

Procedures for Providing Reasonable Accommodation for Individuals with Disabilities

CHAPTER 10. DENIAL OF REASONABLE ACCOMMODATION REQUEST

10-1. DENIAL

A. Procedures

1. If the decision maker renders a “recommended denial” determination, s/he must, within three (3) business days, complete a "Denial of Request" form (see Appendix 3) and forward it, with all the supporting documentation, to the Disability Program Manager. The explanation for the denial must be written in plain language, clearly stating the specific reasons for the denial.
2. Where the decision maker has denied a specific requested accommodation, but has 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 recommended accommodation will be effective.
3. Reasons for the recommended denial of a request for reasonable accommodation may include the following:
 - The actual written notice must include specific reasons for the recommended denial, for example, why the 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 (see Undue Hardship, item 8 above and the EEOC’s Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act at www.eeoc.gov);
 - The requested accommodation would not be effective;
 - 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; or

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- The requested accommodation would require the lowering of a performance or production standard.
4. On receipt of the POH's written "decision to deny the reasonable accommodation," the Disability Program Manager will also notify the requesting individual of the recommended denial and next steps and schedule a Reasonable Accommodation Committee meeting with representation from the Office of General Counsel (OGC), the Office of Departmental Equal Employment Opportunity (ODEEO), the Office of Administration, and the Program Office in which the request originated.
 5. The Committee will review the reasonable accommodation request, any supporting medical documentation, and the written justification for recommending denial of the requested accommodation.
 6. The requesting employee or applicant may also meet with the Committee or a member of the Committee to provide additional information or clarification, if necessary. Based on the information provided, the Committee will vote to determine whether to approve or deny the request.
 7. The Committee has seven (7) business days from receipt of the recommended denial to render a decision.
 8. The Disability Program Manager will inform the POH and the requesting employee/applicant, in writing, of the Committee's decision.
 9. If the Committee's decision is denial of a reasonable accommodation, the Committee's written notice of denial **must also** inform the requester that s/he has the right to file an EEO complaint and may have rights to pursue Merit Systems Protection Board (MSPB) and union grievance procedures. The notice must also explain HUD's Alternative Dispute Resolution (ADR) procedures.

B. Reconsideration of a Denial of Reasonable Accommodation

Individuals with disabilities may request orally, in writing, or via any other mode of communication, prompt reconsideration of a denial of reasonable accommodation using the following methods:

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1. 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 (5) business days;
2. If the decision maker is the supervisor, and s/he does not reverse the decision, the individual can ask the Principal Organization Head for reconsideration. The Principal Organization Head shall respond to this request within seven (7) business days;
3. If the Principal Organization Head does not reverse the decision, the individual can ask the Principal Organization Head to have the decision reviewed and evaluated by the Reasonable Accommodation Committee. The Principal Organization Head shall contact the Disability Program Manager who, in turn, will schedule a Reasonable Accommodation Committee meeting. The Committee will respond to this request within seven (7) business days;
4. If the Reasonable Accommodation Committee does not reverse the decision, the individual may file an EEO complaint, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement, or initiate an appeal to the Merit Systems Protection Board.
5. The requesting individual can also request reconsideration of a denial by the RAC. The Committee will respond to this request within seven (7) business days.

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10-2. ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADR)

A. Election of ADR

The individual may also elect to pursue prompt reconsideration through the Department's ADR Program. If the individual chooses to participate in ADR, the processing period shall not exceed ninety (90) days from the date of initial contact with the EEO Office. The individual seeking reconsideration may contact the Office of Departmental Equal Employment Opportunity, Alternative Dispute Resolution Program Staff, at (202) 708-2001, without first having to contact an EEO Counselor or file an EEO complaint. Individuals with hearing or speech impairments may reach the ADR Program staff through the Federal Relay Information Service at (800) 877-8338 (toll free).

1. Process

The ADR Program Manager will determine the case's appropriateness for ADR and, if appropriate, will:

- Explain the steps necessary to take to protect his/her EEO rights if the ADR process is unsuccessful.
- Inform the designated Equal Employment Opportunity Officer of the request to mediate and reveal the individual's name to the appropriate officials in order to attempt to bring resolution to the issues.
- Advise the individual that if the ADR Program Manager determines that the matter is not appropriate for ADR, in accordance with Title 5, the individual shall have the right to continue to process the allegation through the traditional EEO process.
- Advise the individual that if the case is determined to be suitable for ADR, and the parties agree to participate in the mediation, the ADR Program Manager will explain the mediation process to the parties.

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- Advise the individual that the ADR Program Manager will make arrangements to obtain the services of a mediator. The mediation will be scheduled as soon as possible.
- Advise the individual that the ADR Program Manager will provide the mediator with a Mediator Information Sheet that provides background information on the case.
- Advise the individual that the ADR effort will be concluded when one of the following occurs:
 - Withdrawal of the complaint; or
 - Impasse, i.e., no resolution after reasonable efforts have been made to reach agreement;
 - Termination of the process by either party; or
 - Signing of a settlement agreement.

2. Role of the ADR Program Manager

Advise the individual that at the conclusion of a successful ADR proceeding, the ADR Program Manager will ensure that all necessary settlement documents are appropriately coordinated, approved and signed. The terms of settlement agreements **are not binding** until they are approved by the EEO Director. The signed settlement agreement is a binding contract between the parties, enforceable in a court of law. If there is no resolution, the individual will be informed of his/her right to proceed in the traditional EEO formal complaint process.

3. Effect of ADR on Time Limits For Statutory and Collective Bargaining Claims

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 statutory and collective bargaining claims. 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, MSPB, or union grievance procedures.