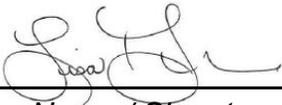


Chapter 7-100

Reasonable Accommodation

Approved by:  Executive Director
Name / Signature *Title*

Summary. This directive establishes the policy for assuring reasonable accommodation and prescribes the procedures for the processing of requests for reasonable accommodation at the National Council on Disability (NCD).

Applicability. The provisions of this directive apply to all Council Members and members of the NCD staff, regardless of type of appointment, applicants, employees seeking promotional opportunities and any person detailed to the NCD staff.

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1. References

- a. Executive Order 13164, October 20, 2000.
- b. Equal Employment Opportunity Commission (EEOC) Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, October 20, 2000.
- c. Titles I and V, Americans with Disabilities Act of 1990, Title 42 U.S.C. 12101-12117.
- d. Rehabilitation Act of 1973, sections 501 and 505
- e. Title 29, Subtitle B, Regulations relating to Labor, Chapter XIV—Equal Employment Opportunity Commission, Part 1630—Regulations to implement the equal employment provisions of the Americans with Disabilities Act
- f. Federal Sector Equal Employment Opportunity, 29 C.F.R. § 1614, November 9, 1999.
- g. EEOC Directive 715 (MD-715), October 1, 2003

- 2. Policy** NCD is committed to the fair and equal employment of people with disabilities. It is the policy of NCD to reasonably accommodate qualified individuals with disabilities when such accommodations are directly related to performing the essential functions of a job, competing for a job or to enjoying equal benefits and privileges of employment, unless the accommodation would impose an undue hardship. Within this framework, NCD has the following objectives:
- a. Allow a Council Member, employee or applicant with a disability, family member, health professional or other representative who is acting on behalf of the employee or applicant to initiate a request for reasonable accommodation orally or in writing.
 - b. Ensure requests for reasonable accommodation are handled in an effective and expeditious manner.
 - c. Enable the individual employee to perform the essential functions of the position, or to gain access to the workplace.
 - d. Enable an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job.
 - e. Allow an employee with a disability an opportunity to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.
 - f. Assure that all NCD printed and audiovisual materials are available to individuals with disabilities in a format that will enable them to have equal access to the information. Specifically, all documents issued by NCD will be available in accessible formats unless this process would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. All films and videos produced or shown by NCD will be opened-captioned; closed captioning will be made possible in certain circumstances; or, an interpreter a/o CART reporter will be present at the showing to members or

staff if the film is not captioned.

g. Assure that meetings, conferences, seminars, hearings, focus groups and other NCD sponsored events are accessible to persons with disabilities, including employees, participants, and members of the public.

3. Definitions

a. **Disability.** For purposes of determining eligibility for a reasonable accommodation, a person with a disability has (1) a physical or mental impairment that substantially limits a major life activity (actual disability); (2) a record of physical or mental impairment that substantially limits a major life activity; or, (3) when a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor ("regarded as"). NCD must provide reasonable accommodation to qualified employees and applicants with a substantially limiting impairment or a "record of" such an impairment.

b. **Qualified Individual with a Disability.** An individual with a disability is qualified if: (1) he/she satisfies the requisite skill, experience, education and other job-related requirements of the position; and, (2) he/she can perform the essential functions of the position, with or without reasonable accommodation.

c. **Reasonable Accommodation.** Any change or modification in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.

d. **Undue Hardship.** If a specific type of reasonable accommodation causes significant difficulty or expense, then the agency does not have to provide that particular accommodation. Determination of undue hardship must be made on case-by-case basis, considering factors such as the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the agency.

e. **Essential Functions.** Those job duties that are so fundamental to the position that the individual 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 ability to perform. 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.

f. **Extenuating Circumstances.** Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation. When there is a delay in processing a request for, or delivering, a reasonable accommodation, the agency must investigate whether there are temporary measures that could be taken to assist the individual with a disability.

g. **Employee.** An employee for the purposes of this directive includes Council Members, members of the NCD staff, and any person detailed to the NCD staff.

4. Responsibilities

- a. Executive Director. The Executive Director, or designated official, shall:
 - (1) Ensure a continuing affirmative application and vigorous enforcement of the policy and procedures contained in this directive.
 - (2) Provide sufficient resources for program implementation to ensure efficient and successful processing of requests for reasonable accommodation.
 - (3) Recognize and reward individuals who have demonstrated superior efforts in supporting the spirit of the law.
- b. Americans with Disabilities Act (ADA) Coordinator. The Staff Assistant is designated as the NCD ADA Coordinator. In this role, he/she will:
 - (1) Manage requests for reasonable accommodation and, where appropriate, determine which NCD management officials will handle the request by providing reasonable accommodation, if possible, in a prompt, fair and efficient manner.
 - (2) Assure the maintenance of the records related to an employee's request for accommodation in accordance with the Federal records disposition schedule. Ensure that medical records are kept confidential and maintained in files separate from the individual's official personnel file.
 - (3) Assist in the preparation of the Federal Agency Annual EEO Program Status Report.
 - (4) Request relevant supplemental medical information if documentation submitted does not clearly explain the nature of the disability, reason for reasonable accommodation, or does not clarify how the requested accommodation will assist the applicant/employee to perform the essential function of the job.
 - (5) Provide orientation, training, and advice to NCD supervisors regarding the implementation of the policies and procedures in this directive.
 - (6) Determine appropriate actions and coordinate with appropriate NCD supervisors and decision-makers involved in ensuring timely completion of individual requests.
 - (7) Recommend alternatives to address specific requests.
- c. Employees and Applicants. An employee or applicant shall:
 - (1) Initiate a request for reasonable accommodation orally or in writing in accordance with procedures outlined in Appendix A of this directive.
 - (2) Provide sufficient information and documentation, such as a description of the accommodation requested, and an explanation of how it would enable an employee to perform the job or assist an applicant in the selection process.
 - (3) When required, provide relevant medical information related to the functional impairment and the requested accommodation when the disability and/or need for accommodation is not obvious.

- d. Servicing Human Resource Office (HRO). The HRO staff will:
- (1) Process requests for reasonable accommodation from applicants during the recruitment and application process, as needed.
 - (2) Make vacancy announcements available to applicants/employees with disabilities.
 - (3) Ensure that all vacancy announcements include a statement of reasonable accommodation, to ensure compliance with Executive Order 13078 and support the Office of Personnel Management initiatives to increase the representation of people with disabilities in the Federal workforce.
 - (4) Assist the Executive Director with reassignment, if reassignment is deemed as a reasonable accommodation, in accordance with EEO regulations and laws.

APPENDIX A

PROCEDURES FOR REQUESTING REASONABLE ACCOMMODATION

Summary. An employee or applicant with a disability, family member, health professional or other representative who is acting on behalf of the employee/applicant may initiate a request for reasonable accommodation orally or in writing. An individual's oral request will start the reasonable accommodation process. However, for record keeping purposes, the requestor shall complete NCD Form NCD7-100-1 contained in this Appendix.

PROCEDURES

- The request should be made to the designated ADA Coordinator, Stacey Brown, available for contact via email at sbrown@ncd.gov, or by telephone at (202) 272-2004. The ADA Coordinator will bring the accommodation request to the attention of the Director of Operations who will evaluate and resolve the accommodation request in consultation with requesting employee's supervisor and the ADA Coordinator.
- Any NCD staff member, other than the ADA Coordinator, who receives a request for a reasonable accommodation must forward the request to the ADA Coordinator within three days of receipt.
- After receiving a request, the ADA Coordinator and Director of Operations will take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance.
- Requesting employees and NCD decision-makers can consult EEOC guidance and technical assistance documents to identify and evaluate possible accommodations, available at www.eeoc.gov.
- Unless there are extenuating circumstances, within 20 business days from the date the request was sent to the ADA Coordinator, the accommodation, if determined to be reasonable, should be provided. In certain circumstances, time limits for processing requests for and providing reasonable accommodations should be expedited. Expedited processing might be necessary where, for instance, the reasonable accommodation is needed to enable an individual to apply for a job; or the reasonable accommodation is needed for a specific activity that is scheduled to occur shortly.
- When all the facts and circumstances known to NCD make it is reasonably likely that the requesting employee will be entitled to an accommodation, but the accommodation cannot be provided immediately, NCD will provide the individual with an interim accommodation that allows the individual to perform some or all of the essential functions of the job, absent undue hardship.
- Where an accommodation can be provided in less than the maximum time frame, failure to provide an accommodation in a prompt manner may result in a violation of

the Rehabilitation Act.

- If a requestor's disability and/or need for accommodation are not obvious or already known, NCD (specifically the Director of Operations in conjunction with the ADA Coordinator and requesting employee's supervisor) is entitled to ask for and receive medical information showing that the requestor has a covered disability that requires accommodation. A disability is obvious or already known when it is clearly visible or the individual previously provided medical information showing that the condition met the Rehabilitation Act definition. It is the responsibility of the applicant/employee to provide appropriate medical information requested by NCD where the disability and/or need for accommodation are not obvious or already known.
- If medical documentation is necessary, the ADA Coordinator will prepare the request for medical documentation with input from the requestor, in accordance with EEOC policy guidance on Executive Order 13164.
- Provided medical information must be sufficient to explain: (1) the nature of the individual's disability; (2) the need for reasonable accommodation; and (3) how the requested accommodation, if any, will assist the individual to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace.
- Confidential medical information may be disclosed by NCD under limited circumstances including: (1) supervisors and managers who need to know may be told about necessary restrictions and about the necessary accommodation(s); (2) first aid and safety personnel may be told if the disability might require emergency treatment; (3) government officials to investigate the agency's compliance with the Rehabilitation Act; (4) workers' compensation offices or insurance carriers; and (5) agency EEO officials may be given the information to maintain records.
- NCD considers reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such position, a reasonable accommodation; NCD will 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 his or her current position. NCD will notify supervisors and other relevant agency employees how and where they are to conduct searches for available vacancies when considering reassignment as a reasonable accommodation (including conferring with other management personnel and the agency website for job postings).
- If there are extenuating circumstances that will inhibit either processing a request for or delivering a reasonable accommodation, the ADA Coordinator must notify the requestor promptly and keep the employee informed of the approximate date on which the agency may complete the process or issue a decision. The ADA Coordinator will investigate the possibility of temporary measures that could be taken to assist the requestor. Any changes or developments should be communicated promptly to the requestor.
- Requesting employees may track the processing of requests for reasonable accommodation by conferring with the ADA Coordinator as needed.
- Upon the granting/denial of the request for reasonable accommodation, the

Executive Director will complete the "Reasonable Accommodation Information Report" (Appendix B) and maintain it for future reporting.

- When the ADA Coordinator denies the request, the requestor will be informed in writing of the denial (see Appendix C) and explain the reasons for the denial and the procedures for reconsideration. The denial notice will clearly specify reasons for denying the request; for example, why the medical documentation is inadequate to establish that the individual has a disability or needs reasonable accommodation; why the requested accommodation would not be effective; or, why the accommodation would pose an undue hardship to the agency. The Executive Director will notify the requestor that he/she has the right to file an EEO complaint and may have rights to pursue an MSPB appeal. Within five business days upon receipt of the denial notice, the requestor wishes to request reconsideration of this decision may submit the request to the Chairperson or Executive Director (See Appendix C for appropriate official) to reconsider his/her denial. New evidence and sound justification should be presented to support this request. The Chairperson/Executive Director will issue a decision on reconsideration within 10 business days after receipt of the individual's request for reconsideration. Pursuing reconsideration and any informal dispute resolution procedures does not toll the time limits for initiating statutory claims.
- NCD is required to record the following information: the specific reasonable accommodation; the job (occupational series, grade level, and agency component) sought by requesting applicant or held by the employee; 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; whether the request was granted or denied; the identity of the deciding official; the basis of the denial; and the number of days taken to process the request.
- NCD makes use of both an internal reasonable accommodation fund and, when needed, the services of the federal government's Computer/Electronic Accommodations Program (CAP). Accordingly, requests for reasonable accommodation are not denied for reasons of cost, and individuals with disabilities are not excluded from employment due to the anticipated cost of a reasonable accommodation, if the resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, would enable it to provide an effective reasonable accommodation without undue hardship. Further, as hereby noted: (A) anyone at NCD who is authorized to grant or deny requests for reasonable accommodation or to make hiring decisions is hereby informed that, and will be instructed through internal management training, that pursuant to the regulations implementing the undue hardship defense at 29 CFR part 1630, all resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, are considered when determining whether a denial of reasonable accommodation based on cost is lawful; and (B) anyone authorized to grant or deny requests at NCD for reasonable accommodation or to

make hiring decisions is to make use of NCD's centralized accommodations fund and/or CAP services accordingly.

- NCD's supervisory and managerial employees are aware, as stated herein and as they are also made aware through internal management training, of the resource materials available on EEOC's public website, including EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act (July 27, 2000), and EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act (revised October 17, 2002).
- Any applicant or employee for employment who believes he/she has been discriminated against based on race, sex, color, religion, national origin, age, mental or physical disabilities, and/or reprisal in an employment matter, must contact an EEO counselor within 45 calendar days of the date of the matter to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action. The aggrieved person will be offered EEO counseling or an opportunity to participate in the NCD Alternate Dispute Resolution (ADR) Program. To initiate an EEO complaint or an appeal to MSPB, the following applies:
 - For an EEO complaint, pursuant to 29 CFR § 1614, contact an EEO counselor through Agency Liaison Division within 45 days from the date of the notice of denial of reasonable accommodation; or
 - Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action, as defined in 5 CFR § 1201.3.

APPENDIX A

REQUEST FOR REASONABLE ACCOMMODATION

1. Name of Employee/Applicant: _____
2. Telephone no. _____
3. Office/Organization: _____
4. ACCOMMODATION REQUESTED. Please be as specific as possible (e.g., adaptive equipment, reader, or interpreter.)

5. REASON FOR REQUEST. (If accommodation is time-sensitive, please explain.)

Signature: _____ Date: _____

Management Official/Supervisor

Signature: _____ Date: _____

RETURN FORM

Case No.: _____ Name, Title: _____

Signature: _____ Date: _____

All requests for accommodation will be handled in a prompt and expeditious manner. All records of reasonable accommodation must be kept confidential.

NCD Form NCD7-100-1

APPENDIX B

REASONABLE ACCOMMODATION INFORMATION REPORT

Name of Employee/Applicant:

Position Title:

Office:

Telephone:

1. Reasonable accommodation needed for (check one):

Application Process

Performing job functions or accessing the work environment

Accessing a benefit or privilege of employment (e.g., attending a training program or special event)

2. Types of reasonable accommodation requested (e.g., adaptive equipment, staff assistant, removal of architectural barrier):

3. Types of reasonable accommodation provided (if different from what was requested):

4. Reasonable accommodation (check one) indicating that the claim was either:

Approved /Date: _____ or Denied /Date: _____

(If denied, attach copy of the written denial letter/memo)

5. Date reasonable accommodation provided _____

6. If time limits outlined in the reasonable accommodation procedures were not met, please explain why.

7. Explain the medical information and documents required to process this request, if applicable.

8. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations (e.g., Job Accommodation Network, Disability Program Manager, and Disability Organization).

Comments:

Submitted by: _____ Telephone No.: _____

**ATTACH COPIES OF ALL DOCUMENTS OBTAINED OR DEVELOPED IN
PROCESSING THIS REQUEST**

NCD Form NCD7-100-2

APPENDIX C

DENIAL OF REASONABLE ACCOMMODATION REQUEST

(Must complete items 1-4)

To: (Name of the requestor):

Type(s) of reasonable accommodation requested:

Request for reasonable accommodation denied because (may check more than one item):

_____ Accommodation ineffective

_____ Accommodation would cause undue hardship

_____ Medical documentation inadequate

_____ Accommodation would require removal of an essential function
Accommodation would require lowering of performance or production standard

_____ Other (please specify) _____

Detailed reason(s) for the denial of reasonable accommodation (must be specific, e.g., why accommodation is ineffective or causes undue hardship):

If the requester proposed one type of reasonable accommodation which is being denied but rejected an offer of a different type of reasonable accommodation, explain both the reasons for denial of the requested accommodation and why you believe the chosen accommodation would be effective.

If an individual wishes to request reconsideration of this decision, he/she may take the following steps:

1. First, ask the decision maker to reconsider his/her denial. Additional information may be presented to support this request.
2. If the decision maker does not reverse the denial and the decision maker was the Executive Director; the individual can ask the Chairperson to do so.

If an individual wishes to file an EEO complaint, or pursue MSPB grievance procedures, he /she must take the following steps:

1. For an EEO complaint, pursuant to 29 CFR § 1614, contact an EEO counselor through Agency Liaison Division within 45 days from the date of the notice of denial of reasonable accommodation; or
2. For a collective bargaining claim, file a written grievance in accordance with the provisions of the agency's collective bargaining agreement; or
3. Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action, as defined in 5 CFR § 1201.3.

Name, Title and Signature of Deciding Official: _____

Date: _____

NCD Form NCD7-100-3