

**NATIONAL ENDOWMENT FOR  
THE ARTS**

**PROCEDURES TO FACILITATE THE  
PROVISION OF REASONABLE  
ACCOMMODATION FOR  
INDIVIDUALS WITH DISABILITIES**

**September 2004**

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FOR INDIVIDUALS WITH DISABILITIES**

- I.**     PURPOSE. These procedures implement the National Endowment for the Arts policy on Reasonable Accommodation for Individuals with Disabilities.
- II.**    AUTHORITY AND COVERAGE. Reasonable accommodation of qualified individuals with disabilities who are employees or applicants will be provided in accordance with 29 CFR Part 1630 and 29 CFR Section 1614.203.

**III.**   NATIONAL ENDOWMENT FOR THE ARTS ON REASONABLE ACCOMMODATION

The National Endowment for the Arts' (NEA) policy is to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973, as amended, and Title I of the Americans with Disabilities Act (ADA). Under the law, federal agencies must provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship. NEA is committed to providing reasonable accommodations to its employees and applicants for employment in order to assure that individuals with disabilities enjoy full access to equal employment opportunity at NEA. NEA is committed to not discriminate on the basis of disability, to provide appropriate accommodations to visitors, panelists, and the general public, and to assure that all its programs and facilities are accessible. NEA provides reasonable accommodations when an applicant with a disability needs an accommodation in order to be considered for a job; when an employee with a disability needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace; and when an employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment.

NEA will process requests for reasonable accommodation and, where appropriate, provide reasonable accommodations in a prompt, fair and efficient manner.

Employees may refer to the Equal Employment Opportunity Commission's (EEOC) "Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act" (available on EEOC's internet sites) for additional information on the rights and responsibilities of applicants and employees requesting reasonable accommodation, and the responsibilities of NEA personnel involved in responding to those requests.

- IV.**    APPLICABILITY. The provisions of these procedures apply to all Arts Endowment employees and applicants for employment.

V. DEFINITIONS.

1. Deciding Official. The deciding official is the immediate supervisor, second level supervisor, the appropriate Deputy Chairman, or the Disability Program Manager.
2. Disability and/or Physical or Mental Impairment. (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal; special sense organs, cardiovascular; reproductive; digestive; respiratory (including speech organs); genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
3. Essential Functions. Those job duties that are so fundamental to the position that the individual holds or desires that s/he cannot do the job without performing them. A function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.
4. Flexible Interactive Process. The proactive communications between the individual requesting the accommodation and the Arts Endowment's deciding official about the request, the process for determining whether an accommodation will be provided and the nature of the potential accommodations, if the request is granted.
5. Functional Limitations. The impact a disability has on an individual's ability to perform at home, at work or in other settings.
6. Individual With a Disability. An employee or applicant for employment who (1) has a physical or mental impairment which substantially limits one or more of that person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. Current illegal use of drugs and certain sexual and behavioral disorders are excluded from this definition.
7. Major Life Activities. Basic activities that the average person in the general population can perform with little or no difficulty. Includes activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

8. Medical Documentation. Documentation relating to the claimed disability, which substantiates that, an individual is a qualified individual with a disability and assists in the identification of appropriate accommodations.
9. Qualified Individual with a Disability. With respect to employment, an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health or safety of the individual or others and who, depending upon the type of appointing authority used: (1) meets the experience and/or education requirements of the position in question, or (2) meets the criteria for appointment under one of the special appointing authorities for disabled persons.
10. Reasonable Accommodation. Any change or adjustment to a job or in a work environment or in the way things are customarily done that does not impose undue hardship and would enable a qualified individual with a disability to enjoy equal employment opportunities.
11. Reassignment. Reassignment is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to vacant positions and for employees who are qualified for the new position. If the employee is qualified for the position, he/she will be reassigned to the job and will not have to compete for it.
12. Substantially Limits. The term substantially limits means: (1) unable to perform a major life activity that the average person in the general population can perform; or (2) significantly restricted as to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
13. Undue Hardship. The concept of undue hardship includes any action that is unduly costly, extensive, substantial, unduly disruptive, or that would fundamentally alter the nature or operation of the business. [Determination of undue hardship will always be made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the agency.]

## **VI. REQUESTS FOR REASONABLE ACCOMMODATION**

A request for reasonable accommodation is a statement that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition. **The reasonable accommodation process begins as soon as the request for accommodation is made.**

A request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." An individual with a disability may request a reasonable accommodation whenever s/he chooses, even if s/he has not previously disclosed the existence of a disability. **Any NEA employee or applicant may consult the Disability Program Manager for further information or assistance** in connection with requesting or processing a request for reasonable accommodation.

1. Employee
  1. An employee's request for reasonable accommodation, whether oral or written, will be process as soon as received.
  2. Whether oral or written, a reasonable accommodation request is generally made to the employee's immediate supervisor, but may also be made to the employee's second level supervisor or the appropriate Deputy Chairman, the Civil Rights Office or the Office of Human Resources.
2. Applicant for Employment. An applicant may request a reasonable accommodation orally or in writing from any Arts Endowment employee with whom the applicant has contact in connection with the application process. The Office of Human Resources is responsible for training staff involved in the application process to recognize requests for reasonable accommodation and to handle them appropriately.
3. A family member, friend, health professional, or other representative may request reasonable accommodation on behalf of an individual with a disability. Where possible, the agency should then confirm with the person with a disability that he/she in fact wants a reasonable accommodation. However, the employee may refuse an accommodation, when he/she believes it is not needed. The procedures for consideration and approval/disapproval of such requests will be the same as for requests made by the individual needing the accommodation.

## **VII. RESPONSIBILITY FOR PROCESSING THE REQUEST**

As the first step in processing a request for reasonable accommodation, the NEA staff member who receives the request must determine who will be responsible for handling it and forward it, if necessary. **The person who handles the request for accommodation will be referred to as the "decision maker."** There are four possible decision makers: a Personnel Management Specialist, an employee's

immediate supervisor, an employee's second level supervisor, and the Disability Program Manager. A staff member receiving a request for accommodation should follow the instructions below to determine which of these individuals should receive the request.

The request should be forwarded to the appropriate person **as soon as possible but in no more than five business days**. All referrals must be copied to the second level supervisor of the employee requesting the accommodation. If the person receiving the request, including the Disability Program Manager, is also the decision maker, s/he should promptly notify the employee's second level supervisor that the request has been made. **Upon receipt of the request, the person handling and processing the request for reasonable accommodation will inform the employee that s/he will be issuing the final decision.**

- ° Requests for accommodation from applicants will be handled by the Personnel Management Specialist responsible for the recruitment and/or selection process.
- ° Requests for accommodation from employees will be handled by the requesting employee's immediate supervisor unless the request is one which should be handled by the second level supervisor or the Disability Program Manager, as explained below.
  1. Individuals requesting reasonable accommodation will:
    1. Make request orally or in writing (preferred) using the format example provided in **Appendix A** or equivalent. Any request, whether oral or in writing, should include identification of the disability and functional limitations.
    2. Work with appropriate Arts Endowment officials to identify specific, appropriate reasonable accommodation.
    3. Provide, if asked, appropriate reasonable medical or other supporting documentation relating to the function impairment at issue and the requested accommodation.
  2. The Immediate Supervisor will:
    1. Provide an initial response to the employee which indicates that the accommodation is approved or that additional information is needed within a specified timeframe;
    2. Consult and cooperate with an employee or applicant for employment who makes an accommodation request, and make referrals as necessary, to determine whether the requested accommodation is appropriate; and
    3. Provide reasonable accommodation to an employee or qualified applicant for employment with a disability unless the accommodation requested would create an undue hardship on the Agency.

3. The Deciding Official will decide on a case-by-case basis whether to grant the requested accommodation, offer alternative reasonable accommodation(s), or deny the request based on undue hardship.
4. Disability Program Manager (Director, Office of Human Resources) will:
  1. Provide guidance and assistance to managers, supervisors, employees and applicants for employment on how to adhere to the policy and procedures described in this document;
  2. Review accommodation requests and decisions that deny requested accommodation to ensure that these established procedures have been followed;
  3. Ensure that supervisors respond to employees who have requested reasonable accommodation within specified timeframes;
  4. Determine position series for which an employee qualifies and whether vacant positions are available for reassignment; and
  5. Consult and coordinate the provision of services/equipment with the Civil Rights Office, the Office of Information Technology Management, the Office of AccessAbility, the Administrative Services Division and other offices, as needed, concerning reasonable accommodation issues and policies, and concerning specific requests for accommodation.
5. The Equal Employment Opportunity (EEO) Manager will:
  1. Advise and consult with employees, management and the Disability Program Manager with respect to reasonable accommodation requests.
  2. Handle and investigate internal and external complaints of illegal discrimination against an individual based on disability. Provide guidance and assistance in addressing accessibility issues raised in conjunction with reasonable accommodations requests.
6. The General Counsel will provide legal advice and counsel to agency managers and supervisors, the Office of Human Resources (OHR), the Civil Rights Office (CRO), the Office of Information and Technology Management (ITM), the Office of AccessAbility, the Administrative Services Division and other offices, as needed, concerning reasonable accommodation issues and policies, and concerning specific requests for accommodation.
7. The Director of Administrative Services will provide assistance in accommodating an employee or applicant with a disability in areas related to building facilities, furniture and equipment not related to information technology.

8. The Chief Information Officer will be responsible for the provision of information technology and other adaptive equipment to facilitate approved reasonable accommodation requests.
9. The Office of AccessAbility Coordinator will provide guidance and assistance in addressing accessibility issues raised in conjunction with reasonable accommodation requests.

The next step is for the parties to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and the decision maker must talk to each other about the request, the process for determining whether an accommodation will be provided, and potential accommodations.

**Communication is a priority throughout the entire process.** The decision maker will have the principal responsibility for identifying possible accommodations. S/he will take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation should also participate to the extent possible in helping to identify an effective accommodation. Resources, which are available to help both the decision maker and the individual requesting the accommodation to identify possible accommodations, are listed in **Appendix B**. The Disability Program Manager is also available to provide assistance.

- Ongoing 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 which should be provided are clear, extensive discussions are not necessary. Even so, the decision maker and requesting individual should talk to each other to make sure that there is a full exchange of relevant information.
- The decision maker or any other NEA official who receives information in connection with a request for reasonable accommodation may share information connected with that request with other agency officials **only when the agency official(s) need to know the information in order to make determinations on a reasonable accommodation request**. See Section IX for specific rules governing the confidentiality of medical information.
- Specific considerations when responding to a **request for reassignment**.
  - Reassignment will only be considered if no accommodations are available to enable the individual to perform his or her current job, or if the only effective accommodation would cause undue hardship.
  - In considering whether there are positions available for reassignment, the Disability Program Manager will work with both the Office of Human Resources (OHR) and the individual requesting the accommodation to identify: (1) all vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and (2) all positions which OHR has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. The



agency will first focus on positions, which are equivalent to the employee's current job in terms of pay, status, and other relevant factors.

If there is no vacant equivalent position, NEA will consider vacant lower level positions for which the individual is qualified.

### **VIII. DOES THE INDIVIDUAL REQUESTING THE ACCOMMODATION HAVE A DISABILITY? REQUESTS FOR MEDICAL INFORMATION**

**NEA is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation.** In some cases the disability and need for accommodation will be obvious or otherwise already known to the decision maker. In these cases, NEA will not seek any further medical information. However, when a disability and/or need for reasonable accommodation is not obvious or otherwise already known to the decision maker, NEA may require, if it chooses, that the individual provide reasonable documentation about the disability and his or her functional limitations.

- If a supervisor or other decision maker believes that medical information is necessary in order to evaluate a request for reasonable accommodation, s/he will make a request to the Disability Program Manager to obtain such information.
- The Disability Program Manager will make a determination as to whether medical documentation is necessary. If it is, s/he will request the necessary medical information. If it is not necessary, the request for accommodation will be returned promptly to the decision maker to complete the processing.
- If a determination is made to seek medical information, NEA will request information sufficient to substantiate that the individual has a disability and needs the reasonable accommodation requested, but will not ask for unrelated documentation. NEA requests for medical information will follow the requirements set forth in the EEOC's Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act.

An agency may request information or documentation regarding:

- the nature, severity, and duration of the individual's impairment;
- the activity or activities that the impairment limits;
- the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or
- why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

In most situations, the agency may not request access to a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for an accommodation.

- The Disability Program Manager will seek information or documentation about the disability and/or functional limitations from the individual, and/or ask the individual to

obtain such information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. In order to get the most helpful information possible, all requests for information should describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information. The Disability Program Manager may work with the supervisor and/or Office Director in seeking appropriate information.

- Once the medical documentation is received, the Disability Program Manager will evaluate it, in consultation with a physician chosen by NEA at the agency's expense, if necessary.
- If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable NEA to determine whether an accommodation is appropriate, the Disability Program Manager may ask for further information.
  - First, however, s/he will explain to the individual seeking the accommodation, in specific terms, why the information, which has been provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.
  - The individual may then ask the health care or other appropriate professional to provide the missing information.
  - Alternatively, the Disability Program Manager and the individual requesting the accommodation may agree that the individual will sign a limited release, and that NEA may thereafter submit a list of specific questions to the individual's health care professional or may otherwise contact the individual's doctor.
- If, after a reasonable period of time, there is still not sufficient information to demonstrate that the individual has a disability and needs a reasonable accommodation, the Disability Program Manager may request that the individual be examined by a physician chosen by NEA at the agency's expense.
- The Disability Program Manager will let the decision maker know whether the documentation demonstrates that a reasonable accommodation is appropriate and provide, if necessary, any additional relevant information about the individual's functional limitations.
- In some cases, the individual requesting the accommodation will supply medical information directly to the decision maker without being asked. In these cases, the decision maker will consider such documentation and if additional information is needed, the decision maker will work with the Disability Program Manager as set forth in this section.

**The failure to provide appropriate documentation or to cooperate in NEA's efforts to obtain such documentation can result in a denial of the reasonable accommodation.**

## **IX. CONFIDENTIALITY REQUIREMENTS REGARDING MEDICAL INFORMATION OBTAINED IN THE REASONABLE ACCOMMODATION PROCESS**

**Under the Rehabilitation Act and the ADA, medical information obtained in connection with the reasonable accommodation process must be kept confidential.** This means that all medical information, including information about functional limitations and reasonable accommodation needs, that NEA obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. It also means that any NEA employee who obtains or receives such information is strictly bound by these confidentiality requirements.

- The Disability Program Manager will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and the requirements of 29 C.F.R. 1611.
- This information may be disclosed only as follows:
  - supervisors and managers who need to know (including the decision maker who requested that the Disability Program Manager obtain medical information) may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s), but medical information should only be disclosed if strictly necessary.
  - first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; government officials may be given information necessary to investigate the agency's compliance with the law; and
  - the information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers.
- Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements attach to it.

## **X. TIME FRAMES FOR PROCESSING REQUESTS AND PROVIDING REASONABLE ACCOMMODATIONS**

**NEA will process requests for reasonable accommodation and provide accommodations, where they are appropriate, in as short a time frame as reasonably possible.** NEA recognizes, however, that the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information.

1. Expedited processing: In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a time frame that is shorter than the 15 or 20 business days discussed below. This includes where a reasonable accommodation is needed:

- a. **to enable an applicant to apply for a job.** Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, the Office of Human Resources 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 five days.
- 2. If a request for an accommodation can be processed by the requesting **employee's supervisor or second level supervisor**, no supporting medical information is required, and no extenuating circumstances apply, the request shall be processed and the accommodation, if granted, provided in no more than **15 business days** from the date the supervisor or Office Director receives the request, and sooner, if possible. Since decision makers may need the full 15 days to engage in the interactive process and collect all relevant information about possible accommodations, they should not delay beginning this process. Failure to meet this time frame solely because a decision maker delayed processing the request is not an extenuating circumstance.
  - a. If the decision maker believes that it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or to identify the functional limitations, the decision maker will make such request to the Disability Program Manager as soon as possible after his or her receipt of the request for accommodation, but before the expiration of the 15-day period. NEA recognizes that the need for documentation may not become apparent until after the interactive process has begun.
  - b. If the decision maker requests that the Disability Program Manager obtain medical information, the 15-day period is frozen. If the Disability Program Manager determines that medical information is not needed, the 15-day time period resumes as soon as the Disability Program Manager notifies the decision maker that s/he can continue processing the request.

If the Disability Program Manager determines that medical documentation is needed, the decision shall be made and the accommodation, if granted, will be provided within 15 business days from the date the decision maker receives the relevant information from the Disability Program Manager.

Examples of accommodations, which can easily be provided within this 15-day time frame, include:

- a. An employee with diabetes who sits in an open area asks for four breaks a day to test her blood sugar levels so that she may do these tests in private.

- b. An employee who takes anti-depressants which make it hard for her to get up in time to get to the office at 9:00, requests that s/he be allowed to start work at 10:00 and still put in an 8 hour day.
  - c. A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes it difficult to read and he needs more time to prepare.
3. Where the **Disability Program Manager** is the decision maker, s/he will make a decision on the request and the accommodation, if granted, will be provided **within 20 business days** from the date the request was initially made, absent extenuating circumstances. If medical documentation is necessary, the decision will be made **within 20 business days** from the receipt of the documentation, absent additional extenuating circumstances.
4. **Extenuating Circumstances:** These are **factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation**. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. It is NEA's policy that extensions based on extenuating circumstances should be limited to circumstances where they are strictly necessary. All NEA staff are expected to act as quickly as reasonably possible in processing requests and providing accommodations. The following are examples of extenuating circumstances:
- a. There is an outstanding initial or follow-up request for medical information, or the Disability Program Manager is evaluating medical information, which has been provided.
  - b. The purchase of equipment may take longer than 15 or 20 business days because of requirements under the Federal Acquisition Regulations.
  - c. Equipment must be back-ordered, the vendor typically used by NEA for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.
  - d. The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before NEA buys it.
  - e. New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.

"**Extenuating circumstances**" covers limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. For example, NEA may not delay processing or providing an accommodation because a particular staff member is unavailable.

Where extenuating circumstances are present, **the decision maker must notify the individual of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected.** Any further developments or changes should also be communicated promptly to the individual.

- a. If there is a delay in providing an accommodation, which has been approved, the decision maker must investigate whether temporary measures can be taken to assist the employee. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. In addition, the decision maker may provide measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if: (1) they do not interfere with the operations of the Agency; and (2) the employee is clearly informed that they are being provided only on a temporary, interim basis.
- b. For example, there may be a delay in receiving adaptive equipment for an employee with a vision disability. During the delay, the supervisor might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.
- c. If a delay is attributable to the need to obtain or evaluate medical documentation and NEA has not yet determined that the individual is entitled to an accommodation, NEA may also provide an accommodation on a temporary basis. In such a case, the decision maker will notify the individual in writing that the accommodation is being provided on a temporary basis pending a decision on the accommodation request.
- d. NEA decision makers 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 secure the permanent accommodation are being taken.

## **XI. GRANTING A REASONABLE ACCOMMODATION REQUEST**

As soon as the decision maker determines that a reasonable accommodation will be provided, that decision should be immediately communicated to the individual. If the accommodation cannot be provided immediately, the decision maker must inform the individual of the projected time frame for providing the accommodation. This notice does not need to be in writing.

Once a request is approved the first time for a type of reasonable accommodation that an employee is likely to need on a repeated basis, such as sign language interpreters or readers, the employee does not need to submit a written request for recordkeeping purposes each time the accommodation is needed. The employee may obtain the accommodation by notice to the appropriate individual or office.

## **XII. DENIAL OF REASONABLE ACCOMMODATION REQUEST**

As soon as the decision maker determines that a request for reasonable accommodation will be denied, s/he must fill out the attached "Denial of Request" form and give it to the individual who requested the accommodation. The explanation for the denial should be written in plain language, clearly stating the

specific reasons for the denial. Where the decision maker has denied a specific requested accommodation, but offered to make a different one in its place which was not agreed to during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the decision maker believes that the chosen accommodation will be effective. Reasons for the denial of a request for reasonable accommodation may include the following (keeping in mind that the actual notice to the individual **must include specific reasons for the denial, for example, why the accommodation would not be effective or why it would result in undue hardship**):

- The requested accommodation would not be effective.
- Providing the requested accommodation would result in undue hardship. Before reaching this determination, the decision maker must have explored whether other effective accommodations exist which would not impose undue hardship and therefore can be provided. A determination of undue hardship means that the NEA finds that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of NEA's operations. When evaluating budgetary or administrative concerns to determine if undue hardship exists, the NEA will follow the standards enunciated in the regulations and in the "Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act."
- Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
- The requested accommodation would require the removal of an essential function.
- The requested accommodation would require the lowering of a performance or production standard.

The written notice of denial also informs the individual that s/he has the right to file an EEO complaint and may have rights to pursue a claim under the MSPB. The notice also explains NEA's procedures available for informal dispute resolution.

### **XIII. INFORMAL DISPUTE RESOLUTION [Reconsideration of a denial of reasonable accommodation]**

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

- If an individual wishes reconsideration, s/he should first ask the decision maker to reconsider the decision. The individual may present additional information in support of his/her request. The decision maker will respond to the request for reconsideration within **five business days**.
  - If the decision maker was the supervisor, and s/he does not reverse the decision, the individual can ask the second level supervisor to do so. The second level supervisor will respond to this request within **ten business days**.

- If the decision maker was the second level supervisor, and s/he does not reverse the decision, the individual can ask the Disability Program Manager to do so. The Disability Program Manager will respond to this request within **ten business days**.
- If the decision maker was the Disability Program Manager, and s/he does not reverse the decision, the individual can ask the Chairman or his designee to do so. This official will respond to this request within **ten business days**.

Pursuing any of the informal dispute resolution procedures identified above, including seeking reconsideration from the decision maker and appealing to the next person in the decision maker's chain of command, does not affect the time limits for initiating an equal employment opportunity (EEO) complaint or a claim to the Merit Systems Protection Board (MSPB). An individual's participation in any or all of these informal dispute resolution processes does not satisfy the requirements for bringing a claim under EEO or to the MSPB.

#### **XIV. INFORMATION TRACKING AND REPORTING**

The decision maker will complete the attached "Information Reporting" form and submit it to the Disability Program Manager within **10 business days** of the decision. The decision maker should attach to the form copies of all information, including medical information, s/he received as part of processing the request.

- The Disability Program Manager will maintain these records for the longer of the employee's tenure with NEA or five years.
- The Disability Program Manager will prepare annually a report, to be made available to all employees. The report will contain the following information, presented in the aggregate:
  - the number of reasonable accommodations, by type, that have been requested in the application process and whether those requests have been granted or denied;
  - the jobs (occupational series, grade level, and agency component) for which reasonable accommodations have been requested;
  - the types of reasonable accommodations that have been requested for each of those jobs;
  - the number of reasonable accommodations, by type, for each job that have been approved, and the number of accommodations, by type, that have been denied;
  - the number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;
  - the reasons for denial of requests for reasonable accommodation;
  - the amount of time taken to process each request for reasonable accommodation; and



- the sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.
- In addition, the report will provide a qualitative assessment of NEA's reasonable accommodation program, including any recommendations for improvement of NEA's reasonable accommodation policies and procedures.

## **XV. RELATION OF PROCEDURES TO STATUTORY CLAIMS**

This policy is **in addition** to statutory protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory claims, including time frames for filing such claims, remain unchanged.

An individual who chooses to pursue statutory remedies for denial of reasonable accommodation **must**:

- For an EEO complaint: contact an EEO counselor within 45 days from the date of receipt of the written notice of denial, or
- Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. 1201.3.

If a member of the Civil Rights Office staff has had any involvement in the processing of the request for reasonable accommodation, that staff member shall recuse him or herself from any involvement in the processing of an EEO counseling contact or complaint in connection with that request.

## **INQUIRIES**

Any person wanting further information concerning these Procedures may contact the Disability Program Manager at 202-682-5470 or email at [mccordc.arts.endow.gov](mailto:mccordc.arts.endow.gov).

## **APPENDIX A**

The following forms are available on the H drive in separate documents:

1. Confirmation of Request for Reasonable Accommodation
2. Denial of Reasonable Accommodation Request
3. Information Accommodation Information Reporting Form

**CONFIRMATION OF REQUEST FOR REASONABLE ACCOMMODATION**

1. Applicant's or Employee's Name|

\_\_\_\_\_

Today's Date: \_\_\_\_\_

Date of Request: \_\_\_\_\_

Applicant's or Employee's Telephone Number: \_\_\_\_\_

Employee's Office: \_\_\_\_\_

2. **ACCOMMODATION REQUESTED.** (Be as specific as possible, e.g., adaptive equipment, reader, interpreter):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. **REASON FOR REQUEST:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If accommodation is time sensitive, please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Return Form to Disability Program Manager (Disability Program Manager will assign number)**

4. Log Number: \_\_\_\_\_

**DENIAL OF REASONABLE ACCOMMODATION REQUEST**

(Must complete numbers 1-4; complete number 5, if applies)

1. Name of Individual requesting reasonable accommodation:

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2. Type(s) of reasonable accommodation requested:

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3. Request for reasonable accommodation denied because: (may check more than)

☐ 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 identify): 

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

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5. If the individual 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.

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6. If an individual wishes to request reconsideration of this decision, s/he may take the following steps:
  - (a) First, ask the decision maker to reconsider his/her denial. Additional information may be presented to support this request.
  - (b) If the decision maker does not reverse the denial:
    - and the decision maker was the individual's supervisor, the individual can ask the second level supervisor.
    - and the decision maker was the second level supervisor, the individual can ask the Disability Program Manager to do so.
    - and the decision maker was the Disability Program Manager, the individual can ask the official designated by the Director of Civil Rights to do so.
7. If an individual wishes to file an EEO complaint or pursue the Merit Systems Protection Board, s/he must take the following steps:
  - (a) Initiate an EEO complaint pursuant to 29 C.F.R. § 1614, by contacting an EEO counselor in the Office of Equal Opportunity within 45 days from the date of this notice of denial of reasonable accommodation; or
  - (b) Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. § 1201.3.

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**Name of Deciding Official:** \_\_\_\_\_

**Signature of Deciding Official:** \_\_\_\_\_

**Date reasonable accommodation denied:** \_\_\_\_\_

## REASONABLE ACCOMMODATION INFORMATION REPORTING FORM

Name of Individual requesting reasonable accommodation:

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Office of Requesting Individual:

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1. Reasonable accommodation: (check one)

☐ Approved

☐ Denied (If denied, attach copy of the written denial letter/memo - See Section XII, of the Reasonable Accommodation Procedures.)

2. Date reasonable accommodation requested: \_\_\_\_\_

Who received request: \_\_\_\_\_

3. Date reasonable accommodation request referred to decision maker (i.e., supervisor, Office Director, Disability Program Manager, Personnel Management Specialist):

\_\_\_\_\_

Name of decision maker: \_\_\_\_\_

4. Date reasonable accommodation approved or denied: \_\_\_\_\_

5. Date reasonable accommodation provided (if different from date approved):

\_\_\_\_\_

6. If time frames outlined in the **Reasonable Accommodation Procedures** were not met, please explain why.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. Job held or desired by individual requesting reasonable accommodation (including occupational series, grade level, and office): \_\_\_\_\_

8. 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 social event)

9. Type(s) of reasonable accommodation requested (e.g., adaptive equipment, staff assistant, removal of architectural barrier):

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10. Type(s) of reasonable accommodation provided (if different from what was requested):

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11. Was medical information required to process this request? If yes, explain why.

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12. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations (e.g., Job Accommodation Network, disability organization, Disability Program Manager):

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13. Comments:

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Submitted by: \_\_\_\_\_

Phone: \_\_\_\_\_

**Attach copies of all documents obtained or developed in processing this request.**

## UTILIZING SIGN LANGUAGE INTERPRETERS

4. **SCHEDULING INTERPRETER SERVICES.** The individual or office scheduling a meeting or event which will require interpreting services (staff meeting, training, office function, etc.) is responsible for obtaining the interpreter. **Please check to see if an interpreter is available before scheduling the date, time, and place of the event.**

Advance scheduling - preferably one to two weeks - is strongly encouraged, to the extent possible. Although it is not possible to foresee every occasion for which interpreting services may be required, failure to schedule interpreting services well in advance may result in the necessity to reschedule meetings until interpreter services are available.

If a meeting or event will last longer than one half hour, arrangements must be made for more than one interpreter to be present, or the meeting or event must be scheduled to include sufficient rest periods, including a "sign-free" lunch break, if necessary. Generally, one interpreter can work 45-60 minutes and then needs a 15-minute break. A break during a meeting or event does not constitute a rest period for the interpreter if s/he is expected to continue working (e.g., deaf and hearing parties wish to communicate during the break and look to the interpreter to facilitate the exchange).

An employee who knows sign language or who is taking a sign language class is not an acceptable substitute for a contract interpreter.

5. **WORK EVENTS OUTSIDE THE WORKPLACE.** NEA will provide an interpreter for an employee who is deaf or hard of hearing who, as part of his/her job, attends a meeting or event outside of the workplace. If s/he attends a conference or training program sponsored by an outside organization, the sponsoring organization is principally responsible for providing interpreters. NEA will provide interpreting services, however, if the sponsoring agency fails to do so.
6. **OFFICE SOCIAL FUNCTIONS AND SPECIAL EVENTS TO WHICH THE INTERPRETERS ARE INVITED.** Interpreting services are routinely requested for office or Agency social functions or special events -- e.g., Holiday Party -- scheduled during official government time and which might be attended by employees who are deaf or hard of hearing.
7. **INTERPRETING PHONE CALLS.** Employees who are deaf or hard of hearing should schedule an interpreter when services are needed to interpret business-related phone calls. The telecommunication relay service is available to all NEA employees to serve telephone needs when a sign language interpreter is not available.



## **APPENDIX B**

### **Selected Reasonable Accommodation Resources**

#### **U.S. Equal Employment Opportunity Commission**

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. 12101 et seq. (1994), and the regulations, 29 C.F.R. 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The two main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. 1630.2(o), (p), 1630.9 (1997) , and (2) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents: (1) Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); and (5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000).

Finally, the EEOC has a poster that employers and labor unions may use to fulfill the ADA's posting requirement.

All of the above-listed documents, with the exception of the ADA Technical Assistance Manual and Resource Directory and the poster, are also available through the Internet at <http://www.eeoc.gov>.

#### **Job Accommodation Network (JAN)**

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

<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.

#### **ADA Disability and Business Technical Assistance Centers (DBTACs)**

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

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.

**Registry of Interpreters for the Deaf**

(301) 608-0050 (Voice/TT)

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. Services may include:

- information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products),
- centers where individuals can try out devices and equipment,
- assistance in obtaining funding for and repairing devices, and
- equipment exchange and recycling programs.