

# National Archives and Records Administration

---

## **Transmittal Memo**

---

**DATE:** September 11, 2019

**TO:** All Employees

**SUBJECT: Interim Guidance 303-1, Reasonable Accommodations**

**Purpose:** This interim guidance establishes NARA's temporary policy and procedures on providing reasonable accommodation (RA) for qualified employees and applicants with disabilities so these individuals may enjoy the benefits and privileges of employment. A replacement directive is being written. The interim guidance:

- Provides instructions to NARA employees and NARA job applicants who want to request an RA and to NARA staff who receive, coordinate, review, process, and approve RA requests.
- Establishes criteria for collecting and annually reporting data on the numbers and types of RA requests received and processed at NARA.
- Identifies the Disability Program Manager (DPM) as a resource for understanding and navigating the NARA RA Process.

**Background/significant changes:** Executive Order 13164, "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation," requires agencies to establish procedures for handling requests for RAs from NARA employees and applicants. NARA processes these requests and provides accommodations within the timeframes in compliance with these procedures.

**Significant changes:** The original policy was published in April 2003. Reasons for changes include compliance with EEOC mandates, and the need to clarify processing timeframes and specific parts of the process. The potential impact is improved processing timeframes, EEOC accountability, clarification on denials, and avenues of redress. Changes include:

- All deadlines are changed from calendar days to business days;
- Clarification on processing timeframes connected to medical documentation (time freezes);
- New/updated definitions for Personal Assistance Services (PAS), Persons with Targeted Disabilities (PWT), and Reasonable Accommodation Team (REACT);
- Addition of the EEOC-mandated PAS request process; and
- Clarification on the interactive process, undue hardships, denials, and the REACT role.

**Available forms:**

- NA Form 3043, Confirmation of Reasonable Accommodation Request

## **National Archives and Records Administration**

- NA Form 3044, Disposition of Reasonable Accommodation Request
- NA Form 3076, Authorization to Provide Limited Access to Medical Information

### **Cancelled policies:**

- Personnel 300, Chapter 752, Disciplinary and Adverse Actions, dated May 29, 2003
- Interim Guidance 300-1, NARA Personnel Manual, ch. 752, Disciplinary and Adverse Actions, dated July 13, 1999
- Interim Guidance 300-37, NARA Personnel Manual, ch. 752, Disciplinary and Adverse Actions, dated October 12, 2007

**Effective date:** This interim guidance is effective upon signature date.

**Contact information:** For questions about this policy, please contact the EEO office at [neeo@nara.gov](mailto:neeo@nara.gov) or (301) 837-3411.

DEBRA STEIDEL WALL  
Deputy Archivist of the United States

# National Archives and Records Administration

**Interim Guidance 303-1**  
September 11, 2019

## **SUBJECT: Interim Guidance 303-1, Reasonable Accommodations**

### **303.1 Policy.**

- a. NARA provides reasonable accommodations (RA) for qualified NARA employees and applicants upon request and as required by law.
- b. An RA is any modification or adjustment to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position.
- c. Failure to provide a reasonable accommodation may be a violation of the Rehabilitation Act.
- d. RA requests can be made at any time, even if an individual's disability has not been previously disclosed.
- e. A family member, health professional, supervisor, or representative of an employee or applicant may request an RA on behalf of the NARA employee or applicant.
- f. NARA may require proof that an individual has a disability, and that the disability necessitates an RA.
  - i. Individuals must use NA Form 3076, Authorization to Provide Limited Access to Medical Information, when submitting medical documentation. Failure to provide requested documentation may result in a denial of the RA.
  - ii. NARA has the right to have a medical professional review medical documentation.
  - iii. When necessary, NARA has the right to require a medical examination that is job related and consistent with business necessity to verify the existence and nature of a disability.
- g. NARA may provide temporary accommodations to the RA requester while medical information is being processed and before a final decision on a permanent RA has been made.
- h. NARA processes RA requests and provides accommodations within prescribed timeframes.
  - i. Individuals may ask for reconsideration if their RA request has been denied.
- j. All RA requests must be documented using NA Form 3043, Confirmation of Reasonable Accommodation Request, NA Form 3044, Disposition of Reasonable Accommodation Request, and NA Form 3076, Authorization to Provide Limited Access to Medical Information.
- k. NARA provides personal assistant services (PAS) to NARA employees with "targeted disabilities" unless doing so will impose an undue hardship on the agency. PAS are not the same as RAs. Information on targeted disabilities may be found at <https://www.eeoc.gov/laws/regulations/qanda-ada-disabilities-final-rule.cfm>.

### **303.2 Scope and Applicability.**

- a. This policy applies to all NARA employees, including probationary employees, and all applicants to NARA job vacancies, at all NARA facilities. Individuals covered under this policy are:
  - i. Employees and applicants with a disability; and
  - ii. Employees with pregnancy-related conditions that constitute a disability or limitations resulting from the interaction of the pregnancy with an underlying impairment.
  - iii. Additionally, NARA will entertain reasonable accommodation requests from NARA volunteers, but such requests are not typically covered by this policy.
- b. An individual with a disability has a physical or mental impairment that substantially limits one or more major life activities (e.g., walking, talking, hearing, seeing, breathing, working) and:
  - i. Has a record of such an impairment; or
  - ii. Is regarded as having such an impairment.
- c. NARA is required to consider reassignment to a vacant position as part of an RA, but NARA is not required to:
  - i. Reassign a probationary employee if she or he has never successfully performed the essential functions of the position;
  - ii. Create a position as a means of reasonably accommodating an employee;
  - iii. Promote an employee to a higher grade level; or
  - iv. Reassign the employee to a new position whose pay and benefits were the same as her or his old position.
- d. Contractors may not request an RA from NARA. If a contractor employee requires an RA, she or he should request the accommodation from her or his employer. If the requested accommodation requires NARA to take action, the contractor should coordinate with the NARA Disability Program Manager.

### **303.3 Responsibilities.**

In addition to the authorities delegated in NARA 101, NARA Organization and Delegation of Authority, the following responsibilities are assigned in order to effectively implement this policy.

- a. The Disability Program Manager (DPM), Office of Equal Employment Opportunity (NEEO), has overall responsibility for administering the NARA-wide Disability Program to support the employment of, and services for, individuals with disabilities. The DPM:
  - i. Disseminates NARA's reasonable accommodation policy to all NARA facilities and staff.
  - ii. Advises supervisors on providing RAs.
  - iii. Receives requests for RAs from employees, including requests submitted by someone requesting an RA on behalf of an employee.
  - iv. Receives RA requests from applicants to NARA vacancies if the request cannot be administered by NARA's human resources shared services provider, the Department of the Treasury, Bureau of the Fiscal Service, Administrative Resource Center (ARC). When ARC forwards an applicant's RA request to

NARA, the DPM is responsible for contacting the applicant, determining her or his specific need, and providing an accommodation if possible.

- v. Is responsible for completing the NA Forms 3043 and 3044 for the applicant, including any follow up with the point of contact for the vacancy announcement. Any cost associated with providing the accommodation, other than Sign Language Interpreting (SLI)/ Communication Access Realtime Translation (CART) services, is the responsibility of the office filling the vacancy.
- vi. Collects and maintains data regarding RAs in accordance with the reporting requirements set forth by the Equal Employment Opportunity Commission (EEOC).
- vii. Maintains all records, including electronic copies of emails and word processing files, created or received during the RA request process.

b. The Office of Human Capital (H) is responsible for working with the DPM and Reasonable Accommodation Team (REACT) when necessary to advise the decision maker about Human Capital- specific implications of an RA such as RAs that include changes in duties, reassignments, and problems with the RA requester's performance or conduct.

c. Reasonable Accommodation Team (REACT). Provides specific expertise needed to process complex, multi-layered, RA requests. Examples include cases involving medical documentation that is inconclusive and/or if multiple attempts have been made to receive sufficient documentation; when accommodation attempts have been unsuccessful and reassignment is necessary; when management has questions or concerns about the relationship between a disciplinary or performance-based action and the accommodation; or if the accommodation could be denied. REACT is comprised of the DPM, the Affirmative Employment Program Manager, and staff members from H and the Office of the General Counsel (NGC).

d. Immediate supervisors, other supervisors in the employee's chain of command, and Executives and Staff Directors can receive RA requests from employees and act as decision makers. Decision makers approve or deny the requests.

e. Employees, applicants, or their representatives are responsible for requesting RAs in accordance with this interim guidance.

#### **303.4 Examples of reasonable accommodations.**

- a. NARA uses the definition of "reasonable accommodation" found in the Equal Employment Opportunity Commission's (EEOC) Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act. "An RA balances the needs of the employer and the needs of the individual. As the very name suggests, RAs must be feasible for the employer to enact and, in the context of job performance, must enable the employee to perform the essential functions of their position. As applied to applicants, an RA enables an applicant with a disability to have an equal opportunity to participate in the application process and be considered for a job. RAs allow those employees with a disability an equal opportunity to enjoy those benefits and privileges of employment that employees without disabilities enjoy."

b. A reasonable accommodation is any change in the work environment, in the way things are customarily done, or in the job application process that enables a person with a disability to enjoy equal employment opportunities and equal physical access to her or his workplace or work station. An RA may include, but is not limited to:

- i. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
- ii. Job restructuring (for example, by changing the order of tasks within a work process);
- iii. Part-time or modified work schedules;
- iv. Acquisition of new or modification of existing equipment or devices;
- v. Appropriate adjustment or modifications of examinations, training materials, procedures or policies;
- vi. SLI or CART services;
- vii. Providing qualified readers or interpreters;
- viii. Other similar accommodations; and
- ix. Reassignment to a vacant position.

### **303.5 Additional information.**

The Supplement to this interim guidance contains detailed, step-by-step instructions for individuals requesting an RA, managers and supervisors, and the DPM on how to submit, process, and enact RAs.

### **303.6 Authorities.**

- a. E.O. 13164 of July 26, 2000, “Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation,” requires agencies to establish procedures for handling requests for RAs from NARA employees and applicants.
- b. EEOC’s Policy Guidance on E.O. 13164 requires each federal agency to establish effective written procedures for processing RA requests.
- c. 29 U.S.C. 791, The Rehabilitation Act of 1973, prohibits employment discrimination against individuals with disabilities in the federal sector, and contains provisions governing related remedies and attorney’s fees.
- d. 29 CFR Part 1614 prohibits discrimination in employment because of race, color, religion, sex, national origin, age, disability, or genetic information, and prohibits workplace retaliation against anyone who files or participates in an EEO complaint.
- e. The ADA Amendments Act of 2008 (Public Law 110-325), effective January 1, 2009, the Act amended the Americans with Disabilities Act of 1990 (ADA) and other federal disability nondiscrimination laws.
- f. Section 508 of the Rehabilitation Act (29 U.S.C. § 794 (d)), as amended in 1998, requires Federal agencies to make their electronic and information technology accessible to people with disabilities.
- g. Web Content Accessibility Guidelines (WCAG) 2.0 and 2.1 explain how to make web content more accessible to people with disabilities. The Guidelines have been developed through the W3C process in cooperation with individuals and organizations around the world, with a goal of providing a single shared standard for web content accessibility that

meets the needs of individuals, organizations, and governments internationally. WCAG 2.1 is the latest iteration.

- h. Pregnancy Discrimination Act of 1978 prohibits sex discrimination on the basis of pregnancy, childbirth, or related medical conditions.
- i. Genetic Information Nondiscrimination Act (GINA) of 2008 protects individuals from genetic discrimination in health insurance and employment.

### **303.7 Public Release.**

Unlimited. This interim guidance is approved for public release.

### **303.8 Records Management.**

Records created during the administration of the RA program are covered by General Records Schedule (GRS) 2.3, item 020, RA program files. Records created during the processing of requests for RAs are covered by GRS 2.3, item 021, RA employee case files. Supervisors must not keep any medical documents they receive during the course of an RA request (GRS 2.2, Item 080, Exclusion 2). Such medical documents must be forwarded to the DPM. Contact Corporate Records Management (CM) with any questions regarding the management of these records.

## **Supplement 1: Reasonable Accommodation Procedures**

### **1. The goal of RA**

- a. The goal of RA is for the accommodation to be effective. The accommodation is a modification or adjustment to the application or hiring process, the job, an employment practice, or the work environment that allows a qualified individual with a disability to perform the essential functions of the job.
- b. RA falls into three main categories:
  - i. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position she or he wants; or
  - ii. Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities; or
  - iii. 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 a qualified individual with a disability to perform the essential functions of that position.
    - 1. Essential functions are the fundamental duties of the job that the individual with a disability holds or seeks. A duty of the position is not necessarily an essential function of the job just because it is in a position description. A crucial step in the RA process is distinguishing between essential and marginal functions of a given position, and then determining if any RA could enable the employee requesting an RA to perform the essential functions of the position. The determination of what constitutes an essential

function must be made on a case-by-case basis, and consider the following factors:

- a. Whether the position exists specifically to perform that function;
- b. Whether there are a sufficient number of other employees among whom the performance of that job function can be distributed;
- c. Whether the function is highly specialized so that the individual in the position is hired based on her or his ability to perform the function;
- d. The amount of time spent on the job performing the function; and
- e. The consequences of not requiring the incumbent to perform the function.

c. The decision maker, in consultation with the DPM, must determine whether the accommodation is effective. The Agency is not required to provide the specific RA requested by the employee, and may choose other RAs. As part of the good-faith Interactive Process, the decision maker must consider the employee's requested accommodation, but can also propose and discuss other effective alternative RAs. The decision maker should explain to the employee the reasons that alternatives are being considered. Before rejecting an employee's requested accommodation, the decision maker should also be confident that a selected alternative is indeed effective in enabling the employee to perform the essential functions of the position or otherwise meeting the purpose of the RA.

## **2. Instructions for requesting an RA**

- a. A request for an RA is a statement that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment due to a medical condition. The request does not need to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." A request for RA can be made verbally or in writing, marks the start of the "interactive process," and is then officially documented via the NA 3043, Confirmation of Reasonable Accommodation Request, within three (3) days of NARA becoming aware of the request.
- b. Applicants to open positions at NARA are not expected to understand the agency's RA process, so if they mistakenly send an RA request to the wrong staff, those staff members must ensure the requests are forwarded to ARC at [StaffingClassification@fiscal.treasury.gov](mailto:StaffingClassification@fiscal.treasury.gov).
- c. A NARA employee or her or his representative can make a request for RA to the employee's immediate supervisor. The request for RA can also be made to any supervisor in the employee's chain of command, to the Executive or Staff Director, or to the Disability Program Manager (DPM). Accommodation requests may be emailed to [accommodation@nara.gov](mailto:accommodation@nara.gov), or to the DPM directly.

- d. All requests for RAs will be documented using NA Form 3043, Confirmation of Reasonable Accommodation Request. If NARA receives a request submitted by an applicant, the DPM will complete the NA 3043. If the request is for an employee, the DPM will request that the employee or her or his representative complete the NA 3043. The NA 3043 is available on NARA@Work. The completed NA Form 3043 must be given to the DPM within three (3) business days after the request has been made known to any of the parties above.
- e. If the requesting employee has a representative, the representative must submit a signed Designation of Representation to the DPM.
- f. A supervisor may initiate the interactive process with an employee if the supervisor believes the employee would benefit from an RA. Supervisors are strongly encouraged to consult with the DPM before proactively approaching an employee to suggest they need an RA. Supervisors are encouraged to remind staff of the RA process and may help them with the process. However, an employee is not required to proceed with the RA process, as it is voluntary, nor is the employee required to accept an accommodation. A supervisor may request an RA on behalf of her or his employee if the employee cannot request an accommodation on their own.
- g. A deaf or hard-of-hearing employee or member of the public may request RA in the form of SLI or CART services. In these situations, the POC for the event, the employee, the administrative assistant of the unit in which the employee works, or the manager or supervisor of the employee may make the request by filling out NA Form 3081 (Sign Language Interpreter Request form), and submitting it to the EEO office staff appointed to process such requests. The form should be submitted preferably at least five business days before the event date, to interpreting@nara.gov. NA Form 3043 Confirmation of Reasonable Accommodation Request, is not necessary for these types of requests. If this is the first time an employee is requesting SLI or CART services, and will be needing services on an on-going basis, the NA Form 3043 will be needed as the initial accommodation request. It is not needed thereafter.
- h. Computer/Electronic Accommodations Program (CAP). If an employee has a request for assistive technology devices and services to be obtained through CAP, the employee will be advised by the DPM on how to complete the on-line request. Make sure to include the DPM as the point of contact for the request, so tracking of the request is possible.

### **3. Processing RA requests from job applicants**

If a job applicant requests an RA related to the application process, ARC will adjudicate the RA request and, if approved, will provide the RA. If ARC cannot provide the RA or if the request relates to steps of the hiring process that are NARA's responsibility (e.g. interviews), ARC will forward the RA request to the NEEO@nara.gov mailbox, which is monitored by the EEO office. The DPM will then contact the applicant and process the RA request. (See paragraph 303.3.a.(4), "Responsibilities"). If an accommodation is needed after an applicant is selected, forward the request to the immediate supervisor.

**4. Processing RA requests from NARA employees**

- a. Requests initiated verbally. The NARA official receiving the request may advise the employee to contact the DPM, who will provide the employee with the NA Form 3043 Request for Reasonable Accommodation, and the NA Form 3076, Authorization to Provide Limited Access to Medical Information. The official may also provide the employee (or the employee's representative) with the forms to be completed by the employee within three (3) business days, and the names of whom to send them to. The NARA official must write in the name of the decision maker on NA Form 3043, write in the date, and if necessary, help the employee complete the form.
- b. Written requests. If the written request is not made on the NA 3043, the NARA official receiving the request will advise the employee to contact the DPM, who will provide the employee with the NA 3043, and the NA Form 3076. The official may also provide the employee (or the employee's representative) with the forms to be completed. Submitted NA 3043 forms must be forwarded to the DPM within three (3) business days of receipt of the request from the employee.
- c. For both verbal and written requests, the NARA official that receives the RA request should tell the employee who the decision maker is and inform the decision maker and the DPM to anticipate an RA request. If the official receiving the request is unaware who the decision maker will be, that information will be determined via interactive dialogue with the DPM and provided to the employee.

**5. When NARA begins processing a request for RA**

An employee should submit NA Form 3043 immediately or as soon as possible; however, it is not a prerequisite for NARA to begin processing the request. A verbal or written request should be acted on immediately upon receipt. The "Interactive Process" starts once a request is received, and it is the collaborative effort between the decision maker (usually the immediate supervisor) and the employee to discuss the RA request in an effort to identify potential accommodations. A decision maker may offer suggestions for RAs and discuss their effectiveness in removing the workplace barrier that is impeding the individual with the disability.

**6. People who serve as decision makers**

- a. The DPM will act as the decision maker for a job applicant's request for an RA, if the request is forwarded to NARA.
- b. If a NARA employee requests an RA, then the decision maker is typically the employee's immediate supervisor. However, depending on the accommodation requested, any supervisor in the employee's chain of command or the Executive or Staff Director may act as the decision maker.

**7. Backup decision makers**

- a. If a NARA employee requests an RA, and the NARA official identified on NA Form 3043 as the decision maker is not available, then the request may be handled by any supervisor in the employee's chain of command or by an Executive or Staff Director.

- b. Direct questions about the appropriate decision maker to the DPM.

#### **8. The decision maker handles an RA request as follows**

- a. Engage in the Interactive Process. The supervisor begins the Interactive Process when becoming aware of the RA request. The Interactive Process continues throughout the RA process and provides an open line of communication between involved parties.
- b. Review NA Form 3043. If necessary, the decision maker reviews NA Form 3043 with the employee and/or the employee's representative and forwards a copy to the DPM within three (3) business days of learning of the request. The decision maker may have a separate meeting with the DPM to discuss the request and seek possible recommendations, and to clarify any questions regarding the RA process. In addition, DPM will meet with the employee to explain the RA process and next steps the employee must take.
- c. Analyze the employee's specific job duties. The decision maker evaluates the purpose and essential functions of the employee's job, and provides a copy of the employee's position description to the DPM. The decision maker will consult with the DPM regarding questions related to the essential or marginal functions of the position.
- d. Determine what type of accommodation will be effective. The individual requesting the accommodation and the decision maker continue the Interactive Process by exploring possible accommodation solutions. The supervisor may also provide a temporary accommodation until substantive medical documentation is received for a final decision to be made. This is determined through collaboration with the DPM as the Subject Matter Expert (SME). The decision maker should ask the following questions at this point in the process:
  - i. What is the specific limitation, problem, or barrier?
  - ii. What are some possible effective accommodations?
  - iii. What type of accommodation does the requester want? The decision maker should consider the requester's preferred type of accommodation first. If an alternative is needed, then the decision maker should ask the requester for a different proposal. The decision maker should be creative in helping to search for possible accommodations, and should consult appropriate resources for assistance, such as the Job Accommodation Network (JAN), CAP, and the DPM.
- e. Make a decision on the request. The decision maker completes NA Form 3044, Disposition of Reasonable Accommodation Request, gives it to the employee, and discusses the decision with the employee. The decision maker provides the DPM with the 3044 within three (3) business days of the decision. The possible decisions are:
  - i. Grant the request. The decision maker grants the request as soon as possible when the accommodation requested would be effective, or when no medical documentation is needed. (The employee may already have sufficient medical documentation on file from a previous accommodation,

or the disability is obvious, such as with a deaf person needing an interpreter. See paragraph 11, “Instances where medical documentation is not needed for an RA”).

- ii. Modify the request. After evaluating various solutions, the decision maker may grant a request with a modification to the solution or present an alternative accommodation. This is typically done if the original requested accommodation is ineffective or unavailable. An employee is not necessarily entitled to the RA of her or his choice.
- iii. Deny the request. The decision maker may deny the request based on specific reason(s) and will include a justification statement for the denial. See paragraph 18, “Criteria for denying an RA request,” for more detailed information on denials. Prior to denying an RA, the decision maker must consult with the DPM and NGC.
- iv. Withdraw the request. The employee withdraws the request if she or he no longer wants to participate in the process.

## **9. People who can assist the decision maker with the RA request**

- a. DPM. The decision maker is encouraged to seek the advice of the DPM regarding the steps and requirements of the Interactive Process, and regarding possible options for accommodations.
- b. REACT. May advise the decision maker during the RA process if the individual requesting the RA has a complex, multi-layered case involving human resource matters (e.g., changes in duties, reassignments, leave usage, and performance issues). There may be cases when an employee is involved in multiple processes at the same time, such as Performance Improvement Plans, Office of Workers’ Compensation Program (OWCP), or leave restrictions, however, if this occurs, these issues should be dealt with separately from the RA process.
- c. The RESOLVE program. May be used to resolve disputes between the decision maker and the employee making the request. RESOLVE is NARA’s Alternative Dispute Resolution (ADR) program, which offers both mediation and facilitation services to the agency. The ADR program uses neutral external mediators to help parties craft their own solutions to their conflict.
- d. Other available resources. The decision maker can use NARA resources and other resources (See paragraph 8.d.3) to obtain information to help in the decision making.

## **10. Required medical documentation**

NARA may require only medical documentation that is necessary to establish that a person has a disability, and that the disability necessitates an RA. If an individual has more than one disability, NARA can only request information about the disability that requires RA. The documentation about the disability and the functional limitations must come from an appropriate health care or rehabilitation professional. In requesting medical documentation, NARA must specify what types of information it is seeking regarding the disability, the functional limitations of the disability, and the need for an RA. This specific documentation requested will be provided in a letter by the DPM to the

employee's health care professional. The DPM requests that the medical documentation be provided within 30 business days. Extensions can be provided on a case-by-case basis due to extenuating circumstances (see paragraph 16, "Rules for decision makers to extend the processing time").

### **11. Instances where medical documentation is not needed for an RA**

If the disability is obvious or already known to the decision maker, then it is not necessary to obtain medical documentation. For example, an employee who is d/Deaf and needs an interpreter to communicate, will not need to provide medical documentation to justify an RA request for an interpreter, or an employee with a missing leg would not have to provide medical proof of her or his condition to get a mobility-related RA.

### **12. Proper handling of medical information**

NARA employees are strictly bound to the confidentiality requirements below. These requirements comply with the Rehabilitation Act of 1973. NARA employees must:

- a. Only NEEO will retain medical documentation from employees related to RAs. Managers and supervisors must forward all medical documentation to the DPM and must never keep medical files with official or unofficial personnel files. NEEO stores all medical files in locked filing cabinets or drawers.
- b. Disclose information only as prescribed in this paragraph. Divulging information to individuals who do not have a need to know may be a violation of the Privacy Act. If medical information is lawfully disclosed, the recipient(s) must be informed of the confidentiality requirement, and the individual with the disability must be informed that the disclosure happened. Medical information should only be disclosed to:
  - i. Managers and supervisors who need to know about necessary restrictions on the work or duties of the employee and about the RA, but do not reveal the medical condition(s) that make the RA necessary unless there is a compelling reason for the managers and supervisors to know this information.
  - ii. First aid and safety personnel, when appropriate, if the disability might be a factor in the event of a fire, building evacuation, or require emergency treatment; and
  - iii. Government officials if the information is necessary to gauge NARA's compliance with the Rehabilitation Act.

### **13. Purpose of NA Forms 3043, 3044, and 3076**

For NARA to keep accurate records for annual reporting to the Equal Employment Opportunity Commission (EEOC), all requests for accommodation and decisions about those requests must be documented using the NA Form 3043 and NA Form 3044. The DPM is responsible for maintaining all forms and providing the EEOC with required statistics and reports.

It is always necessary to complete the NA Form 3076 if submitting medical documentation. An example of a case where it would be unnecessary would be if a d/Deaf person requests an interpreter.

**14. NA Form 3043 is not necessary for an accommodation needed on a repeated basis**

NA Form 3043 is only required for the initial request (e.g., the assistance of a sign language interpreter or reader).

**15. Timeframes for processing a request and providing an RA**

- a. NARA processes requests for RAs and provides accommodations, where appropriate, as soon as reasonably possible. However, the time needed to process the request depends on the nature of the accommodation requested and whether supporting information must be obtained. If a request for an accommodation requires no supporting medical documentation and there are no extenuating circumstances (see paragraph 16, “Rules for decision makers to extend the processing time”), then the decision on the request should be made within 30 business days from the date the request was made. Processing timelines freeze from the time that medical documentation is requested to when it is received, and therefore does not count against the 30 day deadline.
- b. As soon as the decision maker approves a request, the decision maker immediately notifies the requester, continues the Interactive Process by discussing the decision with the requester, and provides a copy of the NA Form 3044 to the requester. If immediate accommodation is not possible, the decision maker informs the requester in writing of the projected timeframe for providing the accommodation (email is acceptable). Processing time ends when the decision about the request is made.
- c. The decision maker must complete NA Form 3044 and submit it to the DPM within three (3) business days of the decision.

**16. Rules for decision makers to extend the processing time**

Decision makers may extend the time for processing an RA request only when there are extenuating circumstances. Extenuating circumstances are factors in which unforeseen or unavoidable events delay the processing and delivery of an accommodation. Examples of extenuating circumstances:

- a. The decision maker has asked the RA requester to provide medical documentation and is waiting to receive it, or NARA’s medical professional is evaluating the medical documentation. The time waiting for the requester to provide medical documentation is not counted in the overall timeline.
- b. The purchase of equipment will take longer than 15 to 20 business days. The equipment may be on back-order, or the vendor cannot promptly supply the goods or services and another vendor is not promptly available, or because of requirements of the Federal Acquisition Regulation.
- c. NARA needs to contract for an RA requiring the removal of an architectural barrier.

- d. The employee with a disability needs to work with new equipment on a trial basis to ensure that it is an effective RA before NARA purchases it.
- e. Lack of availability of a staff member is not an extenuating circumstance.
- f. A temporary accommodation is provided when waiting for medical documentation or other information to recommend a possible accommodation. This may mean the individual will not do her or his actual job on a temporary basis because of her or his medical condition.
- g. The supervisor may also implement a “trial” period to see whether an accommodation is effective. The length of the trial period may be up to 60, 90, or 120 business days, or other timeframe as deemed appropriate by the supervisor. Trial periods are not counted in processing time. Processing time ends when the decision-maker makes a decision regarding the request.

## **17. Actions to be taken if the timeframe is extended**

- a. Notify the individual with a disability of the delay. When a decision maker cannot meet a deadline, she or he must notify the DPM and the individual requesting an accommodation in writing of the delay, the reason for it, and the approximate date when the decision on an RA will be made or the RA will be provided. Thereafter, the decision maker should promptly tell the RA requester about further developments and changes. Often, it may be the DPM who is aware of a delay (as the DPM may be in communication with various providers of equipment/services). In this case, the DPM will notify both the decision maker and RA requester with an estimated date for obtaining the item or service.
- b. Use temporary measures when an approved accommodation is delayed. If there is a delay in providing an approved accommodation, the decision maker must investigate whether temporary measures can be taken to assist the employee. Decision makers that approve temporary measures must ensure that the temporary measures do not take the place of a permanent accommodation, and that all necessary steps to secure the permanent accommodation are taken. Temporary measures may include the following:
  - i. A less effective form of accommodation. For example, there may be a delay in receiving adaptive equipment for an employee with a vision disability. During the delay, the supervisor might arrange for the employee to telework and use her or his personally-owned adaptive equipment until the NARA equipment arrives. This temporary measure may not be as effective as the adaptive equipment, but allows the employee to perform as much of the job as possible until the equipment arrives.
  - ii. Measures that are beyond what the Rehabilitation Act of 1973 requires if:
    - 1. They do not interfere with NARA’s operations; and
    - 2. The employee is informed that the measures are temporary.
- c. Provide a temporary accommodation if a determination is pending receipt or evaluation of medical documentation. If NARA has not yet determined that the individual is entitled to an accommodation, the decision maker notifies the

individual in writing that a temporary accommodation will be provided in the interim.

**18. Criteria for denying an RA request**

Failure to provide an RA to a qualified individual with a disability may be disability discrimination under the Rehabilitation Act. As such, a decision maker must consult with the DPM and NGC prior to denying a request for an RA. This conversation provides the opportunity to discuss the effectiveness of an accommodation and possible alternatives, and to seek additional information or clarification when making a decision (see paragraph 9, “People who can assist the decision maker with the RA request”). Denials are made on a case-by-case basis, and may be made only for the following reasons:

- a. The RA would not be effective (e.g., even with the RA, the employee would be unable to perform the essential function(s) of the position).
- b. Providing the requested accommodation would result in “undue hardship,” meaning it would cause significant difficulty or expense to NARA. Determinations of undue hardship must be made on a case-by-case basis, considering factors that include the nature and cost of the RA and its impact on the operations of NARA. Undue hardship refers not only to financial difficulty, but to RAs that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.
- c. Medical documentation is inadequate to establish that the individual has a disability and needs an accommodation.

**19. Process for denying an RA request**

- a. As soon as the decision maker decides to deny a request for RA, the decision maker must complete the appropriate sections on NA Form 3044 and give it to the individual who requested the accommodation. The decision maker must also submit a copy of the completed NA Form 3044, along with any other related documentation to the DPM within three (3) business days of the decision.
- b. The decision maker must explain in writing the reason(s) for the denial.
- c. The written notice of denial must also inform the RA requester of the right to seek review by the next higher management official, file an EEO complaint with NARA’s EEO Office or, if a member of the bargaining unit, file a grievance under the negotiated grievance procedure. The notice must also explain NARA’s procedures available for alternative dispute resolution (See NARA 320, NARA’s Alternative Dispute Resolution (ADR) Program).

**20. Cases where no possible RA could enable an employee to perform the essential functions of a position**

- a. Reassignment. This is the accommodation of last resort and is offered if there is no accommodation that would allow the employee to perform the essential functions of the position. The offer of reassignment should be made only after the initial RA request and any and all subsequent and alternative RAs have been deemed ineffective or have been denied. At this point, the DPM will discuss the reassignment process with the supervisor and employee. The employee will be

required to submit a written request for reassignment, and also indicate whether she or he is willing to take NARA jobs that are outside her or his current commuting area, and/or jobs that are at or below her or his current GS level, and return it to the DPM. The DPM along with REACT will look for any open positions for the RAB log for which that employee may be qualified.

- b. NARA is not required to reassign a probationary employees if she or he has never successfully performed the essential duties of her or his current position.
- c. NARA is not required to create a position as a means of reasonably accommodating an employee.
- d. NARA is not required to promote an employee to a higher grade level in order to reassign that employee as part of an RA.
- e. NARA is not required to reassign the employee to a new position whose pay and benefits are the same as the employee's current position.

## 21. Dissatisfaction with the RA outcome

- a. An employee who disagrees with a decision maker's denial of her or his RA or offer of an approved alternative accommodation, may request that the decision be reviewed by the next higher management official in the employee's chain of command. This request must be made in writing within five (5) business days from the date the decision was issued. The request must include:
  - i. A copy of the original decision;
  - ii. An explanation of why the decision is not effective or not the appropriate accommodation;
  - iii. A description of the accommodation the employee is requesting; and
  - iv. Medical documentation that supports a different decision.
- b. An employee whose RA request has been denied or who does not agree with the approved alternative accommodation may file an EEO complaint. The employee must contact the EEO counselor in NEEO within 45 calendar days from the date of receipt of the written notice of denial.
- c. Bargaining Unit Employees (BUEs) covered under NARA's Collective Bargaining Agreement may file a written grievance in accordance with the provisions set forth in the Collective Bargaining Agreement, within 20 calendar days of the denial of accommodation.
- d. For adverse actions over which the Merit Systems Protection Board (MSPB) has jurisdiction, an employee may initiate an appeal to the MSPB within 30 days of an appealable adverse action as defined in 5 C.F.R. § 1201.3.
- e. Employees may choose to participate in RESOLVE, NARA's Alternative Dispute Resolution (ADR) program. See paragraph 9, "People who can assist the decision maker with the RA request," sub-paragraph c.

## 22. Reviewing Existing RAs

- a. An RA should be reviewed when:
  - i. There is a change in the employee's disability status or health condition,  
OR
  - ii. The employee has been assigned to a new supervisor, OR

- iii. The scope and workload of the department or organizational unit has changed.
- b. The RA may be reviewed:
  - i. On an annual basis at the discretion of the supervisor.
  - ii. If the employee has asked for a review due to circumstances outlined in subparagraph 22a, above

**23. Guidelines for keeping official records of RA requests**

The DPM maintains all official records created or received during the processing of a request for RA. The DPM responds to all requests for disclosure of records. Decision makers must forward all documentation to the DPM as prescribed in “18. The decision maker handles an RA request as follows”. Decision makers may retain non-record copies of all documentation except for employee medical documentation.

**24. Additional resources on providing an RA**

Contact the DPM for a list of select RA resources or visit the U.S. Equal Employment Opportunity Commission website at <https://www.eeoc.gov/policy/docs/accommodation.html>.

**25. Paying for RAs**

- a. NARA does not have a centralized RA fund, so each organizational unit is responsible for the funding necessary to provide an accommodation. If an organizational unit lacks the money to pay for an RA for one of its staff, the unit may need to confer with the Office of Budget (XB). The Office should consider NARA’s overall funding when adjudicating the request. An organizational unit’s lack of an approved budget or the fact that it is operating under a continuing resolution (CR) may not be used as justification for failing to provide an accommodation. RAs must be provided in a timely manner and are subject to the timelines outlined in “15. Timeframes for processing a request and providing an RA.”
- b. Undue hardship denials related to funding are based on the entire budget of the Agency as opposed to the organizational unit, and consequently are more difficult to justify. They are uncommon.
- c. Some assistive technology RA requests may be funded by CAP, which provides assistive technology free of charge to partner agencies.
- d. Sign language interpreter/CART services are funded via a centralized fund and managed by the EEO office.

**26. Personal Assistance Services (PAS)**

- a. PAS differ from medical services and services that are typically performed by someone who has a job title like “personal assistant.” PAS are not the same as services that help individuals perform job-related essential duties, such as filing or using a computer. PAS are also not the same as RAs and an employee may use both services.

- b. NARA is required to provide personal assistant services (PAS) to NARA employees with “targeted disabilities” who need assistance with basic activities of daily living such as eating, removing and putting on clothing, and using the restroom, unless doing so will impose an undue hardship on the Agency. These services are required by federal agencies as an aspect of affirmative employment pursuant to 29 C.F.R. § 1614.203(d)(5). These services are also required under Section 501 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability, as long as the provision of such services does not impose an undue hardship.
- c. Targeted disabilities are a subset of the larger disability category. The federal government has recognized that qualified individuals with certain disabilities face significant barriers to employment that are above and beyond the barriers faced by people with the broader range of disabilities. These barriers are often due to myths, fears, and stereotypes about such disabilities. The federal government calls these "targeted disabilities." They are:
  - i. Developmental disabilities such as cerebral palsy or autism spectrum disorder;
  - ii. Traumatic brain injuries;
  - iii. Deafness or serious difficulty hearing;
  - iv. Blindness or serious difficulty seeing even when wearing glasses;
  - v. Missing extremities (arm, leg, hand and/or foot);
  - vi. Significant mobility impairments, including reliance on a wheelchair, scooter, walker, leg brace(s), or other mobility aid devices;
  - vii. Partial or complete paralysis;
  - viii. Epilepsy and other seizure disorders;
  - ix. Intellectual disabilities;
  - x. Significant psychiatric disorders, for example, bipolar disorder, schizophrenia, PTSD, or major depression;
  - xi. Dwarfism; and
  - xii. Significant physical disfigurement, such as conspicuous scars or deformities.
- d. Procedures for requesting PAS
  - i. An employee may request PAS the same way she or he would request RA (using NA Form 3043, Confirmation of Reasonable Accommodation Request).
  - ii. The employee must describe which of her or his basic human functions will be facilitated by the PAS.
  - iii. If the employee needs assistance with job-related tasks, she or he may submit a separate request for an RA to address the essential functions of the job.
  - iv. The process for determining whether such services can be provided by NARA will follow the same protocol as regular RA requests.

- e. Each organizational unit is be responsible for funding each approved PAS request. The DPM will help employees and organizational units find the appropriate service contractors when the need arises.