the request is not an extenuating circumstance. (See Section V, D, for information on "extenuating circumstances.")
- If the decision maker believes that it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or to identify the functional limitations, the decision maker will make such request to the Reasonable Accommodation Specialist or other designee as soon as possible after the receipt of the request for accommodation, but before the fifteen-day period ends. FDA recognizes that the need for documentation may not become apparent until after the interactive process has begun.
  - If the decision maker requests that the Reasonable Accommodation Specialist or other designee obtain medical information, the time period for the decision process is frozen until the medical information is



provided. If the Reasonable Accommodation Specialist or other designee determines that medical information is not needed, s/he will notify the decision maker and the 15-day time period for processing the request resumes.

- If the Reasonable Accommodation Specialist or other designee determines that medical documentation is needed, the decision shall be made and the accommodation, if granted, will be provided within 15 business days from the date the decision maker receives the relevant medical information.

Examples of accommodations which can be provided immediately include:

- An employee with diabetes who sits in an open area asks for four breaks a day to test his/her blood sugar levels so that s/he may do these tests in private.
- An employee with a disability that affects his/her arm strength requests that certain files in his/her office be moved from the overhead storage to the desktop.

Examples of accommodations which can easily be provided within two business days include:

- An employee who takes anti depressants which make it hard to get up in time to get to the office at 9:00, requests that s/he be allowed to start work at 10:00 and still put in an 8 hour day.
- A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes it difficult to read and he needs more time to prepare.

**C. Extenuating Circumstances: Factors beyond the control of FDA personnel that could not reasonably have been anticipated or avoided in advance of the request for accommodation.** When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as necessary. All FDA staff is expected to act quickly in processing requests and providing accommodations. The following are examples, not intended to be exhaustive, of extenuating circumstances:

- There is an outstanding initial or follow-up request for medical information.

- Purchase of equipment may take longer than 15 or 20 business days because of requirements under the Federal Acquisition Regulation.
- Equipment must be back-ordered; the vendor typically used for goods or services has gone out of business or cannot promptly supply the needed goods or services and another vendor is not immediately available.
- New staff needs to be hired or architectural barriers must be removed.

“Extenuating circumstances” covers limited situations in which unforeseen or unavoidable events occurring outside of FDA’s control which prevents prompt processing and delivery of an accommodation. For example, FDA may not delay processing or providing an accommodation because a particular staff member is unavailable. (See Section IV. 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 of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected.** Any further developments or changes should also be communicated promptly to the individual. The following are examples, not intended to be exhaustive, of delays and possible temporary measures that can be taken:

- If there is a delay in providing an accommodation which has been approved, the decision maker must determine **if temporary measures** can assist the employee. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. In addition, the 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: (1) they do not interfere with the operations of the agency; and (2) the employee is clearly informed that they are being provided only on a temporary, interim basis.
- There may be a delay in receiving adaptive equipment for an employee 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 employee to perform as much of the job as possible until the equipment arrives.
- If a delay is attributable to the need to obtain or evaluate medical documentation and the FDA has not yet determined that the individual is entitled to an accommodation, an accommodation may be provided on a temporary basis. In such a case, the decision maker will notify the

individual in writing that the accommodation is being provided 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 that all necessary steps to secure permanent accommodation are being taken.

## **8. PROCEDURES FOR RESPONDING TO REQUESTS FOR REASONABLE ACCOMMODATIONS - THE INTERACTIVE PROCESS**

Parties begin the interactive process to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and the decision maker must talk to each other about the request, the process for determining whether an accommodation will be provided, and the potential accommodation.

**Communication is a priority throughout the entire process.** The FDA decision maker will have the principal responsibility for identifying possible accommodations. S/he will take a proactive approach in researching and considering possible accommodation, including consulting appropriate resources for assistance. The employee requesting accommodation should also participate to the extent possible in helping to identify effective accommodation. Resources available to help both the decision maker and the individual requesting the accommodation to identify possible accommodation are listed in Appendix B. The Reasonable Accommodation Specialist or other manager designated by the FDA should also be available to provide assistance.

- As the first step, the FDA decision maker will: (1) acknowledge the request, (2) explain to the applicant or employee that s/he will be making the decision on the request; and (3) describe what will happen in the processing of the request. **This initial discussion should take place as soon as possible.**
- When a request for accommodation is made by a third party, the decision maker should, if possible, confirm with the applicant or employee with a disability that s/he, in fact, wants a reasonable accommodation before proceeding. It may not be possible to confirm the request if the employee has, for example, been hospitalized in an acute condition. In this situation, the FDA will process the third party's request and consult directly with the individual needing the accommodation as soon as it is practicable.
- Ongoing communication is particularly important where 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 where the disability, the need for accommodation, and the type of accommodation to be provided are clear, extensive discussions are not necessary. Every reasonable accommodation is provided on a case-by-case basis. The accommodation that suits one individual may be totally unsuitable for another individual with the same disability. The decision maker and requesting individual should communicate 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 the officials need to know the information in order to make determinations on a reasonable accommodation request.** The decision maker should notify the RAS in OEEODM to obtain guidance, as necessary, to ensure that the proper procedures have been followed. See Section IX on confidentiality of medical information.
- The FDA office that manages information resources or information technology may be consulted in connection with requests for adaptive equipment for computers. However, this office would have no need to know the medical condition of the person seeking the accommodation. It only needs to know the individual's functional limitations and how the limitations affect technology needs. Also the Department of Defense and the Department of Health and Human Services now have an Interagency Agreement with the Computer/Electronic Accommodations Program (CAP), to provide assistive technology, devices and services to DHHS employees with disabilities at no cost (see Appendix B).

## 9. WRITTEN REQUESTS FOR RECORD KEEPING PURPOSES

To enable DHHS and FDA to maintain accurate records regarding requests for accommodation, employees seeking a reasonable accommodation are asked to follow an oral request either by completing the attached "Confirmation of Request for Reasonable Accommodation" form (Appendix C) or otherwise confirming their request in writing (including by e-mail) to a Reasonable Accommodation Specialist or other manager designated as the decision maker. For an applicant seeking a reasonable accommodation, the Personnel Management Specialist handling the request may provide the "Confirmation of Request for Reasonable Accommodation" form to the applicant. If an individual with a disability requires assistance with this requirement, the staff member receiving the request will provide that assistance.

**While the written confirmation should be made as soon as possible following the initial request, it is not required before the request can be processed. The FDA will begin processing the request as soon as it is made, whether or not the written confirmation has been provided.**

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

## **10. REQUESTS FOR MEDICAL INFORMATION**

**When requests for medical information are necessary, the only information that should be requested is: a short description of the disability; how the disability or barrier limits the employee's ability to do the job or participate in FDA activities or the applicant's ability to apply or interview for the job; and how the requested accommodation is expected to improve the situation.**

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. In these cases, the FDA will **not** seek any further medical information. However, when a disability and/or need for reasonable accommodation is not obvious or already on file, 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 which the accommodation is requested. In most situations, this means FDA may not request access to a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation.

- If a decision maker believes that medical information is necessary in order to evaluate the suitability of the requested reasonable accommodation, s/he will make a request to the Reasonable Accommodation Specialist or other designee to obtain the information.
- The Reasonable Accommodation Specialist or other designee will make a determination as to whether medical documentation is necessary. If it is, s/he will request the necessary medical information. If it is not necessary, the request for accommodation will be returned promptly to the decision maker with instructions to complete the processing.

- If a determination is made to seek medical information, the Reasonable Accommodation Specialist will request information only to substantiate that the individual has a disability covered by the Rehabilitation Act and needs the reasonable accommodation requested; it will not ask for unrelated documentation. Requests for medical information will follow the requirements set forth in EEOC's *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act* (available on EEOC's Internet site).
- The Reasonable Accommodation Specialist or other designee will seek information or documentation about the disability and/or functional limitations from the individual, and/or ask the individual to obtain such information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. In order to get the most helpful possible information, all requests for information from outside sources will describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information. The Reasonable Accommodation Specialist or other designee may work with the supervisor and/or office director in identifying and providing appropriate information on the job and functions.
- Once the medical documentation is received, the Reasonable Accommodation Specialist or other designee will evaluate it, in consultation with an FDA Medical Consultant, if necessary. This evaluation will be performed at the agency's expense.
- If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the Reasonable Accommodation Specialist to determine whether an accommodation is appropriate, s/he may request additional information.
- First, the Reasonable Accommodation Specialist or other designee will explain to the individual seeking the accommodation, in specific terms, why the information which has been provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.
- The individual requesting accommodation may then contact the health care or other appropriate professional to request the missing information.
- Alternatively, the individual requesting the accommodation and the Reasonable Accommodation Specialist or other designee may agree on a list of specific questions to be sent to the individual's health care

professional. With the agreement of the employee, the Reasonable Accommodation Specialist or other designee may directly contact the individual's health care professional.

- If, after a reasonable period of time, the individual's health care professional has not provided sufficient information to demonstrate that the individual has a disability and needs reasonable accommodation, the Reasonable Accommodation Specialist or other designee may request that the individual be examined by a physician chosen by the FDA, at the agency's expense.
- The Reasonable Accommodation Specialist or other designee will let the decision maker know whether the documentation demonstrates that a reasonable accommodation is appropriate and provide, as necessary, additional relevant information about the individual's functional limitations.
- 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 consider such documentation and, if additional information is needed, the decision maker will work with the Reasonable Accommodation Specialist or other designee as set forth in this section. (See Section IX for instructions on storage of this information.)

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

## **11. CONFIDENTIALITY REQUIREMENTS REGARDING MEDICAL INFORMATION AND THE REASONABLE ACCOMMODATION PROCESS**

**Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential.** All medical information, including information about functional limitations and reasonable accommodation needs, obtained in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. Any FDA employee who obtains or receives such information is strictly bound by these confidentiality requirements.

- The FDA will designate who will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in

accordance with the Privacy Act and EEOC and DHHS/FDA requirements.

- This information may be disclosed **only** as follows:
  - supervisors and managers who need to know (including the decision maker who requested that the medical information be obtained) may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation, but medical information should only be disclosed if strictly necessary.
  - first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment;
  - government officials may be given information necessary to investigate compliance with the Rehabilitation Act; and
  - the information may in certain circumstances be disclosed to Workers' Compensation offices or insurance carriers.

Whenever medical information is disclosed, the individual disclosing the Information must inform the recipients of the information about the confidentiality requirements that attach to it.

## **12. PROVISION OF ACCOMMODATION - FUNDING**

The source of funding for reasonable accommodation requests should be provided at the Office/Center level. Decision makers are responsible for seeking out funding for the provisions of accommodations within their respective area.

## **13. REASSIGNMENT**

Reassignment will only be considered if no other accommodation enables the individual to perform his or her current job, or if the only effective accommodation would cause undue hardship for the agency. Reassignment is available only to employees, not to applicants. FDA is not required to create new positions or move employees from their jobs to create a vacancy.

In considering whether there are positions available for reassignment, the Reasonable Accommodation Specialist or other designee will work with both the Office of Human Resources Management and the individual requesting the accommodation to identify: (1) all vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and (2) all positions which the Office of Human Resources



Management has reason to believe will become vacant over the next **60 business days** and for which the employee may be qualified. **It must be noted that in talking about reassignment, the term 'agency' refers to DHHS.** FDA will first focus on positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there is no vacant equivalent position, the organization will consider vacant lower level positions for which the individual is qualified.

Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, FDA will not pay for the employee's relocation costs.

#### **14. GRANTING THE REASONABLE ACCOMMODATION REQUEST**

As soon as the decision maker determines that reasonable accommodation will be provided, the decision should be immediately communicated to the individual. If the accommodation cannot be provided immediately, the decision maker must inform the individual of the projected time frame for providing the accommodation. This notice can be provided in writing if it is requested by the employee.

#### **15. REASONABLE ACCOMMODATIONS AGREEMENT**

Once an accommodation has been approved, the Reasonable Accommodation Specialist may recommend that both the supervisor and employee enter into a reasonable accommodation agreement. Although not required, such an agreement serves to clarify the nature of the accommodation granted. Reasons for having such an agreement include the following:

1. In some cases, the accommodated employee's functional limitations might increase or decrease, thus requiring periodic reviews and adjustments to the approved accommodation(s). For example, some disabilities are degenerative in nature and may require additional accommodation(s).
2. Conversely, a disability may improve to the point that an approved accommodation can be ameliorated or removed.

Once an accommodation has been approved and a Reasonable Accommodation Agreement entered into, if requested, the FDA OEE&DM RAS or designee will review the accommodation on an 'as needed basis' with the supervisor and employee to determine if any changes are needed or if continued accommodation is required.

**Such an agreement should contain the following:**

1. The accommodation approved;
2. The responsibilities and expectations of both parties; and
3. Need for periodic evaluations/review, if applicable.

Once a permanent (long-term) impairment has been documented, the decision-maker's request for further information should be limited to reasonable documentation on the need for further accommodation (if the need is not obvious) and not on the existence of the disability/impairment itself.

**16. DENIAL OF THE REASONABLE ACCOMMODATION REQUEST**

**The decision maker must consult with the Reasonable Accommodation Specialist before moving ahead with the decision to deny a request.**

At this point, if the decision maker has an alternative accommodation that she/he has not already offered to the employee, she/he may do so now. However, if the employee rejects it or the decision maker decides that the reasonable accommodation should be denied for other reasons, she/he must complete the "Denial of Reasonable Accommodation Request" (Appendix D), and give the completed form to the individual who requested the accommodation as well as sending a copy to the Reasonable Accommodation Specialist. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial. When the decision maker has denied a specific requested accommodation, but offered to make a different one in its place which the employee rejected, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the decision maker believes that the chosen accommodation would be effective. Reasons for the denial of a request for reasonable accommodation may include the following (keeping in mind that the actual notice to the individual **must include specific reasons for the denial, for example, why the accommodation would not be effective or why it would result in undue hardship**):

- The requested accommodation would not be effective.
- Providing the requested accommodation would result in undue hardship. Before reaching this determination, the decision maker must have explored whether other effective accommodation options exist which would not impose undue hardship and therefore can be provided. 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 the operating division's operations. When evaluating budgetary or administrative concerns to determine if undue hardship exists, FDA will follow the standards enunciated in the regulations and in the *"Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act."* (Available on the EEOC Web Site)

- Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
- The requested accommodation would require the removal of an essential function.
- The requested accommodation would require the lowering of a performance or production standard.

The written notice of denial shall inform the individual that s/he has the right to file an EEO complaint and may have rights to pursue MSPB and union grievance procedures. The notice shall also explain the procedures available for appeal of a denial of reasonable accommodation.

## **17. APPEAL OF A DENIAL OF REASONABLE ACCOMMODATION - RECONSIDERATION**

**Individuals with disabilities can request prompt reconsideration of a denial of reasonable accommodation.**

- If an individual wishes reconsideration, s/he should ask the decision maker to reconsider the decision. The individual may present additional information in support of his/her request. The designated manager will respond to the request for reconsideration within **five business days**.
- If the decision maker is the supervisor, and s/he does not reverse the decision, the individual can ask the Office Director to do so. The Office Director will respond to this request within **ten business days**.
- If the decision maker is the Office Director, and s/he does not reverse the decision, the individual can ask the Center or ORA Director or, for OC, the Associate Commissioner for Management to do so. This individual will respond to this request within **ten business days**.
- In all other circumstances, the request for reconsideration will be submitted to the original decision maker within five business days. If the original decision maker denies the request for reconsideration, the individual will present the request to the next level supervisor who will

respond to the request within ten business days. If the original decision is not reversed, the request for reconsideration will be elevated to the next management official within the chain of command who will, in turn, respond within **ten business days**.

At any point in this process, the individual may also contact the Conflict Prevention and Resolution Office in OEEDO&DM and initiate the Informal Mediation Process.

Pursuing any of the informal dispute resolution procedures identified above, including seeking reconsideration from the decision maker and appealing to the next person in the decision maker's chain of command, **does not affect the time limits for initiating statutory and collective bargaining claims. An individual's participation in any or all of these informal dispute resolution processes does not satisfy the requirements for bringing a claim under EEO, MSPB, or union grievance procedures.**

## **18. INFORMATION TRACKING AND REPORTING**

The decision maker will complete the "Reasonable Accommodation Information Tracking" form (Appendix E) and submit it to the Reasonable Accommodation Specialist within **ten business days** of the decision. The decision maker should attach to the form copies of all information, including medical information; s/he received as part of processing the request.

- The Reasonable Accommodation Team will maintain the records for the longer of the employee's tenure with FDA or five years.
- This annual report will also be provided to the DHHS EEO Programs Group, Office of Human Resources, ASMB, with the annual Affirmative Action Program for Individuals with Disabilities Report.
- The report will contain the following information, presented in the aggregate:
  - the number of reasonable accommodations, by type, that were requested in the application process and whether these requests were granted or denied;
  - the jobs (occupational series, grade level, and agency component) for which reasonable accommodation has been requested;
  - the types of reasonable accommodation that have been requested for each of those jobs;

- the number of reasonable accommodations, by type, for each job that were approved, and the number of accommodations, by type, that were denied;
  - the number of requests for reasonable accommodation, by type, that relate to the benefits or privileges of employment, and whether those requests were granted or denied;
  - the reasons for denial of requests for reasonable accommodation;
  - the amount of time taken to process each request for reasonable accommodation; and
  - the sources of technical assistance that were consulted in trying to identify possible reasonable accommodations.
- In addition, the report will provide a qualitative assessment of the FDA reasonable accommodation policies and procedures, including recommendations for improvement.

## **19. RELATION OF PROCEDURES TO STATUTORY AND COLLECTIVE BARGAINING CLAIMS**

This policy is **in addition to** statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation and does not supplant these provisions. **Requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims, remain unchanged.**

FDA will have its procedures reviewed by its Union organization.

An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation **must**:

- For an EEO complaint: contact an EEO counselor in the FDA Office of Equal Employment Opportunity & Diversity Management within 45 days from the date of receipt of the written “Denial of Reasonable Accommodation Request” or reconsidered denial;
- For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or
- Initiate an appeal to the Merit Systems Protection Board (“MSPB”) within 30 days of an appealable adverse action as defined in 5 C.F.R. § 1201.3.

If a member of the FDA Office of Equal Employment Opportunity & Diversity Management has had any involvement in the processing of the request for reasonable accommodation, that staff member shall recuse him or herself from any involvement in the processing of an EEO counseling contact or complaint in connection with that request.

**20. DISTRIBUTION AND INQUIRIES**

The FDA Reasonable Accommodation Procedures shall be posted on the FDA Web Site. Copies of the Procedures shall be available in the OEEODM. Information on the Procedures shall also be distributed to new employees as part of their orientation. These Procedures will be provided in alternative formats when requested by or on behalf of any employee or applicant.

Any person wanting further information concerning these Procedures may contact the Reasonable Accommodation Team, Division of Compliance, OEEODM at 301-827-4840.

**21. EFFECTIVE DATE**

The effective date of this guide is January 11, 2006.

**22. Document History -- SMG 3130.2, Procedures for Providing Reasonable Accommodation for Individuals with Disabilities**

<b>STATUS (I, R, C)</b>	<b>DATE APPROVED</b>	<b>LOCATION OF CHANGE HISTORY</b>	<b>CONTACT</b>	<b>APPROVING OFFICIAL</b>
Initial	01/11/2006	N/a	OEEODM/DMS (HFA-715)	Georgia Coffey, Director OEEODM

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**APPENDIX A - READERS, INTERPRETERS AND OTHER PERSONAL ASSISTANTS**

FDA will make readers, interpreters, and other personal assistants available, as appropriate. Other personal assistants perform physical tasks that an employee cannot perform because of a disability. For example, an investigator with limited or no upper extremity mobility may need assistance in physically organizing a file. The investigator would perform the essential functions of the position - e.g., conduct the investigation and draft documents - and the assistant would perform only the physical task. In no case should a staff assistant be called upon - by management or by the employee(s) to whom he or she is assigned - to perform the essential functions of the job held by the employee with the disability.

**HIRING AUTHORITY.** Readers, interpreters, or other personal assistants hired to fill approved positions may be appointed under the non-competitive Schedule A authority, 5 CFR 213.3102 (II) [“l” is lower case, double “L”]. Persons with disabilities hired as readers, interpreters, or assistants may also be hired under the 213.3102 (u) authority.

## **FDA’S INTERPRETING SERVICES POLICY**

Sign Language interpreting is a reasonable accommodation that may be required by individuals who are deaf or hard-of-hearing (d/hoh) including FDA employees 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 OEEO&DM will provide sign language interpreters for all 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, as well as throughout the Regions, through the use of Service Level Agreements.

- 1. 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 OEEO&DM or other designated office to arrange for interpreting services. **Please check to see if an interpreter is available before scheduling the date, time, and place of the event.**

Advance scheduling – preferably one to two weeks – is strongly encouraged, to the extent possible. Although it is not possible to foresee every occasion for which interpreting services may be required, failure to schedule interpreting services well in advance may result in the necessity to reschedule meetings until interpreter services are available.

The length of the meeting or event will determine if arrangements must be made for more than one interpreter to be present, or the meeting or event must be scheduled to include sufficient rest periods including a “sign-free” lunch break, if necessary. Generally, one interpreter can work 45-60 minutes and then needs a 15-minute break. A break during a meeting or event does not constitute a rest period for the interpreter if s/he is expected to continue working (e.g., deaf and hearing parties wish to communicate during the break and look to the interpreter to facilitate the exchange). An employee who knows sign language or who is taking a sign language class is **not** an acceptable substitute for a sign language interpreter.

- 2. WORK EVENTS OUTSIDE THE WORKPLACE.** OEEODM will provide an interpreter for an employee who is deaf or hard of hearing (d/hoh) who, as part of his/her job, attends a meeting or event outside of the workplace. If s/he attends a conference or training program sponsored by an outside organization, the sponsoring organization is principally responsible for providing interpreters. The FDA will provide interpreting services, however, if the sponsoring agency fails to do so.

**Travel Involving an Interpreter:**

**Local Travel:** Any local “day-trip” travel the OEEODM Staff Interpreter(s) engages in will be reimbursed via local travel reimbursement procedures within OEEODM. For local travel involving outside interpreters only ORA Field and CFSAN will be required to reimburse the Central Fund for actual expenses for mileage, metro, parking and tolls, as per the Service Level Agreements.

**Other Travel:** When a d/hoh employee travels to attend a meeting, conference, or training program outside the workplace, and it has been determined that it would be more effective to send the OEEODM Staff Interpreter(s), the Center for whom the d/hoh employee works will be fiscally responsible to either provide or reimburse the interpreter for expenses incurred; this not only includes travel, but per diem as well, if it applies to the situation. In the event that a meal is being provided for the d/hoh employee, and that meal is a “working breakfast/lunch/dinner” where the interpreters are expected to continue interpreting, a meal must be provided for each of the interpreters as well.

- 3. INTERPRETING PHONE CALLS.** Employees who are deaf or hard of hearing should schedule an interpreter when services are needed to interpret business-related phone calls. These employees may also request that the interpreters retrieve and report all voice-mail messages. Telecommunication relay services are available to all employees to serve telephone needs when a sign language interpreter is not available.

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**APPENDIX B - SELECTED REASONABLE ACCOMMODATION RESOURCES**

**DoD Computer Electronic Accommodations Programs (CAP)**

FDA Contact: OEEODM Reasonable Accommodation Specialist, 301-827-4840

The Department of Defense and the Department of Health and Human Services now have an Interagency Agreement with the Computer/Electronic



Accommodations Program (CAP), to provide assistive technology, devices and services to DHHS employees with disabilities at no cost, as granted by the National Defense Authorization Act.

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

1-800-669-3362 (Voice) 1-800-800-3302 (TTY)

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. § 12101 et seq. (1994), and the regulations, 29 C.F.R. § 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The two main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. §§ 1630.2(o), (p), 1630.9 (1997), and (2) **A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III**, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents: (1) Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); and (5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000).

All of the above-listed documents, with the exception of the **ADA Technical Assistance Manual and Resource Directory** are also available through the Internet at <http://www.eeoc.gov>.

### **Job Accommodation Network (JAN)**

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

<http://janweb.icdi.wvu.edu>

A service of the Department of Labor's Office of Disability Employment Policy. JAN can provide information, free-of-charge, about many types of reasonable accommodation.

## **ADA Disability and Business Technical Assistance Centers (DBTACs)**

1-800-949-4232 (Voice/TTY)

The DBTACs consist of ten federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

## **Registry of Interpreters for the Deaf**

333 Commerce Street  
Alexandria, VA 22314

(703) 838-0030 V  
(703) 838-0459 TTY  
(703) 838-0454 Fax

Office hours -- Monday - Friday, 9:00 AM to 5:00 PM EST

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. It is the goal of RID to promote the profession of interpreting and transliterating of both American Sign Language and English. 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.

The RID national office has at its disposal a vast array of informational resources on the field of interpreting, including papers on Interpreting Standards and Practices and How to Hire and Work with an Interpreter.

## **RESNA Technical Assistance Project**

(703) 524-6686 (Voice)  
(703) 524-6639 (TTY)  
<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:

- 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),
- centers where individuals can try out devices and equipment,
- assistance in obtaining funding for and repairing devices, and
- equipment exchange and recycling programs.

### **USDA TARGET Center**

1400 Independence Ave.  
 Room 1006 S  
 Washington DC 20250 9876  
 (202) 720 2600 (Voice/TTY)  
 (202) 720 2681 (FAX)

The Target Center has a wide variety of assistive devices available for Federal employees to examine and test.

### **Rehabilitation Services Agencies**

Rehabilitation Services Agencies are state agencies that provide support for the employment, economic self-sufficiency and independence of individuals with disabilities. Local phone book should list them under state services. Sometimes they are listed by Vocational Rehabilitation Offices

### **Services for the Visually Impaired**

Judy Rasmussen  
 8720 Georgia Avenue, Suite 210  
 Silver Spring, MD 20910  
 (301) 589-0894

Email: judyras@tidalwave.net

Some people who have minimal vision use Braille. This organization can convert documents to Braille. After arranging for payment, documents can be sent to the Services for the Visually Impaired as an e-mail attachment and the Braille copy will be mailed to the agency.

### **National Captioning Institute**

1900 Gallows Road, Suite 3000  
 Vienna, VA 22182  
 703-917-7600

Federal law requires that all videos include captions, preferably open captions.  
The National Captioning Institute can add captions to videos.