# NIH Policy Manual

## 2204 - Reasonable Accommodation

**Issuing Office:** OD/EDI **Phone:** (301) 496-6301

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Transmittal Notice

1. **Explanation of Material Transmitted:** This updated chapter describes the Policy and procedures for Reasonable Accommodation at the National Institutes of Health (NIH). The purpose of this guidance is to provide updated information on:

    a. The NIH Reasonable Accommodation Policy;
    b. The centralized NIH Reasonable Accommodation Program;
    c. Key updates to the NIH Reasonable Accommodation process;
    d. Section 501 of the Rehabilitation Act of 1973's new Affirmative Action obligations;
    e. Section 508 of the Rehabilitation Act Amendments, which requires each Federal Agency to ensure individuals with disabilities have equal access to—and usability of—their electronic and information technology;
    f. 29 Code of Federal Regulations (CFR) 1614.203, which codifies the requirement of each Federal Agency to establish effective written procedures for processing reasonable accommodation request; and
    g. Centralized Sign Language Interpreting Services that are available to all NIH employees, visitors and patients.

2. **Filing Instructions:**

    **Remove:** NIH Manual 2204 dated 08/01/01.
    **Insert:** NIH Manual Chapter 2204 dated 03/20/2020.

**PLEASE NOTE:** For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Policy Manual, contact the Division of Management Support (DMS), OMA, OM, on 301-496-4606 or enter this URL: https://oma.od.nih.gov/DMS/Pages/Manual-Chapters.aspx

### A. Purpose

This chapter describes the Policy and procedures for reasonable accommodation at the NIH.

## B. Scope

This policy applies to all NIH employees and applicants for employment, including probationary employees and employees working part-time schedules. This policy also applies to visitors to the NIH campus and facilities. This policy may be extended to NIH contractors, fellows, and other individuals doing business with NIH, in certain circumstances.

## C. Policy

It is the policy of the National Institutes of Health (hereinafter referred to as "NIH" or "the Agency") to provide equality of opportunity for all employees and applicants for employment regardless of physical or mental disability. We shall accomplish this by promoting affirmative employment programs, while maintaining a workplace free of discriminatory practices and policies.

In accordance with the *Rehabilitation Act of 1973* (Rehab Act) as amended, the *Americans with Disabilities Act of 1990* (ADA) as amended, and the Equal Employment Opportunity Commission's (EEOC) Enforcement Guidance, "Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act," the Agency has a legal obligation to provide reasonable accommodation(s) concerning the known physical or mental limitations of qualified employees and applicants with disabilities unless it can be shown that such accommodation(s) would impose an undue hardship to the Agency. The undue hardship determination must be assessed on a case-by-case basis.

> A reasonable accommodation is any change in the work environment or in the way things are customarily done, including a change or exception to applicable individual office rules and/or procedures, which would enable a qualified individual with a disability to perform the essential functions of a position and/or enjoy equal benefits and privileges of employment.
>
> Although many *individuals with disabilities* can apply for and perform jobs without any reasonable accommodations, there are workplace barriers that prevent others from performing jobs they could do with some form of accommodation.Reasonable accommodation could remove such workplace barriers for individuals with disabilities.

The NIH, Office of Equity, Diversity, and Inclusion (EDI), manages the NIH Reasonable Accommodation Program (RAP).

The reasonable accommodation process begins when an employee or applicant makes a request for reasonable accommodation either **orally or in writing**. Employees are not required to use any specific words, such as "reasonable accommodation" to initiate the process. When an individual decides to request an accommodation, the individual or his/her representative must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. To request accommodation, an individual may use "plain language" and does not need to mention the ADA, the Rehab Act, or specifically

use the term “reasonable accommodation.”

Once the request is made, the NIH is required to initiate an interactive communication with the individual to facilitate effective and timely processing of the accommodation request.RAP Accessibility Consultants (ACs) assist Decision Makers and Requestors in exchanging information and reaching appropriate decisions on reasonable accommodation requests. Only a Decision Maker (see Definitions) is authorized to approve or deny reasonable accommodation requests.

NIH officials are obligated to treat an employee's medical information and documentation confidentially to avoid any unauthorized disclosure. All medical information, including information about functional limitations and reasonable accommodation needs, obtained in connection with a reasonable accommodation request will be kept in files separate from the individual’s personnel files or managers’ employee files. Any NIH employee who obtains or receives such information is strictly bound by this confidentiality requirement. Storage and maintenance of personally Identifiable Information (PII) must comply with the requirements of the Privacy Act, including having a current, published Privacy Act System of Records Notice (SORN). The published SORN for RA purposes is SORN 09-25-0099.

## D. Responsibilities

In the Reasonable Accommodation Process, the main parties to consider are the Requestor, the Decision Maker, and the Accessibility Consultant (AC).Each party has their own responsibilities in order to successfully process a request for accommodation.

The Requestor is responsible for:

1. Notifying the Agency of their need for accommodation.
2. Providing sufficient information to establish that they are an individual with a disability.
3. Describing the limitation(s) they encounter that requires accommodation.
4. Participating in the interactive process to successfully identify and implement a reasonable accommodation.
5. Contacting the AC to provide information and/or determine the status of their request.

The Decision Maker is responsible for:

1. Assessing the requested accommodation and/or limitations presented to evaluate the potential impact and implementation necessary to accommodate the Requestor.
2. Approving or denying an accommodation request.
3. Considering interim and/or alternative accommodation(s).

The AC is responsible for:

1. Serving as a neutral consultant regarding all aspects of the Reasonable Accommodation (RA) process.

2. Synthesizing the information collected and providing a recommendation regarding whether:

    a. the individual meets the definition of a qualified individual with a disability;
    b. the requested accommodation would be effective;
    c. alternative effective accommodations could be provided; and
    d. the individual can perform the essential functions of the position with an accommodation.

3. Managing the collection of medical documentation and, if necessary, coordinating supplemental medical reviews as needed from the Agency Medical Reviewing Authority (AMRA), which is currently the NIH Office of Occupational Medical Services (OMS) and/or Federal Occuplational Health (FOH).
4. Using the Entellitrak system to:

    a. document requests,
    b. assess request information,
    c. submit recommendation(s) to the Decision Maker,
    d. request information from the Requestor,
    e. add comments and track the processing of a request; and
    f. perform data analysis to determine trends and timeliness of requests over time.

On matters involving applicants, reassignment, and/or situations that raise performance concerns concurrent with requests for reasonable accommodation, the ACs coordinate closely with the Office of Human Resources (OHR) to ensure that the needs of all stakeholders are met.

The need for an employee to request a reasonable accommodation may present itself while consulting with other offices at the NIH. Such offices may include Employee and Labor Relations, the Civil Office, the Office of the Ombudsman, the Employee Assistance Program, the Center for Information Technology, the Office of Medical Services, Workforce Relations Division, and others.The RAP is committed to working with these partners at the NIH and will ensure appropriate support and coordination is available to our customers.

## E. Definitions

1. **Accessibility Consultant (AC):** Federal employees, who staff the NIH Reasonable Accommodation Program, managed by EDI. Neutral consultants to the NIH and individuals seeking information regarding any aspect of the RA process.
2. **Decision Maker:** The NIH official who has the responsibility of making a decision regarding the requested accommodation. This individual is empowered to respond to requests for accommodation(s) with or without the input of the RAP. However, it is required that RAP be consulted in all instances where a Decision Maker wishes to deny a request (in part or whole).

    The Decision Maker will be different depending on who is requesting accommodation:

a. **Applicant:** The Decision Maker for applicants is the hiring manager. Applicants requiring accommodation should contact the RAP with their request and information on the position(s) to which they seek to apply. An AC will collaborate with the Office of Human Resources, Client Services Division (CSD) to reach a decision with the hiring manager.
b. **Contractor:** The Decision Maker for a contractor is the contractor's employer. The contractor's employer must determine if they require consultation with the NIH Contracting Officer (CO), or their Representative (COR), in reaching a decision on the request for accommodation.
c. **Employee:** The Decision Maker for an employee is the employee's Manager/Supervisor, usually their first-line rating official. A second-line rating official may be required to make a decision on a request if the requestor wishes to have the decision of the first-line rating official reconsidered.
d. **Visitor:** The Decision Maker for a visitor is the program owner of the event or service being sought by the visitor. All NIH programs and events must list a point of contact for reasonable accommodation requests in the event that an accommodation is required to attend and/or participate.

3. **Disability:** The *Americans with Disabilities Act Amendments Act of 2008* (ADAAA), establishes a three-part definition of "disability." A *disability*, with respect to an individual, is defined as:

    a. a *physical or mental impairment* that *substantially limits* one or more *major life activities*;
    b. one who has a record of such an impairment; or
    c. one who is regarded as having such an impairment[1].

4. **Entellitrak**: The online portal used by NIH for tracking and processing requests for accommodation (https://nih-ra.entellitrak.com/). Access to this portal is limited to NIH employees and contractors (must have a valid .gov email address and be listed in the NIH directory system). Applicants or Visitors to the NIH would need to submit their request to the Vacancy Hiring Manager or their Sponsor.
5. **Essential Functions:** The job duties that are so fundamental to a position that the job cannot be done without performing them. A function can be essential if, among other things, (1) the position exists to perform that function, (2) there are a limited number of other employees who can perform the function, or (3) the function is specialized and the individual is hired based on his or her expertise or ability to perform it (29 C.F.R. 1630.2(n)).

    Determination of Essential Functions must be done on a case-by-case basis so that it reflects the job as it is actually performed and not solely the components of a generic position description (Id.). To determine the essential functions of a job, the following factors will be considered:

    a. Employee's position description (PD);
    b. Employee's Performance Management Appraisal Program (PMAP) evaluation;

c. Amount of time performing a function; and
d. Consequences of failing to perform the function

*With or without accommodation*, employees are responsible for maintaining normal production standards that are applied uniformly to all employees.

**NOTE:** It is the policy of the Department of Health and Human Services (HHS) that *essential job functions* shall not be removed as an accommodation.

6. **Institute or Center (IC):** The NIH is comprised of 27 Institutes and Centers, each with a specific research agenda.
7. **Interactive Process:** An informal flexible dialogue between any and all parties involved (Requestor/employee, Decision Maker, and accessibility consultant/AC) in processing a request. This allows for clarifying the individual's needs, identifying and exploring potential accommodations, and ultimately identifying an effective reasonable accommodation(s)—absent undue hardship to the Agency. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.
8. **Major Life Activity:** A basic activity that most people in the general population can perform with little or no difficulty. Examples of *major life activities* include, but are not limited to the following:

    a. Caring for oneself, walking, seeing, hearing, speaking, breathing, learning, sitting, standing, lifting, and working; as well as mental and emotional processes such as thinking, concentrating, and interacting with others.
    b. The operation of major bodily functions, including functions of the immune system, special sensory organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

9. **Qualified Individual with a Disability:** An individual with a *disability* is qualified if he or she (1) satisfies the requisite skills, experience, education, and other job-related requirements of the position held or desired, and (2) can perform the *essential functions* of the position, with or without reasonable accommodation (29 C.F.R. 1630.2(m)). An individual would be considered "unqualified" within the meaning of the ADAAA if he or she cannot perform the essential functions of their position, either *with or without accommodation*.
10. **Reasonable Accommodation:** Any change in the work environment or in the way things are customarily done, including a change or exception to applicable individual office rules and/or procedures, which would enable a *qualified individual with a disability* to perform the *essential functions* of a position and/or enjoy equal employment opportunities. Reasonable accommodation is available to all qualified applicants and NIH employees, regardless of whether they work part-time or full-time, or are considered probationary.

11. **Reassignment:** Reassignment is a form of reasonable accommodation that is provided to employees[2] who, because of a *disability*, can no longer perform the *essential functions* of their current position, even with reasonable accommodation. Reassignment is a "last resort" accommodation that must be considered if it has been determined that there are no effective accommodations that would enable the employee to perform the essential functions of their current job, or that all other possible accommodations would impose *undue hardship*. Reassignment is available only to an existing employee who is qualified for the new position; it is not available to applicants.

    Additional information regarding the processing and provision of Reassignment as a reasonable accommodation can be found in Section G.c.iii.3 - Reassignment.
12. **Requestor:** The individual making a request for accommodation. It is the responsibility of this individual, upon request, to submit appropriate and sufficient information on the relevant disabling condition and the accommodation(s) sought. While an accommodation may be requested by a third party, the *Requestor* refers to the individual with a *disability*.
13. **Substantially Limit:** The degree to which a *major life activity* is limited, compared to most people in the general population, as a result of a *physical or mental impairment*. The ADAAA notes that the term "*substantially limits*" should be construed broadly, in favor of expansive coverage to the maximum extent permitted. "*Substantially limits*" is not meant to be a demanding standard. An impairment need not permanently prevent, or significantly restrict the individual from performing a major life activity in order to be considered *substantially limiting*.
14. **Undue Hardship:** Undue hardship means significant difficulty or expense in implementing a reasonable accommodation, and it focuses on the resources and circumstances HHS to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, disruptive, or would fundamentally alter the nature or operation of the business.

    If a specific accommodation causes a significant difficulty or expense, to HHS as the employer, NIH is not required to provide that particular accommodation. Undue hardship determinations are required to be made on a case-by-case basis, considering factors such as the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the organization's operations (29 C.F.R. 1630.2(15)(d)). Generalized conclusions will not suffice to support a claim of undue hardship.

    A determination of undue hardship regarding expense here at the NIH must factor in the overall financial resources of HHS **and** all possible sources of outside resources for all or part of the accommodation (such as the Department of Defense's Computer-Electronics Accommodation Program[3] (CAP)), as opposed to the budget of an individual branch, division, Office, Institute, or Center. For this reason, it is unlikely that NIH can defend an undue hardship argument based on expense. The employee's salary, position, or status (e.g. full-time vs. part-time or permanent vs. temporary) shall

not be taken into consideration to establish undue hardship. Further, a determination of undue hardship cannot be based on the potential impact on the morale of other employees and whether or not the accommodation complies with existing office policy. Employers, however, may be able to show undue hardship where provision of a reasonable accommodation would be unduly disruptive to other employees' ability to work.

1. **With or Without Accommodation:** While the requirement to perform *essential job functions* with an accommodation is obvious, that requirement to perform remains in effect when the employee is "without" an accommodation. An employee may be without an accommodation in the following circumstances: (1) an individual with a *disability* who does not request/require an accommodation, or (2) who refuses to accept an [offered] effective reasonable accommodation. It is the responsibility of the employee to request a reasonable accommodation.

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[1] Employees who are solely "regarded as" having an impairment may not be entitled to a reasonable accommodation.

[2] Employers cannot deny a reassignment to an employee solely because s/he is designated as "probationary." An employee with a disability is eligible for reassignment to a new position, regardless of whether s/he is considered "probationary," as long as the employee adequately performed the essential functions of the position, with or without reasonable accommodation, before the need for a reassignment arose (EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act No. 915.002, Oct. 17, 2002, at "Other Reasonable Accommodation Issues," n.25; https://www.eeoc.gov/policy/docs/accommodation.html).

[3] CAP was established in 1990 as the centrally funded reasonable accommodation program form employees with disabilities in the Department of Defense. In 2000, Congress granted CAP the authority to provide assistive technology, devices and support services free of charge to Federal agencies that have a partnering agreement with CAP.

## F. References

1. Affirmative Action for Individuals with Disabilities in Federal Employment
2. Americans with Disabilities Act of 1990 (ADA), Title 1, Employment
3. Americans with Disabilities Act Amendments Act of 2008 (ADAAA)
4. Executive Order 13164 - Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodations
5. NIH Procedure for Requesting and Reviewing Medical Documentation.
6. Regulations to Implement the Equal Employment Provision of the Americans with Disabilities Act, as Amended
7. The Architectural Barriers Act (P.L. 90-480) of 1968, as amended

8. The Rehabilitation Act of 1973, as amended:

    a. Section 501, affirmative action for individuals with disabilities in Federal employment;
    b. Section 503, addressing the employment practices of Federal contractors;
    c. Section 504, which covers all programs receiving Federal financial assistance;
    d. Section 508, requiring access to the Federal government's electronic and information technology.

9. Title 5, Code of Federal Regulations, Part 339
10. Title 29, Code of Federal Regulations, Section 1614
11. Title 29, Code of Federal Regulations, Section 1630
12. U.S. Equal Employment Opportunity Commission: Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (October 17, 2002)
13. U.S. Equal Employment Opportunity Commission: A Technical Assistance Manual on the Employment Provisions (Title 1) of the Americans with Disabilities Act

## G. Procedures

a. **Reasonable Accommodation Program:**

The **Reasonable Accommodation Program** (RAP) serves as a central point-of-contact and consultant to NIH for all requests for reasonable accommodation and ensures consistency in request processing.The RAP also ensures that approved accommodations and record retention follow the employee throughout their career at NIH.This means that if an employee with a disability transfers to a different Office or IC within NIH, or is assigned a new manager, he or she will retain the approved accommodationabsent undue hardship to the agency.

b. **The Reasonable Accommodation Process:**

Reasonable accommodation requests are processed in three phases: Request, Decision, and Provision.

The time required for each phase varies depending on many factors, such as the need to clarify requests, obtain the necessary supporting documentation, and the availability of all parties involved. As a general rule, NIH shall process all reasonable accommodation requests as expeditiously as possible, per Executive Order 13164 2. Failure to process the request for accommodation in a prompt manner may result in a violation of the Rehabilitation Act. Consistent with that directive, RAP has established the following timeframes for timely processing, absent reasonable delay, which allow a maximum of 45 business days to process a request and provide any approved accommodation.

- Request Phase
- Decision Phase (≤ 15 Business Days from receipt of sufficient medical documentation)

- Provision Phase (≤ 30 Business Days from the Decision)

i. **Request Phase**

1. **Request**

A **request for reasonable accommodation** is a statement, either orally or in writing that an accommodation is needed due to a medical reason.A does not have to use any specific words, such as reasonable accommodation, disability, or Rehabilitation Act when making a request for a reasonable accommodation.**Mere mention of the inability to perform duties and/or enjoy the benefits and privileges of the workplace based on a medical condition should be considered a request for reasonable accommodation and trigger an interactive dialogue between the Requestor and the NIH.**

The EEOC provides examples of language that might be used in a request:

- *Example A*: *An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.*
- *Example B*: *An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.*
- *Example C*: *A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.*
- *Example D*: *An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.*[4]

A request for accommodation can be made at any time during employment or the application process; however, Requestors should consider that the more notice given, the more effective and timely the requested accommodation can be provided.

Requestors may use the **Confirmation of Request for Reasonable Accommodation Form** (included in the Appendix A: Reasonable Accommodation Request Confirmation Form) for the purpose of submitting a request.An NIH employee or contractor may also use the NIH Entellitrak online portal to submit their request. The AC may direct a Requestor to one or more of these tools to formalize and clarify their

request. Though processing will not be delayed until a formal written request is received, the more specifically a request can be articulated, the more efficiently it can be processed. The Requestor is not required to know the exact accommodation that would be effective; but, if a Requestor doesnt engage with the Decision Maker or AC in articulating their accommodation needs, the request may be denied for failure to provide enough information to process the request.

2. **Acknowledgement:**

   A request for accommodation will generally be followed by the Decision Maker or an AC contacting the Requestor to acknowledge receipt of the request, provide general information on the process of requesting an accommodation, and to initiate an interactive dialogue. Any request that is submitted through the NIH Entellitrak system will generate an automated acknowledgement to the Requestor and AC.

   If an NIH employee other than the Decision Maker or an AC (for example a colleague or HR staff member) receives the request for accommodation, he or she should notify the RAP and/or direct the employee to contact the RAP via the RAP Resource Box (Email: edi.ra@nih.gov). It is important that any individuals notified of a potential need for accommodation respond quickly and appropriately.

   Once RAP is notified of the request, an AC will be assigned based on the Requestors Institute or Center to process and track the request through its resolution.

3. **Interactive Process**

   As soon as a request for accommodation is made, NIH shall initiate and engage the employee in the interactive process, which is an informal, flexible dialogue that focuses on clarifying the individual's needs, exploring potential accommodations, and ultimately identifying an effective reasonable accommodation(s).

   As the fundamental tool in processing a reasonable accommodation, all parties should be prepared to engage in an interactive dialogue throughout. Since the duty to provide reasonable accommodation is an ongoing one, the continuation of the interactive process with the employee, even beyond the provision of an accommodation, is strongly encouraged.

   Failure to engage in the interactive process may place NIH at risk of providing an accommodation that is ineffective, or improperly denying a reasonable accommodation that would be effective. Decision Makers and Requestors may consult with ACs for guidance when engaging in the interactive process.

4. **Sufficiency Review**

   To determine if a request can proceed to the Decision Phase, an AC must first determine that there is sufficient information to substantiate that the Requestor is a person with a disability, as per the legal definition, and therefore eligible for reasonable accommodation.

   In many instances, the medical condition and need for a reasonable accommodation will be clear or have been previously documented. NIH will not request medical documentation when both the disability and the need for reasonable accommodation are obvious[5] or previously documented.

   Medical documentation will be considered **sufficient** if it meets the following criteria:

   - Describes the nature, severity, and duration of the individual's impairment,
   - The activity or activities that the impairment limits,
   - The extent to which the impairment limits the individuals ability to perform said activity or activities; and
   - Substantiates why the requested reasonable accommodation is needed.

   Per the Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act, B (10-11), documentation will be considered **insufficient**if it meets the following criteria:

   - Does not specify the existence of a disability and explain the need for reasonable accommodation;
   - Does not specify the functional limitations due to the disability;
   - Is provided by a health care professional who does not have the expertise to give an opinion about the individual's medical condition and the limitations imposed by it; or
   - Appears to be fraudulent or not credible.

5. **Request for Information**

   If the AC determines there is insufficient information to determine that the Requestor is a person with a disability, the AC shall request information from the individual. The AC will explain what information is missing and why any documentation currently submitted is insufficient. The Requestor is then given time to obtain and submit the missing information from the appropriate health professional.

The Requestor will only be asked for information that is related to determining the existence of a disability and the necessity for an accommodation. Requests for medical documentation must be limited to the job-related functions for which the accommodation is requested. If an individual has more than one disability, the AC can only request information pertaining to the disability(ies) requiring reasonable accommodation. This means that an individual's complete medical record will not be requested because it is likely to contain information unrelated to the disability and/or the need for accommodation.

Medical documentation about the individuals disability and functional limitations must come from a qualified health care or rehabilitation professional.Depending on the disability and the type of functional limitation it imposes, qualified professionals could be doctors, psychiatrists, psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, or licensed mental health professionals.For example, documentation from a psychiatrist would likely not be acceptable to establish limitations relative to a breathing impairment.All medical documentation received will be evaluated on a case-by-case basis.

In some cases, even though a disability is obvious or known, some medical documentation may still be needed to satisfy certain requirements.For example, blindness is often an obvious disability and usually results in a request for assistive technology.However, if the request will be submitted to a program, such as CAP[2], to obtain equipment, a statement from the employees health care provider may be required to satisfy the program requirements.

The AC will provide the Requestor the **Medical Inquiry Form** (available on the EDI website), for their medical provider to complete, as a convenient way to obtain the necessary medical information.The Requestor may choose to submit other medical documentation in lieu of this form if it contains sufficient information.

The RAP can provide assistance in completing any forms as needed.Documentation can be submitted to the RAP via email to edi.ra@nih.gov, faxed to 301-480-1818, uploaded to a Requestors Entellitrak profile[6], or hand-delivered to RAP at 2 Center Drive, Building 2, 3W09 Bethesda, Maryland 20892.

Once the Requestor has been advised of the information needed in order to process their request, the NIH will not be responsible for time-tracking until sufficient information is received.

The Requestor will have thirty (30) business days to supply sufficient documentation unless an extension is requested and approved.If the documentation is not received within thirty (30) business days, and no extension is requested and approved, the AC will recommend that the Decision Maker deny the request as a failure of the Requestor to provide appropriate documentation. The request may be pursued at any time in the future by resubmitting with the requested information.

The *Decision Phase* will begin once the AC confirms that the information received meets the standards for sufficiency.

ii. **Decision Phase**

1. **Interim Accommodation**

For some requests, it may be appropriate for the NIH to provide the Requestor an *interim accommodation*.Such instances can include: where a need for accommodation is identified while the most effective accommodation remains unknown; where an immediate need exists while additional information needs to be gathered; when a medical review is deemed necessary; when the requested accommodation is not readily available from the vendor; or, when installation requires the assistance of facilities or IT services personnel that are not readily available.

When all the facts of a request make it reasonably likely that the Requestor will be entitled to an accommodation, the Agency is required to provide an interim accommodation that allows the Requestor to perform some or all of their essential functions while a final accommodation is determined and/or procured.

During these instances, the AC will work with the Requestor and Decision Maker to arrange for an interim accommodation to meet the Requestors needs and/or mitigate the employees limitations until the request can be fully processed.An interim accommodation should be documented in the same formality as a final accommodation and may include the date or conditions under which the interim accommodation will expire.The general timeframes for processing an accommodation may be tolled/suspended while an interim accommodation is in place.

2. **Medical Review**

In some requests, additional medical questions may need to be addressed even after baseline sufficient information is received.Generally, these requests involve unclear limitations, a complex medical history, or an unusual accommodation.

The interactive process should be used to address these questions as much as possible; however, in a minority of requests, it may be necessary to have the Requestors documentation reviewed, and/or their medical provider consulted, by a medical reviewer of NIHs choice and at the NIHs expense.In these instances, ACs will work with the Agency Medical Reviewing Authority (AMRA), currently the Office of Occupation Medical Services (OMS) to address these additional medical questions.The AMRA is an organization of licensed and/or board-certified health care experts the RAP consults with through an interagency agreement.

Some examples of requests that would require a medical review from the AMRA include:

- *Example A: An employee with a mobility impairment requests a modification of site inspection duties as a reasonable accommodation. It is determined that site inspection is an essential function of the employees position. In this instance the additional medical questions to address include: What are the specific limitations to the employees mobility (distance, incline, duration, frequency, etc.)? What other accommodations could be employed as an alternative or in conjunction with other accommodations to effectively accommodate the employee without removing the essential function?*
- *Example B: A lab technician returns to work after surgery with medical documentation indicating a limitation on performing manual tasks. The documentation meets the standards of sufficiency to be eligible for accommodation. In this instance the additional medical questions to address include: What specific tasks can the employee perform? To what degree? This may also require that the employees medical provider be sent information on the employees essential functions to better evaluate the appropriate specific limitations.*
- *Example C: A project manager with a chronic condition requests to telework full-time as an accommodation while undergoing a medical treatment which prevents the employee from commuting. The Decision Maker determines that the essential functions of the job are not 100% portable; but, is prepared to accommodate the employee for a limited duration. In this instance the additional medical questions to address include: How long will the treatment reasonably last? What is the prognosis of the employees limitations during and after the treatment? Is the employee otherwise limited from reporting to the work site? If so, what are those limitations?*

When a medical review is determined to be necessary, an AC will contact the AMRA with the specific questions to address and provide the AMRA

any relevant medical documentation.The Requestor may be asked to sign a limited release permitting the AMRA to contact their health care professional directly regarding the specific questions that need to be addressed.While this release is not mandatory, an employees refusal to authorize the AMRA to contact the appropriate health care professional(s) may limit the degree of clarity that can be obtained, and therefore, result in an inconclusive review.The AMRA will review the documentation provided and consult with the Requestors health care professional(s), as permitted, to provide a medical review to the AC within three to six weeks[7].

Depending on the findings of the AMRA review, there may be times when the Requestor will be asked to undergo an independent medical examination (IME) by a physician chosen by the AMRA, at the NIHs expense.Any medical examination conducted by the AMRA-chosen health care professional, will be job-related and consistent with business necessity.This means that the examination conducted by the IME will focus on, and be limited to, determining the existence of a disability and the functional limitations that require reasonable accommodation.

**NOTE:** When a medical examination is warranted, the Decision Maker, with assistance from the RAP AC, will explain to the individual that not agreeing to participate in the medical examination could result in a denial of the accommodation.

3. **Recommendation**

Through the interactive process, the Decision Maker and/or AC will meet with the Requestor to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with accommodation. The following questions serve as examples of the kind of questions that can help evaluate the effectiveness of a particular accommodation:

- Is the accommodation necessary for the performance of essential duties?
- What effect will the accommodation have on the organizations operation and the employees job performance?
- To what extent does the accommodation compensate for the employee's limitations?
- Will the accommodation give the employee the opportunity to function, participate, or compete on a more equal basis with co-workers?
- Are there alternatives that would accomplish the same purpose?

In order to identify the appropriate accommodation for an employee, it will sometimes be necessary to analyze the particular position the employee holds and understand its purpose and essential functions.When the accommodation needed is not clear or where different possible accommodations are being considered, the interactive process will be a crucial step in identifying an effective accommodation.

If more than one accommodation could be effective, the preference of the individual will be given primary consideration.However, NIH has the ultimate discretion in choosing between effective accommodations, and may choose the accommodation that is less expensive or less burdensome to provide, as long as it is effective (i.e., it would remove a workplace barrier, thereby providing the individual with an equal opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment).The accommodation selected does not have to be the individuals preferred option, but it does have to be effective.

An AC can direct Requestors and Decision Makers to resources to help identify potential reasonable accommodations.Additionally, the AC can facilitate a discussion of various accommodations being considered and the effectiveness each accommodation would have in enabling the individual to perform the essential functions of the position.Some resources available to help identify possible accommodations are available on the EDI website and in the Appendix D: Selected Reasonable Accommodation Resources.

The AC will synthesize the information shared into a recommendation to assist the Decision Maker.This recommendation will identify (1) whether the request should be approved or denied; (2) what accommodation(s) would be effective; and (3) any special considerations.The Decision Maker is not bound to this recommendation, however, it is strongly encouraged that any remaining concerns be addressed with the AC before issuing a decision.

4. **Decision** Upon evaluating all recommendations, considering available resources, and engaging in the interactive process with the Requestor, the Decision Maker will make a final determination on the request.The Decision Maker is charged to meet with the employee, discuss the decision via the interactive process, and document their decision in writing[8].The AC will prepare a Reasonable Accommodation Management Decision Form[9] (available on the EDI website) as needed to achieve this purpose.Once issued, this will end the *Decision Phase*.

**Approval**

The decision will describe the accommodation that has been approved.When a different, effective accommodation is offered in lieu of the one requested, the decision will explain the reason(s) for approving the accommodation chosen as opposed to what was requested.

Some accommodations are needed on an ongoing and/or recurring basis.Examples of such accommodations include: sign language interpreter services, episodic telework, and accommodations for travel.When such an accommodation is approved, the Requestor shall not be required to resubmit their request each time they require the accommodation.It is generally recommended that any logistical procedures necessary, such as scheduling[10], to invoke the approved accommodation be defined in the approval.

If the approval involves any specific considerations, those must be documented in writing.Such considerations may include: exceptions, specifications, instructions for invoking, and expiration.

- *Example A*: *An approval for Full-Time telework may have an exception that the employee be required to report to the physical work site if given 48 hour notice.*
- *Example B*: *An approval for JAWS screen reading software may specify that version 13 will be provided as it is the most recent supported version.*
- *Example C*: *An approval for first-class flights on official travel may include an instruction to contact the Administrative Officer no less than a month prior to travel with the dates, times, and location of travel.*
- *Example D*: *An accommodation may be approved on a trial basis and will include an expiration in 6 months and guidance regarding the evaluation of effectiveness.*

**Denial**

If denied, the decision will contain a written explanation, in plain language, clearly stating the specific reason(s) for the denial.Reasons for denying a request for accommodation may include the following:

- The requested accommodation would not be effective.
- Providing the requested accommodation would result in undue hardship. **NOTE:** Before reaching this determination, NIH must have explored whether other effective accommodations exist which would not impose undue hardship and therefore can be provided. A determination of undue hardship means that the NIH finds that the specific accommodation would result in significant difficulty or

expense to HHSnot merely a branch, division, Office, Institute/Center, or NIHor would fundamentally alter the nature of its operations.

- 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.
- Medical condition does not rise to the level of a disability pursuant to the Americans with Disabilities Act of 2008 (ADAAA) and the Rehabilitation Act of 1973.
- Failure of the Requestor to provide appropriate documentation or cooperate with the efforts of the RAP to obtain necessary information to address the request for reasonable accommodation.

The written notice of denial must include specific reasons for the denial, for example, *why* the accommodation would not be effective or *how* it would result in undue hardship.The notice must also inform the individual of his or her rights, such as the right to request reconsideration of the denial or file a formal complaint. **It is required that RAP be consulted in all instances where a Decision Maker wishes to deny a request (in part or whole), to ensure that the denial is processed in accordance with these specifications and is made on a non-discriminatory/business-related basis**.

iii. **Provision Phase**

1. **Funding**

Generally, NIH is responsible for procuring all approved equipment or services.The Decision Maker will be responsible for identifying the appropriate funds and/or resources in their office, division, or institute to acquire an accommodation.The assigned AC is able to assist the Decision Maker in the Provision Phase to find vendors and resources for the provision of approved accommodations.

2. **Provision**

Provided that no extenuating circumstances exist, a request for reasonable accommodation shall be provided as expeditiously as possible; and, not exceed thirty (30) business days from the date the request is approved. Since the interactive process and collecting all relevant information may take more or less time than expected, NIH should not delay beginning this process when a request is approved. Failure to meet this timeframe solely

because the NIH delayed processing/procuring a request/accommodation does not constitute an extenuating circumstance.

If the approved accommodation is likely to be needed on a recurring basis (such as a sign language interpreter, telework, accommodations for travel, etc.), the employee need not submit a new written request for each instance of accommodation.

There may be an instance where an employee chooses to refuse the accommodation provided.If an accommodation is refused, the AC will document the refusal and identify if there are any additional actions are needed to accommodate the employee.

The RAP will remain in contact with the employee (and Decision Maker if necessary) to ensure that the item or service is provided/received in a timely manner and there are no issues with the equipment or service received.After receipt of the item, repairs, maintenance, replacements or upgrades shall be coordinated through the Decision Maker.Once the accommodation is received by the employee, the accommodation will be considered Provided and the *Provision Phase* will have ended.

If an accommodation requires installation or training in order to be operable for the employee, mere receipt of the accommodation will not result in the request being considered Provided.

**NOTE:** *Leased Facilities*

In the context of leased space, the NIH is responsible for coordinating changes to property owned by others if required as part of a reasonable accommodation.In circumstances where the NIH has the right under a lease or other contractual relationship with the property owner to make the types of changes that are needed, the NIH will look into make the changes.If the contractual relationship requires the property owner's consent to implement the required changes, or prohibits them from being made, then the NIH will make good faith efforts either to obtain the owner's permission or to negotiate an exception to the terms of their contract

3. **Reassignment**

Reassignment is a form of reasonable accommodation that is provided when it has been determined that there are no effective accommodations that would enable an employee to perform the essential functions of their current job; or, that all other possible accommodations would impose undue hardship for the agency. This is considered the accommodation of last resort. Reassignment must be considered before terminating an individual with a disability who cannot be accommodated in their current position.

- *Example A*: *An employee with multiple chemical sensitivity may request an accommodation to change or modify the procedures and/or products used in the cleaning routine of their work environment. The Decision Maker may accommodate the employee by purchasing a special cleaning product for the janitorial staff as well as coordinate cleaning of that employees specific location to take place in the latest rotation when the employee will not be in the office. If the employee continues to have problems, the employee may request telework as an additional reasonable accommodation. However, if it is determined that the employees essential functions require they be on-site during their tour of duty (for instance, the employee must have direct access to a database that cannot be securely accessed from a remote location), telework may result in an undue hardship to the agency. At this point, the employee and the Decision Maker may determine that there are no accommodations that would effectively accommodate the employee to perform their essential functions, and therefore reassignment should be considered*
- *Example B: An employee has a limitation that they cannot lift more than 10 lbs., and requests an exception from lifting. Even if it is determined that lifting 10 lbs. or more is an essential function, a Decision Maker may not seek reassignment without first exploring accommodations such as equipment or workplace personal assistance that could effectively accommodate the employee in performing that essential function.*

Reassignment of an NIH employee can only be made to existing, vacant, and funded positions within HHS. A vacant position is one that is available at the time the employee requests reassignment, or that the Agency knows will become available within 30 calendar days. HHS is not required to create a new position in order to reassign an employee as a reasonable accommodation.

An employee must be qualified for the new position, meaning that they meet the requisite skills, experience, education, and other job-related requirements of the position. The employee must be able to perform the essential functions of the new position with or without reasonable accommodation. If the employee is deemed qualifiedthey need not be the best qualifiedthey are placed in the position identified without competing for it. The Agency is not required to assist an employee to become qualified for a position.

Once the Decision Maker approves reassignment as an accommodation, the NIH Human Resources (HR), in collaboration with RAP, will conduct the search for an appropriate position. This process begins by consulting with the affected employee to determine any potential search limits[11], the

employees qualifications, and what kinds of accommodation (if any) the employee may anticipate needing in order to perform the essential functions of the new position. NIH should communicate with the employee to avoid unnecessary search efforts, failure to identify accommodation needs, and/or failure to appropriately determine the employees skills and abilities. It should be noted that in reassignment requests an exhaustive search must be made of HHS as a whole, not just NIH or an individual IC.

If a position is identified, NIH HR and RAP will coordinate the offer of the new position to the employee.The employee must accept or reject this offer.If any/all offers are rejected; or, if a vacant and available position cannot be identified after the exhaustive search, the RAP will coordinate with the to document the search efforts conducted and why the reassignment accommodation cannot be provided.At that time, the matter will be referred to Employee and Labor Relations as to a determination regarding medical inability to perform the job.

4. **Extenuating Circumstances**

The term extenuating circumstances refers to limited situations in which unforeseen or unavoidable events prevent prompt provision of an approved accommodation.

When extenuating circumstances exist, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as necessary.It is NIHs policy that extensions based on extenuating circumstances be given only in unique circumstances.

The following are examples of extenuating circumstances:

- The purchase of equipment may take longer because of requirements under the Federal Acquisition Regulation.
- Equipment needed is on back-order with the vendor.
- The vendor typically used has unexpectedly gone out of business or cannot promptly supply the needed goods or services and another vendor is not immediately available.
- The accommodation involves NIH hiring or contracting new staff.

When extenuating circumstances exist, the Decision Maker will explain to the Requestor the reason for the delay and the approximate date on which provision of the reasonable accommodation is expected.Any further developments or changes should also be communicated promptly to the Requestor.If a delay due extenuating circumstances is identified, the Decision Maker must determine, within two business days after such realization, whether temporary measures can be taken to assist the Requestor in the interim.

iv. **Follow-Up:**

In some cases, the NIH **may conduct a periodic review** of an individuals current accommodations.The review is to ensure that the accommodation provided continues to be effective and/or if it should be continued or modified.For example, some types of disabilities are degenerative in nature and may impact an individuals functional limitations differently over time, thus requiring periodic reviews and adjustments to accommodation(s).In such cases, the need for periodic review would be noted in the written decision.

Conversely, a medical condition may improve to the point that an approved accommodation can be reduced or removed.The RAP and/or the Decision Maker, in dialogue with the employee, will review the accommodation on an as-needed basis to determine if any changes are needed or if continued accommodation is necessary.Requests for further medical information shall be limited to reasonable documentation supporting the need for continuing accommodation (if the need is not obvious) and not on the existence of the disability itself.

c. **Expedited Processing:**

In certain circumstances, a request for reasonable accommodation may require review, decision, and provision in an expedited timeframe.For instance:

- To enable an applicant to apply for a job. Depending on the timeframe 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 the job.
- To enable an employee to attend a meeting or event scheduled within a short period of time. For example, an employee may need a sign language interpreter for a meeting taking place within a short timeframe.

If a Decision Maker requires assistance in processing a request that requires expedited processing, an AC must be contacted immediately, so as to process the request as quickly as possible. However, Requestors and Decision Makers must realize that the more notice the AC has, the more effective and timely the requested accommodation can be processed.

d. **Direct Services**

Some accommodations necessitate the use of services from another trained professional.The most common types of direct services are sign language interpreters and personal assistants.

**Sign Language Interpreting** Sign language interpreters facilitate communication for members of the Deaf/Hard of Hearing community. These services are managed by the

Division of Amenities and Transportation Services (DATS) in a centralized contract. The implementation of these policies will not interfere with the DATS interpreting program. Any interpreting needs identified by the RAP will be processed like any other request and coordinate provision with DATS. Information about the program and how to schedule services can be found at https://www.ors.od.nih.gov/pes/dats/interpret/ or by contacting the program at interpretingservices@ors.od.nih.gov.

**Personal Assistance** Personal Assistants are individuals who assist people with disabilities in performing job functions that either cannot be accomplished with a machine/physical tool, or would be inconvenient to use assistive technology. For example, a blind employee may require a reader as a personal assistant in order to read documents that cannot be read by a screen reader; or in situations (like training) where a screen reader may not be available. Or, an employee who has paralysis may require assistance in retrieving work materials.

Requests for Personal Assistance will be processed like any other request for accommodation.

In addition, Section 501 of the Rehabilitation Act requires federal agencies to provide Personal Assistance Services (PAS) as part of their obligation to engage in affirmative action.PAS as defined by Section 501 are services that help individuals who, because of targeted disabilities, require assistance to perform basic activities of daily living, like eating, dressing and using the restroom.

**Other Types of Direct Assistance** Other instances where an employee may need direct services as an accommodation may include (but not limited to): job coaches, ergonomists, and organizers. Requests for other types of Direct Assistance will be processed like any other request for accommodation.

e. **Reconsideration**

If an individual is dissatisfied with a decision made regarding a request for a reasonable accommodation, the individual may:

1. **Reconsideration of Reasonable Accommodation Request**

    a. An individual may request the first-line manager (if applicant, then HR manager) reconsider their decision on the reasonable accommodation request. Requests for reconsideration must be submitted in writing within ten (10) business days of receipt of the decision. The individual may present additional supporting information in their request for reconsideration. It is recommended that the request for reconsideration be submitted through the Entellitrak Reasonable Accommodation system. The first-line/HR manager will respond to the request in writing within five (5) business days.
    b. If the first-line/HR manager affirms the previous decision, then the individual may request further reconsideration from the second-line/HR

manager. Requests for second-level reconsideration must be submitted in writing within ten (10) business days of receipt of the decision on first-level reconsideration. It is recommended that the request for reconsideration be submitted through the Entellitrak Reasonable Accommodation system. The second-line/HR manager must respond to this request in writing within five (5) business days.

**NOTE: The time limits set forth in EEOCs regulations for bringing a claim to EEOC, MSPB, or union grievance procedures will <u>not</u> be delayed by this reconsideration process.**

If an individual believes they have been discriminated against based on the disability or the denial of their request for accommodation, the individual may pursue the following:

1. **File an Equal Employment Opportunity (EEO) Complaint**

    a. The individual must contact EDI within 45 days of receipt of a final decision regarding his/her request for reasonable accommodation to obtain the assistance of a counselor.
    b. The counselor will advise the individual regarding the availability of the Agencys Alternative Dispute Resolution Program for EEO complaints and the process for filing an EEO complaint.

For more information and how to contact a counselor please contact the Office of Equity, Diversity, and Inclusion. 2 Center Dr. 3rd Floor Suite. Phone: 301-496-6301. Website: www.edi.nih.gov/resolutions.

1. **File a Grievance (Bargaining Unit & Administrative)**

    a. Bargaining Unit Employees must use the negotiated procedures outlined in their collective bargaining agreements. Please consult your union representative for details.
    b. Non-Bargaining Unit Employees must follow procedures set forth in the Administrative Grievance process.

For more information on filing a grievance, please contact the Office of the Ombudsman.Monday-Friday: 8:00AM-5:00PM.Building 31, Room 2B63.Email: ombudsman@od.nih.gov. Phone: 301-594-7231.

f. **Inquiries:**

EDI strives to continually improve its Reasonable Accommodation Program and ensure that NIH is meeting the needs of its employees with disabilities.For further information concerning this Reasonable Accommodation Procedures Guide, or to provide feedback and suggestions, please contact the RAP.

EDI Access & Equity (A&E) Branch Team can be reached through the RAP central mailbox (edi.ra@nih.gov), or via the EDI Main Line (301 496-6301).

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[4] However, it is appropriate for the employer to follow-up with the employee to determine if a basis for reasonable accommodation exists.

[5] The federal government has identified certain targeted disabilities that have historically been used to exclude qualified individuals from employment. By their nature, many targeted disabilities will be apparent when interacting with the individual. As such, these conditions are generally considered obvious and will not require medical documentation to establish the presence of a disability.

[6] Medical Records in Entellitrak are kept confidential by only appearing on the requestors profile. When uploading a medical document, users should ensure to identify it as a Medical Record. Any questions about this process can be addressed by reaching out to edi.ra@nih.gov or by checking resources on the EDI website.

[7] The timeframe for the entire Decision Phase is 15 business days. Given that, (1) requests requiring Medical Review are generally in the minority of overall requests; and (2) the provision of an interim can suspend time-tracking, the RAP is confident that the Medical Review process will not significantly impact the NIHs ability to process requests in a timely manner.

[8] Any decision on a request for accommodation should also include an attachment describing the requestors rights (reconsideration, filing a complaint, filing a grievance). Decisions documented in the online Entellitrak portal will automatically send the requestor this document. This attachment is available on the EDI website.

[9] A decision maker using the Entellitrak online portal to document their decision will automatically generate this form with the basic information of the request.

[10] For example, NIH has a Sign Language Interpreting Program. Individuals approved for sign language interpreting services should be advised of the procedures for scheduling through the program.

[11] Search limits may include, but are not limited to: geographical location, organizational unit (office, IC, agency), type of position, and pay grade. The NIH is not legally obligated to keep the employee at the same pay grade.

## H. Confidentiality

a. **Confidentiality**

Under the *Rehabilitation Act of 1973*, 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 will be kept in files separate from the individual's personnel files.Any NIH employee who obtains or receives such information is strictly bound by these confidentiality requirements.

The RAP will maintain custody of records obtained or created during the processing of a request for reasonable accommodation, including medical records.If, in the course of processing a reasonable accommodation, a manager/decision-maker raises a legitimate need to have access to a particular medical document, the RAP will review and redact the document as needed and release it through secure channels; this redacted document will continue to be subject to all defined standards for confidentiality. All records will be maintained in accordance with the Privacy Act (see 29 C.F.R. 1611), as well as EEOC and HHS requirements.Supervisors and managers (or other entities as appropriate) who have a need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s).

As per 29 CFR 1630.14, medical information may be **disclosed only as follows**:

1. First aid and safety personnel may be informed if an individual with a disability requires emergency treatment;
2. Government officials may be given information necessary to investigate or provide technical assistance to ensure compliance with the Rehabilitation Act;
3. 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 about confidentiality requirements.Other than these limited, as needed, circumstances, the RAP will not share an employee's prognosis and/or diagnosis.

b. **Information Tracking:**

The RAP shall manage informational data on all reasonable accommodation matters that all personally Identifiable Information (PII) will be kept confidential pursuant to the Privacy Act, with special care to ensure the protection of all medical information. Storage and maintenance of (PII) must comply with the requirements of the Privacy Act, including having a current, published Privacy Act System of Records Notice (SORN). The published SORN for RA purposes is SORN 09-25-0099.

The data collected must be able to identify at least:

1. The number of reasonable accommodations, by type, that have been requested in the application process, and whether those requests have been approved or

denied.

2. The jobs (by occupational series, grade level, and NIH component) for which reasonable accommodations have been requested.
3. The types of accommodations that have been requested for each of those jobs.
4. The number of reasonable accommodations, by type, for each job that have been approved; and, the number of reasonable accommodations, by type, that have been denied.
5. The number of reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests have been approved or denied.
6. The reasons for denial of requests for reasonable accommodation.
7. The deciding official for each request for reasonable accommodation.
8. The amount of time taken to process each reasonable accommodation request.
9. The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodation.

This information will be maintained for a minimum of three years, in accordance with NIH General Records Schedules 06-326 (Employee Relations Programs Administrative Records), 06-327 (Reasonable Accommodation Case Files), and 06-334 (EEO Discrimination Complaint Files) in order to provide the EEOC information and records used to track the NIH's performance with regard to processing reasonable accommodation.

## I. Distribution

The NIH Reasonable Accommodation policy shall be distributed to all employees upon issuance, and annually thereafter.It shall be distributed to all new employees as part of the NIH New Employee Orientation during their first week of work.The policy and these procedures will also be made available to employees on-site, on the NIH intranet, on the NIH/EDI website and in alternative formats upon request.Notification will also be made to the Union (where applicable) and then to all employees by NIH Broadcast.

All new NIH employees will receive training on the guidelines as part of their New Employee Orientation.The procedures will also be incorporated into manager and employee guides, and both manager and staff training.

Copies of the guidelines will also be available in the NIHoffice.

## J. Records Retention and Disposal

All records pertaining to reasonable accommodation must be retained and disposed of under the authority of NIH Manual 1743, "Keeping and Destroying Records, Appendix 1, NIH Records Control Schedule,".

E-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the NIH or have informational value are considered Federal Records. These records must be maintained in accordance with current NIH Records Management guidelines. If necessary, back-up file capability should be created for this purpose. Contact your Institute or Center's Records Officer for additional information.

All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to an NIH approved requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages.

E-mail messages must also be provided to Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

## K. Internal Controls

The purpose of these procedures is to provide guidance on reasonable accommodation for people with disabilities and the retention of employees who develop a disabling condition while employed at the NIH.

1. **Office Responsible for Reviewing Internal Controls:** Through this guide, EDI is responsible for ensuring that NIH and its component ICs are in compliance with NIH's policy and is responsible for reviewing the internal controls in place.

1. **Frequency of Reviews:** The EDI will collect information on number and types of reasonable accommodations provided to employees and applicants by each IC on an annual basis. The EDI Access and Equity Branch Chief will review this information monthly in preparation for annual reporting.

1. **Method of Review:** The EDI currently collects information on reasonable accommodations as part of its annual Affirmative Action Plan for Individuals with Disabilities. This information, along with any additional information needed to ensure the program is operating properly, will be developed by EDI on an annual basis. EDI will request each IC to submit a quarterly summary report on reasonable accommodations.

1. **Reviewing Officials:** The Director, EDI, and the Deputy Director for Management will serve as reviewing officials.

The RAP will also conduct internal audits of the process by reviewing data on number of requests, types of requests, and processing timeliness.These reviews will be conducted

quarterly and reported to the EDI Director and Deputy Director.

## Appendix A: Reasonable Accommodation Request Confirmation Form

Reasonable Accomodation Request Confirmation Form

## Appendix B: Reasonable Accommodation Medical Inquiry Form

Reasonable Accommodation Medical Inquiry Form

## Appendix C: Management Decision Form

Management Decision Form

## Appendix D: Selected Reasonable Accommodation Resources

Selected Reasonable Accommodation Resources

## Appendix E: Reasonable Accommodations

Provided below are examples of the major categories of reasonable accommodation. This list is not exhaustive:

- **Administrative Services:** modifications to workplace processes and procedures.
- **Direct Services:** services provided to a qualified individual with a disability that enables them to access their work product, facilities, and all of the benefits and privileges afforded to employees and/or visitors.
- **Equipment:** physical and information technology equipment that enables provided to a qualified individual with a disability that enables them to access their work product, facilities, and all of the benefits and privileges afforded to employees and/or visitors.