

CHAPTER 2 . STATUTORY REQUIREMENTS/ POLICY STATEMENT/MANAGEMENT RESPONSIBILITIES

2-1. STATUTORY REQUIREMENTS

A. Section 501 of the Rehabilitation Act of 1973, as amended,

1. Prohibits discrimination on the basis of disability in Federal employment and requires the Federal Government to engage in Affirmative Employment for Individuals with Disabilities.
2. Requires Federal employers not to discriminate against qualified job applicants or employees with disabilities. Federal employers shall ensure that their policies do not unnecessarily exclude or limit individuals with disabilities because of a job's structure or because of architectural, transportation, communication, procedural, or attitudinal barriers.
3. Requires employers to make "**reasonable accommodation**" to the known physical or mental limitations of qualified applicants and employees with disabilities unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of its program.
4. Prohibits the use of selection criteria and standards which tend to screen out people with disabilities, unless such criteria have been determined through a job analysis to be job-related and consistent with business necessity, and an appropriate individualized assessment indicates that the job applicant cannot perform the essential functions of the job, with or without reasonable accommodation.

B. Executive Order 13164 dated July 26, 2000, " Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation", mandates Federal agencies, among other things, to establish effective written procedures to facilitate the provision of reasonable accommodation, and submit Agency Reasonable Accommodation procedures to the Equal Employment Opportunity Commission by July 26, 2001.

C. Americans With Disabilities Act of 1990 (ADA) amended Section 501 of the Rehabilitation Act by applying the employment nondiscrimination standards of the ADA (Title I) to Federal government employees and applicants for employment. It also firmly stated that it is the obligation of the Federal government to be the "model employer of individuals with disabilities".

2-2. DEPARTMENT-WIDE POLICY STATEMENT

It is the policy of the Department of Housing and Urban Development (HUD) to promote active recruitment and proper placement of qualified persons with disabilities; provide selective placement assistance to assure retention and career advancement opportunities; and to assure that persons with disabilities have a full opportunity to be represented at every level in the workforce.

It is also the policy of HUD to provide reasonable accommodation to the known physical or mental limitations of qualified employees and job applicants with disabilities, unless it can be shown that the accommodation would impose an undue hardship on its operations.

It is the goal of the Department to be a model employer of persons with disabilities by providing full and fair consideration, employment, advancement, and retention of persons with disabilities in a broad range of grade levels and occupations commensurate with their knowledge, skills, and abilities. Further, HUD will assure that persons with disabilities are not unnecessarily excluded or limited because of job design or because of architectural, communication, procedural, or attitudinal barriers.

Managers and supervisors are responsible for achieving these goals, as expressed in the Department's Affirmative Employment Program (AEP) plan covering the hiring, placement, and advancement of individuals with disabilities, at their respective office levels. They are also responsible for providing reasonable accommodation, which is a logical adjustment made to a job or work environment that enables a qualified person with disabilities to perform the essential functions of a position.

The Office Departmental Equal Employment Opportunity (ODEEO) will prepare an annual report, to be made available via the Management Directive 715 (MD 715). The report will contain a qualitative assessment of HUD's reasonable accommodation program for applicants and employees, including any recommendations for improvement of HUD's reasonable accommodation procedures. The analysis of the information collected will also be used to determine whether HUD's is complying with the nondiscrimination and affirmative action requirements imposed under Section 501, and such records will be available to the Equal Employment Opportunity Commission upon request.

2-3. MANAGEMENT'S RESPONSIBILITY

A. What is Reasonable Accommodation?

1. Reasonable accommodation is any change or adjustment to a job or the work - environment or in the way things are customarily done that enables a qualified individual with a disability to perform the essential functions of the position, thereby enjoying equal employment opportunities. The duty to provide reasonable accommodation is a fundamental statutory requirement because of the nature of discrimination faced by individuals with disabilities. Although many individuals with disabilities can apply for and perform jobs without any reasonable

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accommodation, there are workplace barriers that keep others from performing jobs that they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment) or they may be procedures or rules (such as rules concerning when or where work is performed, when breaks are taken, or how essential or marginal functions are performed). Simply put, reasonable accommodation removes work-place barriers for individuals with disabilities.

2. HUD managers and supervisors shall make reasonable accommodation to the known physical or mental limitations of qualified employees or job applicants with disabilities unless it can be shown that the accommodation would impose an undue hardship on the agency.

B. Providing Reasonable Accommodation

1. Accommodations are not new in an employment situation. In the context of job performance, when an effective accommodation is provided (one that enables an employee with a disability to perform the essential functions of the position), a manager or supervisor has satisfied the reasonable accommodation obligation. Similarly, an effective accommodation will enable an applicant with a disability to have an equal opportunity to participate in the merit staffing process and to be considered for a job. Lastly, a reasonable accommodation is effective if it allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy.
2. Providing accommodations for qualified individuals with disabilities means that the work-related needs of all employees will be considered. Reasonable accommodations must be provided to qualified employees regardless whether they work part-time or full-time, or are considered "probationary."

There are a number of possible reasonable accommodations that HUD managers and supervisors may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. These include:

- making existing facilities accessible;
- job restructuring;
- part-time or modified work schedules;
- acquiring or modifying equipment;
- providing qualified readers or interpreters;
- changing tests, training materials or policies; and
- reassignment to a vacant position.

3. Managers and supervisors do not have to provide personal items, such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids or similar devices when needed by the individual in accomplishing daily activities both on and off the job. Managers and supervisors do not have to provide personal use amenities, such as a hot pot or refrigerator, if those items are not provided to employees without disabilities. Furthermore, they do not have to eliminate an essential function, i.e., a fundamental duty of the position. A person with a disability who is unable to perform the essential functions, with or without reasonable accommodation, is not a "qualified" individual within the meaning of the Rehabilitation Act. Managers and supervisors are also not required to lower production standards — whether qualitative or quantitative — that are applied uniformly to employees with and without disabilities. However, managers and supervisors may be required to provide reasonable accommodation to enable an employee with a disability to meet the production standards.