

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

Date: 05/27/2004 (Regulations may contain various dates)

Category: 9 - Equal Opportunity

OPR: OEEO

Title: AR 9-4 REASONABLE ACCOMMODATION OF INDIVIDUALS WITH DISABILITIES

REVISION SUMMARY: 27 May 2004

This regulation supersedes AR 9-4, dated 28 September 2001.

AR 9-4, paragraph e(1) is revised to reflect that the interactive accommodation process must begin with an appropriate Agency official who is not the recruiter or hiring manager. In addition, paragraph i(2) is revised to indicate that the Reasonable Accommodation Panel must look for jobs equal to or at any grade below the employee's current grade, rather than just two grades below.

Boldfaced text in this regulation indicates revisions.

This regulation was written by the Office of Equal Employment Opportunity, (secure).

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4. (U) REASONABLE ACCOMMODATION OF INDIVIDUALS WITH DISABILITIES SYNOPSIS. This regulation sets the Agency policy, responsibilities, and procedures for the use of assistive technology, job restructuring, reassignment, and other accommodations available for qualified employees or applicants who have or who develop a disability.

a. (U) AUTHORITY

- (1) The Central Intelligence Agency Act of 1949, as amended; the National Security Act of 1947, as amended; the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, as amended; Executive Order 13164; and other applicable law.
- (2) This regulation implements applicable provisions of Equal Employment Opportunity Commission (EEOC) regulations, directives, and advisories, and the statutes on which they are based.

b. (U) POLICY

- (1) The Agency will make reasonable accommodations to qualified employees with disabilities and to applicants for employment who request accommodations. Reasonable

accommodations are required not only in the workplace, but also for work-related social and recreational activities.

- (2) The Agency will comply with all accessibility requirements of the Rehabilitation Act and the Americans with Disabilities Act (collectively, "ADA"), and associated federal regulations for enabling access to Agency facilities and electronic and information technology (IT) systems by individuals with disabilities.
- (3) The Agency encourages full employment of all individuals with disabilities. If the employee or applicant is able to perform the essential job functions, with or without reasonable accommodations, **the employee or applicant's disability will not preclude Agency employment.**

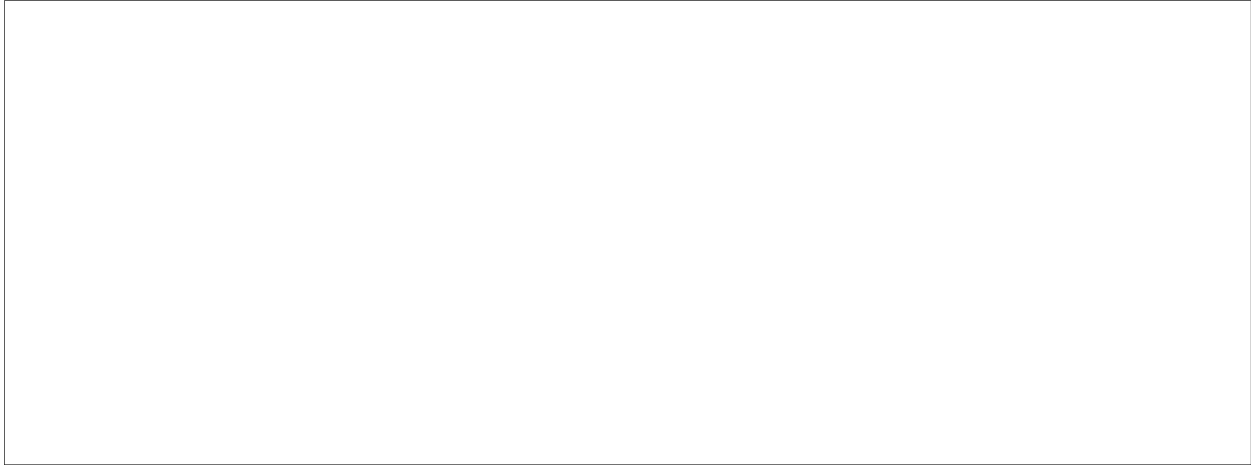
c. **(U) DEFINITIONS**

- (1) **DISABILITY.** Under the ADA, a disability is a "physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. § 12102(2)(A). The term "disability" includes only physical and mental impairments, and not environmental, cultural, or economic disadvantages. The ADA protects from employment discrimination individuals with disabilities, as well as those who have a record of such impairment or who are regarded as having such impairment. When an individual's disability is not obvious, the Office of Medical Services (OMS) will determine whether an employee has a covered disability that requires reasonable accommodations.
- (2) **ESSENTIAL JOB FUNCTIONS.** Essential job functions are those duties that are so fundamental to a given position that the individual cannot do the job without being able to perform them. A function can be "essential" if, among other things, the position exists specifically to perform that function, there are a limited number of employees who could perform the function, or the function is specialized and the individual is hired based on his or her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed and not simply the components of a generic position description.
- (3) **QUALIFIED INDIVIDUAL.** An employee with a disability is deemed qualified for work if, with or without reasonable accommodation, he or she can perform the essential job functions.
- (4) **REASONABLE ACCOMMODATION.** A reasonable accommodation is a modification or adjustment to a job-related process (including the job application process), the work environment, or the manner or circumstances under which the job is customarily performed that enables a qualified individual with a disability to perform the essential job functions, or to enjoy benefits and privileges of employment, and does not place an undue hardship on the employer.
- (5) **UNDUE HARDSHIP.** If a specific kind of accommodation causes significant difficulty or expense, the Agency does not have to provide that particular accommodation. Determination of undue hardship is always made on a case-by-case basis, considering

factors that include the nature and cost of the accommodation needed, and the impact of the accommodation on the Agency's operations.

d. (U) AGENCY-WIDE MANDATORY ACCESSIBILITY REQUIREMENTS

- (1) All Agency owned or occupied buildings must comply with the ADA's accessibility provisions for disabled individuals.
- (2) Any contracts established for the use of external facilities (for example, hotels for conferences or training) must reflect the obligation that the facilities be accessible to people with disabilities.



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- (4) Section 508 standards for accessibility cover a broad range of IT and electronic systems, including those used for communication, duplication, computing, storage, presentation, control, transport, and production. These include, for example, computers, software, Agency-sponsored World Wide Web sites, Agency intranet applications, Lotus Notes databases, networks, peripherals, and other types of office equipment. Other electronic and IT systems may also require adaptation to make them accessible to individuals with disabilities or otherwise compatible with available assistive technology. The Office of Equal Employment Opportunity (OEEEO), in consultation with the Office of the Chief Information Officer (CIO) and the Office of General Counsel (OGC), will determine whether a particular system requires accessibility.
- (5) Regardless of format, all video and multimedia productions -- including videotapes, televised live broadcasts of internal Agency television feeds, and rebroadcasts of live television feeds -- that contain speech or other audio necessary to understand the content shall be captioned or taped simultaneously with a qualified sign-language interpreter. Similarly, all video and multimedia productions that contain visual information necessary to understand the content shall be audio-described.
- (6) Offices that need to convert non-captioned videotapes to open or closed caption may contact OEEEO/Reasonable Accommodations Staff (RAS) for referral. Requests for interpreter services may be submitted to OEEEO/RAS, via Lotus Notes, using the



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- (7)  the Agency will voluntarily comply with the

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provisions of Section 508 for most other electronic and IT systems. Exemptions from compliance will be restricted to the following two categories:

- (a) Those that involve a compelling national security mission requirement. The CIO Mission Support Office (MSO) must approve requests for exemptions from Section 508 compliance based on this requirement.
 - (b) Those that involve time-critical national security operational requirements and will be used by fewer than 25 people, or where it would be inappropriate to comply with Section 508 because of cover reasons. If a component is using this exemption, the facts and circumstances must be fully explained in the contracting documents.
- (8) The Agency is responsible for providing reasonable accommodations to qualified detailees to the Agency. An individual from another Government organization who is assigned to CIA should have his or her parent organization contact OEEO/RAS to coordinate the parent organization's provision of, or payment for, reasonable accommodations.
 - (9) The Agency is not responsible for providing reasonable accommodations to independent contractors (ICs), except for physical modifications to Agency facilities. The IC's contracting officer's technical representative (COTR) should contact OEEO/RAS or OGC for further guidance.
 - (10) Industrial contractors are responsible for providing reasonable accommodations to their employees in most circumstances, except for physical modifications to Agency facilities. An IC's COTR should contact OEEO/RAS or OGC for further guidance.
- e. **(U) INITIATING THE INTERACTIVE REASONABLE ACCOMMODATIONS PROCESS**
- (1) The reasonable accommodation process is an interactive process that usually begins when a request for accommodation is made by an employee. To begin the interactive process, the individual or his or her representative (for example, family member, health professional, or other representative), must first advise **the employee's supervisor or manager, OGC, or OEEO/RAS** that an adjustment or change at work is needed for a reason related to a medical condition. When a representative makes a request on behalf of an individual, the Agency will confirm with the individual that the accommodation is wanted.
 - (2) The request for an accommodation may be made orally or in writing. Individuals are not required to mention the Rehabilitation Act, the ADA, or the phrase "reasonable accommodation" in requesting an accommodation. Furthermore, an individual with a disability is not required to make a request for a reasonable accommodation at any particular time. The Agency may ask for the request in writing for record-keeping purposes (via Lotus Notes or Attachment 1, "Confirmation of Request for Reasonable Accommodations for Individuals With Disabilities"), but may not delay in implementing the reasonable accommodation process.
 - (3) When an employee has requested a type of reasonable accommodation that will likely be needed on a repeated basis (for example, the use of sign language interpreters), the employee is not required to go through the process multiple times. Once the reasonable accommodation is approved the first time, the employee may obtain the accommodation

by notice to the appropriate individual or office. For sign language interpreter services, for example, the employee or supervisor submits a request through in Lotus Notes.

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- (4) Managers generally may not ask an applicant whether he or she needs a reasonable accommodation. The hiring manager may specify the essential job functions and ask the applicant to discuss how he or she will meet the requirements of the job. If the applicant has an obvious disability or voluntarily discloses a disability, the manager should contact OEEO/RAS for guidance if necessary. OEEO/RAS will work with the manager and the applicant to devise an effective accommodation strategy.

f. (U) PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION

- (1) The Agency will begin processing a request for accommodation within two working days of receipt of the request. Special circumstances may require that the Agency begin processing a request immediately.
- (2) The Agency will have up to 15 working days, absent extenuating circumstances, to grant or deny requests for reasonable accommodation. This standard represents a maximum; managers must not delay the expeditious processing of requests. If a request for a reasonable accommodation is made to, or handled by, a manager, that manager must process the request promptly and notify the individual of a decision within the designated time limit. If a request for a reasonable accommodation is made to a manager, but referred to and handled by OEEO/RAS, OEEO/RAS will process the request and notify the individual of a decision within the designated time limits.
- (3) Extenuating circumstances may justify delays in processing requests beyond the designated limit. To justify a delay, circumstances must be such that they could not be reasonably anticipated or avoided in advance of a request (for example, equipment must be back-ordered or the vendor typically used by the Agency unexpectedly goes out of business). Delays in providing necessary medical documentation may also affect the time limit. The Agency will notify the individual of the reason for a delay and keep the individual informed of the expected date the request will be processed.
- (4) Managers who receive requests for reasonable accommodations should not question employees about their medical histories and should not rely on assumptions about an impairment to determine if an employee is a qualified individual with a disability. Managers should, however, discuss the request with the employee as soon as practicable. The manager's response to an employee's request for a medically based adjustment to his or her employment situation will vary depending on the nature of the medical condition. For example, a manager could grant a request for a period of extended sick leave to allow an employee to recover from knee surgery without contacting OEEO. If an employee cites a medical condition as the basis for a long-term inability to perform certain aspects of the employee's assigned duties, then the manager should immediately contact OEEO/RAS for assistance in determining the appropriate accommodation(s). A member of OEEO/RAS will help guide the interactive process, working in collaboration with the employee, manager, OGC, and OMS, as appropriate.
- (5) Because the interactive process is intended to be flexible, decisions to approve requests for reasonable accommodations should be made at the lowest possible level to minimize

the burden on the requestor and expedite the processing and delivery of reasonable accommodations. As an example, a first-line supervisor may approve adjustments to an individual's work schedule as a reasonable accommodation. It is imperative throughout this process that those responsible for making decisions regarding reasonable accommodations maintain open communication with those requesting accommodation in order to gain a clear understanding of the needs involved and the nature of any accommodation requests.

- (6) OEEO/RAS will oversee the processing of requests for reasonable accommodation that cannot be handled by an employee's immediate supervisor. OEEO/RAS will also serve as the focal point for questions regarding reasonable accommodations and resources available inside or outside the Agency.
- (7) An applicant or employee requesting an accommodation is responsible for providing appropriate medical information related to the disability and proposed accommodation as needed. The Agency has the right to have such information reviewed by a medical expert of its own choosing at Agency expense. The Agency also has a right to request relevant, supplemental medical information if the information submitted does not clearly explain the nature of the disability or substantiate the need for reasonable accommodation. If the submitted medical information is not sufficient, the Agency also has a right to require that the requesting individual be examined by a physician of the Agency's choosing and at Agency expense.
- (8) If an employee's manager and/or OEEO/RAS cannot determine the appropriate accommodation(s), or where the employee's disability is not obvious, the employee may be referred to OMS for an Accommodation Evaluation. An employee may also initiate a request for an Accommodation Evaluation. OMS will evaluate the employee's medical condition and functional limitations. OMS may also request that management provide information regarding the employee's essential job functions. OMS may recommend preliminary accommodations based on a dialogue with the employee and reevaluate the recommendation once appropriate medical information is received. OMS also may ask the employee to provide supplemental medical information when the initial information is insufficient to document a disability or the functional limitations it causes. If OMS needs to further substantiate the existence of a disability and need for accommodations, OMS will request that the employee be examined by a physician of the Agency's choosing and at Agency expense.
- (9) In consultation with the OEEO/RAS and OGC, management will then determine whether the OMS-recommended accommodations are reasonable and feasible in light of the employee's essential job functions. Because the Rehabilitation Act requires that all medical information be kept confidential, any medical information obtained in connection with a request for reasonable accommodation will be kept in files separately from an individual's personnel file, and shared only with employees who have an official need to know.
- (10) Employees are responsible for cooperating with the accommodation evaluation to determine whether a medical condition is a disability and whether the individual needs an accommodation. Failure to cooperate, including failure to provide necessary

documentation when it has been properly requested, could result in a denial of the reasonable accommodation request.

- (11) The Agency cannot compel an individual to accept an accommodation; however, an individual who refuses to accept an effective accommodation may not be qualified to remain in the job if the accommodation is necessary to eliminate a direct threat to the health or well being of the individual or any other person, or to enable the individual to perform an essential job function. It is within the Agency's discretion to determine whether an individual who refuses an accommodation is qualified for their assigned position without such accommodation.

g. (U) DENIAL OF A REQUEST FOR A REASONABLE ACCOMMODATION

- (1) If an employee's request for an accommodation is denied, the Agency official making the decision will respond to the employee in writing with the specific reasons for the denial. A copy of the response will be provided to OEEO/RAS. This notice of denial will include notification of the employee's right to file an Equal Employment Opportunity (EEO) complaint. (See AR 9-3Notes Link) The notice of denial also must explain the option to use the Alternative Dispute Resolution (ADR) process to obtain prompt reconsideration of a denial. [Located at ADR website:

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- (2) If an employee's original request for a specific accommodation is denied, and the Agency offers an alternative accommodation, the written response to the employee will explain both the reasons for denying the requested accommodation and the reasons that the chosen accommodation will be effective.

h. (U) KINDS OF REASONABLE ACCOMMODATIONS

- (1) The Agency may choose among reasonable accommodations as long as the chosen accommodation is effective. The Agency may solicit and consider the employee's input, but the Agency has the ultimate discretion to choose among effective accommodations. OEEO will fund reasonable accommodations when those accommodations have been determined to be appropriate. Reasonable accommodations may include:
 - (a) Making existing facilities readily accessible;
 - (b) Job restructuring;
 - (c) Part-time or flexible work schedules;
 - (d) Provision of special devices or technology;
 - (e) Provision of qualified service providers, such as readers or interpreters;
 - (f) Modification of testing and examination procedures; and
 - (g) Reassignment to a vacant position.
- (2) The Agency is not required to lower productivity standards, remove or change the essential functions of the job, or create a position as an accommodation to employees with disabilities; however, managers must consider reassigning nonessential job functions or modifying how essential job functions are performed.

i. (U//~~ATUO~~) REASONABLE ACCOMMODATION PANEL (RAP)

- (1) Employees who cannot perform the essential functions of a job, whether, with or without reasonable accommodation, are not qualified for that job and should be considered for reassignment to a vacant position as an accommodation.
- (2) If an employee needs to be reassigned as an accommodation, the employee's home component Human Resources (HR) officer should review all vacant positions in the employee's home component, as well as all positions from the component that are matrixed into other areas of the Agency, that are at **or below** the employee's current grade, as well as those that are expected to become vacant in the following three months and that management plans to fill. If the employee accepts a lower-graded position, **the employee may still retain the salary level of their higher-graded position as authorized by HR 20-31b(5)Notes Link.**
- (3) If the home component is not able to identify an available and appropriate reassignment, the employee's file should be forwarded to the directorate or MSO HR focal point for a similar review on a directorate-wide or MSO-wide basis. In coordination with OEEO/RAS and OGC, all alternatives for an accommodation should be thoroughly explored within the directorate or MSO before requesting assistance through the RAP. Information obtained in connection with the employee's request for a reasonable accommodation in his or her current position should not be used to discriminate against the employee in the search for a reassignment. Managers who have a reasonable belief that the employee will need a reasonable accommodation to perform the functions of the new job, however, may ask what type of accommodation would be needed to perform those functions. Managers may not use the fact that an employee will need a reasonable accommodation in the reassignment to deny the employee a job for which he or she is otherwise qualified, unless providing the accommodation would cause an undue hardship.
- (4) If a suitable position cannot be identified within the directorate or MSO for a current staff employee, the directorate or MSO management staff must request an Agency-wide position review through the RAP. The RAP was created to search Agency-wide for vacancies suitable for the placement of employees with disabilities, as defined by the ADA, who are no longer able to perform their essential job functions. The RAP is chaired by the Deputy Chief/HR, or his or her designee, and consists of the senior HR representative from each Directorate and MSO, as well as advisors from OGC, OMS, and OEEO/RAS.
- (5) The employee's home directorate or MSO management staff will be responsible for scheduling the RAP meeting, preparing background information, and recording minutes of any meetings. The RAP representative will circulate a package to the other directorates and MSO representatives that includes: the employee's current biographical profile; the employee's last two PARs; and a blank spreadsheet for listing vacant directorate or MSO positions. Medical information regarding the employee seeking reassignment will not be disclosed to RAP members, interviewers, or potential supervisors. Representatives from the other directorates and MSOs will review vacancies within their control to determine if a suitable vacant position exists that meets the accommodation needs of the employee. The results of each search will be presented and discussed at a formal RAP meeting. The employee will be notified via written memorandum of the results of the RAP review. If the RAP identifies suitable vacant positions, the employee's directorate management staff will arrange meetings with

prospective managers. If the employee accepts a position identified through this process, he or she will join the new career service as soon as possible.

- (6) If the RAP determines that no position exists that would allow the employee to perform essential job functions with or without reasonable accommodation, the employee will be declared excess by the home career service. The home career service will provide written notification to the employee and review available options such as immediate retirement, eligibility for medical disability retirement, or involuntary separation as defined in AR 13-8Notes Link. In the event of involuntary separation, an employee's entitlement to separation pay benefits will be determined according to AR 20-32Notes Link.

j. (U//~~FOUO~~) DOCUMENTATION

The employee's home career service should develop procedures to ensure careful documentation of meetings, discussions, and decisions throughout the reasonable accommodation process. The career service will prepare written summaries of all counseling sessions, evaluations, RAP meetings, and job offers to the employee. The documentation should note items discussed, the nature of accommodation options that were considered, and resolutions to any pertinent issues. If possible, employees should sign any counseling letters or evaluations pertaining to them and be provided copies for their records. The Director, OEEO, will retain original documentation from the RAP meeting and subsequent employee meetings. The employee's representative HR officer at the RAP is responsible for delivering copies of all RAP documentation to OEEO/RAS within 30 calendar days of the RAP meeting.



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