

**Accommodation Policy
for the
Federal Election Commission
(Approved by EEOC on July 16, 2013)**

Purpose

This policy is designed to describe the procedures to be followed when an accommodation is requested by an applicant to, or employee of, the Federal Election Commission. The policy has been formulated based on guidance from the Equal Employment Opportunity Commission (EEOC) and has been vetted through that agency, as it has primary authority for interpreting and enforcing the application of Sections 501 and 505 of the Rehabilitation Act of 1973.

I. Introduction

It is the policy of the Federal Election Commission (FEC or Commission or Agency) to provide equal employment opportunity to all employees and applicants for employment. In carrying out its goal to be a model employer of persons with disabilities, the Commission promotes full access, consideration, integration, promotion and retention of persons with disabilities across the broad range of its workforce. The Commission is committed to providing “reasonable” accommodation to employees and applicants (“requesting individuals”) with disabilities, consistent with all applicable laws, Executive Orders, regulations and EEOC guidelines. **Managers and supervisors must actively participate in achieving these goals.** This document describes the Agency’s Reasonable Accommodation (RA) requirements, processes and procedures to guide the FEC workforce and applicants about how to make a request for accommodation and about how FEC managers are to respond to requests for accommodation.

II. Authorities

- A.** Section 501 of the Rehabilitation Act of 1973, as amended,
1. Protects Federal sector employees with disabilities against discrimination.
 2. Requires Federal employers to provide reasonable accommodation(s) to persons with disabilities where needed.
 3. Prohibits employers from making improper disability-related inquiries or requiring improper medical examinations.
 4. Requires that employers keep the medical information of all employees confidential.
 5. Requires that employers comply with anti-harassment standards.
 6. Prohibits retaliation by employers.
- B.** Executive Order 13164, dated July 26, 2000, “Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation,” requires all Federal agencies to establish written procedures for handling employee requests for accommodation due to a health issue.

- C. The Americans with Disabilities Act of 1990 (ADA) amended Section 501 of the Rehabilitation Act by applying the employment nondiscrimination standards of the ADA (Title I) to Federal government employees and applicants for employment. It also stated that it is the obligation of the Federal government to be the “model employer of individuals with disabilities.” The ADA Amendments Act of 2008 (ADAAA) was signed by the President on September 25, 2008, and became effective as of January 1, 2009. The ADAAA, as amended,
1. Emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis.
 2. Emphasizes that the primary object of attention should not be on the definition of disability but rather on whether the individual can be accommodated absent undue hardship.

III. Definitions

- A. **Accommodation:** a change in the workplace or in the way things are customarily done that provides an individual with a disability with equal employment opportunities.
1. Accommodations are available: a) for the application process; b) to enable an individual with a disability to better perform essential job functions; c) to provide equal **benefits and privileges** of employment.
 2. An effective accommodation is one that allows equal opportunity for the employee or applicant with a disability to be considered for positions and enjoy the benefits and privileges that are available to employees without disabilities.
- B. **Disability Program Manager (DPM):** an employee designated by the Staff Director that has primary responsibility for administering, coordinating and monitoring the agency’s accommodation program. The DPM serves as the agency’s primary liaison with supervisors, managers, applicants and employees regarding the requesting individual’s accommodation request.
- C. **Individual with a disability:** someone who: 1. has a “**physical or mental impairment**” that “**substantially limits**” one or more of that individual’s “**major life activities**”; 2. has a record of such impairment; or 3. is “regarded as” having such an impairment
- D. **Substantially limits: this phrase** describes a situation when an individual is (or has been) substantially limited in performing a major life activity as compared to most people in the general population. The term “substantially limits” should be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADAAA. The law no longer requires that impairment to “severely” or “significantly” restrict a major life activity. While an individualized assessment is still required, comparison to most people in the general population usually should not demand scientific or medical evidence. Please note:
1. With the exception of “ordinary eyeglasses or contact lenses,” **the use of mitigating measures** (e.g., medications, assistive technology, etc.) should be disregarded when making the assessment.

2. Impairments that are episodic or in remission may be disabilities if substantially limiting when active.
3. Only one major life activity needs to be substantially limited.
4. There is no durational minimum.

E. **Major life activities: examples of these** are described in **two non-exhaustive lists** both in the ADAAA and the EEOC regulations. The first list consists of those activities that were previously recognized by the EEOC and most courts. The second list includes new categories that will make it easier for individuals with many different types of impairments to establish disability. The impairments listed below include both physical disabilities as well as severe intellectual disabilities.

1. The first list includes: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.
2. The second list includes: functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive. This list also includes operations of an individual organ within a body system, such as the operation of kidney, liver or pancreas.
3. Impairments that should easily be found to be disabilities include deafness, blindness, mobility impairments requiring the use of a wheelchair, intellectual disability (mental retardation), partially or completely missing limbs, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, and muscular dystrophy. Other mental impairments include major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder and schizophrenia.

F. **Qualified individual:** an individual who:

1. meets the basic skill, education, training, and other job-related requirements; and
2. is able to perform the essential (or fundamental) functions of a position with or without reasonable accommodation.

(note: this term refers to job performance and not the disability)

G. **Essential Functions:** the fundamental job duties of the position that the individual with the disability holds or seeks. The term “essential functions” does not include marginal functions of the position. A job function may be considered essential for any of several reasons, including but not limited to the following:

1. The duties are so fundamental that removing the function would fundamentally change the job;
2. The job is highly specialized.
3. The position exists specifically to perform that function;
4. The function is specialized and the person is hired based on his or her specific ability to perform the particular function; or
5. There are only a limited number of employees who can perform the function.

H. Undue hardship: an individualized assessment of current circumstances that shows that a specific reasonable accommodation would cause significant difficulty or expense. In general, federal agencies do not often assert that the cost of a requested accommodation imposes an undue hardship as the analysis is based on the entire financial resources available to the agency. Each accommodation request is evaluated individually and on its own merits, including whether there is any potential “undue hardship” impact if the accommodation request is approved. Other considerations in the analysis include the impact of the accommodation on the overall operation of the agency, safety, security, and the structure and composition of the affected workforce.

I. Health care professional: a person who has completed a course of study, is licensed to practice in a field of health care and is trained to diagnose, assess and make recommendations for the accommodation of a particular disability or disabilities under consideration.

IV. Requests for Reasonable Accommodation in General

A. What is a “Reasonable” Accommodation (RA)?

(See Section III. Definitions, A. above). Generally, the process starts when an individual with a disability requests an accommodation. The request is for some change in the workplace or in the way things are done due to a medical condition. Employees make accommodation requests to management. In the process of evaluating the employee’s request, **management** determines whether the request is reasonable and may determine that an alternative accommodation is reasonable.

“Reasonable” accommodations may include, but are not limited to:

1. Making facilities readily accessible to and usable by persons with disabilities;
2. Job restructuring;
3. Part-time or modified work schedules;
4. Acquiring or modifying equipment or devices such as Telecommunication Device for the Deaf (TDD);
5. Adjusting or modifying examinations by changing tests, training materials or policies;
6. Providing qualified readers or interpreters; and
7. Reassignments to a suitable, vacant position, and other similar actions.

B. What are the Agency Requirements?

When an employee or job applicant initiates a request for accommodation, Agency management will either refer the employee or job applicant to the DPM, contact the DPM personally, or both. Once the DPM has spoken to the requesting individual and/or the manager, a meeting will be scheduled to allow those involved to engage in an interactive process to discuss all aspects of the requested accommodation.

At some point in this process, the DPM may request medical documentation from the requesting individual to confirm the existence of the disability (particularly when the

employee's health issue or disability is not obvious). Depending upon the sufficiency and clarity of the medical documentation provided by the requesting individual, the DPM may contact the agency's medical consultant to review the medical information for recommendations and guidance to assist agency managers to make informed decisions; again, depending upon the sufficiency and clarity of the medical documentation provided, the medical consultant (with a signed release from the requesting individual) may contact the requesting individual's medical professional to discuss and/or seek clarity regarding the health issues. As appropriate, the DPM coordinates the evaluation of the medical documentation by the medical consultant and subsequently assists management with making informed decisions about the requested accommodation. When the disability is obvious, the DPM may still elect to follow this process, for the same reasons.

During the interactive process, the DPM will determine if the requesting employee is an "individual with a disability" and work with agency management to assist with their determination of whether the requesting employee is a "qualified individual"—that is, able to perform the essential functions of the position with or without reasonable accommodation.ⁱ Employee requests for accommodation should be provided when the need has been substantiated by the DPM.

Once Agency management has decided upon an effective accommodation, the DPM will develop a written notice from the appropriate agency manager to provide to the requesting employee. The notice is written confirmation that the accommodation request has been received, discussed in the interactive process and decided upon. When the requested accommodation (or an effective alternative accommodation) has been approved, the notice will describe the parameters of the accommodation plan in detail including the time period, if appropriate, for the duration of the plan. The interactive process is a fluid process and may continue after the accommodation plan becomes effective or at such time that either the employee or management would like to discuss modifications to the plan.

When Commission management has provided an effective accommodation, the reasonable accommodation obligation is satisfied.

"Reasonable" accommodation will be provided to all requesting individuals with disabilities, including part-time, full-time and "probationary" employees and applicants for employment unless providing such an accommodation will place an undue hardship on the agency. In providing an accommodation to an individual with a disability, management considers the work-related needs of all employees.

Managers and supervisors are not required to eliminate essential functions of a position. Similarly, managers and supervisors are not required to lower production standards—whether qualitative or quantitative—that are applied uniformly to all employees. However, management may be required to provide a reasonable accommodation to enable an employee with a disability to meet the production standards.

Personal items, such as a wheelchair, eyeglasses or a hearing aid needed by the individual for daily activities both on and off the job, are not the responsibility of the agency.

V. Roles and Responsibilities

A. Staff Director

The Staff Director of the FEC has agency-wide responsibility for implementing and administering the accommodation policy and other legal requirements set forth in this document. Specifically, the Staff Director is responsible for delegating authority to the EEO Director to maintain centralized control over the administration of this Policy to ensure that employee requests for accommodation are processed timely and appropriately. Additionally, the EEO Director's responsibilities include overseeing that tracking records and other data collection is managed properly in order to satisfy the reporting requirements to the EEOC. The DPM, while technically appointed by the Staff Director, reports directly to the EEO Director and has primary responsibility for providing assistance and guidance to management to ensure compliance with the requirements of this Policy, the ADA and other related authorities described in Section II of this document.

B. EEO Director

The FEC EEO Director is responsible for assuring that the Agency fulfills the obligations set forth in this document by establishing and monitoring an effective process for addressing employee requests for accommodation due to a health issue. Both the EEO Director and the Disability Program Manager positions are neutral in the interactive reasonable accommodation process. The EEO Director has delegated responsibility for coordinating and monitoring the Agency's Reasonable Accommodation program to the DPM. These responsibilities include developing and conducting training as well as tracking employee requests for accommodation in a tracking system. In consultation with the DPM, the EEO Director will prepare related agency policies and procedures, consulting with the EEOC for guidance and approval. The EEO Director will also support the DPM in his/her communications to Management regarding the obligations of the Agency in the accommodation process and remain responsible for the preparation of required reports on reasonable accommodation efforts.

C. Office of Human Resources

The FEC's Office of Human Resources (HR) is responsible for accepting requests for accommodation made by applicants for employment. HR shall immediately forward all applicant requests for accommodation to the DPM for processing.

D. Disability Program Manager (DPM)

The DPM is designated by the Staff Director and has primary responsibility for administering, coordinating and monitoring the Agency's Reasonable Accommodation program. Although the DPM serves as the agency's *primary* liaison with supervisors, managers, applicants and employees regarding the provision of reasonable accommodation, the DPM position is neutral in the reasonable accommodation interactive process. The DPM works with requesting

applicants, employees and relevant supervisors and managers in seeking sufficient information about the limitations of the disability and the essential functions of the position to determine the feasibility of the request and, on occasion when a requested accommodation has been deemed to create an undue hardship on the Agency, to determine whether an alternative accommodation is possible. The DPM may consult with the EEO Director and/or the EEOC to seek guidance on the requirements of the law and whether alternatives are available. The DPM is responsible for tracking and providing statistical information to the EEO Director about employee requests for accommodation and the agency's response to such accommodation requests.

E. Managers and Supervisors (including Selecting Officials)

FEC managers and supervisors are responsible for providing accommodation to employees or job applicants with disabilities unless it can be shown the accommodation would impose an undue hardship on the Commission. Managers and supervisors should refer any request for accommodation that they receive to the DPM for processing; however they retain the responsibility of deciding whether an accommodation will be granted. Regardless of whether an employee request for accommodation due to a health issue is ultimately approved, or an alternate accommodation is approved or the request is denied, the employee will be informed who, specifically, is the Deciding Official in the process. This person could be any supervisor in the employee's chain of command (i.e., the immediate or second level supervisor or the Director of the Office in which the employee works). Managers and supervisors should consult with the DPM to seek guidance on the requirements of the law and coordinate the documentation of any proposed plans and decisions with the DPM.ⁱⁱ

F. Individual Requesting Accommodation

The employee may initiate a request for accommodation orally, in writing or via any other mode of communication to his/her supervisor, any supervisor or manager in his/her chain of command or to the DPM. A job applicant requiring accommodation in the application process must make a request orally, in writing or via any other mode of communication to HR, who then refers the request to the DPM, or directly to the DPM. The employee or applicant's request should include a description of an accommodation that would allow equal participation in the FEC workforce or application process.

Any FEC employee with a health issue who would like to make a request to management for accommodation may make that request directly to the DPM, the immediate supervisor, any supervisor in the chain of command or directly to the EEO Director. The employee with a health issue should describe the workplace essential function(s) that he/she cannot perform due to a disability.

VI. Accommodation Request Process

A. Making a Request

Employees

Employees who wish to request an accommodation shall initiate a request by making the request orally, in writing or by any other means of communication. The request may be made to a first or second line supervisor, any other supervisor in the individual's chain of command or directly to the DPM. Employee accommodation requests do not have to be in writing; they do not have to use the "magic words" reasonable or accommodation; and the request may come from a third party (e.g., an employee's family member or doctor).

Applicant for employment

Requests for accommodation made by an applicant may be made orally, in writing or by any other means of communication to HR or the DPM. The request should identify the accommodation needed, if known. Although an applicant with a disability may request an accommodation at any time during the application process, the applicant should, to the greatest extent possible, make the request as soon as he/she is aware of a barrier in the process. When the HR office receives a request for accommodation from an applicant for employment, it shall be immediately forwarded to the DPM for processing. After evaluating the accommodation request, the DPM will make a recommendation to an appropriate deciding official in the Office of Human Resources chain of command (that is, to an HR Supervisor, HR Director or Deputy Staff Director for Management & Administration).

Third Party Request

A family member, health care professional or other representative may also initiate requests for accommodation. Before acting on a third party request, the DPM will consult with the employee or applicant for employment to confirm that the employee or applicant wishes the request to be acted upon.

B. Expedited processing

Certain requests require expedited processing, for example, to enable an applicant to apply for a job or to participate in a specific Commission activity that is scheduled to occur shortly. In those instances, the supervisor or DPM will strive to expedite the processing of the request before the deadline or activity.

C. Interactive Communication Process

1. When an employee has requested accommodation (as previously described), the DPM will attempt to confer with the employee and Agency management as soon as possible, within one to two (1-2) working days of receiving the request.
2. After speaking with those involved, the DPM will schedule a meeting within five (5) working days to engage in the interactive process. The purpose of the interactive process is to determine what, if any, accommodation should be provided. This process is necessary to clarify what the requesting individual needs, the impact of the disability on the employee's job performance, and what would be an effective accommodation that would enable the employee to perform the essential job functions.
3. If an applicant makes a request for accommodation to either HR or the selecting official, the request should be immediately referred to the DPM. The DPM, with the assistance of

the selecting official, shall begin the review of the requested accommodation and initiate the interactive process with the requesting applicant.

4. Questions to be asked during the initial interactive process can include, but are not limited to the following:
 - Will the accommodation be effective, that is, give the person the opportunity to function, participate, or compete on an equal basis?
 - Is the accommodation necessary to perform the duties of the position?
 - What effect will the accommodation have on the agency's operations and on the employee's performance?
 - Are there other accommodations that would accomplish the same purpose?
5. The interactive process and interactive communication is a priority throughout the consideration of an employee's request for accommodation. The DPM, employee and the manager must actively exchange information in order to reach a resolution within the appropriate timeframes. In order to implement an accommodation plan, however, the supervisor and/or manager need not routinely be provided with copies of the requesting individual's medical documentation or be advised of the nature of the disability if the requesting individual prefers for the medical information to be kept confidential. Rather, supervisors and managers need only to be advised verbally of the requesting individuals health limitations, in general terms, to enable them to make informed decisions. Normally, the requested accommodation (or an effective alternative accommodation), shall be provided to the requesting employee within 30 calendar days absent extenuating circumstances.
 - a. Extenuating circumstances are factors that could not be reasonably anticipated or avoided, for example, equipment that is on back order, the company has gone out of business, or medical documentation has been delayed by the Health Care Provider.

D. Medical documentation

1. Where the disability and/or the need for accommodation are not obvious, the DPM may request supporting medical documentation to confirm the requesting employee's disability and to obtain suggestions and recommendations from the Health Care Provider that assist with the development of an appropriate accommodation plan. The medical documentation is only necessary so that the DPM can verify the existence of a condition that impacts job performance and determine whether the requested accommodation can be effective. In some cases, the Health Care Provider can clarify what kind of accommodation is recommended (necessary).
2. When requested by the DPM, the employee shall provide adequate medical documentation from the Health Care provider to the DPM who then will review the information and assist Agency management with making informed decisions in the

development of an appropriate accommodation plan. (The documents provided by the requesting individual that contain his/her medical information are secured and maintained by the DPM according to the provisions of the Federal laws and regulations governing confidentiality and are not shared with agency management; rather, the DPM shares [verbally] only enough of the individual's medical information with the management deciding official(s) so that they can make informed decisions when considering the employee's accommodation request.) The suggestions and recommendations from the Health Care Providers are helpful to the process of developing an appropriate accommodation plan in response to the employee's request in addition to providing confirmation of the employee's disability.

3. When the need for accommodation is obvious (the disability is obvious), the requesting individual may still be asked by the DPM to provide medical information from their Health Care Provider in order to assist in the process of developing an appropriate plan.
4. To facilitate effective answers to the above, the DPM may request that the supervisor or manager provide copies of a current position description that defines essential functions, performance standards and any other information that clearly explains the duties of the position.
5. The DPM may request additional documentation if what is submitted is insufficient for the agency to make a determination about the accommodation or the appropriate accommodation to provide in response to the employee's request.
6. The DPM may seek the assistance of the Agency's contract Medical Consultant to clarify the medical situation of the requesting individual when the medical documentation provided is unclear or raises additional questions about the employee's health issues related to the requested accommodation. This process is facilitated by the requesting employee signing a limited medical release of information authorizing the Agency's Medical Consultant to communicate about the requesting individual's situation and accommodation request with the employee's Health Care Provider for this purpose only.
7. The Agency will consider the requesting individual's failure or inability to submit requested medical documentation in determining whether to approve the request. Failure to provide sufficient documentation or to cooperate in efforts to obtain reasonable documentation may result in a denial of the request.
8. If the employee or applicant provided insufficient documentation to substantiate the existence of a disability and the need for accommodation, the Agency may request that the employee or applicant undergo a job-related medical examination at Agency expense. Failure to comply with the Commission's request that the employee or applicant undergo a medical examination at Agency expense may result in the denial of the accommodation request.

E. Confidentiality Requirements Regarding Employee Medical Information in the

Accommodation Process

Under the Rehabilitation Act, medical information obtained in connection with the accommodation process must be kept confidential. This means that all medical information, including information about functional limitations and accommodation needs, obtained by the Agency in connection with a request for accommodation, must be kept in files separated from the individual's Official Personnel File. It also means that any FEC employee who directly or indirectly receives such information is strictly bound by these confidentiality requirements. Confidentiality applies to all aspects of the accommodation process.

Personal medical documentation provided in response to a request by the DPM is not shared with Agency management. The process requires Agency management to have enough information about the employee's health issues to be able to make informed decisions about the accommodation that is to be provided to the employee. This is accomplished in conversation between the DPM and Agency management without sharing the employee's medical documents.

The DPM maintains custody of all medical records obtained or created while processing employee requests for accommodation.

All records will be maintained and disclosed in accordance with the Rehabilitation and Privacy Acts.

F. Approval Process of Requests for Accommodation

The employee's immediate supervisor, in consultation with the DPM and next level supervisor, is responsible for approving accommodation requests and determining whether the request results in an undue hardship.

Agency managers and senior leadership are encouraged to approve accommodation requests that will not result in an undue hardship as defined in these procedures. Examples of typical requests for accommodation where "undue hardship" is not an issue include:

- Where no cost is involved; and,
- Where the supervisor and the employee are in agreement as to the accommodation (e.g., rearrangement of office furniture, approval of a schedule change, etc.).

When a supervisor or selecting official recommends approval of an accommodation and the approved accommodation involves cost (e.g., the procurement of an assistive device or item of furniture), the management official should contact the DPM. A coordinated effort involving the DPM, the Admin Manager, the OCFO and the affected office/employee will occur to determine whether and/or how an appropriate accommodation can be provided. Whether the employee's accommodation is approved or denied, the employee must be notified in writing of the decision. If approved, the notice must contain a description of the parameters of the accommodation to be provided. If denied, the notice must advise the

employee of the denial and the reason(s) for the denial. It must also provide the employee with information about their appeal rights and the option for engaging in the EEO Complaints process.

The Agency's accommodation records reflect when an employee's accommodation request has been received, when it has been either approved or denied, and by whom, and if an alternate accommodation has been provided, when and by whom. All of these records are maintained by the DPM.

G. Funding for Employee Requests for Accommodation

During Fiscal Year 2013, funding for Agency employee requests for accommodation was centralized and overseen by the DPM with assistance from the Office of the Chief Financial Officer (OCFO). Centralized funding for employee requests for accommodation ensures consistency of the process throughout the Agency and consistency in the accommodations that are provided to requesting individuals. The DPM will, with the collaboration and oversight of the EEO Director, administer this aspect of the Agency's accommodation program.

H. Interim Measures

If a delay occurs or is anticipated during the interactive process and evaluation process, the employee's supervisor or the selecting official must explore, in consultation with the DPM and the individual with a disability, whether temporary measures can be taken to assist the employee. These measures should be taken while waiting, for example, for necessary adaptive equipment or other necessary measures. Addressing an interim accommodation is often discussed in the interactive process when a delay is expected and has the additional benefit of keeping the employee informed about the delay and when the Agency expects to provide the requested accommodation.

I. Confidentiality

Information about an employee's accommodation must be kept strictly confidential. For example, when an accommodation has been established for an individual with a disability that results in some flexibility outside of established guidelines (use of leave, telework, flexible schedule, etc.), supervisors and/or managers may not discuss these arrangements with other staff. The exceptions to that general rule are that information may be disclosed as follows:

- to supervisors and managers for necessary work restrictions or reasonable accommodations;
- to individuals involved in making decisions about reasonable accommodations;
- where necessary for emergency treatment;
- to officials investigating compliance with the Rehabilitation Act;
- for workers compensation and insurance claims.

The DPM ensures the confidentiality of the accommodation process. It is important that any other individuals that become involved in the review of an accommodation request (for the specific reasons noted above) not be involved in processing any EEO complaint related to the request.

J. Reassignment

The Agency must consider reassignment for a non-probationary employee if it determines that no other reasonable accommodation will permit the employee to perform the essential functions of his or her current position.

Reassignment is the “accommodation of last resort.” An employee must be considered for reassignment to a vacant position if such a position exists and the position is equal to the employee’s current position in terms of pay, status, etc., or as close as possible to being equal. Vacant means that the position is available or will become available within a reasonable time. The position need not be a promotion, nor is the Agency required to create a position. Additionally, the employee must be qualified for the new position (but does not have to be among the best qualified), and if qualified, must be reassigned to the position.

In the absence of a position at the same grade or level, an offer of reassignment to a vacant position, for which the individual is qualified, at the highest available grade or level below the employee’s current grade or level is required. The availability of such a position does not affect the employee’s entitlement, if any, to disability retirement.

Please note that a reassignment that would violate a collectively bargained seniority system is generally not considered to be reasonable.

K. Tracking System for Employee Requests for Accommodation

The Agency is required to track employee requests for accommodation and the DPM maintains a system of records to track the processing of each employee request for accommodation, from initial contact to the establishment of an accommodation plan or other result.

The DPM maintains all reasonable accommodation case files and related documents to include the requesting employees’ medical information if provided during the process. The confidential maintenance of the medical information received is in compliance with applicable laws and regulations. As previously stated, supporting documentation, specifically relating to medical information, must not become part of an Official Personnel File. The decision maker must forward all records involving reasonable accommodation requests (including any employee medical information provided) to the DPM for storage and maintenance. The tracking system will contain the following data:

- 1.** The number of accommodations, by type, that were requested in the application process and whether those requests were granted or denied;
- 2.** The jobs (occupational series, grade level, and Agency component) for

- which reasonable accommodations were requested;
3. The types of accommodations that were requested for each of those jobs;
 4. The number of accommodations, by type, for each job, that were approved, and the number of accommodations, by type, that were denied;
 5. The number of accommodations, by type, that related to the benefit or privileges of employment, and whether those requests were granted or denied;
 6. The reasons for denial of requests for accommodation;
 7. The amount of time taken to process each request for accommodation; and,
 8. The sources of technical assistance that have been consulted in trying to identify possible accommodations.

L. Denial of Request for Accommodation (Please Section V. E. above.)

Denial of a request for accommodation must be in writing and specifically explain the reason(s) the request was denied. Some examples of reasons for the denial include (but are not limited to):

- Why the medical documentation is inadequate to establish that the individual has a disability or needs accommodation;
- Why the requested accommodation would not be effective; or,
- Why the accommodation would pose an undue hardship.

- In the written denial notice (just as it is in a written approval notice), the requesting employee is informed who, specifically, is the Deciding Official in the process. A Deciding Official could be any supervisor in the employee's chain of command (i.e., the immediate or second level supervisor or the Director of the Office in which the employee works).

All denials of requests for accommodation must include information regarding appeal rights.

All materials related to an employee's accommodation request, including a copy of the accommodation request and response, and any related documents, must remain on file in the DPM's records of accommodation requests for the duration of the requestor's employment.

M. Appeal Rights

An employee or applicant may file an EEO complaint with the FEC's EEO Office if he or she is not satisfied with the accommodation decision or if the accommodation is not implemented. The applicant must contact the EEO Office within 45 days of when he/she becomes aware of the accommodation decision or the failure to implement the accommodation decision. Voluntary, informal dispute resolution is encouraged to allow the parties to resolve disagreements and to obtain prompt reconsideration of denials. Please see the EEO Office's brochure entitled "Complaint or Dispute Resolution Options for FEC Employees" for detailed information about appeal options for both bargaining unit and non-

bargaining unit employees.

N. Resources

- a. www.eeoc.gov
- b. Management Directive 715 (October 1, 2003)
- c. The Americans with Disabilities Act of 1990 (ADA)
- d. The ADA Amendments Act of 2008 (ADAAA)
- e. The Rehabilitation Act (Section 501 applies the employment nondiscrimination standards of the ADA (Title I) to Federal government employees.)
- f. Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (October 17, 2002)
- g. EEOC Enforcement Guidance: Disability Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (July 27, 2000)
- h. Executive Order 13164 Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodations (July 26, 2000)
- i. EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (October 20, 2000)
- j. Job Accommodation Network (JAN) – askjan.org
- k. Computer/Electronics Accommodation Program (CAP) - <http://www.cap.mil/>

ⁱ However, **the ADAAA emphasizes that “the primary object of attention should not be on the definition of disability but rather on whether the individual can be accommodated absent undue hardship”** and not on the issue of whether the requesting employee is or is not determined to be a “qualified individual.”

ⁱⁱ Accommodation decisions will be handled on a case-by-case basis across supervisory chains. In order to expedite the process, decision making will begin with the direct (1st level) supervisor, but may also involve other higher level officials in the same supervisory chain (as appropriate), to ensure that the proper action is taken regarding an accommodation request.