

Chapter 4 - Reasonable Accommodations

4.1 Introduction

US Department of Health and Human Services (HHS) and its Operating Divisions (OPDIVs) will implement reasonable accommodation procedures in compliance with policies established by the Equal Employment Opportunity Commission (EEOC).

Request: Individual makes request for reasonable accommodation (Section 4.6):

1. An **employee** should request a reasonable accommodation from his/her immediate supervisor; or the HHS Operating Division (OPDIV) Reasonable Accommodation Designee. The request may be made orally or in writing.
2. A **job applicant** can request reasonable accommodation from Human Resources (HR) Specialists, individual hiring managers, selective placement coordinators, reasonable accommodations specialists, or other HHS employees with whom s/he has contact in connection with the application process.
3. For record keeping purposes, an oral request should be followed by completion of a "Confirmation of Request for Reasonable Accommodation" (See HHS Form 557 at Appendix D) or by confirming the request in writing (including E-mail) to the person or office designated by the HHS OPDIV. A staff member can assist the individual with this documentation.

4.1.1 Individuals Processing Requests:

The staff member receiving the request must determine who will be responsible for handling it and forward it, if necessary, to that person **as soon as possible but in no more than three business days**. The **individuals designated to process requests for** reasonable accommodation can include: HR Specialists (for applicants); employee supervisors; employee's Office Director; or the HHS OPDIV Reasonable Accommodation Designee. (Section 4.6)

4.1.2 Time Frames for Processing Requests and Providing Reasonable Accommodations (Section 4.11):

If a request can be processed by the employee's supervisor or Office Director, does not require supporting medical information, and no extenuating circumstances apply, the request shall be approved or denied in no more than **ten business days** from the date the employee makes the request, and sooner whenever possible.

The accommodation, if approved, will be provided within **ten business days** of the date the request was approved.

If medical documentation is required, time frames are suspended until the requested medical documentation is submitted. In order to allow the agency's medical reviewing authority an opportunity to review medical documentation, the agency shall request from the employee authorization to contact the physician completing the medical documentation. After medical documentation is received and a decision is made to grant the accommodation, it will be provided within **15 business days** from the receipt of the documentation.

If the employee needs to try various accommodations to find one that is suitable, the time frame will be expanded by mutual consent.

Certain **extenuating circumstances** beyond the control of the agency may delay providing reasonable accommodation within the time frames listed above.

Every accommodation should be provided as soon as possible. Certain requests require **expedited processing** including provision of accommodation during the application process and to enable an employee to attend a meeting on a specific date.

4.1.3 Denial of reasonable accommodation must be documented. (See HHS Form 557a at Appendix D). The decision maker may not issue a written or verbal denial of a reasonable accommodation request without first consulting with the HHS OPDIV's Reasonable Accommodation Designee. A denial of a reasonable accommodation request which contradicts the recommendations of the OPDIV Reasonable Accommodation Designee must be routed through the OPDIV EEO Director within **three business days**. The OPDIV EEO Director will advise the appropriate management official, who will in turn make the final decision regarding the reasonable accommodation. (Section 4.7)

- 4.1.4** The decision maker must complete a “**Reasonable Accommodation Information Tracking Form**” (See HHS Form 557b at Appendix D) within **ten business days** of the decision and give it to the HHS OPDIV Reasonable Accommodation Designee.
- 4.1.5** **Reports on provision of reasonable accommodation** will be completed annually and transmitted with the annual report on the Affirmative Action Program for Individuals with Disabilities to the ODME Diversity Management Division, Office of the Assistant Secretary for Administration and Management (ASAM). (Section 4.17)
- 4.1.6** **HHS Procedures for Reasonable Accommodation** will be available on the web at <http://www.hhs.gov/odme/>. Forms used to confirm, deny and track request and reasonable accommodation provisions will be available electronically.

4.2 Abbreviations, Acronyms, and Definitions

For the purpose of this policy, the following abbreviations and acronyms will apply:

1. ODME – Office of Diversity Management and EEO
2. OHR – Office of Human Resources
2. CAP – Computer/ Electronic Accommodations Program
3. EEO – Equal Employment Opportunity
4. EEOC – Equal Employment Opportunity Commission
5. MSPB – Merit Systems Protection Board
6. OPDIVS – Operating Divisions

For the purpose of this policy, the following definitions apply:

1. **Person With a Disability** – An individual with a disability is a person who has: a physical and/or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment.
 - a. “Physical and/or mental impairment” includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body system: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic disorder; mental retardation; endocrine; organic brain syndrome; emotional or mental illness; and specific learning disabilities.

- b. “Major life activities” are activities that an average person can perform with little or no difficulty. Examples are: walking; speaking; breathing; performing manual tasks; seeing; hearing; learning; caring for oneself; and working.
 - c. “Record of impairment” means that an individual has a history of, or has been classified as having a mental or physical impairment that substantially limits one or more major life activities.
 - d. “Is regarded as having impairment” means that individuals, including supervisors, managers and/or employees, believe that the individual has a disability, whether the individual actually has a disability or not.
2. **Employee** – An individual who is employed by the HHS OPDIVs, regardless of the type of appointment mechanism; whether an individual can be considered an employee for reasonable accommodation will be decided on a case by case basis.
3. **Qualified Individual With a Disability** – an individual with a disability who, with or without reasonable accommodations, can perform the essential duties of the position description (or “condition of employment”) that the individual holds.

Specific exclusion: A person who currently uses illegal drugs is not protected by these procedures as a “qualified individual with a disability.” However, a former drug user who is receiving treatment for a drug addiction or has been rehabilitated successfully is protected.

4. **Reasonable Accommodation** – A request for reasonable accommodation is a statement that an individual needs an adjustment or change at work for a reason related to a medical condition so that the individual may enjoy the same benefits and privileges of employment as are available to a similarly situated employee without a disability. Reasonable Accommodations is not the creation of a new position or intentional altering of a position (job/condition of employment) of record beyond its grade controlling factors. If requested or identified, reasonable accommodations are addressed in three aspects of employment:
- a. In the recruitment/application process: A reasonable accommodation is provided in the recruitment process to provide a qualified applicant with a disability an equal opportunity to be considered for the position the person applied for.

- b. In the performance of the essential functions of a job: a reasonable accommodation is provided to enable a qualified person with a disability to perform the essential duties of the job being sought or currently held. This may include modification or adjustments to the work environment and to the way duties are customarily performed.
 - c. In receipt of all benefits of employment: A reasonable accommodation is provided to enable an employee with a disability to enjoy benefits and privileges of employment equal to those enjoyed by other similarly situated employees without disabilities. This would include equal access to buildings, conferences and meetings that are OPDIV-sponsored services and events.
5. **Reassignment** – a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to vacant positions and to employees who are qualified for the new position. If the employee is qualified for the position, s/he will be reassigned to the job and will not have to compete for it.
6. **Essential Functions** – those 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 the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.
7. **Undue Hardship** – if a specific type of reasonable accommodation causes significant difficulty or expense, then HHS OPDIVS does not have 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 operations of the agency.

8. **Reasonable Medical Documentation** – the employer may require only the documentation that is needed to establish that a person has a disability that necessitates a reasonable accommodation. Thus, an employer, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. In addition, all medical documentation will be treated confidentially and the Employer will observe all requirements of the Privacy Act and other appropriate legal authorities. Medical documentation will be maintained in accordance with applicable provisions of 5 CFR, Section 293 and 5 CFR 297.

9. **Decision Maker** – For the purpose of this policy, decision maker is that person who has responsibility and authority to make certain determinations and decisions relative to an employee's request for reasonable accommodation. This individual initiates the interactive process in a timely fashion to an accommodation that balances the legitimate needs of both the employee and agency.

4.3 Policy on Reasonable Accommodations

In accordance with the Rehabilitation Act of 1973 (as amended), it is the policy of HHS and its OPDIVs to provide reasonable accommodations for qualified individuals with disabilities. This chapter applies to HHS employees and applicants for employment with disabilities requiring a reasonable accommodation; including employees sustaining job-related injuries; and employees with temporary disabilities requiring a reasonable accommodation. United States Public Health Service Commissioned Corps Officers are excluded.

As the nation's principal agency for protecting the health of all Americans and providing essential human services, HHS continuously endeavors to be a model employer. HHS is particularly sensitive to the needs of People with Disabilities, a diverse segment of the American Public and critical members of our workforce. As such it is the policy of HHS to make agency facilities and services accessible to people with disabilities and provide reasonable accommodation to job applicants and qualified employees with disabilities. By providing reasonable accommodation and ensuring that our services, electronic and information technology are accessible, we reaffirm our commitment to diversity and equality; and to recruiting, promoting and retaining the very best that our Nation has to offer as well as complying with the mandates of the Rehabilitation Act of 1973 as amended.

Accommodations may include, but are not limited to, such modifications as: assistive devices; readers; or sign language interpreters; job restructuring; part-time or modified work schedules; physical accessibility to work site; ergonomic evaluations; or any adjustments that promote a positive work environment and facilitate the successful accomplishment of our mission. (A more precise definition of reasonable accommodation can be found in Subsection 4. 2.4).

HHS and HHS OPDIVs are committed to ensuring that our reasonable accommodation policies and procedures remain flexible and responsive to the needs of persons with disabilities. By doing so we remove barriers to HHS programs, services, activities and facilities, and ensure the full participation not only of diverse segments of our workforce, but also to the American public.

HHS employees and managers/supervisor are also encouraged to utilize reasonable accommodation resources outside the agency, such as the Job Accommodation Network, DoD Computer/Electronic Accommodations Program and USDA TARGET Center. Through these resources, employees, supervisors and managers can be informed about accommodations for various impairments, explore the latest assistive technology, or obtain equipment at no cost to the agency.

4.4 Responsibilities

1. Agency Medical Reviewing Authority (Federal Occupational Health (FOH), Office Health and Safety (OHS), Occupational Medical Services (OMS))

- a. At the request of agency management, provide medical assessments from the medical information submitted by the employee's physician and/or other health care provider related to continued employability in accordance with U.S. Office of Personnel Management (OPM) guidance;
- b. Provide medical or psychiatric recommendations pertaining to medical eligibility, medical abilities and limitations, and/or work restrictions as they relate to job requirements and environmental factors associated with an employee's current position and potential placements for which Human Resources Officers request advice;
- c. Provide detailed information on the employee's medical limitations to assist the supervisor in making decisions related to reasonable accommodation.

2. HHS OPDIV Heads

- a. Ensure organizational compliance with the HHS policies and procedures for the provision of reasonable accommodation;
- b. Provide leadership within the Agency to ensure adequate budget, staff and resources for the provision of reasonable accommodation;
- c. Provide leadership within the Agency in developing and carrying out a positive program for the continued employment of employees who develop a disabling condition;
- d. Ensure supervisors and managers are provided training on their responsibilities for the provision of reasonable accommodations;
- e. Ensure that the Agency's human resources and EEO functions are provided adequate staff and resources for the implementation of the Reasonable Accommodation Program;
- f. Ensure that its managers and supervisors are familiar with, follow, and implement the agency's reasonable accommodation policy; ensure that reasonable accommodations are made for employees or applicants for employment with disabilities in accordance with applicable law and regulations, supporting medical documentation, applicable bargaining agreements, and this policy.

3. Employee/Job Applicant

- a. Employees and applicants for employment are responsible for initially raising medical issues to the attention of management officials in accordance with the procedures outlined in this manual issuance, including the providing of medical documentation as requested. Each employee is responsible for:
 - b. Notifying the supervisor of any disability or medical condition that may interfere with the performance of essential duties of his/her position of record; submitting an OPM Self-Identification Standard Form 256 to the Human Resources Office on any disabling condition; (**NOTE:** Submission of form is optional, but submission of form would greatly assist in processing the request for reasonable accommodation.);
 - c. Suggesting reasonable accommodation possibilities that can be explored, and cooperate with management efforts to identify and effect accommodations and/or alternate placement if necessary; and

- d. Providing Agency Designated Physician, Appropriate Healthcare or Rehabilitation Professional with information relating to the medical condition and how it relates to the essential duties of the position.

4. HHS Reasonable Accommodation Designee (Human Resources Office, Equal Employment Opportunity Office)¹

- a. Provides guidance on the agency's policy regarding reasonable accommodations to employees, applicants for employment, supervisors, and other management officials; The HHS Reasonable Accommodation Designee will:
 - 1. Coordinate and facilitate the implementation of the procedures in this policy;
 - 2. Advise management officials and supervisors on their responsibilities relating to reasonable of employees with disabilities;
 - 3. Consult with the Agency Designated Physician, Appropriate Healthcare or Rehabilitation Professional in assessing an individual's medical condition or disability and the need for reasonable accommodation;
 - 4. Work with supervisors and the employee with a disability to provide reasonable accommodation through job structuring, training, or work environment adjustments when an employee cannot perform the essential functions of his or her current position;
 - 5. Counsel employees to explore reasonable accommodations and, when appropriate, discussing alternatives open to the employee;
 - 6. Assist in obtaining adaptive equipment, including information technology and communications equipment, or specially designed furniture;
 - 7. Document efforts taken within HHS OPDIVs for providing appropriate reasonable accommodations; Track reasonable accommodation requests in their Agency, and prepare an annual summary report for submission to the ASAM/ODME;
 - 8. Consult and assists the Agency Selective Placement Coordinator in the implementation and provision of reasonable accommodation for applicants and employees; and

¹ PSC is servicing agency for SAMHSA and AHRQ; OS is servicing agency for AoA and ACF.

9. Maintain liaison with public and private organizations concerned with the rehabilitation of persons with disabilities.

5. Office of Human Resources (OHR)

- a. Provide reasonable accommodation to applicants with a disability for any part of the application or hiring process;
- b. Ensure that all vacancy announcements include the following statement in accordance with Office of Personnel Management (OPM) guidelines “Applicants with a disability who need a reasonable accommodation for any part of the application or hiring process must notify OHR. The decision on granting reasonable accommodation will be made on a case-by-case basis”;
- c. Assist management in locating vacant positions that can be utilized for reassignment or change to lower grade as a reasonable accommodation.

6. Agency Selective Placement Coordinator

- a. Provide policy and regulatory guidance to the Agency on the Selective Placement Program;
- b. Coordinate Agency-wide placement assistance and documenting efforts to reasonable accommodate those employees who are medically unqualified for their current position; and
- c. Serve as an Agency resource.

7. Work Force Relations and Partnership Branch

Consult and advise all levels of management on issues related to reasonable accommodation in connection with employees’ performance or conduct issues.

8. Agency Supervisors and Managers

- a. Takes the request for accommodation seriously and actively engage employees who request reasonable accommodations to solicit any additional information needed to make timely determinations on all reasonable accommodation requests;
- b. Provide appropriate reasonable accommodations for applicants and employees with disabilities;

- c. Work with Agency Officials (Human Resources and EEO Office) and Agency Designated Physician, Appropriate Healthcare or Rehabilitation Professional to determine appropriate reasonable accommodations;
- d. Examine each job to determine which functions are essential to performance. These essential elements should be listed as major duties in the position description;
- e. Determine, based on advice from the HHS Reasonable Accommodation Designee and Financial Management Office, the feasibility of accommodating employees with disabilities and the assumption of costs associated with reasonable accommodation efforts (including costs of training the disabled employee); and
- f. Maintain written records on request (s) for accommodation and provides a copy of the request to the OPDIV Reasonable Accommodation Designee.

9. HHS OPDIV EEO Director

- a. Provide oversight of Agency programs and activities relating to reasonable accommodation;
- b. Develop and issue policies and procedures for the application of reasonable accommodations;
- c. Provide consulting services to Agency Officials regarding procedures for administering reasonable accommodation policies;
- d. Conduct appropriate reviews of complaints relating to reasonable accommodations;
- e. Conduct periodic reviews of the Agency to ensure compliance with the policies and guidance outlined with these procedures;
- f. Ensure dissemination throughout their Agency of policies and procedural requirements associated with providing reasonable accommodations for employees and applicants;

- g. Provide training to managers and employees on policies and procedures for the application of reasonable accommodation to the employment of individuals with disabilities and the retention of employees who develop disabling conditions;
- h. Ensure that the Agency follows procedural requirements associated with reasonable accommodations for employees.

10. Agency Complaints Manager

- a. Process discrimination complaints based on disability regarding reasonable accommodations and work towards resolution; and
- b. Consult with Agency Director on technical issues concerning allegations of discrimination.

11. Buildings and Facilities Manager

- a. Ensure facility accessibility of buildings, restrooms, conference rooms, ramps, doorways and other architectural features.
- b. Establish a method to track work orders associated with reasonable accommodation requests to ensure timely completion.

4.5 Procedures

Reasonable Accommodations are considered where a particular disability creates a limitation that impedes an individual with a disability from performing the essential functions of the job. The need for reasonable accommodation is determined on a case-by-case basis, taking in consideration the applicant's or employee's specific disability and existing limitations to performance of a particular job function; the essential duties of a job; the work environment; and whether the proposed accommodation would create an undue hardship on the Agency.

4.6 Requests for Reasonable Accommodation

When an employee is disabled at the time of employment, or becomes disabled while employed at the HHS, he/she should notify the supervisor of his/her impairment or limitation and of the need for reasonable accommodation, either orally or in writing. Under either situation, the employee can request a reasonable accommodation for the temporary or permanent disability.

1. 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.** An employee may request reasonable accommodation orally or in writing.
2. 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 she has not previously disclosed the existence of a disability. Any HHS employee or applicant may consult the OPDIV Reasonable Accommodation Designee for further information or assistance in connection with requesting or processing a request for reasonable accommodation.
3. An applicant may request reasonable accommodation from any HHS OPDIV employee with whom the applicant has contact in connection with the application process. OPDIV Reasonable Accommodation Designees 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 contacts with applicants needs to know how to recognize and respond to requests for reasonable accommodation. It is the responsibility of the applicant to inform the HR specialist, selecting official or an official within the recruitment process, of the need for a reasonable accommodation prior to an interview or visit.
4. 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 management official will confirm the request with the person with the disability.

4.7 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.

In requests that are more complex in nature, the designated decision maker should seek additional information or clarification from the individual requesting the accommodation when specific limitations, problems, or barriers are unclear; where an effective accommodation is not obvious; or where the parties are identifying different possible reasonable accommodations. These discussions are crucial and form the basis and justification for granting or denying the reasonable accommodation request.

Communication is a priority throughout the entire process. The applicant or 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 OPDIV Reasonable Accommodation Designee is available to provide assistance.

As the first step, the HHS OPDIV's 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 who has the 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 management official 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 management official and requesting individual should communicate to ensure a full exchange of relevant information.

The decision maker or any other HHS 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 OPDIV Reasonable Accommodation Designee to obtain guidance, as necessary, to ensure that the proper procedures have been followed. See Section 4.5.5 on confidentiality of medical information.

The HHS OPDIV's office that manages information resources or information technology may be consulted in connection with requests for adaptive equipment for computers. However, this office would not have a need to know the medical condition of the person seeking the accommodation. It only needs the individual's functional limitations and how the limitations affect technology needs. Also the Department of Defense and HHS have an Interagency Agreement with the Computer/Electronic Accommodations Program (CAP), to provide assistive technology, devices and services to HHS employees with disabilities at no cost (See Appendix B).

4.8 Determining Which Official Will Respond to the Request:

As the first step in processing a request for reasonable accommodation, the OPDIV staff member who receives the request must determine who will be responsible for handling it and forward it, if necessary. The request should be forwarded to the appropriate person **as soon as possible but in no more than five business days.**(2)

1. Requests from applicants will be handled by the HR Specialist responsible for the recruitment and/or selection process.
2. Requests from employees will be handled by the requesting employee's immediate supervisor or designated management official within the organization in consultation with the OPDIV Reasonable Accommodation Designee.
3. The OPDIV Reasonable Accommodation Designee will respond to the following:

(2) 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 4.5.6 Time Frames for Processing Requests and Providing Reasonable Accommodation for more information, including when a request must be expedited.

- a. Requests for adaptive equipment, including information technology and communications equipment, or specially designed furniture. HHS OPDIVs shall designate the process for coordination with the appropriate information technology, procurement and other offices.
 - b. Requests for a reader, sign language interpreter, or other personal assistant to enable employees to perform their job functions, when the accommodation cannot be provided by current staff. Each OPDIV shall identify the process for coordinating requests and providing sign language interpreters, readers, or other personnel assistants.
 - c. Request for removal of architectural barriers, including reconfigured work spaces.³ The HHS OPDIV procedures shall describe how such requests will be coordinated by facilities staff with the General Services Administration and/or the owner of a particular building
 - d. Requests for accessible parking will be handled through each OPDIV's internal procedures. Information on these accommodations shall be documented and included in the reports of all reasonable accommodations.
 - e. Requests for materials in alternative formats (e.g., Braille) that cannot be provided by the supervisor or Administrative Officer.
 - f. Requests for reassignment to another job in coordination with the HHS OPDIV's Office of Human Resources.
4. The OPDIV Reasonable Accommodation Designee will be available, as needed, to provide assistance to employees and management officials in processing requests.
 5. All decision makers 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 4.11 will not be suspended or extended because of the unavailability of a decision maker.
 6. The Human Resource Management Specialist (for applicants) and the

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

OPDIV Reasonable Accommodation Designee must each designate a back-up.

4.9 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 HHS activities or the applicant's ability to apply or interview for the job; and how the requested accommodation is expected to improve the situation.

1. HHS OPDIVs are not required to obtain medical documentation, and may not request it when the disability and need for accommodation is obvious or otherwise already known. In these cases, the HHS OPDIV 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 HHS OPDIV 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 for medical documentation will be limited to the job related functions for which the accommodation is requested. In most situations, this means the HHS OPDIV 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.
2. 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 OPDIV Reasonable Accommodation Designee to obtain the information.
3. The OPDIV Reasonable Accommodation 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.
4. If a determination is made to seek medical information, the OPDIV Reasonable Accommodation Designee will request information only to substantiate the individual has a disability covered by the Rehabilitation Act and require 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* (See Section 4.22), Reference I of this policy, also available on EEOC's Internet Web Site). The employee

requesting a reasonable accommodation will be given fifteen calendar days to provide medical information, barring extenuating circumstances.

5. The OPDIV Reasonable Accommodation 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 OPDIV Reasonable Accommodation Designee may work with the supervisor and/or other management officials in identifying and providing appropriate information on the job and functions. The types of medical information or documentation that may and may not be requested by the agency are described in the *EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, Section II.D.17*. If the employee refuses to provide the requested information, the Agency can no longer provide assistance.
6. Once the medical documentation is received, the OPDIV Reasonable Accommodation Designee, in consultation with Agency Medical Reviewing Authority, will evaluate it. This evaluation will be performed at the agency's expense.
7. If the initial medical documentation is provided by the employee at the time of the request and it is insufficient to enable the decision maker to determine whether an accommodation is appropriate, the OPDIV Reasonable Accommodation Designee may request additional information:
8. First, the OPDIV Reasonable Accommodation 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.
9. The individual requesting accommodation may then contact the health care or other appropriate professional to request the missing information.

10. Alternatively, the individual requesting the accommodation and the OPDIV Reasonable Accommodation Designee may agree on a list of specific questions to be sent to the individual's health care professional. With the written permission from the employee, the OPDIV Reasonable Accommodation Designee or an Agency Medical Reviewing Authority may directly contact the individual's health care professional. There may be instances where the Agency Medical Reviewing Authority may not be in the best position to formulate an opinion on the occupational limitations imposed on a disabled individual and therefore may consult with other medical experts outside HHS OPDIV for assistance. Appropriate professionals include, but are not limited to doctors (including psychiatrists), psychologist, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals. This evaluation will be performed at the agency's expense. (*EEOC Policy Guidance on Executive Order 13164: Establishing Procedures To Facilitate the Provision of Reasonable Accommodation, Section II, D, 17-18*).
11. 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 require reasonable accommodation, the OPDIV Reasonable Accommodation Designee may request that the individual be examined by a physician chosen by the Agency Medical Reviewing Authority at the agency's expense. (*EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, Section II, D, 17-19*).
12. The OPDIV Reasonable Accommodation Designee will inform the management official whether the documentation demonstrates that a reasonable accommodation is appropriate and provide, as necessary, additional relevant information about the individual's functional limitations.
13. 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 OPDIV Reasonable Accommodation Designee as set forth in this section. (See Section 4.17) for instructions on storage of this information.)
14. The failure to provide appropriate documentation or to cooperate with the HHS OPDIV efforts to obtain such documentation can result in a denial of the request for reasonable accommodation (EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act) – (See Section 4.22)

15. The entitlement of the HHS OPDIV to reasonable medical documentation may necessitate the periodic review of updated documentation to insure that the need for accommodation is effective and needs to be continued (See Section 4.14 Reasonable Accommodations Agreement).

4.10 Confidentiality Requirements Regarding Medical Information and the Reasonable Accommodation Process

1. 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 HHS employee who obtains or receives such information is strictly bound by these confidentiality requirements.
2. The OPDIV Reasonable Accommodation Designee 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 HHS requirements. This information may be disclosed **only** as follows:
 - a. Supervisors and managers with a need to know 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.
 - b. first aid and safety personnel may be informed, when appropriate, *if* the disability might require emergency treatment;
 - c. government officials may be given information necessary to investigate or provide technical assistance to ensure compliance with the Rehabilitation Act;
 - d. And, in certain circumstances, the information may be disclosed to Workers' Compensation offices or insurance carriers.
3. Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements.

4.11 Time Frames for Processing Requests and Providing Reasonable Accommodation

1. HHS OPDIVs will process requests for reasonable accommodation, as appropriate, in short a time frame as reasonably possible. HHS recognizes, however, 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.
2. Expedited processing: In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a time frame that is no more than five business days as discussed below. This includes where a reasonable accommodation is needed:
 - a. to enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, human resources staff needs to act as quickly as possible to make a decision and, if appropriate, provide reasonable accommodation;
 - b. 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.
 - c. If a request for an accommodation can be processed by the requesting management official, 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. However, prior to approval, the management official will contact the OPDIV Reasonable Accommodation Designee.

- d. 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 management official delayed processing the request is not an extenuating circumstance.
- e. If the decision maker believes that it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or identify the functional limitations, the decision maker will make such request to the OPDIV Reasonable Accommodation Designee as soon as possible after receipt of the request for accommodation, but before the fifteen-day period ends. HHS recognizes that the need for documentation may not become apparent until after the interactive process has begun.
- f. If the decision maker requests that the OPDIV Reasonable Accommodation Designee obtain medical documentation, the time period for the decision process is frozen until the medical information is provided. If after reviewing with the agency medical reviewing authority, the OPDIV Reasonable Accommodation Designee determines that medical information is not needed, s/he will notify the management official and the **15-day time period** for processing the request resumes.
- g. If the OPDIV Reasonable Accommodation 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 of the decision maker receives the relevant medical information.

Examples of accommodations that can be provided immediately include:

- g. 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.
- h. 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 that can easily be provided within two business days include:

- i. An employee who takes anti-depressants that 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.
 - j. 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.
3. **Extenuating Circumstances:** Where extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as necessary. All HHS staff is expected to act quickly in processing requests and providing accommodations. The following are examples of extenuating circumstances:
- a. There is an outstanding initial or follow-up request for medical information.
 - b. Purchase of equipment may take longer than 15 or 20 business days because of requirements under the Federal Acquisition Regulation.
 - c. Equipment may 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.
 - d. New staff needs to be hired or architectural barriers must be removed.
4. **Extenuating circumstances** covers limited situations in which unforeseen or unavoidable events occurring outside of HHS OPDIVs prevent prompt processing and delivery of an accommodation.
5. For example, a HHS OPDIV may **not** delay processing or providing an accommodation because a particular staff member is unavailable. (See Section VII. For information on designating back-ups to respond to request when the decision maker is unavailable.)

6. 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:
 - a. 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 in writing that they are being provided only on a temporary, interim basis.
 - b. 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.
 - c. If a delay is attributable to the need to obtain or evaluate medical documentation and it 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.
6. HHS decision makers who approve temporary measures are responsible for assuring that they do not take the place of permanent accommodations and that all necessary steps to secure permanent accommodation are being taken.

4.12 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. (NOTE: reassignment is only available to a probationary employee if the employee adequately performed the essential elements of the position, with or without reasonable accommodation, before the need for the accommodation arose.) Neither HHS nor its OPDIVs are 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 OPDIV Reasonable Accommodation Designee will work with both Human Resources and the individual requesting the accommodation to identify; (1) all vacant positions within the affected employee's agency for which the employee may be qualified with or without the accommodation; (2) all current vacancies identified by the servicing Human Resource Center within the affected employee's current commuting area; and (3) all projected vacancies (over the next **60 business days**) throughout the Department for which the employee may be qualified.

The agency 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, HHS will not pay for the employee's relocation costs. In addition, as part of the interactive process and if reassignment is contemplated, the individual should be asked to identify qualifications, interests, and willingness to accept a reassignment outside the local commuting area and to accept a downgrade if no vacant positions are identified at the same grade.

4.13 Granting the Reasonable Accommodation Request

Upon request for reasonable accommodation, the decision maker will contact the OPDIV Reasonable Accommodation Designee of such requests and coordinate the processing of 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. Since the HHS OPDIVs are required to track the processing of reasonable accommodation requests, disposition of each request should be monitored and information provided to the appropriate individual responsible for collecting such information. (See Section 4.6 “Information Tracking and Reporting”)

4.14 Reasonable Accommodations Agreement

1. Once an accommodation has been approved, the Reasonable Accommodation Designee 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:
 - a. 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).
 - b. Conversely, a disability may improve to the point that an approved accommodation can be ameliorated or removed.
 - c. Once an accommodation has been approved and a Reasonable Accommodation Agreement entered into, if requested, the Reasonable Accommodation 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.

2. Such an agreement should contain the following:
 - a. The accommodation approved;
 - b. The responsibilities and expectations of both parties; and
 - c. Need for periodic evaluations/review, if applicable.
3. Once a permanent (long-term) medically stable 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.

4.15 Denial of the Reasonable Accommodation Request

1. The decision maker must consult with the OPDIV Reasonable Accommodation Designee before moving ahead with the decision to deny a request.
2. As soon as the decision maker decides that a request for reasonable accommodation should be denied, s/he must complete the "Denial of Reasonable Accommodation Request" (Appendix D), and give the completed form to the individual requesting the accommodation. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial.
3. When the management official has denied a specific requested accommodation, but offered to make a different one in its place which was not agreed to during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the management official believes that the chosen accommodation will be effective.
4. 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, or example, *why* the accommodation would not be effective or *why* it would result in undue hardship):

- a. The requested accommodation would not be effective.
 - b. Providing the requested accommodation would result in undue hardship. Before reaching this determination, the management official must have explored whether other effective accommodation options exist that would *not* impose undue hardship and therefore can be provided. A determination of undue hardship means that the HHS OPDIV finds a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of the OPDIV's operations. When evaluating budgetary or administrative concerns to determine if undue hardship exists, HHS and its OPDIV 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.*" Oct 17, 2002 (See Section VIII G, also available on the EEOC Internet Web Site <http://www.eeoc.gov/policy/docs/accomodation.html>).
 - c. Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
 - d. The requested accommodation would require the removal of an essential function.
 - e. The requested accommodation would require the lowering of a performance or production standard.
 - f. The failure by the employee to provide appropriate documentation or cooperate with the management official's efforts to obtain necessary information to address the request for reasonable accommodation.
5. 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 HHS procedures for appeal of a denial of reasonable accommodation available for informal dispute resolution.

4.16 Appeal of Denial of Reasonable Accommodation - Reconsideration

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

- a. 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 **five 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 **five business days**.
- b. At any point in this process, the individual may also contact the Alternative Dispute Resolution Office and initiate the Informal Mediation Process.
- c. 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.

4.17 Information Tracking and Reporting

1. To enable HHS to keep accurate records regarding requests for accommodation, the decision maker who receives the request must follow up an oral request either by requesting the employee to complete the "Confirmation of Request for Reasonable Accommodation" form or otherwise confirming the request in writing (including by e-mail) to the OPDIV Reasonable Accommodation Designee. However, if the employee refuses to do so, the request must still be responded to through the normal procedures. At this point, the decision maker may be asked to provide as much information as possible that would have been provided through the form to the Reasonable Accommodation Designee.
2. For applicants seeking a reasonable accommodation, the Human Resources Management Specialist handling the request must give them the "Confirmation of Request for Reasonable Accommodation" form to complete.
3. If an individual with a disability requires assistance with this requirement, the staff member receiving the request will provide that assistance. Decisions regarding a request for reasonable accommodation will be made by the employee's immediate supervisor or other designated management official within the organization.

4. While the written confirmation should be made as soon as possible following the request, it is not a requirement for the request itself. The decision maker will begin processing the request as soon as it is made, whether or not written confirmation has been provided.
5. 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 and readers, etc). The written form is required only for the first request although, of course, appropriate notice must be given each time the accommodation is needed.
6. The management official will complete the “Reasonable Accommodation Information Tracking” form (Appendix E) and submit it to the OPDIV Reasonable Accommodation Designee within **ten business days** of the decision. The management official should attach to the form copies of all information, including medical information s/he received as part of processing the request.
7. The OPDIV Reasonable Accommodation Designee will maintain the records for the length of the employee’s tenure with HHS or five years.
8. The OPDIV Reasonable Accommodation Designee will prepare an annual report, to be made available to all employees.
9. This annual report will also be provided to the ODME Diversity Management Division with the EEOC Federal Agency Annual EEO Program Status Report: Special Program Plan for the Recruitment, Hiring, and Advancement of Individuals with Targeted Disabilities. The report will contain the following information, presented in the aggregate:
 - a. the number of reasonable accommodations, by type, that were requested in the application process and whether these requests were granted or denied;
 - b. the jobs (occupational series, grade level, and agency component) for which reasonable accommodation has been requested;
 - c. the types of reasonable accommodation that have been requested for each of those jobs;
 - d. the number of reasonable accommodations, by type, for each job that were approved, and the number of accommodations, by type, that were denied;
 - e. 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;

- f. the reasons for denial of requests for reasonable accommodation;
 - g. the amount of time taken to process each request for reasonable accommodation; and
 - h. the sources of technical assistance that were consulted in trying to possible reasonable accommodations.
10. In addition, the report will provide a qualitative assessment of the HHS and its OPDIVs' reasonable accommodation policies and procedures, including recommendations for improvement.

4.18 Relation of Procedures to Statutory and Collective Bargaining Claims

1. 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.
2. Each HHS OPDIV should have their procedures reviewed by their respective Union organizations.
3. An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation **must:**
 - a. For an EEO complaint: contact an EEO Counselor in the HHS OPDIV's Equal Employment Office within 45 days from the date of receipt of the written "Denial of Reasonable Accommodation Request" or reconsidered denial;
 - b. For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or
 - c. Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. § 1201.3.

4. If a member of any HHS or HHS OPDIV Equal Employment Opportunity Office 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.

4.19 Provision of Accommodation – Funding

All HHS OPDIVs shall identify in their reasonable accommodation procedures the source of funding for reasonable accommodation. The reasonable accommodation procedures shall also designate who to contact concerning funding.

4.20 Inquiries

Any person wanting further information concerning these procedures may contact the HHS Diversity Management Division in ODME.

4.21 Distribution

The HHS reasonable accommodation procedures shall be posted on the HHS web site. Copies of HHS OPDIV procedures shall be distributed to their respective OPDIV employees after issuance and annually thereafter. Procedures shall be available in EEO and HHS Human Resources offices. They 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.

4.22 References

- A. The Rehabilitation Act of 1973, as amended
- B. The Americans with Disabilities Act of 1990
- C. 29 CFR 1614, Federal Sector Equal Employment Opportunity
- D. 29 CFR 1630, Regulations to Implement the EEO Provisions of the Americans with Disabilities Act
- E. 5 CFR 339, Medical Qualification Determinations
See www.eeoc.gov/policy/docs/accommodation.html re F-I.
- F. EEOC Enforcement Guidance on Preemployment Disability-Related Questions and Medical Examinations, October 1995
- G. EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, October 2002
- H. EEOC Enforcement Guidance on the Americans with Disabilities and Psychiatric Disabilities, March, 1997
- I. EEOC Disability-Related Inquiries and Medical Examinations of Employees Under the ADA, July 2000

APPENDIX A

Readers, Interpreters and Other Personal Assistants

HHS and its OPDIVs 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) ["I" is lower case, double "L"]. Persons with disabilities hired as readers, interpreters, or assistants may also be hired under the 213.3102 (u) authority.

Sign Language Interpreters

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 HHS OPDIV office designated to provide interpreting services. Please check to see if a sign language 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.

A Qualified Sign Language Interpreter is one who is fluent in sign communication [be it American Sign Language, PSE, or manually coded English] to the extent that the deaf/hard of hearing employee can fully participate in any discussion, meeting or event in the workplace; and conversely, that any hearing person can fully understand the Sign-to-English spoken communication the deaf person expresses. This communication must be conveyed effectively, accurately, and impartially, through the use of any necessary specialized vocabulary.

2. **WORK EVENTS OUTSIDE THE WORKPLACE.** HHS will provide an interpreter for an employee who is deaf or hard of hearing who, as part of his/her job, attends a meeting or event outside 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 HHS OPDIV will provide interpreting services, however, if the sponsoring agency fails to do so.

When an employee goes to a meeting, conference, or training program outside the workplace, HHS OPDIVs will assess whether it would be effective to send staff or contract interpreter(s). If the OPDIV determines it would be more effective to send staff interpreter(s) and provides transportation for or reimburse the travel cost of the employee, then the office of the employee with the disability must also provide or reimburse travel costs for the staff interpreter(s). Similarly, if (agency) pays for meals for the employee who is deaf or hard of hearing while attending these types of events, then the office of the employee with the disability must also pay for the meals for the staff interpreter(s).

3. **SPECIAL EVENTS TO WHICH STAFF INTERPRETERS ARE INVITED:** Interpreting services are routinely request for special events during official government time and which might be attend by employees who are deaf or hard of hearing. In HHS OPDIVs that have staff interpreters who express the desire to attend these “all-employee” functions in an off-duty capacity, arrangements will be made by the HHS OPDIV for contract interpreting services.
4. **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.

APPENDIX B

EXAMPLES OF REASONABLE ACCOMMODATION

The types of actions that can be taken in connection with reasonable accommodation can best be determined on a case-by-case basis, taking into consideration the employee, his/her specific disability and the resulting limitations, the essential duties of the particular job, the work environment, and the feasibility of the proposed accommodation. Reasonable accommodation may include, but is not limited to, the following:

1. Modification of the Worksite

Facilities should be made readily accessible. Modifications may include, but are not limited to: arranging files or shelves for accessibility; raising or lowering equipment and work surfaces to provide comfortable working heights; installing special holding devices on seats, desks, or machines; using Braille labels or other tactile cues for identification purposes; and installing special equipment such as telephone amplifiers.

2. Assistive Devices

HHS OPDIVs are authorized to purchase equipment or assistive devices if they are necessary to fulfill the official business of the agency. Equipment or assistive devices may not be provided if they are of a personal nature such as eyeglasses or hearing aids. In determining whether the purchase of equipment and assistive devices should be authorized, consideration should be given as to whether the device will enable the person with a disability to perform tasks he/she would otherwise be unable to carry out, and whether the major benefit would be an increase in the quantity, quality, or efficiency of the employee's work.

3. Readers, Interpreters, and Personal Assistants

Reader- It may be a reasonable accommodation to provide a reader for a qualified individual with a disability, if this would not impose an undue hardship. In some job situations, a reader may be the most effective and efficient accommodation, but in other situations, equipment or an assistive device may enable a visually impaired individual to read independently. A reader may be an employee who performs other duties.

Qualified Sign Language Interpreter – See definition under Appendix A.

Captioning - The process of converting the audio portion of a video production or live event onto text which is displayed on a television or film screen. The captions are typically white upper-case against a black background and, when pre-recorded, displayed live as the show is broadcast. They may also be permanently visible (open-caption) or viewable only through a decoder (closed-caption) attached to or built in to the television.

Computer-Aided Real-time Translation (CART) - A form of captioning which provides a word-for-word transcription of what is being said. It may be read on a laptop computer or projected on to screen television or, for a large audience, on to a full-size screen.

Personal Assistant - Providing a personal assistant on an "as-needed" basis may be a reasonable accommodation for a person with a disability. If an individual is so severely disabled that he/she needs assistance arranging work materials, or transferring from a wheelchair to a taxi or other modes of transportation, this assistance may be provided by a personal assistant.

4. Flexible Leave Policies

HHS OPDIVs have authority to adopt flexible leave policies, subject to appropriate laws and regulations that will accommodate employees with disabilities.

5. Adjusting Work Schedules

HHS OPDIVs are encouraged to approve flexible or altered work schedules for employees who cannot meet the requirements of the regularly scheduled tour of duty for their position for reasons associated with their disability (examples include requirement for medical treatment, need for rest periods, or difficulty getting to work).

6. Restructuring Jobs

Job restructuring is one of the major means by which an employee with a disability can be accommodated. Supervisors should consult with the Human Resources Office, Selective Placement Coordinators, EEO Officers, and/or specialists in the fields of vocational rehabilitation and medicine, to discuss changes that can be made to enable the person with a disability to perform the job.

7. Training

The HHS OPDIVs employing a person with a disability will accommodate and assume the costs incurred when that employee attends training. The HHS OPDIVs will also arrange reasonable accommodation needs for approved courses, whether held at the Agency or other locations, including arrangement of transportation to and from the training site.

APPENDIX C

SELECTED REASONABLE ACCOMMODATION RESOURCES

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.

CAP (Department of Defense)

(703) 681-8813 (Voice) (703) 681-0881 (TTY)
<http://www.tricare.osd.mil/cap/requests>
<http://www.HHS.cap@hhs.gov>

CAP “Computer/Electronic Accommodations Program”, the Department of Defense (DoD) established CAP in 1990 to eliminate employment barriers for its employees with disabilities. Providing real solutions for real needs to ensure people with disabilities have equal access to the information environment and opportunities in the Federal Government are the mission of the Computer/Electronic Accommodations Program (CAP). HHS entered into an agreement with CAP to provide free computer/electronic equipment to employees with disabilities.

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.

APPENDIX D

HHS REASONABLE ACCOMMODATION FORMS

1. (HHS Form 557) Confirmation of Request for Reasonable Accommodation



Adobe Acrobat 7.0
Document

2. (HHS Form 557a) Denial of Reasonable Accommodation Request



Adobe Acrobat 7.0
Document

3. (HHS Form 577b) Reasonable Accommodation Information Tracking



reasonable
accommodation infor

4. Standard Form 256, Self Identification of Handicap



Adobe Acrobat 7.0
Document

Chapter 5 – Diversity and Special Emphasis Observances Policy

Chapter 5 - DIVERSITY AND SPECIAL EMPHASIS OBSERVANCES POLICY

5.1 PURPOSE

This policy establishes guidance for planning, conducting, and improving Diversity and Special Emphasis Observances for the Department of Health and Human Services (HHS).

5.2 SCOPE

This policy extends to Diversity and Special Emphasis Observances sponsored by the Assistant Secretary of Administration and Management, Office of Diversity Management and Equal Employment Opportunity (ASAM/ODME) and all HHS OPDIVs.

5.3 POLICY

Recognizing the HHS workforce as the foundation for our strength as an organization, HHS fully supports Equal Employment Opportunity (EEO) policies and objectives that will enhance the quality of work life and workforce productivity. Diversity and Special Emphasis Observances are management programs designed to embrace diversity and inclusion by recognizing historical racial, gender, and social disparities, as well as celebrate the accomplishments and contributions of minorities, women, and persons with disabilities in various organizational components throughout HHS.

This policy is designed to:

- a. Provide Operating Divisions (OPDIVs) within HHS with guidance to plan, sponsor, coordinate, and evaluate programs for the purposes of educating and promoting a greater understanding and awareness of diversity
- b. Establish a mechanism to evaluate processes and outcomes to facilitate collaboration among sponsors to promote continuous program improvement efforts.

5.4 AUTHORITY

- Title VII of the Civil Rights Act of 1964, as amended
- Rehabilitation Act of 1973
- Title 29 Code of Federal Regulations Part 1614
- Office of Personnel Management Guidance on Special Emphasis Programs
- EEOC Management Directives 110 and 715
- HHS Diversity Management Plan

5.5 RESPONSIBILITIES

5.5.1 ODME/ASAM

1. Develop departmental policy for Diversity and Special Emphasis Observances
2. Conduct program evaluation and analysis
3. Complete an annual activity report by calendar year

5.5.2 OPDIV HEADS. Provide leadership and organizational resources to plan, coordinate, and conduct Diversity and Special Emphasis Observances within their OPDIV. Through personal leadership and involvement, proactively support and promote the Department's Equal Employment Opportunity (EEO) and Diversity management programs to achieve a more diverse workforce and promote a workplace free of discrimination.

5.5.3 Diversity and Special Emphasis Observance Organizers

1. Plan, coordinate, and manage Diversity and Special Emphasis Observances
2. Collect post-event customer service feedback data
3. Report feedback data quarterly on Key Performance Indicator (KPI) quarterly report
4. Coordinate activities with OPDIV Heads to facilitate support from senior leadership

GUIDANCE ON DIVERSITY AND SPECIAL EMPHASIS OBSERVANCES

- A. **Tailor Activity to Workforce:** When planning Diversity and Special Emphasis Observances, tailor activities to the needs of the workforce. OPDIVs are not limited to Title VII groups and persons with disabilities when planning observances. OPDIV Heads may approve additional events, such as observances that mark the birth of Martin Luther King, Jr. or the Holocaust Days of Remembrance, etc.
- B. **At a minimum, OPDIVs should use the following calendar, and Exhibit A, as a planning guide for Diversity and Special Emphasis Observances:**
- February: African American Heritage Month
 - March: National Women’s History Month
 - May: National Asian American/Pacific Islander Heritage Month
 - September: National Hispanic Heritage Month (September 15 – October 15)
 - October: National Disability Awareness Month
 - November: National American Indian/Alaskan Native Heritage Month
- C. **Coordinate and Collaborate:** OPDIVs may sponsor Diversity and Special Emphasis Observances within their own organizations; however, collaboration among OPDIVs and ASAM/ODME is strongly encouraged to benefit from the talents of their employees and to benchmark successful events
- D. **Involve Leadership:** Leadership commitment and participation are key elements in successfully planning and hosting Diversity and Special Emphasis Observances. Organizers must coordinate activities with their leadership to maximize marketing and attendance support. Managers and supervisors must leverage work center requirements with the goal of promoting maximum participation for observances. It is the responsibility of managers and supervisors to afford employees the opportunity to participate and encourage attendance at Diversity and Special Emphasis Observances, when their attendance does not conflict with mission requirements.

5.6 GUIDANCE ON PLANNING DIVERSITY AND SPECIAL EMPHASIS OBSERVANCES

- A. **Develop a Detailed Plan:** A well planned Diversity and Special Emphasis Observance promotes the overall diversity goals and objectives of HHS. OPDIVs should develop an organized and structured approach to planning events, which include at a minimum, development of a timeline of key deliverables and milestones, assignment of a team or individual responsible for the deliverables and milestones, projected costs of the project, and an evaluation of the project's processes and outcomes. Applying principles of project management are an excellent way for OPDIVs to develop Diversity and Special Emphasis Observances – see Exhibit B.
- B. **Educate Participants About the Observance.** When planning Diversity and Special Emphasis Observances, ensure they are educational in nature, demonstrate positive contributions in recognition of the subject event, and conducted within the targeted budget. Consultation with HHS University and the OPDIV's workforce development and training offices, when developing educational objectives and outcomes, is strongly encouraged.
- C. Examples of appropriate educational objectives for Diversity and Special Emphasis Observances are:
1. *Participants gain an awareness of the group(s) being emphasized at the event*
 2. *Participants demonstrate ability to identify one or more organizational benefits of diversity*
 3. *Participants demonstrate an understanding of how diversity impacts organizational performance*
 4. *Receive Prior Approval of Guest Speakers:* Guest speakers are also an excellent source for Diversity and Special Emphasis Observances. However, it is important organizers coordinate requests for and approval of guest speakers with the lead OPDIV's Head. Planners are strongly advised to contact the Public Affairs Office to solicit their coordination and or recommendations regarding the proposed speakers. Guest speakers should promote diversity in a positive manner by highlighting the event's theme and the overall value of diversity. Final approval of guest speakers for Diversity and Special Emphasis Observances rests with the lead OPDIV's Head, unless otherwise further delegated to the OPDIV EEO Director.

5. *Develop a Marketing Strategy:* Organizers should develop an aggressive marketing strategy during the planning phase, with the goal of reaching 100 percent of their workforce. Organizers will market observances by distributing memoranda to employees about the activity and inviting employees to attend; disseminating the associated Presidential Proclamation commemoration, when available; posters, flyers, etc., to maximize attendance. Marketing of events should begin well enough in advance to allow for maximum attendance and provide supervisors and managers with enough lead-time to leverage mission needs with support for the events. Use of physical and electronic bulletin boards, including web sites and electronic mail are excellent sources for marketing.
6. *Extend Special Invitations:* Organizers should extend special event invitations to the Secretary, Deputy Secretary, Assistant Secretaries, Chief of Staff, OPDIV/STAFFDIV heads, and ASAM/ODME. For events planned at the Southwest Complex or in the Hubert H. Humphrey Building, coordinate invitations through ASAM/ODME. Invitations may also be extended to the HHS recognized employee organizations, special interest organizations, HHS partnership organizations, and/or other Federal agencies. All announcements of HHS-sponsored activities to the public and to the HHS workforce must include interpretive services language and the reasonable accommodation statement, including a contact person for requesting reasonable accommodation for persons with disabilities.
7. *Prepare an Agenda:* Organizers should carefully plan the agenda for Diversity and Special Emphasis Observances to meet the desired outcome of the event and support mission requirements. To encourage maximum participation and support, organizers must plan and schedule the events appropriately, in terms of program length. In general, observances that are one hour in length are more desirable; however, those that include cultural entertainment, such as food sampling may require additional time.

5.7 GUIDANCE ON EVALUATING DIVERSITY AND SPECIAL EMPHASIS OBSERVANCES

Evaluation of Diversity and Special Emphasis Observances is an important step in identifying opportunities for improvement. Sponsors of events are encouraged to collect KPIs for Special Emphasis Observances, in the form of a customer feedback survey.

Exhibit C is a feedback tool to assist organizers in collecting relevant data. Sponsors and organizers may use a different tool to collect and measure customer feedback; however, to ensure measurement of reportable KPIs, incorporate the questions from the attached tool with the locally developed instrument. In addition, ASAM/ODME will periodically collect lessons learned data for the purpose of collaboration and continuous program improvement.

5.8 RESPONSIBLE OFFICE

Any questions or comments regarding the contents of this policy should be directed to the Director, Office of Diversity Management and EEO, HHS/ASAM.

Chapter 6 – EEO and Diversity Policy

Chapter 6 - EEO AND DIVERSITY TRAINING POLICY

6.1 PURPOSE

This policy establishes mandatory training requirements for all employees assigned to the Department of Health and Human Services (HHS).

6.2 SCOPE

This policy extends to EEO and Diversity Management training which is prescribed by the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Assistant Secretary for Administration and Management in his/her capacity as the HHS Director of Equal Employment Opportunity.

6.3 POLICY

HHS employees and supervisors/managers are required to receive training as specified in this manual.

6.4 AUTHORITY

- Title VII of the Civil Rights Act of 1964, as amended
- Rehabilitation Act of 1973
- Age Discrimination in Employment Act (ADEA) of 1967
- Title 29 Code of Federal Regulations Part 1614
- Office of Personnel Management Guidance on NoFEAR training
- EEOC Management Directives 110 and 715

6.5 RESPONSIBILITIES

6.5.1 ODME/ASAM

1. Develop Departmental policy for EEO and Diversity training
2. Evaluate OPDIV training programs to ensure consistency and standardization of desired learning outcomes
3. Advocate for needed resources to enhance the training capability of the Department

6.5.2 OPDIV HEADS

- A. Provide leadership and organizational resources to ensure all eligible employees receive the required training.
- B. Plan, coordinate, and conduct EEO and Diversity training within their OPDIV.

6.6 REQUIRED TRAINING

6.6.1 Employee and Supervisor/Management Training

- A. NoFEAR Training:
 - 1. All new employees must complete NoFEAR training within 90 days of assignment
 - 2. All employees must complete refresher training every 2 years before the anniversary of their initial training.
- B. Reasonable Accommodation, Harassment (Sexual & Non-Sexual), Alternative Dispute Resolution, and Diversity Training
 - 1. All new employees must complete initial training within the first year of assignment
 - 2. All employees must complete refresher training in each of these areas every 3 years.

6.6.2 EEO Counselor Training

OPDIVs will ensure all EEO Counselors complete the 32 hour Basic Counselor Training Course and the requisite 8 hour refresher training.

6.6.3 EEO Practitioner Training

OPDIVs will ensure all EEO Practitioners receive training in the following areas:

- A. EEO Practitioner Update:** This course will provide an update on recent developments in the federal sector EEO which will affect the administration of EEO programs. Trainers should use case studies, and practical scenarios to assist participants in understanding concepts and issues. Upon completing this course the employee should be aware of the latest developments in federal sector EEO law, regulations and policy, be able to apply case law to facts to reach procedural and merit decisions, and have increased knowledge and skills in the performance of EEO job responsibilities.

B. Developing Acceptance/Dismissal Letters: This course will provide EEO Specialists with an understanding of how to accept and dismiss claims of discrimination raised in formal EEO complaints. The course is designed to serve as a refresher and to provide guidance to newly-hired EEO Specialists in order to address situations with which they are inexperienced. Specifically, the course will focus upon the regulatory criteria for accepting or dismissing claims for further processing. Techniques in framing claims and applying regulatory prerequisites will also be shared to ensure the acceptance/dismissal letter properly defines the focus/scope of the investigation for further processing and/or procedural grounds for dismissal. Upon completing this course, the practitioner should understand relevant EEO laws, regulations and procedures, and be able to identify the bases for filing EEO complaints, determine whether a formal complaint has sufficient information to determine whether to accept or dismiss a claim, apply regulatory prerequisites for procedural dismissal of formal complaints, and identify problems/pitfalls in drafting the highest quality Accept/Dismiss correspondence.

C. Drafting Final Agency Decisions: This course is designed to equip the learner with the fundamentals of how to prepare final agency decisions (FADs) concerning complaints of discrimination utilizing well-established methodologies for review, analyses and remedial relief determinations. Upon completion of this course, the practitioner should be able to identify the theories and basis of discrimination, burdens and standards of proof, identify prima facie case elements relative to specific bases, organize notes and/or outline investigative report utilizing techniques which will demonstrate recognition of relevant testimony, analyze contents of the investigative report to identify prima facie case, rebuttal or pretext and to determine whether complainant's claims have been substantiated, formulate remedial relief by matching action to harm when there is a finding of discrimination, and draft well-written and concise final agency decision document in conformance with procedural and substantive requirements as outlined in complaint processing regulations.

6.6.4 Training Waivers

The Department has worked with the OPDIVs and HHS-University to develop standardized training modules which meet the basic employee and supervisory training requirements. OPDIVs are highly encouraged to use these instructional materials. However, to afford OPDIVs maximum flexibility to train their employees and meet mission requirements, OPDIVs may wish to pursue alternative means of instruction (contract instructors, web-based instruction, etc). In such cases, the OPDIV will submit their training lesson plans and course materials to ODME for review to ensure the desired learning objectives are met. Once approved, ODME will issue the OPDIV a training waiver.

In addition, collaboration among OPDIVs is highly encouraged. OPDIVs may sponsor training opportunities within their own organizations, but wish to collaborate with other OPDIVs to benefit from consolidated training or cost saving opportunities.

6.7 LEARNING MANAGEMENT SYSTEM

All training will be documented via the HHS-University Learning Management System. OPDIVs will contact HHS-University to coordinate system integration, course development, employee registration, etc. Only in extreme situations will OPDIVs be allowed to deviate from the LMS process. (NOTE: HHS is required to routinely report formal training to OPM. The LMS system is the primary Departmental tool to capture this data. In addition, OPDIV training statistics are derived from the LMS system and reported via Key Performance Indicators with regard to Performance Management.

6.8 RESPONSIBLE OFFICE

Any questions or comments regarding the contents of this policy should be directed to the Director, Office of Diversity Management and EEO, HHS/ASAM.

Index

- adaptive equipment, 76, 80, 82
Adjudication, 2
Administrative Chain (AC), 2, 24
ADR, 2, 12, 14, 15, 19, 23, 25, 26, 27, 28, 29, 30, 31, 56, 58
affidavit, 63, 64
affirmative employment, 7
African American Heritage Month, 93
Age Discrimination in Employment Act of 1967, 5, 7
Agency, **ii, iii, 14, 17, 23, 25, 28, 30, 31, 32, 33, 35, 36, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 57, 59, 61, 68, 69, 73, 99**
Agency officials, 31
Aggrieved Party, 11
AJ, 24, 32, 33, 35, 36, 40, 45, 46, 51, 52, 53, 54, 61, 68, 69
Allegations of Discrimination, **i, ii, 23, 24, 55, 56**
alleged discrimination, **6, 13, 34**
Alternative Dispute Resolution, **i, 2, 4, 25, 27, 58, 98**
ASAM Diversity Management and EEO Council, **9**
Assistant Secretary for Administration and Management, **i, 1, 6, 7, 9, 72, 97**
attorney's fees, 35, 36
attorneys fees, **7**
- bargaining unit employee, 40
- chain-of-command, 24
Civil Action, **ii, iii, 40, 47, 70**
civilian applicants, 25
civilian employees, **8**
Civilian Personnel Records, 21, 47
class complaint, 22, 23, 50, 51, 52, 53, 54
Collective Bargaining Agreement, 38, 90
Commissioned Corps, **i, ii, 2, 3, 7, 8, 24, 25, 27, 56, 57**
complaint counseling, **7, 14, 16, 22, 23**
Complaint of Discrimination, 3, 58
Complaint Process, 3
confidentiality, 20, 31, 39, 82, 85
Confirmation of Request, 71, 82
Conflict of Interest Complaint, 3
CONFLICT OF INTEREST COMPLAINTS, **65**
Conflicts of Position or Interest, **ii, 57**
consolidation of complaints, 34
Counselor, **i, 3, 12, 13, 14, 15, 16, 17, 18, 19,**
20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 37, 48, 50, 56, 58, 60, 66
Counselor's Report, 15, 16, 17, 18, 19, 20, 26, 28, 29
custom case number, 21
- Delegation of Authority, **1**
Denial of reasonable accommodation, 72
Departmental EEO official, **1**
Director of Equal Employment Opportunity, **6, 7, 97**
Disability Program Manager, 71, 72, 75, 76, 77, 78, 79, 81, 82, 83, 84, 86, 88
Diversity Management, **i, 1, 2, 4, 8, 9, 10, 25, 57, 65, 72, 91, 92, 96, 97, 100**
- EEO Compliance Practitioner, 4
EEO Investigations, **62, 63, 65**
EEO Investigator, 38, 59
EEOC, **ii, iii, 4, 8, 9, 11, 12, 21, 23, 24, 27, 29, 32, 33, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 55, 58, 59, 61, 65, 67, 68, 69, 70, 71, 72, 73, 83, 85, 87**
Essential Functions, 74
extension of counseling, 16
- FAD, **11, 33, 39, 41, 42, 43, 49, 53, 55, 57, 59, 60, 61, 67, 68, 69, 70**
final agency decisions, **7, 11, 99**
Final Interview, **i, 15, 16, 19, 20, 58**
findings and recommendations, 52
first aid and safety, 85
Formal Complaint, **i, ii, 20, 29, 31, 47, 59, 60**
- Guest Speakers, 94
- hearing, **3, 7, 8, 24, 32, 33, 34, 35, 36, 39, 40, 41, 49, 50, 52, 55, 59, 61, 68, 69**
- iComplaints*, **i, 4, 20, 21, 22, 24, 27, 29, 30, 31, 42, 43, 44, 45, 46, 57, 58**
individual relief, 52, 53
Initial Counseling, **i, 14**
Inter-Agency Agreements, 28
Investigations, **ii, 4, 37, 39, 58, 60, 61, 62, 63, 64, 65, 66**
- LEARNING MANAGEMENT SYSTEM, 100
letter of dismissal, 34
Liaison Officer, 25
- management, **2, 3, 5, 7, 8, 9, 11, 12, 13, 15, 27, 28, 30, 33, 37, 39, 59, 86, 91, 94**
Management Directive 110, 1, 4, 11

Marketing Strategy, 94
mediation, **2, 4, 27, 28, 29, 30, 31, 39**
Mediation, i, 2, 4, 27, 30
Merit Systems Protection Board, 47, 57, 90
minorities, **1, 91**
mixed case, 48, 49, 66, 67
MSPB, 48, 49, 59, 66, 67, 87, 88, 90

National American Indian/Alaskan Native Heritage Month, 93
National Asian American/Pacific Islander Heritage Month, 93
National Disability Awareness Month, 93
National Hispanic Heritage Month, 93
National Women's History Month, 93
NoFEAR, 97, 98
Notice of Right to File Formal, 15, 17, 19, 21, 23, 50

offer of resolution, 35, 36
Office of Federal Operations, **8, 33, 61, 70**
Office of Personnel Management, 92, 97
Office of the General Counsel, 38, 40, 58
Official Time, **i, 12**
OPDIV EEO office, 13, 20, 23, 25, 31, 33, 34, 35, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 55, 56, 57
outreach, **1, 7**

personnel policies, 23
persons with disabilities, **1, 89, 91, 93, 95**
Pre-Complaint, **i, 13, 16, 21, 22, 27**
Presidential Proclamation, 95
Privacy Act, 39, 85
probationary period, 48
program evaluation, **1, 92**
PSC Contract Manager, 35, 38, 62

Qualified Individual with a Disability, 74

Reasonable Accommodation, iii, 4, 72, 73, 74, 75, 76, 77, 85, 86, 87, 90, 98
Reassignment, iii, 74, 86
Reconsideration of Appellate Decisions, **ii, 46**
Record Keeping, iii, 82
Record Retention, **ii, 47**
Rehabilitation Act of 1973, **5, 91, 97**
rejection of the offer, 35, 36
Report of Investigation (ROI), 38, 59, 65
Requests for Medical Information, iii, 82
right to appeal, 32, 52, 54, 55, 56, 57, 69, 70
right to privacy, **7**
rights and responsibilities, 14, 23, 74
RMO, 3, 16, 28, 30, 57, 59

settlement, **2, 5, 7, 8, 15, 17, 18, 23, 26, 28, 29, 44, 45, 46, 47, 54, 58**
Settlement, i, 5, 17, 18, 44, 54
Settlement Officials, 5
settlement review board, **8**
Sexual Orientation, **i, ii, 23, 24, 55**
Special Emphasis Observances, **iii, iv, 91, 92, 93, 94, 95**
Summary Report, 65, 68
supplemental investigation, 35, 39, 68
Surgeon General's, 56

The Interactive Process, iii, 81
the letter of acceptance, 33
Title 29, **3, 7, 8, 11, 59, 92, 97**
Title 29 Code of Federal Regulations Part 1614, **3, 8, 59, 92, 97**
Title VII of the Civil Rights Act of 1964, **5, 24, 91, 97**
TRAINING, 97, 98

U.S. District Court, **iii, 57, 70**
Undue Hardship, 73, 74, 87
union, **6, 38, 40, 87, 88**
union representation, 38

veterans, **1**

