



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

1.20.2

JUNE 11, 2021

EFFECTIVE DATE

(06-11-2021)

PURPOSE

- (1) This transmits revised IRM 1.20.2, *Equity, Diversity and Inclusion, Providing Reasonable Accommodation for Individuals with Disabilities*.

MATERIAL CHANGES

- (1) 1.20.2.2.4 Revised to clarify that if an accommodation can be provided in less than the maximum amount of time permitted it must be and that failure to do so might result in a finding that the agency violated applicable law, the agency will not be expected to adhere to its usual timelines if an individual's health professional fails to provide needed documentation in a timely manner and the status of a pending request may be ascertained by contacting the servicing Reasonable Accommodation Coordinator.
- (2) 1.20.2.2.4.1 Changed processing timeframe from 15 to 20 workdays, and modified to reflect that the processing timeframe is not tolled while a determination is made as to whether medical documentation is needed.
- (3) 1.20.2.5 Eliminated provision authorizing a Deciding Official up to five days to provide written notice of a denial decision.
- (4) Editorial changes made throughout the IRM for clarity. Reviewed and updated grammar, titles, website addresses, legal references and IRM references.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 1.20.2 dated July 7, 2020

AUDIENCE

All Divisions and Functions

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1.20.2

Providing Reasonable Accommodation for Individuals with Disabilities

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1.20.2.1
(06-11-2021)
Program Scope and Objectives

- (1) **Purpose:** The following policies and procedures apply to all divisions, functions, offices, employees and applicants for employment with the Internal Revenue Service. These procedures supplement the below-listed authorities (IRM 1.20.2.1.2).
- (2) **Audience:** These provisions are applicable Servicewide to persons who request accommodations, managers/supervisors determining whether to grant accommodations as well as Reasonable Accommodation Coordinators facilitating the accommodation processes.
- (3) **Policy Owner:** The Chief Diversity Officer has overall responsibility for the Reasonable Accommodation Program.
- (4) **Program Owner:** The Disability Services Division of the Office of Equity, Diversity & Inclusion is primarily responsible for operating the reasonable accommodation program.

1.20.2.1.1
(06-11-2021)
Background

- (1) The Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in federal employment, and requires federal employers to provide reasonable accommodations to employees and applicants with disabilities unless doing so would impose undue hardship.
- (2) The Americans with Disabilities Act Amendments Act (ADAAA) defines a person with a “disability” as a person who:
 - has a physical or mental impairment that substantially limits a major life activity or bodily function
 - has a record of such an impairment, or
 - is regarded as having such an impairment

Note: The applicable laws and regulations provide that employers are not required to provide reasonable accommodations to employees and applicants who have protected status only due to being regarded as having a disability.

1.20.2.1.2
(06-11-2021)
Authority

- (1) The following provisions implement the requirements set forth under Section 501 of the Rehabilitation Act of 1973 (29 C.F.R. §1614.203(d)(3)) and Executive Order 13164 by establishing requirements for processing requests for reasonable accommodations.

1.20.2.1.3
(06-30-2020)
Responsibilities

- (1) The IRS’s Reasonable Accommodation Policy P-1-47 provides that the Internal Revenue Service shall take positive and persistent actions to recruit, hire, develop, and advance persons with disabilities. The Service shall make reasonable accommodations for all qualified applicants or employees with physical or mental disabilities in accordance with law. The Service shall comply with all appropriate rules, regulations, and directives. Executives, managers, and supervisors shall create a positive work environment that will encourage employees with disabilities to maximize and reach their full potential.

1.20 Equal Employment Opportunity and Diversity

1.20.2.1.4
(06-11-2021)

Program Management and Review

- (1) The Chief Diversity Officer will annually evaluate the Agency's reasonable accommodation program. An effective reasonable accommodation program is part of a model EEO program. Program results must be included in the IRS's Equal Employment Opportunity Commission Management Directive 715 Report to the Department of the Treasury.

1.20.2.1.5
(06-11-2021)

Program Controls

- (1) The IRS's Equal Employment Opportunity Commission Management Directive 715 Report to the Department of the Treasury should include a discussion of the following:
 - a. Accessibility of the reasonable accommodation policy to employees and applicants with or without a disability, (e.g., posted on the Internet, Intranet, disseminated in employee handbooks, or available in alternative formats, such as Braille);
 - b. The specific reasonable accommodation requested, if any;
 - c. The job (occupational series, grade level, and agency component) sought by the requesting applicant or held by the requesting employee;
 - d. Whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment;
 - e. Whether the request was granted (which may include an accommodation different from the one requested) or denied;
 - f. The identity of the Deciding Official;
 - g. If denied, the basis for such denial; and
 - h. The number of days taken to process the request

1.20.2.1.6
(06-11-2021)

Terms/Definitions/ Acronyms

- (1) **Accessible** - Enter, operate, participate in, or use safely, independently and with dignity by a person with a disability (i.e., site, facility, work environment, service or program).
- (2) **Appeal Process** - Any voluntary mechanism through which an individual can request reconsideration of denial of reasonable accommodation, regardless of whether the person has started the EEO complaint process.
- (3) **Business Unit** - A major subdivision of the IRS.
- (4) **Commuting Area** - The geographic area that usually constitutes one area for employment purposes. This includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.
- (5) **Deciding Official** - The IRS official designated to identify possible accommodations and determine whether a requested accommodation shall be provided. There are three possible Deciding Officials: a human resources manager (for applicants only), an employee's immediate supervisor/manager, and a manager in the employee's chain of command.
- (6) **Denial** - Deciding Official/Manager makes an informed decision to deny the employee's specific reasonable accommodation and does not offer an alternative in its place, or an alternative accommodation is offered and declined by the employee.

- (7) **Disability** - For the purposes of providing a reasonable accommodation, “disability” is defined as a physical or mental impairment that substantially limits one or more of the major life activities/bodily functions or a record (or past history) of such an impairment.
- (8) **Essential Function** - Those job duties that are so fundamental to the position that the individual holds or desires that they 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 their ability to perform them. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.
- (9) **Episodic or Remission** - An impairment that is “episodic” or in “remission” is a disability if it would substantially limit a major life activity when active. Examples of impairments that are episodic or in remission include epilepsy, hypertension, multiple sclerosis, asthma, diabetes, major depression, bipolar disorder, schizophrenia, and cancer.
- (10) **Extenuating Circumstances** - Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation or situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation (e.g., identified software is not compatible with existing equipment).
- (11) **Federal Occupational Health** - Designated physician or health service provider under contract with the IRS to provide medical consultation in cases of an individual request for reasonable accommodation.
- (12) **Genetic Information** - As defined by the Genetic Information Nondiscrimination Act (GINA) of 2008, includes information concerning the manifestation of disease/disorder in family members “family medical history”, information about an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.
- (13) **Granted** - Deciding Official/Manager makes an informed decision to approve the employee’s specific reasonable accommodation request or an alternative accommodation which both the employee and manager believe will be effective.
- (14) **Head of Office** - As stated in the Internal Revenue Manual:
 - Commissioner of Internal Revenue
 - Deputy Commissioner, Services and Enforcement
 - Deputy Commissioner, Operations Support
 - Commissioner’s Office & Chief of Staff
 - Commissioner, Large Business and International Division
 - Commissioner, Small Business/Self-Employed Division
 - Commissioner, Tax Exempt and Government Entities Division
 - Commissioner, Wage and Investment Division

- Chief, Facilities Management & Security Services
 - Chief, Independent Office of Appeals
 - Chief, Communications and Liaison
 - Chief, Criminal Investigation
 - Chief, Diversity Officer
 - Chief, Financial Officer
 - Chief, Human Capital Office
 - Chief, Technology Officer
 - National Taxpayer Advocate
 - Director, Research, Applied Analytics and Statistics
 - Chief, Privacy, Governmental Liaison and Disclosure
 - Chief, Return Preparer Office
 - Chief, Online Services
 - Chief, Whistleblower Office
 - Chief, Risk Office
 - Chief, Procurement Office
 - Director, Office of Professional Responsibility
- (15) **Individual with a Disability** - For the purpose of providing a reasonable accommodation, an individual with a “disability” is defined as a person who has a physical or mental impairment that substantially limits one or more of that person’s major life activities or bodily functions, or who has a record of such an impairment.
- (16) **Interactive Process** - The process by which the individual requesting an accommodation and the Deciding Official discuss the request for accommodation, determine whether an accommodation will be provided, and examine potential alternative accommodations.
- (17) **Major Life Activity** - Basic activities that most people in the general population can perform with little or no difficulty, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, concentrating, thinking, communicating, learning, interacting with others and working. Major life activities also includes the operation of major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, circulatory, respiratory, endocrine, and reproductive functions.
- (18) **Physical or Mental Impairment** - Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- (19) **Post of Duty** - Official duty station that is defined as a building in which the IRS occupies space
- (20) **Qualified Individual** - An individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or seeks, and who, with or without reasonable accommodation, can perform the essential functions of such position.

- (21) **Reasonable Accommodation (RA)** - A change or adjustment that enables a qualified person with a disability to apply for a job, perform job duties, or enjoy benefits and privileges of employment. There are three categories of reasonable accommodations:
 - a. Modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job (such as, providing application forms in alternative formats like large print or Braille);
 - b. Modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job (such as, providing sign language interpreters); and
 - c. Modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment (such as, removing physical barriers in an organization's cafeteria)
- (22) **Reassignment** - Reasonable accommodation of last resort, 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 funded vacant positions and for employees who are qualified to fill the vacant position. Informing an employee that they may apply for or otherwise compete for a position does not satisfy the obligation of appropriate officials to review vacancies for positions which the employee is qualified. Appropriate officials should determine if there is another position at the same or lower grade which the employee can perform. If the employee is qualified for the position, they will be reassigned to the job and will not have to compete.
- (23) **Reasonable Accommodation Coordinator (RAC)** - EDI staff member with specialized knowledge of disability-related laws, regulations, directives, practices and procedures, who support and help administer the process for requesting, assessing and affording reasonable accommodations.
- (24) **Receiving Official** - IRS personnel designated to officially receive a request for reasonable accommodation from an employee or applicant (or an individual acting on their behalf), who will forward the request to the servicing Reasonable Accommodation Services office to process and monitor the request until it is closed.
- (25) **Regarded as** - An individual is "regarded as" having a disability if the agency takes a prohibited action based on an actual or perceived impairment that is not transitory (lasting or expected to last for six months or less) and minor.
- (26) **Request for Reasonable Accommodation** - 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. A reasonable accommodation request may be submitted orally or in writing, by the employee or applicant, or by someone associated with the employee or applicant.
- (27) **Requester** - A qualified employee or applicant for employment with a disability, or an individual acting on their behalf, who requests reasonable accommodation.
- (28) **Temporary Measures** - Accommodations that may be taken in extenuating circumstances.

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- (29) **Transitory** - An impairment with an actual or expected duration of 6 months or less.
- (30) **Undue Hardship** - An action requiring significant difficulty or expense. A determination of undue hardship should be based on several factors, including:
- the nature and cost of the accommodation needed
 - the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility
 - the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity)
 - the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer
 - the impact of the accommodation on the operation of the facility
- (31) **Vacant Position** - The position is available when the employee asks for reassignment as a reasonable accommodation, or the employer knows that the position will become available within a reasonable amount of time.

1.20.2.2 (06-11-2021) Requesting a Reasonable Accommodation

- (1) The reasonable accommodation (RA) process begins as soon as the request for accommodation is made either orally or in writing. The request does not have to include any special words, such as “reasonable accommodation,” “disability,” “Rehabilitation Act.” or identify the accommodation sought. To enable the IRS to keep accurate records regarding requests for accommodation, employees should follow up an oral request for accommodation by completing the Reasonable Accommodation Request, *Form 13661*. If an employee chooses not to complete the written form, the Receiving Official, the Reasonable Accommodation Coordinator (RAC) or other responsible individual must complete Part I of the Form 13661 to document the request. Although the written RA Request Form should be completed as soon as possible following the request, it is not a requirement for the request itself. Processing of the request will begin as soon as it is made, whether or not the RA Request Form has been provided. This form can be completed online. An individual with a disability may request a reasonable accommodation whenever they choose, even if they have not previously disclosed the existence of a disability. The request does not necessarily mean that the IRS is required to provide the change or adjustment.

Note: *A RA Request Form is not required when an employee needs a reasonable accommodation on a recurring basis (e.g., the assistance of sign language interpreters or readers). The written form is required only for the first request although appropriate notice must be given each time the accommodation is needed.*

Note: When the accommodation involves an individual who accesses Classified National Security Information (NSI), the Chief, Facilities Management and Security Services must be consulted prior to the accommodation being granted if the accommodation relates to NSI systems, storage of NSI and/or handling/processing of NSI.

- (2) The individual's request must be considered when an employee makes a request to (a) their immediate supervisor; (b) a supervisor or manager in their immediate chain of command; and/or (c) the IRS Disability Division Reasonable Accommodation Services (RAS). When an applicant makes a request, it will be considered if made to any agency employee with whom the applicant has contact in connection with the application process or any other individual designated by the Agency. The human resources specialist/management official handling the personnel action must give the RA Request Form to the applicant to fill out. If the applicant requires assistance with this requirement, the human resource official receiving the request will provide that assistance. If an applicant for employment chooses not to complete the form, the human resource official who has received the request must complete the form to document the request. A copy of the form will be provided to the servicing RAS office.
- (3) The Human Capital Office in conjunction with RAS, is responsible for training staff involved in the application process to recognize requests for reasonable accommodation and to handle them appropriately.
- (4) A family member, friend, health professional, or other representative (such as a union steward or coworker) may request a reasonable accommodation on behalf of an employee or applicant with a disability. The request shall be made to one of the same persons to whom the employee or applicant would make the request. To the extent possible, an individual with a disability should be contacted to confirm that they in fact want a reasonable accommodation. The individual may refuse to accept an accommodation.

Note: Requests for accommodation or inquiries concerning the status of RA requests may be made at ra.form.13661@irs.gov.

1.20.2.2.1 (06-24-2013) The Interactive Process

- (1) Communication is a priority throughout the entire process. IRS officials involved in the reasonable accommodation process should take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation (and any chosen representative) should also participate, to the extent possible, in helping to identify an effective accommodation.
- (2) On-going communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation that should be provided are clear, extensive discussions are not necessary. Even so, the Deciding Official and requesting individual should discuss the matter to make sure that there is a full exchange of relevant information.
- (3) If after engaging in the interactive process the parties cannot agree on the accommodation to be granted, the Deciding Official should offer the individual the accommodation that the Deciding Official has determined to be reasonable and effective.

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- (4) If through the interactive process the parties agree on an (alternative) accommodation that is different than what was originally requested, that should be noted on the RA form.
- (5) Resources are available to help both the Deciding Official and the individual requesting the accommodation in identifying possible accommodations for sign language interpreters, requests for materials in accessible formats, adaptive technology, and ergonomic or special equipment. See Exhibit 1.20.2-1 and Exhibit 1.20.2-2.

1.20.2.2.2 (06-11-2021) **Determining Who Will Handle the Request**

- (1) **The Reasonable Accommodation Coordinator (RAC)** is responsible for processing all requests for reasonable accommodation. Once a request is received by the RAC, they will work closely with the employee or their representative, supervisor/manager or in the case of an applicant, HR Specialist to facilitate the reasonable accommodation requests.
- (2) **Deciding Official** is responsible for (1) acknowledging the request; (2) explaining to the employee that they will be making the decision on the request for reasonable accommodation; (3) describing what will happen in processing of the request. (i.e. delays and/or extenuating circumstances). See IRM 1.20.2.2.4.2 – Request Involving Extenuating Circumstances.

1.20.2.2.3 (06-11-2021) **Reassignment as an Accommodation**

- (1) Reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such position, is a reasonable accommodation, and the IRS must consider providing reassignment to a vacant position as a reasonable accommodation when it determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of their current position. Reassignment will only be considered if:
 - a. There are no effective accommodations that will enable the employee to perform the essential functions of their current position;
 - b. The accommodation does not conflict with a controlling collective bargaining agreement (e.g., the IRS-NTEU National Agreement, mid-term agreements, Letters of Understanding, or local agreements), absent special circumstances; or
 - c. All other reasonable accommodations would impose an undue hardship
- (2) In considering whether there are positions available for reassignment, the Deciding Official shall work closely with the servicing RAC, Human Resources staff, as well as the individual requesting the accommodation to identify:
 - a. All vacant funded positions at the same or lower grade which the employee can perform with or without an accommodation; and
 - b. All positions which the RAC and the delegated Business Unit Official has reason to believe will become vacant within 60 workdays from the date the search is initiated and for which the employee may be qualified.
- (3) If there are no suitable vacant positions found within the IRS, the IRS, may consult with Main Treasury on conducting a 30 workdays search for suitable positions throughout the department. Examples of when the IRS would not consult Treasury for suitable positions at other bureaus are:
 - a. Employee has stated that they are not interested in a position outside of the IRS

- b. Employee is only interested in positions within their POD and the other Treasury Bureaus do not have offices in that location.

Note: *Informing an employee that they may apply for or otherwise compete for a position does not satisfy the obligation of appropriate officials to review vacancies for positions which the employee is qualified. Appropriate officials should determine if there is another position at the same or lower grade which the employee can perform.*

Note: *Since it may take a minimum of 30 business days to determine whether an appropriate vacant position exists, the Deciding Official and employee should discuss the employee's options during that period, i.e., use of accrued leave, use of unpaid leave, or a temporary assignment.*

- (4) The HR staff/RAC, will focus on positions that are equivalent to the employee's current job in terms of pay and other relevant factors, as well as vacant lower level positions for which the individual is qualified. If an IRS position at a lower grade is identified the Service will consider not filling that position until the Treasury-wide reassignment search is completed.
- (5) Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other reassignments not required by management, the IRS shall not pay for the employee's relocation costs unless IRS policy provides for such payments for non-disabled employees.
- (6) For reassignment to a position across Business Units, the manager in the losing office must coordinate these types of requests with the manager who has authority to effect the employment decision in the gaining office.
- (7) Reassignment is available only to employees, not to applicants for employment.

1.20.2.2.4 (06-11-2021) Time Frames for Processing Requests for Reasonable Accommodations

- (1) .The time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting documentation. At a minimum, however, requests shall be processed as outlined in IRM 1.20.2.2.4.1 "Requests Not Involving Extenuating Circumstances" and IRM 1.20.2.2.4.2 "Requests Involving Extenuating Circumstances."
- (2) When a particular reasonable accommodation can be provided in less than the maximum amount of time permitted, failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act. See 29 C.F.R. § 1614.203(d)(3)(i)(O).
- (3) The agency will not be expected to adhere to its usual timeliness if an individual's health professional fails to provide needed documentation in a timely manner. See 29 C.F.R. §1614.203(d)(3)(i)(N).
- (4) The status of pending accommodation requests may be tracked by contacting the assigned Reasonable Accommodation Coordinator. If processing is delayed, the Reasonable Accommodation Coordinator will provide status updates including any extenuating circumstances that justify the delay.

1.20.2.2.4.1
(06-11-2021)**Requests Not Involving
Extenuating
Circumstances**

- (1) If the manager receiving the request is the Deciding Official, they should immediately engage in the interactive discussion with the employee and/or servicing RAS office.
- (2) If the manager or management official receiving the request is not the Deciding Official, they shall forward the request to the Deciding Official as soon as possible but in no more than five workdays.
- (3) If the request does not require obtaining supporting medical information, the request shall be processed and the accommodation, if granted, provided as soon as possible but no more than 20 workdays from the date the request was initially made. Since the Deciding Official may need the full 20 workdays to engage in the interactive process and collect all relevant information about possible accommodations, the Deciding Official should not delay beginning this process. Failure to meet this time frame because a Deciding Official delayed processing the request is not an extenuating circumstance.
- (4) If the request requires that supporting medical information be obtained to determine whether the individual has a disability and/or to identify the functional limitations, the following will apply:
 - a. The servicing RAC will request the documentation as soon as possible after their receipt of the request for accommodation, but before the expiration of the 20 workday period referred to above.
 - b. The 20 workday period is tolled until necessary medical documentation is received.

1.20.2.2.4.2
(06-11-2021)**Requests Involving
Extenuating
Circumstances**

- (1) When extenuating circumstances are present, the time for processing a request for reasonable accommodation will be extended as deemed necessary, however, such extensions should be rare. All IRS officials are expected to act as quickly as reasonably possible in processing requests and providing accommodations.

Note: Extenuating circumstances might exist when for example an employee with a disability needs to work with equipment on a trial basis to ensure it is effective before the agency buys the equipment, new staff would need to be hired/contracted to fulfill the requested accommodation, or a requested accommodation would involve removal of architectural barriers.

1.20.2.2.5
(06-11-2021)**Expedited Processing
and Interim
Accommodations**

- (1) In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a time frame that is shorter than the 20 workdays discussed above. This includes where a reasonable accommodation is needed:
 - a. To enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant for employment with a disability has an equal opportunity to apply for a job. Therefore, the IRS needs to move as quickly as possible to make a decision and, if appropriate, provide a reasonable accommodation.
 - b. To enable an employee to attend a meeting scheduled to occur shortly. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 days.

- (2) When a decision concerning a reasonable accommodation request cannot be made promptly (e.g. when waiting for necessary medical documentation) management should consider providing an interim accommodation on a temporary basis.
- (3) Deciding Officials who approve such temporary measures are responsible for assuring that they do not take the place of a permanent accommodation and that all necessary steps to assess the need for or secure the permanent accommodation are being taken.

1.20.2.3 (06-11-2021) Requests for Medical Information

- (1) In some cases, the disability and need for accommodation will be obvious or otherwise already known to the Deciding Official. In these cases, further medical information will not be sought. However, when a disability and/or need for reasonable accommodation is not obvious or otherwise already known to the Deciding Official, the IRS may require an individual who requests a reasonable accommodation to provide medical information that is sufficient to explain the nature of the individual's disability, their need for reasonable accommodation, and how the requested accommodation would assist the individual with applying for a job, performing the essential functions of a job or enjoying the benefits and privileges of the workplace. IRS has the right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

Note: Any request for medical information must comply with the Genetic Information Nondiscrimination Act (GINA) of 2008, as well as the laws, regulations, and guidance referenced in the "Authority" section above, and other applicable confidentiality statutes.

- (2) If the Deciding Official believes medical information is necessary to evaluate a request for a reasonable accommodation, they should contact the servicing RAC to obtain the necessary medical documentation to make an accommodation decision.
- (3) If a determination is made to seek medical information, the requested information should be sufficient to establish that the individual has a disability. Documentation unrelated to the claimed disability should not be requested. Agency requests for medical information will follow the requirements set forth in EEOC's Enforcement Guidance: "Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act", available at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>.
- (4)) If the Human Resources Specialist believes that medical information is necessary in order to evaluate a request for reasonable accommodation from an applicant, they will consult with the servicing RAC for guidance.
- (5) If a determination is made to seek medical information, an employee will be asked to provide Part III-A/B of the Reasonable Accommodation Request, Form 13661 to their health care practitioner, social worker, or rehabilitation counselor to substantiate their functional limitations and that the individual has a disability.
- (6) Once the medical documentation is received, the RAC will evaluate the documentation, and if the RAC deems necessary will consult with Federal Occupational Health (FOH). If the information provided by the health care pro-

1.20 Equal Employment Opportunity and Diversity

professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable the Deciding Official to determine whether an accommodation is appropriate, the RAC will request reasonable supplemental documentation.

- a. First, however, the RAC should explain to the individual seeking the accommodation, in specific terms, why the medical information provided is insufficient, what additional information is needed, and why the information is necessary for a determination of the reasonable accommodation request.
 - b. The individual may then ask the health care practitioner or other appropriate medical professional to provide the missing information.
- (7) The individual requesting the accommodation may agree to sign a limited release, giving the RAS Office permission to submit a list of specific questions to the individual's health care professional or contact the individual's doctor. Agency officials outside of RAS Office should not contact a health care professional directly.
 - (8) In some cases, the individual requesting the accommodation will supply medical information directly to the Deciding Official without being asked. In these cases, the Deciding Official will forward the documentation in a sealed envelope or zip file to the RAC immediately to determine if documentation is sufficient. See the section on Confidentiality and Disclosure for instructions on storage of medical information.

Note: *All medical documentation should be submitted to the Servicing RAC.*

- (9) If the individual requesting accommodation does not provide appropriate documentation or does not cooperate in the Agency's efforts to obtain such documentation the Agency may deny the requested accommodation.
- (10) IRS officials who gain access to an employee's or an applicant for employment's personal medical information will be reminded that the Rehabilitation Act of 1973 and ADAAA requires that they keep this information strictly confidential and share it only with others who have a need to know. This information may be disclosed only to those individuals listed in the "Confidentiality and Disclosure" section.

Note: *Whenever medical documentation is transmitted among authorized IRS personnel it must be done in a secure manner such as conveyed in a sealed envelope or via a zipped electronic file.*

1.20.2.4 (06-24-2013) Confidentiality and Disclosure

- (1) All medical information, including information about functional limitations and reasonable accommodation needs, obtained in connection with a request for reasonable accommodation **must be kept confidential**. The information shall be kept in files separate from the individual's personnel file. In addition, employees who obtain or receive such information are strictly bound by these confidentiality requirements. The servicing RAC will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. The information may be disclosed to the following individuals:

- a. Deciding Officials, supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and the necessary accommodation(s), but medical information should only be disclosed if absolutely necessary.
 - b. First aid and safety personnel, when appropriate, if the disability might require emergency treatment or special arrangements in emergency situations such as building evacuations.
 - c. Government officials when the information is necessary to investigate compliance with the Rehabilitation Act.
 - d. In certain circumstances, to workers' compensation offices or insurance carriers
 - e. Treasury and IRS legal counsel in connection with providing legal advice to agency officials
 - f. Those Agency Officials with the need to know the information to carry out official duties of their position
- (2) Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that apply.

Note: *The Rehabilitation Act confidentiality obligation is not limited to the medical diagnosis. The fact that someone has requested an accommodation, or that something is being provided as an accommodation, also constitutes confidential medical information.*

Case Illustration: Tyson v. United States Postal Service, EEOC Appeal No. 01992086 (Aug. 23, 2002). Agency violated Rehabilitation Act by disclosing complainant's medical condition and symptoms in a letter mailed to other installations seeking a vacancy to which he could be reassigned. Although the other managers needed to be alerted to complainant's work restrictions and his need for accommodation, they had no need to know his condition or symptoms.

- (3) Nondisclosure of GINA Protected Information: The Genetic Information and Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting, requiring, or purchasing genetic information of employees or their family members, except as specifically allowed by this law. To comply with GINA, the request for medical information must state that the agency is asking that genetic information not be provided when responding to the request for medical information, unless the information is allowable as explained below:
- a. Genetic information: as defined by GINA, includes information concerning the manifestation of disease/disorder in family members "family medical history", information about an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.
 - b. Rehabilitation Act: The general prohibition against requesting or requiring genetic information does not apply where an employer requests documentation to support a request for reasonable accommodation as long as the request for documentation is lawful. Such a request is lawful only

1.20 Equal Employment Opportunity and Diversity

where the disability and/or the need for accommodation is not obvious; the documentation required contains no more information than what is sufficient to establish that an individual has a disability and needs reasonable accommodation; and the documentation relates only to the impairment that the individual claims to be a disability that requires reasonable accommodation. (See 29 CFR.1635.8(b)(1)(i)(D)(1), and 29 CFR 1,635.8(b)(1)(i)(B)).

1.20.2.5 (06-11-2021) Granting or Denying a Request for Accommodation

- (1) As soon as the Deciding Official determines that a request for reasonable accommodation is granted, including alternative accommodations agreed upon during the interactive dialogue, the Deciding Official shall complete Part II of IRS RA *Form 13661*, and provide a copy (i.e. including in an accessible format if requested) to the requester of the accommodation with a copy to the servicing RAC. The decision shall describe in plain language the accommodation(s) granted.
- (2) As soon as the Deciding Official determines that a request for reasonable accommodation is denied, the Deciding Official shall complete Part IV of IRS RA *Form 13661* and provide a copy (i.e. including in an accessible format if requested) to the requester of the accommodation with a copy to the servicing RAC. The explanation for the denial should be written in plain language, clearly stating the specific reasons for the denial.
- (3) Where the Deciding Official has denied a specific requested accommodation, but offered an alternative accommodation in its place which was not agreed to during the interactive process, Part IV of the Reasonable Accommodation Request, *Form 13661* should explain both the reasons for the denial of the specific requested accommodation and the reasons that the Deciding Official believes the chosen accommodation will be effective.
- (4) The written decision must include specific reasons for the denial of a reasonable accommodation. Explanation(s) may include the following:
 - a. Requestor does not meet the definition of an individual with a disability) or the medical documentation is inadequate to establish the individual has a disability and/or needs a reasonable accommodation.
 - b. The requested accommodation would not be effective.
 - c. Providing the requested accommodation would result in undue hardship. Before reaching this determination, the Deciding Official must have explored whether other effective accommodations exist which would not impose undue hardship and therefore can be provided.

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

- 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.
- (5) The written decision denying a request for reasonable accommodation must also inform the individual that they have the right to file an EEO complaint and may have rights to pursue Merit Systems Protection Board (MSPB) or union grievance procedures. The notice must also explain the Agency's procedures available for dispute resolution.

1.20.2.6 (06-11-2021) Appeal Process

- (1) An employee seeking reconsideration should appeal to the Deciding Official within **fifteen (15) workdays** of receiving the written denial. The employee may present additional information in support of their request. Any request for reconsideration received after **fifteen (15) workdays** of the denial will be treated as a new request for a reasonable accommodation. This new request will not require the employee to resubmit any documentation previously submitted in a prior request. Rather, this "new request" only affects the timeframes for processing in compliance with the negotiated procedures. The Deciding Official will respond to the appeal within **five (5) workdays** of the receipt of the appeal.
 - a. The **fifteen (15) workdays** deadline will commence when the employee requesting reasonable accommodation has received the denial of their request for reasonable accommodation.
 - b. For purposes of this paragraph, the term "received" means when the employee is handed the denial decision in-person or when the individual signs for mail with return receipt requested.
- (2) If the Deciding Official does not reverse the initial denial, the employee may initiate a second and final appeal within **15 workdays** of receiving the Deciding Official's denial of the request for reconsideration. The appeal shall be decided by the Business Unit Commissioner/Chief or their executive-level designee. The BU Commissioner/Chief or their executive-level designee may consult with the Chief Diversity Officer or their designee prior to rendering a final decision. A response to the final appeal will be issued to the employee within **15 workdays** of receipt of the final appeal request.
- (3) Employees should follow up any oral reconsideration requests in writing. If the employee chooses not to submit a written reconsideration request, the request must be documented in writing and dated by the receiving official, the RAC, or other responsible individual.
- (4) Pursuing this appeal process, including seeking reconsideration from the Deciding Official or filing a second and final appeal under this process will toll the time limits for initiating claims under the Parties' collective bargaining agreement. However, seeking reconsideration will not toll statutory time frames for filing an EEO complaint or Merit Systems Protection Board appeal.
- (5) For an employee to invoke their right to appeal within the **fifteen (15) workday** timeframe, they must simply notify, orally or in writing, the point of contact of their decision to appeal. Within the **fifteen (15) workday** timeframe, the employee must only invoke their right to reconsideration; the employee does not have to prepare the content of the appeal within that time. The point of contact will be identified at the time of the denial decision.

1.20.2.7
(06-24-2013)
**Relationship of
Procedures to Statutory
and Collective
Bargaining Claims**

- (1) Executive Order 13164 does not create new rights for employees or applicants for employment; nor does it limit an individual's rights under the Rehabilitation Act of 1973. The policies and requirements described in these procedures are in addition to statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims, remain unchanged.
- (2) An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation must comply with the following:
 - a. **EEO Complaint** - Contact an EEO counselor within 45 days from the date of receipt of the written notice of denial.
 - b. **Collective Bargaining Claim** - File a grievance in accordance with the provisions of the controlling Collective Bargaining Agreement (under the IRS-NTEU National Agreement, Article 41, a grievance must be filed within 15 workdays of the denial); or
 - c. **Merit System Protection Board Appeal** - Initiate an appeal within 30 days of an appealable adverse action as defined in 5 CFR §1201.154.

1.20.2.8
(06-24-2013)
**Collective Bargaining
Obligations**

- (1) As called for in the EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (ADA) (which has also been applied to the Rehabilitation Act of 1973), prior to granting any reasonable accommodation that would violate any collective bargaining agreement between the IRS and NTEU (e.g., the IRS-NTEU National Agreement, mid-term agreements or LOUs, local agreements, etc.) the Service will notify NTEU at the appropriate level and seek to negotiate, in good faith, a variance to the agreement to allow the accommodation. The parties are encouraged to work cooperatively to reach such agreements, but only if they do not unduly burden the expectations or rights of other workers.
- (2) The Service acknowledges that under the ADA 2008 Amendments Act (ADAAA) and Rehabilitation Act case law, accommodations that conflict with collectively bargained seniority systems are unreasonable, absent special circumstances.
- (3) The Service will notify and bargain, to the extent required by law, with NTEU prior to implementing any reasonable accommodation that would require more than de minimis change in other bargaining unit employees' conditions of employment.
- (4) If granting a reasonable accommodation would conflict with a collectively bargained agreement, or would necessitate a change in other employees' conditions of employment, and thus require negotiations, consistent with paragraph 3 above, the Service will consider such situations as presenting extenuating circumstances (as defined in the RA procedures) requiring a delay in implementation of the accommodation, and perhaps requiring the Service to take temporary measures.
- (5) The Service will consider reasonable accommodations that do not conflict with collective bargaining agreements or require changes to other employees' conditions of employment before proposing or approving reasonable accommodations that would cause such conflicts or changes.

Exhibit 1.20.2-1 (06-11-2021)**IRS Reasonable Accommodation Resources**

Reasonable accommodation resources below include: materials in accessible formats, assistive technology, and ergonomic equipment information.

Materials in Accessible Formats

The Alternative Media Center (AMC) publishes material in accessible formats for IRS employees and taxpayers with disabilities. This includes Braille, large print, CD-ROM, electronic Braille, tactile graphics, captioning services, etc. Electronically accessible media forums such as Intranet and Internet sites are available for access by customers with disabilities who utilize the AMC products. Currently, the AMC manages the productions, distribution and storage of materials through in-house and contract facilities. The following information is required when placing an order:

- A. Document name and revision date (Example: F.1040 1/2001)
- B. Format preferred (Example: Braille, large print, CD-ROM)
- C. Date the order is required to be delivered to the customer
- D. Contact name, number and e-mail address, if available

Requests for AMC services and products can be sent to: <http://amc.enterprise.irs.gov/>

Assistive Technology

The goal of the Information Resources Accessibility Program (IRAP) Office is to work closely with the employee with a disability and their manager to choose the adaptive technology that will best enable the performance of essential job duties. In addition to the purchase of adaptive computer equipment, IRAP offers services such as installation and integration; training on the use of the equipment; hardware maintenance; and software support.

IRAP associates work with managers and employees to:

- A. Conduct needs assessments
- B. Identify appropriate adaptive equipment solutions
- C. Coordinate systems requirements with local IS support personnel
- D. Provide ongoing technical support, etc.

To request IRAP services, contact the servicing EDI-RAS office.

Ergonomic Equipment

For reasonable accommodation only, funding has been allocated to cover ergonomic chairs and workstation modifications in offices managed by the service. Managers should refer questions or concerns regarding ergonomic furniture as a reasonable accommodation to the Facilities Management point of contact identified in the FMSS Portal Logistics Contacts. <https://portal.ds.irsnet.gov/sites/FMSS/LogContacts/Lists/LogisticsContacts/Reasonable%20Accommodation.aspx>

Exhibit 1.20.2-2 (06-24-2013)**External Reasonable Accommodation Resources**

External resources below include: volunteer, disability business and technical, job accommodation, EEOC, interpreter, and state vocational rehabilitation information.

Volunteer Assistors

OPM's Guide to Processing Personnel Actions (commonly referred as the GPPA), provides instructions for documenting service, performed without compensation, by an individual who does not receive a Federal appointment. GPPA states: "Volunteers do not receive Federal appointments, so their service is not reported to the Central Personnel Data File (CPDF). Agencies are responsible for determining how to document volunteer service (e.g., self-developed forms, letters, etc.). An SF-50 can not be used to document volunteer appointments; however, agencies must clearly inform volunteers of the nature of their appointment with respect to service credit for leave or other employee benefits." For guidance on recommended language to use for documenting volunteer service, go to Chapter 33 of OPM's GPPA: <http://www.opm.gov/feddata/gppa/Gppa33.pdf>

ADA Disability and Business Technical Assistance Centers (DBTACs)

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

The DBTACs consist of 10 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.

Equal Employment Opportunity Commission

EEOC Washington Field Office

1-800-669-4000 (Voice)

1-800-669-6820 (TTY)

EEOC Publication Center

1-800-669-3362 (Voice)

1-800-800-3302 (TTY)

<http://www.eeoc.gov>

With its headquarters in Washington, D.C., and through the operations of 50 field offices nationwide, the EEOC coordinates all federal equal employment opportunity regulations, practices, and policies. The Commission interprets employment discrimination laws, monitors the federal sector employment discrimination program, provides funding and support to state and local Fair Employment Practices Agencies (FEPAs), and sponsors outreach and technical assistance programs.

Job Accommodation Network (JAN)

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

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

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

Exhibit 1.20.2-2 (Cont. 1) (06-24-2013)**External Reasonable Accommodation Resources****Office of Disability Employment Policy (ODEP) (Formerly the President's Committee on Employment of People with Disabilities)**

(202) 376-6200 (Voice)

(202) 376-6205 (TTY)

<https://www.dol.gov/odep/>

The mission of ODEP is to bring a heightened and permanent long-term focus to the goal of increasing employment of persons with disabilities.

Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TT)

<http://www.rid.org>

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project

(703) 524-6686 (Voice)

(703) 524-6639 (TT)

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

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

State Vocational Rehabilitation (VR) Agencies<https://dds.dc.gov/service/vocational-rehabilitation-services>

State Vocational Rehabilitation (VR) agencies furnish a wide variety of services to help people with disabilities return to work. These services are designed to provide the client with the training and other services that are needed to return to work, to enter a new line of work, or to enter the workforce for the first time. Participation in a VR program through your state VR agency can affect you in a number of ways.

