



FEDERAL DEPOSIT INSURANCE CORPORATION

# DIRECTIVE SYSTEM

TYPE AND NUMBER

Circular 2710.5

CONTACT

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DATE

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DATE OF CANCELLATION (*Bulletins Only*)

**TO:** All Employees

**FROM:** Segundo Pereira, Director  
Office of Minority and Women Inclusion (OMWI)

**SUBJECT:** Procedures for Providing Reasonable Accommodation to Individuals with Disabilities

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**1. Purpose** To update the Federal Deposit Insurance Corporation's (Corporation or FDIC) policy and procedures on providing reasonable accommodation to qualified employees and applicants for employment with disabilities.

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**2. Revision** FDIC Circular 2710.5, Procedures for Providing Reasonable Accommodation to Individuals with Disabilities, dated October 2, 2007, is hereby revised and superseded.

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**3. Scope** The provisions of this Circular apply to all employees and applicants for employment. The applicability of the provisions of this Circular to bargaining unit employees has been negotiated with the National Treasury Employees Union (NTEU).

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**4. Background** The FDIC provides reasonable accommodations to qualified employees or applicants with disabilities as required by applicable laws and regulations. These accommodations are changes or modifications in the work environment, equipment or instruments used, or the way things are customarily done, that enable individuals with disabilities to enjoy the same opportunities and benefits of employment as employees without disabilities.

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**5. Authority** The Rehabilitation Act of 1973, as amended (29 U.S.C. § 701 et seq.); the Americans with Disabilities Act (ADA) of 1990, as amended (42 U.S.C. § 12101 et seq.); and Federal Regulations (29 C.F.R. §§ 1614, 1630) require Federal agencies to provide reasonable accommodations to qualified employees and applicants for employment with disabilities.

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## 6. Policy

The Corporation shall, upon request, provide a reasonable accommodation for known physical or mental disabilities of qualified employees and applicants for employment, unless the Corporation can show that a particular accommodation would impose an undue hardship on the operation of its programs.

When appropriate, the Corporation may grant an accommodation to an employee or an applicant for employment, even though the Corporation may not be legally required to do so.

Therefore, the Corporation's approval of an accommodation request does not necessarily constitute a determination by the Corporation that an employee, (or applicant for employment), is legally entitled to the accommodation granted.

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## 7. Definitions

Terms specific to this Circular are defined below:

a. **Deciding Official** is the employee's first-level supervisor, another supervisor or manager in an employee's chain of command, or the Human Resources (HR) Specialist in the case of an applicant for employment, who decides whether the Corporation shall provide a requested reasonable accommodation.

b. **Disability** is:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of an individual;

(2) A record of such impairment; or

(3) Being regarded as having such impairment.

c. **Essential Functions** are job duties fundamental to the position that an individual holds or desires. A job function may be considered "essential" for several reasons including, but not limited to, the following:

(1) The position exists to perform the specific job function;

(2) There are a limited number of other employees who could perform the job function; and

(3) The job function is specialized and the individual is hired based on his/her ability to perform it.

d. **Has a Record of such Impairment** means the individual has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

e. **Implementing Office** is the Division/Office responsible for the acquisition of equipment or services or for making the facilities readily accessible to accommodate an employee (or applicant for employment) with a disability. For example, the Implementing Office for computer hardware and/or software is the Division of Information Technology (DIT), while the office providing sign language interpreting services is OMWI.

f. **Is Regarded as Having such an Impairment** means:

(1) Has a physical or mental impairment that does not substantially limit any major life activity or is transitory and minor but the individual is treated by an employer as having such limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of an employer toward such impairment; or,

(3) Has none of the impairments defined in subparagraph 7.h. (1) or (2) below, but the individual is treated by an employer as having a substantially limiting impairment.

g. **Major Life Activities** include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

h. **Physical and/or Mental Impairment:**

(1) **Physical Impairment** is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(2) **Mental Impairment** is any mental or psychological disorder, such as intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

i. **Qualified Employee (or applicant for employment) with a Disability** is one who:

(1) Satisfies the requisite skill, experience, education, and other job-related requirements of the position the individual holds or desires; and,

(2) Is able to perform the essential functions of the position with or without a reasonable accommodation.

j. **Reasonable Accommodation** means:

(1) Modification of the job application process to enable a qualified applicant with a disability to be considered for the position he/she desires;

(2) Modification of the work environment, or the way in which the position held or desired is customarily performed, to enable a qualified employee with a disability to perform the essential functions of the position. Such modifications may include, but are not limited to:

(a) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities; or,

(b) Job restructuring; part-time or modified work schedules; reassignment to a vacant, funded position; acquisition or modification of equipment or devices; appropriate adjustment or modification of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

k. **Reasonable Accommodation Coordinator** is located in the Office of Minority and Women Inclusion (OMWI).

l. **Reassignment** is a reasonable accommodation of last resort that, absent undue hardship, is provided to an employee who, because of a disability, can no longer perform the essential functions of his/her current job, even with a reasonable accommodation. Reassignments are made only to vacant, funded positions, regardless of geographical location, and for employees who are qualified for and can perform the essential functions of the new position.

m. **Reviewing Official** is the employee's second level supervisor, or, in the case of an applicant for employment, the Deputy Director, Human Resources Branch (HRB), Division of Administration (DOA), or his/her designee, for Headquarters applicants, and for field applicants the Regional HR Officer, who reviews the Deciding Official's decision when a request for reasonable accommodation is denied and the employee (or

applicant for employment) has filed a request for reconsideration. For applicants for employment with the Office of Inspector General (OIG), the Reviewing Official is the Deputy Assistant Inspector General for Management or his/her designee. The Reviewing Official has the authority to uphold, modify, or reverse the decision to deny the reasonable accommodation.

n. **Substantially Limits** mean the person is:

(1) Unable to perform a major life activity that an average person in the general population can perform;

(2) Significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the general population. The following factors are considered in determining whether an individual is substantially limited in a major life activity:

(a) The nature and severity of the impairment;

(b) The duration or expected duration of the impairment; and,

(c) The permanent or long-term impact, or the expected permanent or long-term impact of the impairment.

o. **Transitory Impairment** is an impairment with an actual or expected duration of 6 months or less.

p. **Undue Hardship** is significant difficulty or expense the Corporation would incur if it provided a particular accommodation. The Corporation is not required to provide an accommodation that causes undue hardship. Determination of undue hardship is always considered on a case-by-case basis. The criteria to be considered in determining undue hardship include the following:

(1) Nature and cost of the accommodation;

(2) Overall size of the organizational unit as compared with the number of employees, facilities, and size of the budget;

(3) Type of operation, including composition and structure of the work force; and,

(4) The impact of the accommodation on the operation of the office, including the impact on the ability of other employees to perform their duties, and the impact on the office's ability to conduct business.

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**8. Requesting  
Reasonable  
Accommodation**

An employee (or applicant for employment) with a disability may request a reasonable accommodation at any time, even if he/she has not previously disclosed the existence of a disability. The request may be made verbally or in writing and does not have to include any special words such as “reasonable accommodation,” “disability,” or “Rehabilitation Act.” The request may be made or submitted to the employee’s first-line supervisor, another supervisor or manager in the employee’s chain of command, the Division/Office Director, or the Reasonable Accommodation Coordinator. In the case of an applicant for employment, the request may be made or submitted to the HR Specialist responsible for recruitment of the position.

For employees with intellectual disabilities, a Support Coordinator will be assigned for the purpose of assisting the employee and promoting the employee’s best interest in the workplace. While supervisors should take all necessary precautions to maintain the confidentiality of the employee with intellectual disabilities, a supervisor may be required to discuss the employee’s disability in order to afford them a reasonable workplace accommodation. The Support Coordinator, in conjunction with any legal guardian, if necessary, will ordinarily be involved in all aspects of the reasonable accommodation process or any other process for determining appropriate workplace assistance. The Reasonable Accommodation Coordinator should be contacted for information on accommodations available for persons with intellectual disabilities.

Verbal requests for a reasonable accommodation must be followed by the requestor submitting form FDIC 2710/02, Request FDIC for Reasonable Accommodation or Barrier Removal. Section I of form FDIC 2710/02 must be completed in accordance with the instructions on the form. The submission of form FDIC 2710/02 is for recordkeeping purposes.

Communication is a priority throughout the reasonable accommodation process. Immediately following a verbal or written request for a reasonable accommodation, the employee (or applicant for employment) and the Deciding Official shall engage in the interactive communication process. This process involves discussions between the employee (or applicant for employment) and the Deciding Official regarding the request, the process for determining whether an accommodation will be provided, and possible accommodations. The interactive communication process is especially important when a medical condition is not obvious or an effective accommodation is not clear.

a. **Medical Documentation.** When a disability and/or need for an accommodation is not obvious, the Deciding Official may ask the employee (or applicant for employment) with a disability to provide sufficient medical documentation about the disability and his/her functional limitations. The documentation should address the following:

- (1) The nature, severity, and duration of the impairment;
- (2) The activity or activities that the impairment limits;
- (3) The extent to which the impairment limits the ability to perform the activity or activities; and/or
- (4) Why the individual requires reasonable accommodation or the particular reasonable accommodation requested; as well as how the requested accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

The physician's statement must be legible, on the physician's letterhead, and signed with an original signature. A qualified medical professional appointed by the Corporation may review the medical documentation. Failure to provide the necessary documentation requested may result in denial of reasonable accommodation.

b. **Repeated Need for the Same Accommodation.** When an employee seeks an approved accommodation on a repeated basis, the employee needs only to make a summary request for the accommodation, either verbally or in writing, when a subsequent need arises.

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## 9. Processing a Request for Reasonable Accommodation

When a request for a Reasonable Accommodation has been made, various individuals are accountable for reviewing, processing and implementing the request. Those individual responsibilities are more clearly defined below:

a. **The Deciding Official** shall process a request for reasonable accommodation in accordance with the timeframes outlined in subparagraph 9.c., below. Additionally, he/she shall:

- (1) Immediately begin the interactive communication process with the person requesting the reasonable accommodation;
- (2) Verify his/her authority to grant or deny requests for reasonable accommodation, as well as his/her expenditure authority. If he/she does not have the authority to grant or

deny the reasonable accommodation requested, he/she shall refer the request to the next higher-level official who has the authority to make the determination;

(3) Confirm that the employee wants a reasonable accommodation when a family member, health professional, or representative requests a reasonable accommodation on an employee's behalf;

(4) Notify the Reasonable Accommodation Coordinator when a request for a reasonable accommodation is received and provide him/her with a copy of form FDIC 2710/02 submitted by the employee;

(5) Engage in a discussion with the Reasonable Accommodation Coordinator, who shall refer the Deciding Official to the appropriate resources, individuals, and Divisions/Offices that are able to provide assistance in making the decision and/or may be affected by the implementation of the request;

(6) Consult with the appropriate Divisions/Offices, which may include, but are not limited to the:

(a) HRB, DOA, on issues that may impact personnel policy;

(b) DIT regarding the availability and feasibility of certain computer equipment, hardware, peripherals, software, and training;

(c) Health, Safety and Environmental Unit, Corporate Services Branch, DOA regarding the availability and feasibility of certain accommodation requests; and/or

(d) Labor, Employment and Administration Section, Legal Division, for legal questions;

**Note:** For requests made by employees in OIG, contact should be made with the OIG Office of Management, Human Resources Team, who will coordinate with OIG Counsel.

(7) Request medical documentation, when needed, to support the request for a reasonable accommodation;

(8) Complete Section II of form FDIC 2710/02 in accordance with the instructions on the form once a decision is made; and

(9) Forward the complete case file, including notes, correspondence, medical documentation, and all associated materials to the Reasonable Accommodation Coordinator after the request for a reasonable accommodation has been processed and completed.

**b. Implementing Office shall:**

(1) Immediately begin action to implement the reasonable accommodation once approval of the reasonable accommodation is received;

(2) Indicate the actions taken after full implementation of the approved reasonable accommodation by completing Section IV of form FDIC 2710/02; and

(3) Forward the original form FDIC 2710/02 to the Reasonable Accommodation Coordinator, and a copy to the Deciding Official.

**c. Time-Frames for Processing a Request for Reasonable Accommodation**

(1) Upon receipt of a verbal or written request for a reasonable accommodation, the Deciding Official shall process the request immediately. He/she shall not wait for receipt of form FDIC 2710/02 to begin processing the request;

(2) When a request for a reasonable accommodation can be processed by the Deciding Official and medical documentation is not required and no extenuating circumstances exist, the request shall be processed and the accommodation, if granted, will be provided within twenty-one (21) calendar days;

(3) If the Deciding Official believes that it is necessary to obtain medical documentation, he/she shall request the information before the expiration of the twenty-one (21) calendar day period;

(4) After the requested medical documentation is received, and if there are no further extenuating circumstances, the request for a reasonable accommodation will continue to be processed and, if granted, will be provided within fourteen (14) calendar days;

(5) When there are extenuating circumstances, the time-frame for processing the request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. The following are examples of extenuating circumstances:

- (a) A follow-up request for medical documentation;
- (b) The need for a qualified medical professional to evaluate the medical documentation;
- (c) The purchase of equipment; or
- (d) The completion of a personnel action.

(6) When extenuating circumstances delay processing a request for reasonable accommodation beyond twenty-one (21) calendar days, the Deciding Official shall notify the employee (or applicant for employment) and the Reasonable Accommodation Coordinator in writing of the reason for the delay, and the approximate date for which a decision or provision of the reasonable accommodation is expected. Any further delays or changes shall be promptly communicated to the employee (or applicant for employment) and the Reasonable Accommodation Coordinator.

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**10. Denial of a Request for a Reasonable Accommodation**

If a request for reasonable accommodation is denied, the Deciding Official shall complete Section II of form FDIC 2710/02 explaining in detail the reason for the denial and give copies of the form to the Reasonable Accommodation Coordinator and employee (or applicant for employment). Upon receipt of a written denial, the employee (or applicant for employment) may:

a. Submit a written request for reconsideration along with supporting documentation to the Reviewing Official, or his/her designee, explaining why the Deciding Official's decision to deny the accommodation is incorrect. Requests shall be submitted as follows:

(1) The request for reconsideration must be submitted within fifteen (15) calendar days from receipt of the initial written denial; and

(2) A copy of the request for reconsideration must be forwarded to the Reasonable Accommodation Coordinator.

b. The Reviewing Official shall process the request for reconsideration in accordance with the instructions outlined in paragraph 9, above. Once a decision is made, the Reviewing Official shall complete Section III of form FDIC 2710/02 in accordance with the instructions on the form and forward copies to the employee (or applicant for employment) and the Reasonable Accommodation Coordinator.

c. In addition, employees and applicants for employment may initiate an Equal Employment Opportunity (EEO) complaint by contacting an FDIC EEO Counselor within forty-five (45) calendar days of receipt of the initial written denial.

d. Non-bargaining unit employees may file an FDIC grievance in accordance with FDIC Circular 2140.1, FDIC Grievance Procedures, within fifteen (15) calendar days of receipt of the initial written denial. However, employees may not use the FDIC grievance procedure if they are alleging discrimination as the basis for denial of a request for reasonable accommodation, but instead must use the Corporation's procedures outlined in FDIC Circular 2710.2, EEOC Discrimination Complaint Procedures (for initiating and processing discrimination complaints against the Corporation that are within the jurisdiction of the EEOC).

e. Bargaining unit employees alleging discrimination as the basis for the denial of a reasonable accommodation may file a grievance under the collective bargaining agreement within twenty (20) working days of the initial denial of a request for a reasonable accommodation **or** file a formal EEO Complaint, **but not both**. Employees may participate in the informal EEO complaint process by contacting an EEO Counselor within forty-five (45) calendar days of receipt of the initial written denial.

**Note:** Filing of a request for reconsideration of the initial denial of a reasonable accommodation request does not extend the time for filing either an EEO complaint or a grievance.

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## 11. Confidentiality Requirements

Medical documentation relating to requests for reasonable accommodation must be kept confidential and shared only with those who have a valid need to know (e.g., decision makers who make employment decisions consistent with the ADA for necessary accommodation of the individual, first aid and safety personnel during an emergency and Government officials investigating compliance with the regulations). Medical documentation must be kept in files separate from the employee's official personnel file, or any other files kept by managers or the Corporation. Employees who obtain or receive medical documentation are strictly bound by the confidentiality provisions of this Circular. When medical documentation is disclosed, the individual disclosing the information must inform the recipient(s) of the confidentiality requirements.

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## 12. Recordkeeping Requirements

The Reasonable Accommodation Coordinator shall maintain custody of all records upon completion of the processing of requests for reasonable accommodation. Additionally, he/she

shall compile and maintain the original files on all requests for reasonable accommodation that will be utilized to:

- a. Ensure consistency in the handling of requests for reasonable accommodation; and,
- b. Track corporate processing of requests for reasonable accommodations for purposes of reporting to the U.S. Equal Employment Opportunity Commission.

The Corporation's files are the official record copy and shall be transferred to record storage after five (5) years.

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**13. Questions**

Questions regarding this Circular may be addressed to the Reasonable Accommodation Coordinator/Chief, Special Programs Branch, OMWI by calling (877) 275-3342 or TTY (703) 562-2473.

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**14. Form Availability**

Form FDIC 2710/02, Request for Reasonable Accommodation, is available on the FDICnet Home page under Quick Links – Forms.

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**15. Effective Date**

The provisions outlined in this Circular are effective immediately.