

REASSIGNMENT AS REASONABLE ACCOMMODATION

Purpose: The purpose of this procedure is to establish guidance addressing reassignments as possible reasonable accommodations (RA.) Reassignment is considered an accommodation of **last resort** and should only be explored as an option when employees cannot perform their essential duties and/or there are no viable RA alternatives. It is an attempt to provide the opportunity for employees to continue in employment if a position that they qualify for with or without RA can be found. The reassignment process begins after the search for RA in the current position is exhausted and the qualified employees with disabilities cannot be reasonably accommodated in the current positions. As such, these procedures are for non-competitive reassignments for eligible employees with disabilities when no other recourse for RA are possible.

General Information

Reassignments as RA are non-competitive transfers to an equivalent, funded, vacant, or soon-to-be vacant position; i.e., “soon-to-be vacant” is defined as a vacancy expected to occur **within 30 calendar days** of being identified during the position search. It will only be considered when employees with disabilities cannot perform one or more of their essential duties of their positions and there is a possibility that they may be able to perform the essential duties of another position with or without RA.

When employees cannot perform the essential duties of their positions and no RA can be provided in their positions, the search for a reassignment possibility will be done prior to presenting employees with their options of resignation, retirement (regular or disability), or removal from Federal service due to being unqualified for their positions. The employees must be able to perform all essential duties with or without RA for the position identified for the reassignment. The employees also must be able to perform the essential duties with the normal amount of training provided to any new employee to the position. Developmental training to prepare employees to perform the essential duties of the position are not required by disability law and will not be provided.

Positions at the same grade as the employees occupy are sought first. If a vacant, funded position cannot be found at the current grade level, lower-graded positions that meet the requirements are sought, progressively decreasing in grade level until one is found, or until the search results in no available, eligible positions. Positions at higher grade levels or with higher grade potential are not considered.

Supervisors have the option to remove or reduce the complexity of essential job functions and downgrade positions to allow employees to remain in employment. However, supervisors do not have to remove or change essential functions and downgrade positions as RA as this may be an undue hardship affecting the business processes. The decision is based on business necessity and at management's discretion.

There is no pay retention for reassignments to lower grades as RA. The pay of the former position will be matched to the step of the lower grade as closely as possible per personnel regulations. However, if the employees' pay is higher than step 10 of the grade reassigned to, employees will be placed in the lower grade at step 10 to minimize the reduction in pay.

If there are no positions available, the Agency will search for a position beyond the geographical area if the employees desire. The Agency is not required to and will not pay relocation expenses if a position is found elsewhere. Acceptance of the reassignment to another agency is solely at the discretion of the selecting officials in that agency.

Procedures

1. If all RA options have been explored and the employees are still unable to perform one or more essential functions, reassignment will be considered if a position can be found where the employees can perform the essential duties with or without RA.
2. The Human Resources Management Staff (HRMS) will begin the search for a vacant, funded position in which the employee qualifies and may be able to perform with or without RA. Per the Reasonable Accommodation Directive (Title VII, Chapter 17, Equal Opportunity Directive), the Senior Staff Review Team (SSRT) is automatically made aware of the situation.
3. HRMS and DPM will assist supervisors in preparing a letter to employees that includes:
 - a) RA is not possible in the current position and the specific reasons for the decision;
 - b) A **30-calendar-day** search will be made for a vacant, funded position in which the employees qualify and could possibly perform with or without RA;
 - c) The search for reassignment will begin at the employees' current grade level and status at the Agency and if there is no position at the current grade level, the search will include positions at progressively lower grade levels to see if one can be found;

- d) There is no pay retention when downgraded as a part of RA;
 - e) The right to submit an updated résumé to HRMS within **7 calendar days**, if desired; and
 - f) If no positions are found for reassignment removal from Federal service is possible if they do not elect to use other options available to them; e.g., regular or disability retirement or resignation.
4. If no updated résumé is submitted to HRMS, the search will be based on the latest application available in the employee's Official Personnel File. Once the qualification review is completed, HRMS will search all relevant vacant, funded positions for a period of **30 calendar days**. An available position can be currently vacant and funded or will become vacant and/or funded **within 30 calendar days** of identification. HRMS will keep the supervisors and DPM updated on the progress.
 5. HRMS will document all steps taken and findings of the search for a position. Once the search is completed, DPM is informed and the information given to SSRT for review and a final decision. If more than one position is found, the Agency makes the decision on which best satisfies the Agency's needs for the position within the scope of the RA needs of the employee. Employees are not entitled to select from a list of possible positions. SSRT will work with HRMS, DPM, and supervisors of the area where a position has been located to make a decision on if a reassignment can be offered and which position is offered, if more than one is available. All reasons for decisions are to be documented.
 6. If a position has been identified and approved for reassignment, HRMS will prepare a formal, written offer of reassignment to the employee that includes the grade, step, notice of no pay retention when applicable, title of position, location, supervisor's name, and other relevant information with a start date. The letter also includes that the employees have **21 calendar days** to accept or decline the offer, what happens if there is no response within this timeframe, and information explaining what happens if the offer is declined.

If the response is not received in HRMS by the 21st calendar day, it will be construed as a declination on the 22nd calendar day and the agency will proceed accordingly. Justifiable circumstances for delays within the deadline will be considered by SSRT, HRMS, and DPM with a decision being made on whether to accept a late decision by the employee or proceed with necessary actions.

Employees will sign and date the reassignment offer upon receipt showing that it has been received. For employees who are incapacitated due to the disability and cannot be

present to receive the letter, a family member or other individual designated by the employees may sign for them. If employees refuse to sign receipt of the offer, the supervisor or HR Specialist will note that the employees were given the offer but refused to sign. Other persons in attendance should sign as witnesses to the refusal to sign. Not signing the receipt of the offer does not nullify that the offer was made, nor does it delay the **21-calendar day** limit for the employees to respond.

7. Employees accepting proposed reassignments should sign the portion of the letter stating they accept the offer as is. No modifications or alterations by the employees related to the terms of the offer are allowed and if the acceptance contains such changes, it will be considered a declination of the offer. Acceptance can be done upon receipt of the offer letter or within **21 calendar days**. However, **the acceptance must be received and acknowledged by HRMS no later than the 21st calendar day** or the offer will be considered refused; (i.e., acknowledgement can be date stamping upon receipt or signature and date by the recipient.) A copy of the signed acceptance should be given to DPM by HRMS.
8. If employees accept the offer any other way other than signing the offer letter such as verbally or through email, the recipient of the acceptance will inform the employee that the acceptance portion of the letter must be signed or it can be considered a declination of the offer. Once the reminder is given, the Agency can proceed accordingly based on the employee's action. Details of this situation will be documented and shared with HRMS, DPM, and the supervisors so that all can be informed. Not signing the offer does not nullify that the offer was made, nor does it delay the Agency in taking the next required step processing the refusal.

Note: Extraordinary circumstances may necessitate the need for other methods of signed acceptance and would be considered on a case-by-case basis. HRMS with the DPM's guidance will make the decision on such situations.

9. Once proposed reassignments are accepted, employees should be moved into the new position as soon as possible. During the reassignment process and until the reassignment is completed, employees should continue to be provided interim assistance in the current position. This depends on the situation and could include temporary modifications of duties, flexibility with use of leave as needed, and whatever assistance can be reasonably provided to allow them to remain employed while the process is completed. Leave requests and usage will follow all routine leave procedures such as requests being made to the supervisor and in advance when possible; documentation provided by employees for leave used when necessary and requested; use of various leave programs such as annual, sick, leave-without-pay, FMLA, leave donations, advanced leave; and/or whatever programs in which the employees are eligible and approved.

Employees declining job offers will sign and date the letter as a declination. If there is a refusal to sign the declination, the HR Specialist or supervisor will note this on the offer with witnesses' signatures also. Not signing the declination does not nullify that the offer was made and declined, nor does it delay the Agency in taking the next required steps. A copy of the signed declination will be given to DPM by HRMS.

Declinations signify that the Agency has met its obligation, the RA process has ended, and no further action on the RA request is needed. The Employee Relations (ER) Specialist with the DPM will assist the supervisor in preparing an options letter so that the employees can make the best decisions for their next course of action. The letter will include information on retirement as applicable, resignation procedures, and applying for disability retirement when applicable. It also includes that if employees do not take action on the alternatives in the options letter the Agency will pursue removal from employment as a last-resort action based on the inability of the employee to perform the essential job functions and the declination of the reassignment offer.

10. If employees **do not respond to an offer of reassignment by the 21st calendar day**, HRMS and/or the supervisor can ask the employee for their decision documenting the response **on that 21st calendar day**. **Continued non-responsiveness is construed as a declination on the 22nd calendar day** after the offer is made and the Agency will proceed accordingly. Requests from employees for extended time beyond the 21st calendar day will be considered on a case-by-case basis taking into consideration extenuating circumstances of the employee and the work needs of the Agency. Reasonable extensions of this timeframe may or may not be granted and the response will be put in writing to the employee. If granted, the new, specific date for the employees' decisions will be included in the written responses to the employees.
11. If there are no positions available that the employees qualify for, they will be informed of the right to request that the Agency search for vacancies within USDA outside of the Office of the Chief Financial Officer and its geographical locations. HRMS and DPM will inform the USDA Office of Human Resources Management and the USDA Disability Program Manager of the need for a **30-calendar-day** search for a position. The Agency is not responsible for and will not pay any relocation costs. Interested managers may request to interview the employee and the final decision to offer a reassignment or not is at the managers' discretion.