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ADMINISTRATIVE DIRECTIVE – P-302

**Procedures for Providing Reasonable Accommodations and Personal Assistance Services  
for Individuals with Disabilities**

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## 1. PURPOSE

This directive provides written procedures to facilitate the provision of reasonable accommodation and personal assistance services at the National Endowment for the Humanities (“NEH”).

## 2. POLICY

In accordance with the Rehabilitation Act of 1973, 29 U.S.C. § 791, it is NEH’s policy to provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship to the agency. NEH is committed to providing reasonable accommodations to NEH employees and applicants for employment in order to ensure that individuals with disabilities have full access to equal employment opportunities at NEH. This means that NEH provides reasonable accommodation when:

- An applicant for employment with a disability needs an accommodation in order to be considered for a job;
- A qualified 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
- An employee with a disability needs an accommodation to enjoy equal benefits and privileges of employment to those enjoyed by employees without disabilities.

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

This directive is updated to reflect significant changes to the definition of “disability” under the Americans with Disabilities Act (“ADA”) and to comply with Equal Employment Opportunity Commission (“EEOC”) regulations on agency implementation of the Rehabilitation Act, 29 C.F.R. § 1614.203. NEH will apply the standards set forth in Title I of the ADA Amendments Act of 2008 (“ADAAA”) when determining whether and to what extent to provide reasonable accommodation under the Rehabilitation Act. The ADAAA emphasizes that agencies should construe the definition of disability in favor of broad coverage of individuals, making it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the statute.

In accordance with applicable EEOC regulation, 29 C.F.R. § 1614.203(d)(5), it is NEH’s policy to provide access to personal assistance services (“PAS”) to individuals with targeted disabilities. NEH will process requests and make determinations for PAS in the same manner as it processes requests and makes determinations for reasonable accommodation.

### 3. DEFINITIONS

- A. Accessible: Enterable, operable, safely usable, or otherwise open to participation, independently and with dignity, by a person with a disability. The term “accessible” can apply to a work environment, service, program, etc.
- B. Appeal: A voluntary process through which an individual can request reconsideration of a denial of a request for reasonable accommodation.
- C. Applicant: A person who has applied, or would like to apply, for employment at NEH.
- D. Collective Bargaining Agreement (CBA): The collective bargaining agreement between NEH and the NEH bargaining unit of the American Federation of Government Employees, Local 3403.
- E. Decision Maker: The NEH official with the authority to make a determination on whether or not to provide an accommodation in a given circumstance. The decision maker can be the Chairman, the Senior Deputy Chairman, an immediate supervisor, an Office or Division Director, an Assistant Chairman with authority over the appropriate office or division, or the Director or Deputy Director of the Office of Human Resources.
- F. Denial: A determination by the decision maker to deny a request for a specific reasonable accommodation where the decision maker does not offer an alternative reasonable accommodation or where the requester declines an alternative reasonable accommodation offered by the decision maker.
- G. Disability: With respect to an individual, (1) A physical or mental impairment that substantially limits one or more major life activities; (2) a record of such an impairment; or (3) being regarded as having such an impairment, which means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both “transitory and minor.”
- H. Employee. A person employed by NEH.
- I. Essential Functions: The fundamental job duties of the employment position the individual with a disability holds or desires. The term “essential functions” does not include the marginal functions of the position. A job function may be an “essential function” if, among other things: (1) the reason the position exists is to perform that function; (2) there are a limited number of other employees who could perform the function; and/or (3) the function is specialized and the individual is hired based on his or her ability to perform that particular function.
- J. GINA: Genetic Information Nondiscrimination Act of 2008, Pub. L. 110-233.

- K. Grant: A determination by the decision maker to approve either a request for a specific reasonable accommodation or a reasonable accommodation other than that requested but which both the requester and decision maker believe will be effective.
- L. Individual: The applicant or employee for whom the accommodation is requested.
- M. Interactive Process: An informal process by which NEH will communicate with an employee or applicant who has requested a reasonable accommodation. This process will identify the specific limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.
- N. Personal Assistance Services (PAS): Assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation. Examples include, but are not limited to, assistance with removing and putting on clothing, eating, and using the restroom. Per EEOC Regulation, agencies need only provide PAS to individuals with “targeted disabilities,” as defined below.
- O. Physical or Mental Impairment: any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as the neurological, musculoskeletal, special sense organ, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine systems; or any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disability.
- P. Qualified: With respect to an individual with a disability, “qualified” means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position
- Q. Reasonable Accommodation: (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position; or (3) modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

Examples of accommodation include, but are not limited to:

- a. Making existing employee facilities readily accessible to and useable by individuals with disabilities;
  - b. Job restructuring;
  - c. Part-time or modified work schedules;
  - d. Reassignment to a vacant position (and not just permission to compete for such a position);
  - e. Acquisition or modifications of equipment or devices;
  - f. Appropriate adjustment or modifications of examinations, training materials, or policies; and
  - g. Provision of qualified readers or interpreters.
- R. Requester: The person who requests the reasonable accommodation or PAS. The requester can be the disabled applicant or employee, or a family member, healthcare professional, or other representative of the disabled applicant or employee.
- S. Targeted Disability: a disability that is designated as a “targeted disability or health condition” on the Office of Personnel Management’s Standard Form 256 or that falls under one of the first 12 categories of disability listed in part A of question 5 of the Employment Opportunity Commission’s Demographic Information on Applicants form. Targeted disabilities include, but are not limited to, deafness or serious difficulty hearing, blindness or serious difficulty seeing even when wearing glasses, missing extremities, partial or complete paralysis, significant mobility impairment, intellectual disability, and significant psychiatric disorders.
- T. Undue Hardship: Significant difficulty or expense incurred in providing a reasonable accommodation. If there is undue hardship in providing a reasonable accommodation, NEH is not required to provide that particular accommodation. NEH will determine undue hardship on a case-by-case basis, considering factors that include the nature and cost of the accommodation needed, the overall financial resources of NEH, and the impact of the accommodation on the operations of the agency.

#### 4. REQUESTING A REASONABLE ACCOMMODATION

A request for reasonable accommodation is a statement that an individual needs an adjustment or change in the application process, at work, or in a benefit or privilege of employment for a reason related to a disability.

A person may initiate any request for reasonable accommodation **orally or in writing at any time**. Doing so initiates the interactive process. The requester does not need to:

- Fill out any specific form in order to initiate the interactive process;
- Have a particular accommodation in mind before making his or her request;

- Use any special terms like “reasonable accommodation” or “disability” when making his or her request.

In light of the above guidance, NEH supervisors and other employees should recognize that a person may not always state a request for reasonable accommodation plainly.

A request is any communication in which an individual asks or states a need for NEH to provide or to change something because of a medical condition. A person does not have to specify a particular accommodation although it is helpful if he or she can suggest one. It is sufficient for the individual requesting accommodation to state that some sort of change or assistance is required.

A supervisor should know that a request for a reasonable accommodation can be a statement in “plain English” that an individual needs an adjustment or change in the application process or at work for a reason related to a medical condition.

If an employee or applicant raises any of the following points, he or she is likely requesting a reasonable accommodation:

- The person is talking about some type of medical condition that is impacting his or her work;
- The person mentions some sort of physical/intellectual/psychiatric challenge that is impacting his or her work;
- The person requests an adjustment or change to the workplace;
- The person openly discloses a disability or medical condition;
- The person states that he or she needs assistance performing a job function.

Whenever a supervisor or other employee is uncertain as to whether a person seeks reasonable accommodation, he or she shall ask that person for clarification.

A requester does not need to have previously disclosed the existence of a disability prior to requesting a reasonable accommodation.

An **applicant** may request a reasonable accommodation from any Human Resources Specialist, the selecting official, or any NEH employee otherwise connected with the staffing application process. In cases when an applicant does not make a request to a Human Resources Specialist, the selecting official or NEH employee must forward the request to the Office of Human Resources as soon as possible, but in any event, no later than 5 business days after receiving the request.

An **employee** may request a reasonable accommodation from one of the following officials:

- His or her immediate supervisor, as well as any another supervisor or manager in the employee's chain of command; or
- The Director or Deputy Director of the Office of Human Resources, or a designated Human Resources Specialist.

In cases when an employee does not make a request to the ultimate decision maker, the official who receives the request will forward it to the appropriate decision maker as soon as possible, but in any event, no later than 5 business days after receiving the request.

A family member, healthcare professional, or other representative may request a reasonable accommodation on behalf of an NEH applicant or employee. Under such circumstances, the requester should submit the request to the same persons to whom the employee or applicant would make the request.

Any NEH applicant or employee may consult with the Director or Deputy Director of the Office of Human Resources, or a designated Human Resources Specialist, for further information or assistance in connection with requesting or processing a request for reasonable accommodation.

## **5. NEH PERSONNEL RESPONSIBLE FOR HANDLING REQUESTS**

As explained above, the NEH staff member who receives a request for reasonable accommodation must forward such request to the appropriate decision maker as soon as possible, but in any event, no later than 5 business days after receipt.

There are four possible decision makers as explained further below: an immediate supervisor, an Office or Division Director, the Office of Human Resources, and the Senior Deputy Chairman. In addition, the Chairman reserves the right to serve as the decision maker with respect to any request for reasonable accommodation.

The Office of Human Resources will handle all **applicant** requests.

The employee's immediate supervisor will handle all requests from (or on behalf of) an **employee**, unless an Office or Division Director or the Senior Deputy Chairman is otherwise responsible, as indicated below.

The relevant Office or Division Director will handle all **employee** requests having a division- or office-wide impact.

The Senior Deputy Chairman will handle all **employee** requests for reassignment or otherwise having an agency-wide impact.

All decision makers must designate reserve officials who can continue receiving, processing, and providing reasonable accommodations when the decision maker is not available. The

unavailability of a decision maker will not suspend or extend the timeframes described in Section 11 below.

To ensure that NEH handles reasonable accommodation requests consistently and fairly throughout the agency, the decision maker shall inform, and consult with, the Office of Human Resources as to all such requests prior to making a final decision.

## 6. CONFIRMING DOCUMENTATION

Although an **employee** may initiate a reasonable accommodation request orally, for record keeping purposes, and upon receiving any request **other than one for assistive technology and/or services**, the decision maker should ask the employee (or someone acting on the employee's behalf) to complete an *NEH Confirmation of Request for Reasonable Accommodation or Personal Assistance Services Form* (Attachment 1). Should the employee fail to complete this form, the employee's immediate supervisor or the decision maker shall complete it on the employee's behalf and seek the employee's consent before adding the form to the employee's personnel file.

For any request in which the employee **requests assistive technology and/or services**, the decision maker should request that the employee complete a *CAP Accommodation Request Form* (Attachment 2) or complete the form on the employee's behalf.

The decision maker may share any such forms with the Director of the Administrative Services Office or other appropriate NEH official, as needed to assess the request's potential burden upon NEH.

NEH will begin processing a request for reasonable accommodation as soon as it is made, whether or not the employee provides written confirmation as described in this Section.

## 7. PROCESSING THE REQUEST

Once an applicant or employee (or a person acting on their behalf) makes a request for reasonable accommodation, the requester and decision maker will begin the interactive process to determine whether and to what extent NEH will provide reasonable accommodation.

The decision maker will:

- Explain to the requester that he or she (i.e., the decision maker) will determine whether or not NEH will provide reasonable accommodation; and
- Describe the decision making process to the requester.



When a third party makes a request for accommodation on an individual's behalf, the decision maker should, if possible, confirm with the applicant or employee that he or she, in fact, wants a reasonable accommodation before proceeding further with the interactive process.

The decision maker must communicate with the requester early in the interactive process and periodically throughout the process regarding his or her request to ensure the complete exchange of relevant information. To track the processing of his or her request, the requester may, at reasonable intervals, ask that the decision maker describe the status of his or her request.

Ongoing communication is particularly important where the specific limitation, barrier, or problem is unclear; when an effective accommodation is not obvious; or when the parties are considering different possible reasonable accommodations.

As noted above, a supervisor should know that a request for a reasonable accommodation can be a statement in "plain English" that an individual needs an adjustment or change in the application process or at work for a reason related to a medical condition. The request does not have to include the terms "ADA" or "reasonable accommodation," and the request does not have to be in writing, although the supervisor may ask for something in writing to document the request. A family member, friend, health professional, rehabilitation counselor, or other representative also may request a reasonable accommodation on behalf of an NEH employee with a disability.

The decision maker must take a proactive approach in searching out and considering possible accommodations. To that end, and as explained above, the decision maker shall consult with the Office of Human Resources with respect to all requests for reasonable accommodation. The decision maker may consult with other appropriate offices and resources as necessary, including the Chairman's Office, the Office of the General Counsel, the Office of Information Resources Management, the Administrative Services Office (including via submission of necessary requisitions), and, in the case of assistive technology, devices, and services, the Department of Defense's Computer/Electronic Accommodations Program ("CAP") (see Appendix), subject to the rules governing the confidentiality of medical information as set forth in Section 10 below.

The requester should also participate, to the extent possible, in identifying an effective reasonable accommodation.

## **8. SPECIAL CONSIDERATIONS**

### **A. Sign Language Interpreters**

Where an NEH office, division, or official has scheduled a meeting or event, that particular office, division or official should ascertain as soon as possible whether that event will require sign language interpreters. To request the provision of sign language interpreters, the office, division or staff responsible for the meeting or event must submit a requisition to NEH's Administrative Services Office. CAP will provide sign language interpreters for technical

training lasting 2 full days or more. NEH may not substitute an employee who knows sign language for a licensed interpreter.

This policy strongly encourages staff to schedule events well in advance (1-2 weeks) to ensure adequate time to engage interpretive services, as necessary. Although it is not possible for staff to foresee every occasion requiring interpretive services, failure to schedule such services when required may necessitate rescheduling the meeting or event. NEH must submit all such requests to CAP for interpretive services at least 15 days in advance.

Generally, an interpreter can work 45-60 minutes at a time with a 15-minute rest period. Accordingly, if a meeting or event will last longer than one half-hour, the responsible division or office must make arrangements for more than one interpreter to be present, or otherwise schedule the meeting to include sufficient rest periods and a lunch break. A break during a meeting or event does not constitute a rest period for the interpreter if he or she is expected to continue signing.

For conference or training programs sponsored by an outside organization, the sponsoring organization is principally responsible for providing interpreters. However, if the sponsoring organization fails or is unable to do so, NEH will provide interpreting services. NEH will otherwise provide an interpreter to accompany an employee who is deaf or hard of hearing to NEH meetings and events held outside of the workplace, where NEH has assigned the employee to attend such meetings or events in furtherance of his or her job duties.

#### B. Reassignment

NEH must consider reassignment as a reasonable accommodation where NEH has determined that no other reasonable accommodation will permit the employee to perform the essential functions of his or her current job, or if other options would cause NEH undue hardship.

In considering whether there is a position available for reassignment, the Senior Deputy Chairman will consult with the Director of the Office of Human Resources and the employee requesting the accommodation to identify:

- All vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and
- All positions which the Office of Human Resources has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified.

The decision maker and the Office of Human Resources will first consider offering reassignment to positions equivalent to the employee's current position in terms of pay, status, and other relevant factors. If no vacant equivalent positions exist, the decision maker and Office of Human Resources will consider vacant lower level positions for which the individual is qualified.

## 9. MEDICAL INFORMATION

NEH may require an individual who requests reasonable accommodation to provide medical information sufficient to explain (i) the nature of his or her disability, (ii) his or her need for reasonable accommodation, and (iii) 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. In addition, when NEH requests from CAP assistive technology or devices, CAP may require medical documentation, if necessary to support the need for a reasonable accommodation request. NEH will keep all medical information – including any information obtained in the *NEH Confirmation of Request for Reasonable Accommodation or Personal Assistance Services* Form – in files separate from the individual’s personnel files.

Under the Rehabilitation Act, NEH may **not** request medical information where:

- Both the disability and the need for accommodation, are reasonably obvious; or
- The individual has already provided NEH with sufficient information to document the existence of the disability and the individual’s functional limitations.

If a decision maker believes that he or she requires medical information to evaluate a reasonable accommodation request, he or she will request only such information as is necessary to confirm the disability and need for requested reasonable accommodation. The decision maker will not ask for documentation unrelated to the reasonable accommodation request. In most situations, this means that NEH may not request access to an individual’s complete medical records because such records likely contain information unrelated to the disability at issue and the need for reasonable accommodation.

Again, while NEH may require an employee to provide documentation that is sufficient to substantiate that she/he has an ADA disability and needs the reasonable accommodation requested, NEH cannot ask for unrelated documentation.

Specifically, NEH may request medical information or documentation pertaining to:

- The nature, severity, and duration of any physical or mental impairment;
- The major life activity or activities that such impairment limits;
- The extent to which the impairment limits the individual’s ability to perform essential functions; and/or
- Why the individual requires reasonable accommodation, as well as how the requested accommodation, if any, will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

The decision maker will seek such information or documentation directly from the individual, and/or will ask the individual to obtain such information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. The decision maker and individual may also agree that the individual will sign a limited release authorizing NEH to contact any such professional directly. In order for NEH to obtain the most specific and relevant information, when requesting medical information it must describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information.

The decision maker may contact the Office of Human Resources for assistance in requesting appropriate medical information.

If the information provided by the applicant, employee, or appropriate professional is insufficient to explain the nature of the disability, the need for reasonable accommodation, or how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace, the decision maker will explain why the documentation is insufficient and may ask for relevant supplemental medical information, subject to the limitations described above. The decision maker will allow the employee an opportunity to provide the missing information in a timely manner.

In requesting supplemental medical information, the decision maker should:

- Explain to the individual, in specific terms, why the information initially provided was insufficient, what additional information NEH requires, and why NEH needs that information to decide the individual's reasonable accommodation request; and
- Explain that the individual may ask an appropriate professional to provide the missing information.

NEH has the right to engage a medical expert of NEH's own choosing, and contracted at NEH's expense, to review any medical information provided under this section.

**NEH may deny a request for reasonable accommodation where the individual (or an appropriate professional acting on the individual's behalf) fails to provide sufficient information in response to a request for supplemental medical information.**

Alternatively, if NEH still lacks sufficient medical information to evaluate a request for reasonable accommodation after requesting supplemental medical information, the decision maker may request that the individual agree to a medical examination by a medical expert of NEH's own choosing and contracted at NEH's expense. NEH will limit such examination to determining the nature of a disability and/or the limitations requiring a reasonable accommodation.

**NEH may deny a request for reasonable accommodation where the individual refuses to agree to an examination justified under this section.**

## 10. CONFIDENTIALITY REQUIREMENTS FOR MEDICAL INFORMATION

Pursuant to the Rehabilitation Act, NEH must treat as confidential, and maintain in separate forms and in separate medical files, all medical information obtained in connection with the reasonable accommodation process. Accordingly, NEH will keep such information in files separate from the applicant's or employee's personnel file. A decision maker must forward all medical information obtained in connection with the reasonable accommodation process to the Office of Human Resources, which will place the information within the applicant's or employee's official medical folder, and store such folders within a locked and secure cabinet.

No person outside of the Office of Human Resources may retain any copies of an individual's medical information obtained in connection with the reasonable accommodation process.

The decision maker and Office of Human Resources may disclose medical information obtained during the reasonable accommodation process only to:

- Supervisors and managers, but only insofar as necessary to inform such supervisors and managers regarding necessary restrictions on the employee's work or duties and necessary accommodations;
- First-aid and safety personnel if the disability might require emergency treatment; and
- Government officials investigating NEH compliance with the Rehabilitation Act, upon such officials' request.

NEH must instruct any person identified above, and to which it disclosed medical information, to treat that information as confidential. Any request for medical information must comply with GINA, as well as the laws, regulations, and guidance referenced in this directive, and other applicable confidentiality statutes.

## 11. TIME LIMITS

NEH will process requests for reasonable accommodation and provide reasonable accommodation, where appropriate, in as short a timeframe as is reasonably possible, absent extenuating circumstances. The precise time necessary to process a request will depend on the nature of the accommodation requested and whether NEH must obtain supporting information.

**Normal processing:** with respect to those requests for which NEH requires no supporting medical information, and for which no extenuating circumstances apply, NEH will process, make a final determination regarding whether and to what extent to provide reasonable accommodation, and provide reasonable accommodation by no later than 15 business days from receipt of the request. The 15-day time limit for either providing and/or denying an accommodation starts as soon as the accommodation is first requested, regardless of the need for

supplemental documentation. The deciding official may not wait to begin processing the request until the date the agency receives sufficient medical information. As soon as the decision maker makes a final determination regarding whether and to what extent to provide reasonable accommodation, he or she or shall immediately communicate that decision to the requester.

Examples of reasonable accommodation that NEH easily can provide within the 15 business-day timeframe include:

- Providing a diabetic employee whose workstation is in an open area with four breaks a day to test his or her blood sugar levels in private.
- Providing an employee with a learning disability with staff meeting agendas in sufficient time for him or her to adequately prepare for the meeting.

Where NEH can provide a particular reasonable accommodation in less than 15 business days, failure to provide such accommodation in a prompt manner may result in a violation of the Rehabilitation Act.

With respect to those requests for reasonable accommodation for which NEH requires supporting medical information as described in Section 9, above, the 15 business-day deadline will not begin to run unless and until the date NEH receives medical information sufficient to substantiate the request for reasonable accommodation.

**Extenuating circumstances:** NEH may extend the timeframe for acting upon a reasonable accommodation request where there exist circumstances requiring extension that NEH could not reasonably have anticipated or avoided. Since NEH expects that staff will act as quickly as reasonably possible in processing reasonable accommodation requests, NEH will endeavor to limit such extenuating circumstances to those that are strictly necessary. The decision maker's mere delay in processing a reasonable accommodation request is **not** an extenuating circumstance.

The following are examples of extenuating circumstances:

- Where it will take NEH longer than 15 business days to acquire necessary equipment or furniture due to the Federal Acquisition Regulations or NEH requirements.
- Where a vendor is not able to provide necessary equipment or furniture within 15 business days and no alternate vendor is available.
- Where an individual with a disability requires a trial period to test equipment or furniture to ensure its effectiveness.
- Where the reasonable accommodation requires NEH to hire new staff or contractors.
- Where the reasonable accommodation requires the removal of architectural barriers.

When extenuating circumstances are present, the decision maker must notify the requester as soon as possible of the reason for any delay and the approximate date by which he or she may expect a determination on his or her request for reasonable accommodation. The decision maker should also promptly communicate all further progress on the matter to the requester.

**Interim measures:** where the facts and circumstances known to the decision maker make it reasonably likely that the decision maker will approve a request for reasonable accommodation, but NEH cannot provide the accommodation immediately, NEH will provide an interim accommodation that allows the individual to perform some or all of the essential functions of his or her job, if it is possible to do so without imposing undue hardship on NEH.

Possible interim measures include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. In addition, NEH may provide interim measures that are not reasonable accommodations within the meaning of the law (e.g. temporary removal of an essential function), if:

- The measures provided do not interfere with the operations of the agency, and
- The decision maker clearly informs the individual that NEH will provide the measures only on a temporary basis.

Other examples of interim measures include:

- Arranging for NEH employees to act as readers for an employee with a vision disability while NEH waits to receive adaptive equipment.
- Accommodating an employee while NEH waits to obtain or evaluate medical information.

**Expedited processing:** under certain circumstances, NEH will expedite its review of a request for reasonable accommodation in a timeframe shorter than the 15 business days discussed above. This includes, but is not limited to, circumstances when a person requests reasonable accommodation in order to:

- **Enable an applicant to apply for a job.** Depending on the timeframe for receiving applications, conducting interviews, and making hiring decisions, NEH may expedite a request for reasonable accommodation to ensure that a disabled applicant has an equal opportunity to apply for a job. In this situation, the Office of Human Resources will review and make a final decision on any such request for reasonable accommodation as quickly as possible.
- **Enable an employee to attend an imminently-scheduled meeting.** For example, an employee may require a sign language interpreter for a meeting scheduled to take place in 5 calendar days.

## **12. DENIAL OF REASONABLE ACCOMMODATION REQUESTS**

As soon as the decision maker decides to deny a request for reasonable accommodation, he or she must complete the *NEH Denial of Request for Reasonable Accommodation or Personal Assistance Services* Form (Attachment 3), and provide copies to both the Office of Human Resources and the individual to whom the request pertains. The decision maker must explain the denial in plain language and state clearly the specific reasons for the denial, including if applicable, why the accommodation will not be effective or why it will result in undue hardship for NEH.

When the decision maker has denied a specific requested accommodation, but offered to provide 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 specific requested accommodation and the reasons that the decision maker believes the offered accommodation will be effective.

Examples of reasons for denying a request for reasonable accommodation include:

- The requested accommodation would not be effective for some specific reason.
- Providing an accommodation would result in undue hardship for some specific reason (in reaching this determination, the decision maker must have considered whether any accommodation would impose undue hardship, not just whether the requested accommodation would impose undue hardship).
- Medical documentation is inadequate to establish that the individual has a disability, needs a reasonable accommodation, and/or that any particular accommodation will allow the individual to apply for a job, perform the essential functions of a job or enjoy the benefits and privileges of the workplace.
- The requested accommodation will require the removal of an essential function.
- The requested accommodation will require the lowering of a particular performance or production standard.

The written notice of denial must also inform the individual that he or she has the right to file an equal employment opportunity (“EEO”) complaint pursuant to the procedure set forth in 29 C.F.R. § 1614.106 and may have the right to file a complaint with the Merit Systems Protection Board (“MSPB”) or under CBA grievance procedures. The notice must also explain NEH’s informal dispute resolution procedures available under Section 13 below.

## **13. VOLUNTARY INFORMAL DISPUTE RESOLUTION**

In the event NEH denies a request for reasonable accommodation, and the individual to which the request pertains would like NEH to reconsider his or her request, NEH encourages such individual to use the voluntary informal dispute resolution process set forth below.



An individual (or a third-party acting on the individual's behalf) may initiate the informal dispute resolution process by requesting that the decision maker reconsider his or her decision to deny reasonable accommodation. The requester may make such a request in the same manner as his or her initial request for reasonable accommodation. The requester may present additional information in support of his or her request.

The decision maker will respond to the request for reconsideration within 5 business days.

In the event the decision maker decides not to reverse his or her initial decision, the requester may request further review as follows:

- If the decision maker is the individual's immediate supervisor, and the decision maker does not reverse his or her individual decision, the individual can request that the responsible Office or Division Director reconsider the denial. The Office or Division Director will respond to such a request within 10 business days.
- If the decision maker is an Office or Division Director, and the decision maker does not reverse his or her initial decision, the individual can request that the Senior Deputy Chairman reconsider the denial. The Senior Deputy Chairman will respond to such a request within 10 business days.
- If the decision maker is a representative from the Office of Human Resources, and the decision maker does not reverse his or her initial decision, the individual can request that the Senior Deputy Chairman reconsider the denial. The Senior Deputy Chairman will respond to such a request within 10 business days.
- If the decision maker is the Senior Deputy Chairman, and he does not reverse his initial decision, the individual can request that the Chairman (or his or designee) reconsider the denial. The Chairman (or his or her designee) will respond to this request within 10 business days.

The dispute resolution process discussed above is voluntary.

An individual need not exhaust or otherwise pursue this informal dispute resolution process as a precondition to filing an EEO complaint pursuant to the procedure set forth in 29 C.F.R. § 1614.106 or a complaint with MSPB or under CBA grievance procedures.

However, engaging in the informal dispute resolution process as discussed above does not suspend or extend an individual's deadline for initiating statutory and collective bargaining claims. **Nor** does an individual's participation in the informal dispute resolution process satisfy requirements for bringing a claim under EEO, MSPB, or CBA grievance procedures.

#### **14. RECORDKEEPING AND REPORTING**

The decision maker (or the requester's immediate supervisor) must complete the attached *NEH Reasonable Accommodation and Personal Assistance Services Reporting Form* (Attachment 4) and submit it to the Director of the Office of Human Resources within 10 business days after making a final decision on a request for reasonable accommodation. The decision maker should attach to the form copies of all information, including medical information, he or she received in connection with processing the request for reasonable accommodation, including a copy of the *CAP Accommodation Request Form* (if applicable). NEH must treat any medical information received as confidential per Section 10 of this policy.

The Office of Human Resources will maintain any such records for either the employee's tenure with NEH or for 5 years, whichever is longer.

To satisfy reporting requirements, the Office of Human Resources must track the following information:

- The number of requests for reasonable accommodation that NEH received in a given calendar year;
- Whether NEH granted or denied any particular request for reasonable accommodation;
- The jobs (occupational series, grade level, and office/division) corresponding to each request for reasonable accommodation;
- The nature of the accommodation requested with each request for reasonable accommodation;
- Whether any particular request for reasonable accommodation relates to the benefits and privileges of employment;
- The reasons for denying any request for reasonable accommodation;
- The amount of time taken to process each request for reasonable accommodation; and
- The sources of technical assistance, if any, that NEH consulted when determining to grant or deny any particular request for reasonable accommodation.

The Office of Human Resources will keep all cumulative records tracking NEH's processing and provision of reasonable accommodations for at least 3 years. It will create and maintain an electronic database log that will enable NEH to track the identity of the deciding official for each reasonable accommodation request. This will enable NEH to assess its overall performance in handling requests for reasonable accommodation.

## **15. RELATION OF THESE PROCEDURES TO STATUTORY AND COLLECTIVE BARGAINING CLAIMS**

This directive is an NEH policy. It implements and/or supplements statutory and collective bargaining rights for individuals with disabilities, including the right to file a claim in response to a denial of a request for reasonable accommodation. This directive **does not affect** requirements

governing the initiation of statutory and collective bargaining claims, including the timeframes for filing such claims.

An individual who chooses to pursue statutory or collective bargaining remedies in response to a denial of a request for reasonable accommodation must:


- For an EEO complaint, contact an EEO counselor within 45 calendar days after receipt of the written notice of denial;
- For a collective bargaining claim, initiate an informal grievance within 20 calendar days after receipt of the written notice of denial, in accordance with Section 15 of the CBA; or
- For an adverse action appealable to MSPB, file an appeal with MSPB within 30 calendar days after receipt of the written notice of denial, in accordance with the procedures set forth in 5 C.F.R. part 1201.

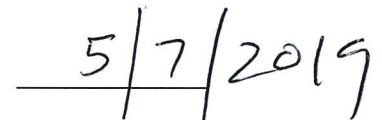
**16. PERSONAL ASSISTANCE SERVICES (PAS)**

The process for requesting PAS, the process for determining whether PAS are required (including whether the individual has a targeted disability), and NEH’s right to deny a request for PAS when providing PAS would pose an undue hardship, are the same as those for requests for reasonable accommodation provided in this directive.

NEH will not provide PAS outside of the scope of working hours.

SIGNED,

  
Chairman Jon Parrish Peede

  
DATE

## **APPENDIX (Additional Information Regarding Reasonable Accommodation)**

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

Mid-Atlantic Center: (301) 217-0124 (Voice/TTY)

<https://adata.org/>

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. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

### **Department of Defense Computer/Electronic Accommodations Program (CAP)**

(703) 614-8416 (Voice); (571) 384-5629 (Videophone)

<http://www.cap.mil/>

NEH has entered into an Interagency Agreement with the Department of Defense Computer/Electronic Accommodations Program (“CAP”), which provides assistive technology, devices, and services to people with hearing, visual, dexterity, cognitive/learning or communication disabilities. NEH employees are therefore eligible for CAP services. The Office of Human Resources will annually review this directive to ensure it remains consistent with the CAP agreement.

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

(800) 526-7234 (Voice); (877) 781-9403 (TTY)

<http://janweb.icdi.wvu.edu/>

Jan is one of several services provided by the U.S. Department of Labor’s Office of Disability Employment Policy. JAN consultants provide information, free-of-charge, about many types of reasonable accommodations and other disability-related issues.

### **NEH Office of Human Resources**

[humanresources@neh.gov](mailto:humanresources@neh.gov); (202) 606-8415

### **RESNA Technical Assistance Project**

(703) 524-6686 (Voice); (703) 524-6639 (TTY)

<http://www.resna.org/>

The Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)

offers certification, continuing education, and professional development guidance regarding the knowledge and practice of rehabilitation and assistive technology.

**Registry of Interpreters for the Deaf**

(703) 838-0030 (Voice); (571) 257-3957 (Videophone)

<http://www.rid.org/>

The Registry of Interpreters for the Deaf offers information on locating and using interpreters and transliteration services.

**U.S. Equal Employment Opportunity Commission (EEOC)**

(800) 669-4000 (Voice); (800) 669-6820 (TTY)

<http://www.eeoc.gov/>

The EEOC's Publication Center (<https://www.eeoc.gov/eeoc/publications/index.cfm>) provides numerous guidance and technical assistance documents on disability discrimination and the ADA, including with respect to federal sector employment specifically.

**ATTACHMENTS**

(NEH will endeavor to revise any form identified below, if possible and as necessary, to accommodate an individual with disabilities.)

**Attachment 1: NEH Confirmation of Request for Reasonable Accommodation or Personal Assistance Services Form**

**Attachment 2: CAP Accommodation Request Form**

**Attachment 3: NEH Denial of Request for Reasonable Accommodation or Personal Assistances Services Form**

**Attachment 4: NEH Reasonable Accommodation and Personal Assistance Services Reporting Form**



Attachment 2

**CAP ACCOMMODATION REQUEST FORM**

The form can be found at the following URL:

<http://cap.mil/Request/Request.aspx>.

Attachment 3

**NEH DENIAL OF REQUEST FOR REASONABLE  
ACCOMMODATION OR PERSONAL  
ASSISTANCE SERVICES**

**1. Name of Individual requesting reasonable accommodation or personal assistance services (“PAS”):**

\_\_\_\_\_

**2. Type(s) of reasonable accommodation/PAS requested:**

**3. Request for reasonable accommodation/PAS denied because:**  
*(May check more than one box):*

- Accommodation/PAS Ineffective
- Accommodation/PAS 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): \_\_\_\_\_

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

**5. If a job applicant or an employee proposed one type of reasonable accommodation/PAS that NEH has denied, but rejected an offer of a different type of reasonable accommodation/PAS, explain both the reasons for denial of the requested accommodation/PAS and why the chosen accommodation or service will be effective:**



Denial of Reasonable Accommodation Request Form (Page 2)

**6. To request *reconsideration* of this decision, the job applicant or employee may take the following steps:**

- **First, ask the decision maker to reconsider his/her denial. The individual may present additional information to support this request. (*The decision maker will respond to the request for reconsideration within 5 business days.*)**
- **If the decision maker does not reverse the denial:**
  - **and the decision maker was the employee's immediate supervisor, the individual can ask the responsible Office or Division Director to reconsider the request. (*The Office or Division Director will respond to this request within 10 business days.*)**
  - **and the decision maker was an Office or Division Director, the individual can ask the Senior Deputy Chairman to reconsider the request. (*The Senior Deputy Chairman will respond to this request within 10 business days.*)**
  - **and the decision maker was a representative of the Office of Human Resources, the individual can ask the Senior Deputy Chairman to reconsider the request. (*The Senior Deputy Chairman will respond to this request within 10 business days.*)**
  - **and the decision maker was the Senior Deputy Chairman, the individual can ask the Chairman or his designee to reconsider the request. (*The Chairman or his designee will respond to this request within 10 business days.*)**

**7. An individual also has the right to file an Equal Employment Opportunity ("EEO") complaint with NEH per the procedures set forth in 29 C.F.R. § 1614.106. If an individual wishes to file an EEO complaint, or pursue rights under NEH's Collective Bargaining Agreement ("CBA") or before the Merits Systems Protection Board ("MSPB"), he or she must do the following:**

- For an EEO complaint, contact an EEO counselor within 45 calendar days after receipt of the written notice of denial. Pursuant to 29 C.F.R. § 1614.105, the job applicant or employee will lose the right to file an EEO complaint unless he or she initiates contact with an EEO Counselor within 45 days of the denial, **regardless of whether the applicant or employee participates in the informal dispute resolution process set forth in Section 6 above.**
- For a claim under the CBA, initiate an informal grievance within 20 calendar days after receipt of the written notice of denial, in accordance with CBA Section 15; or
- For an adverse action appealable to the Merit Systems Protection Board, file an appeal with MSPB within 30 calendar days after receipt of the written notice of denial, in accordance with the procedures set forth in 5 C.F.R. part 1201.

\_\_\_\_\_  
Name of Deciding Official

\_\_\_\_\_  
Signature of Deciding Official

**Date reasonable accommodation/PAS request denied:** \_\_\_\_\_

Attachment 4

**NEH REASONABLE ACCOMMODATION AND PERSONAL ASSISTANCE SERVICES REPORTING FORM**

(To be completed by Supervisor or Decision Maker)

**Name of individual seeking reasonable accommodation or personal assistance services (“PAS”):** \_\_\_\_\_

**Office of requesting individual:** \_\_\_\_\_

**1. Reasonable accommodation/PAS: (check one)**

\_\_\_\_\_ Approved

\_\_\_\_\_ Denied (*If denied, attach a copy of the “NEH Denial of Request for Reasonable Accommodation or Personal Assistance Services Form.”*)

**2. Date of request for reasonable accommodation or PAS:** \_\_\_\_\_

**3. Name of individual who received request:** \_\_\_\_\_

**4. Date request referred to decision maker (supervisor, Office or Division Director, Senior Deputy Chairman, or Human Resources Specialist):** \_\_\_\_\_

**5. Name of Decision Maker:** \_\_\_\_\_

**6. Date reasonable accommodation/PAS was approved or denied:** \_\_\_\_\_

**7. Date reasonable accommodation/PAS was provided (if different from date approved):** \_\_\_\_\_

**8. If time frames specified in the NEH “Procedures for Providing Reasonable Accommodations and Personal Assistance Services to Individuals with Disabilities” were not met, please explain why.**

**9. Job held or desired by individual who requested reasonable accommodation or PAS:**

Occupational Series: \_\_\_\_\_

Grade Level: \_\_\_\_\_

Office: \_\_\_\_\_

Reasonable Accommodation/PAS Reporting Form (Page 2)

**10. Reasonable accommodation needed for:** *(check one; Not Applicable to PAS)*

- Application Process
- Performing Job Functions or Accessing the Work Environment
- Accessing a Benefit or Privilege of Employment (e.g., attending training)

**11. Type(s) of reasonable accommodation/PAS requested** *(e.g., adaptive equipment, removal of architectural barrier):*

**12. Type(s) of reasonable accommodation/PAS provided** *(if different from what was requested):*

**13. Was medical information required to process this request?** *(check one)*

- No
- Yes *(If so, explain why)*

**14. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations** *(e.g., CAP, Job Accommodation Network).*

**15. Comments:**

**\*Attach copies of all documents obtained or developed in processing this request and forward to the Director, HR, within 10 business days of the decision.**

**Submitted by:** \_\_\_\_\_  
Supervisor or Decision Maker

**Date:** \_\_\_\_\_