

## GLOSSARY and ACRONYMS

Following are terms used in the OCFO Reasonable Accommodation Directive as well as frequently used and questioned terms related to disabilities and RA.

1. **Accommodations Review Team (ART)** – A small group of experts brought together by the Disability Program Manager (DPM) to review RA requests and provide input to assist DPM and ultimately, assist the supervisor in making RA decisions. Subject-matter experts for ART will usually include Health Unit personnel, Employee Relations (ER) Specialists, the supervisor, and can include HR Specialists, IT Specialists, and others whose expertise are needed to assist the team.
2. **Adaptive Equipment and Other Auxiliary Aids** – A wide variety of software, hardware, or other items that allow employees with disabilities to perform functions of their positions. Examples are screen reader software for visual impairments; telephone amplifiers and relay services for hearing impairments; voice recognition software for visual, dexterity, or various physical impairments; desk or monitor risers for employees in wheelchairs; larger key extensions for dexterity impairments; and a multitude of other items. As with all RA, these do not have to be expensive or fancy items, nor do they have to be the employee's preference; they only need to be effective.
3. **Alternative Dispute Resolution (ADR)** – A number of conflict resolution techniques used by a trained, neutral third party to assist employees, managers, and the Agency in resolving disputes.
4. **Alternative RA** – RA provided that is not the exact item, service, date, or session that the employee requested; however, it is effective as required by disability law. Supervisors or other personnel such as IT personnel or training office can provide alternative RA due to make, model, availability, or other reason. Providing alternative RA is not a denial of RA. It is merely a modification in what is provided rather than the exact item or service the employee requests.
5. **Appeals** – Requests for reconsideration of RA decisions. The first avenue of redress is for employees to have interactive communication with the supervisor or other decision-making personnel to discuss and understand RA decisions. If an official denial is received, reconsideration can be requested to the next higher lever of management that was not part of the initial denial decision. Employees are encouraged to use the ADR process to resolve issues related to the decision. This may result in a change in the decision, a compromise, or a better understanding of the reason for the decision.

Note that the provision of alternative RA when specific RA (type, brand, model, etc.) are not provided is not a denial of RA. As long as RA are effective, management has the final decision on what are provided.

If employees feel the decisions are due to discrimination, against personnel policies, or unfair labor practice, they can file an EEO complaint, Merit Systems Protection Board (MSPB) appeal, or administrative grievance for non-bargaining unit employees or collective bargaining claim/grievance, respectively. To request ADR or file an EEO complaint, contact the Civil Rights and Conflict Management Office (CRCMO); to file a grievance, contact a Union official; and to file an MSPB appeal, contact an ER Specialist.

**Note: These avenues of redress have time limits to initiate actions.** (See *“Reasonable Accommodations Timeframes: Statutory Timeframes for Employee Recourse.”*)

6. **Benefits and Privileges of Employment** – Activities that may or may not be directly related to positions held, but are available or provided to employees to assist them in job performance or to participate in activities for the pleasure or use of employees. Examples are training; health programs such as flu shots, Weight Watchers, etc.; Credit Union services; and similar activities or services. RA are to be provided as needed so that all employees can participate in these activities or use the services.
7. **Computer/Electronics Accommodations Program (CAP)** – Department of Defense program that supplies electronic and IT to individual employees for RA at no cost to Federal agencies that partner with CAP such as USDA. Items provided may include voice recognition software, adaptive keyboards and mice, screen reader software, large monitors, and much more. Supervisors can contact DPM for information and to request such equipment. Direct contact to CAP cannot be done; DPM will assist in using this vehicle to obtain appropriate items.
8. **Denial of RA** – Various reasons allow for denial of requests. These can include:
  - a. The requestor does not having a disability as described by the Rehab Act,
  - b. The requestor fails to provide requested medical information or not cooperating with the RA process,
  - c. The request would require the removal of essential functions,
  - d. The request would require the lowering of production standards,

- e. The RA requested is not effective; i.e., does not enable the requestor to perform the essential functions of the positions.
- f. Duplicating RA already provided to the requestor, and/or
- g. Causing an undue hardship to the Agency's mission or to other coworkers.

When decisions are to deny RA, they will automatically be reviewed by SSRT. When denial is the final decision an explanation of the denial will be provided to the employee; e.g., why the accommodation would not be effective, why it is not needed, or why it would result in undue hardship. The written notice of denial also informs the employees that they have the right to file an EEO complaint, or right to pursue a grievance, or file MSPB appeals, as applicable. The notice also explains procedures available for ADR along with appropriate encouragement to use this process to resolve issues associated with the RA denials.

The provision of alternative RA is not a denial of RA, as long as RA are effective. *(See definitions for "Alternative RA.")*

- 9. Disability** - Not all individuals with medical impairments or health issues are protected by the law under the Rehab Act. In order to be protected, individuals must be qualified for the positions and have disabilities as defined by the law.

Individuals can show that they have disabilities in one of three ways:

1. If they have a physical or mental impairment that substantially limits a major life activity. *(See definitions for "Physical Impairments," "Mental Impairments," and "Major Life Activities" for more information.)*
2. If they have a history of a disability; e.g., cancer that is in remission or a known disability that is visible and/or previously reasonably accommodated.
3. If they are believed to have a physical or mental impairment that is not transitory and minor (lasting or expected to last six months or less). This prong of the definition means that individuals can file an EEO complaint based on disability if they feel they have been subjected to prohibited actions based on disability status because of actual or perceived impairments. RA is not needed or provided for these individuals because they have allegedly experienced discrimination due to disability status that they do not have or in which RA is not needed. An example would be employees not being allowed to travel for training because of past heart

attacks because they are seen as unable to do so; i.e., they are disabled with no supporting medical documentation to support these decisions.

Many employees believe that they automatically qualify for RA if they have been approved for health related benefits; e.g., FMLA usage for their own illness, have an OWCP claim, are eligible for the VLTP for their own illness, have Veterans benefits for a disability, or have applied for disability retirement. These other programs have their own criteria and levels of qualification. Medical documentation and evaluation requirements for these other programs quite often do not satisfy the Rehab Act's criteria for the definition of disability or provide enough information to satisfy the RA assessment.

10. **Disability Program Manager (DPM)** – Key person in the RA process; an Equal Employment Opportunity (EEO) Specialist in CRCMO. DPM is experienced and trained in RA and disability matters; is aware of applicable laws, Executive Orders, regulations, policies and any changes or updates to such; has access to RA resources for services, adaptive equipment, and guidance; and keeps up to date on legal rulings regarding RA cases. DPM provides information, guidance, and suggestions regarding RA. DPM has the responsibility to inform the appropriate levels of upper management of possible discriminatory actions related to RA requests and decisions, RA requests that are not being addressed, or decisions that may not be in the best interest of the employee or Agency. Management, applicants, employees with disabilities, and employees without disabilities can request guidance and information from DPM regarding RA and disabilities. The DPM can provide information and guidance; however, does not make the final decision on the provision of RA.
11. **Employees** – Persons employed by the Agency including those serving probationary, trial, or term periods. Employees who have served a temporary, trial, or term period and were not converted to a permanent position are considered applicants in regard to RA when applying for another position, either temporary or permanent.
12. **Equal Employment Opportunity Commission (EEOC)** – The Federal agency responsible for enforcing Federal laws that make it illegal to discriminate against a job applicant or an employee because of disability and other factors. EEOC provides leadership and guidance to Federal agencies on all aspects of the equal employment opportunity program.
13. **Essential Functions of a Position** – The critical functions of a position. Essential functions are the fundamental job duties of the position the employee holds or an applicant desires. The reasons a function may be essential may include, but not be limited to:

- a. The reason the position exists is to perform that function;
- b. The limited number of other employees who could perform that function; and/or,
- c. The function may be highly specialized so that the incumbent in the position is hired for his/her expertise or ability to perform the particular function.

Determination of the essential functions of a position must be conducted on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description. As examples, performing system upgrades would be an IT Specialists' essential functions. Reconciling accounting and budgetary accounts would be essential functions of Accountants. However, printing and retrieving items, making copies and filing, answering phone calls because the Secretary is out are not essential duties of these IT Specialists or Accountants.

- 14. Good-faith Efforts** – Working with employees or supervisors to find effective options, if possible. Supervisors and other decision makers or involved personnel should be open-minded; use the interactive process; seek guidance from DPM, ER or HR Specialists, or other appropriate personnel; be willing try different ways to do things in the performance of job duties; and whatever else is needed to listen to employees' requests and needs and to assist them to be able to perform their essential functions. If there are times that RA cannot be granted, it should only be denied after thorough research, evaluation, and considering as many options as possible.

Employees are required to make good-faith efforts as well. They should work with supervisors, DPM, and other involved personnel through the interactive process so that their requests are understood and effective solutions found. Providing requested sufficient medical or other information are also part of this effort.

- 15. Healthcare Providers (HP)** – Healthcare professionals that are qualified to evaluate and provide information on the limitations and restrictions of impairments for the purpose of determining RA. The professionals need to be able to address the limitations and restrictions of the disability. For example: Psychiatrists would provide information on patients/employees with bipolar disorder and not an urgent care doctor; cardiologists would provide restrictions for individuals with heart disease and not physical therapists who are assisting with recovery; and so forth.

- 16. Individual Assessments** – Legal requirements to examine RA based on requestors' specific needs. RA requests are as individualized as the persons submitting them. Disability law requires an assessment of each person's situation; i.e., type of disability,

limitations, restrictions, position, ability, and other relevant factors. Assumptions should not be made based on a person's disability or any other factors. Information should be collected through the interactive process and guidance obtained from DPM and other experts as needed in order to make the best decision for the request. Items needed may include sufficient supporting medical documentation, the employee's position description and essential job functions, additional information from ART if obtained, and input from the Health Unit, USDA Medical Officer or other medical official used by the Agency if necessary.

17. **Interactive Process** – Required communication regarding RA requests between employees and supervisors (and/or other relevant personnel.) The purpose is to give employees the opportunity to explain the request and how RA would assist them in performing the duties of their positions prior to any decisions being made regarding the request. It is also to give the supervisors the opportunity to ask pertinent questions regarding the request and how RA will assist the employees in their positions, if necessary and especially when the disability is not obvious or RA does not seem relevant. After the initial discussions, this process is used to update both parties. Supervisors give updates on the decision making, on status of ordered RA items or services, and/or any delays encountered. They can ask any needed questions for clarification, request medical information, and whatever else may be needed. Employees provide information requested, inform supervisors of any delays with medical or other information requested, and other information sharing. Supervisors and employees should also discuss types, models, or features of RA requested and alternatives as needed.
  
18. **Interpreter for Individuals who are Hearing Impaired** – Highly trained and skilled language Interpreter who is fluent in English, American Sign Language (ASL), their variations, and other communication methods of people who are hearing impaired. It also requires skill, training, and knowledge in the interpreting process; cross-cultural mediation; interpersonal relationship skills, confidentiality, impartiality, and other skills. Disability laws require that Interpreters be qualified, which is defined in the ADA as “an Interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.” Qualified Interpreters also abide by a code of professional ethics. Due to the required education and skill levels, ethical consideration, the definition by law, possible conflict of interest, and privacy issues, employees with some knowledge of ASL or other communication methods should not be used in place of a qualified Interpreter. (*See ” Interpreting Services ”*)
  
19. **Major Life Activities** – In general, major life activities include, but are not limited to:

- Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and
- The operation of a major bodily functions, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

**20. Mental Impairments** – Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

**21. Medical Documentation** – Documentation is required from HP to determine eligibility for RA, medical restrictions and limitations of the employees, duration of condition, and prognosis. The Agency is entitled to know that an employee has a covered disability under disability law that requires RA. Thus, when the disability or the need for RA is not known or obvious, it is job-related and consistent with business necessity for the Agency to ask an employee for reasonable documentation about his/her disability and the functional limitations that require RA. If the disability is apparent or the individual has previously provided such medical information with regard to past accommodation requests, this is not needed unless the impairment, limitations and restrictions, essential duties, or other factors have changed to warrant the need for updated medical documentation. Refusal to provide sufficient medical documentation stops the RA process and the Agency does not have to proceed with the request. In these instances, the requests will be closed.

If employees are approved for FMLA usage for their own health issues, OWCP benefits, VLTP for their own health issues, has disabled Veteran’s documentation, or has applied for disability retirement, or other programs DPM has the authority to review the medical information to see if there is sufficient documentation to make a decision on the RA request; the medical and HR personnel on ART can also review the information if necessary to assist DPM. However, because these programs are for different purposes than RA and have their own requirements the documentation frequently is not adequate for RA purposes. Employees will have to supply the additional or other medical documentation as requested. If the employee refuses, even if thinking the other types of medical documentation should be sufficient, the RA process ends due to insufficient information and lack of the employee’s cooperation.

All medical documentation is kept confidential and only personnel with a need-to-know in order to process RA will have access to it. Such documentation is kept in CRCMO. FMLA, OWCP, VLTP, disabled Veteran's decision, disability retirement, and other documentation reviewed in the HR office will remain in HR; copies of relevant parts can be added to the CRCMO file. Some employees feel comfortable giving their supervisors medical documentation. If supervisors receive such from employees for RA purposes, they should give it to DPM for the confidential files. All staff who review and evaluate medical documentation should receive training on how to comply with the Rehabilitation Act rules concerning the use and confidentiality of applicant and employee medical information.

Per the EEOC, the type of medical information an agency most often will need is:

- Past, present, and expected future nature, severity and duration of the impairment (e.g., functional limitations, symptoms, side effects of any treatments, etc.);
- Activities the impairment limits;
- Extent of the limitations; and
- Why the individual requires reasonable accommodation or the particular reasonable accommodation requested, and how the reasonable 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 Agency is entitled only to information sufficient to show that applicants or employees have a disability and need RA. It may not ask for information unrelated to the impairments for which the accommodation has been requested (e.g., an individual's detailed medical history or entire medical record) or genetic information. When an employee provides insufficient documentation for the Agency to process the request, it may ask for additional information, explaining why it is insufficient and what information is needed. It will provide the employee with specific questions for the HP to answer. In some incidences the Agency's own physician may need to contact the requester's HP. If the employee refuses to supply additional information, the RA process stops and the request is closed. In some cases continued insufficient information may require the employee to go to HP of the Agency's choice at the Agency's expense.

22. **Non-Essential Functions** – The functions of positions that do not affect the position if not performed; i.e., the position would still exist without these duties. The functions can be reduced or removed as RA and not affect the position, grade, and evaluation of performance.



- 23. Physical Impairment** – Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine.
- 24. Qualified Individual with a Disability** – A "qualified individual with a disability" is an individual with a disability who satisfies the requisite skill, experience, education and other job related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of the position.
- 25. Reasonable Accommodations (RA)** – Any modifications in the workplace or the way things are customarily done that provides equal employment opportunities to individuals with disabilities as defined by the Rehab Act. Agencies must make good-faith efforts to provide RA and communicate with employees to find effective solutions. While there are some things that are not considered RA (e.g., removal of an essential job function of a position; reducing or waiving behavior and ethical standards of Federal employment; lowering production and quality standards; or providing personal use items such as hearing aids, wheelchairs, power chairs or scooters, and other items that are needed on and off the job), RA can cover most things that enable an individual to apply for a job, perform a job, or have equal access to the workplace and employee benefits such as utility areas, parking lots, restrooms, and office events. Common types of accommodations include, but not limited to:
- Modifying work schedules or supervisory methods.
  - Granting breaks or approving leave.
  - Altering how or when job duties are performed.
  - Removing and/or substituting a marginal function.
  - Moving to different office space or modifying current space, including larger cubicle or office space when necessary.
  - Providing telework/work at home when appropriate including beyond any established and approved telework policy when necessary.
  - Making modifications of workplace policies.
  - Providing assistive technology, including IT and communications equipment or specially designed furniture.

- Providing a reader, interpreter, or other staff assistant to enable employees to perform their job functions, where the accommodation cannot be provided by current staff.
- Removing an architectural barrier, including reconfiguring work spaces.
- Providing accessible parking.
- Providing materials in alternative formats (e.g., Braille, large print)
- Providing a reassignment, if possible, to another job if no other RA are available or reasonable.

The EEOC and courts define “reasonable” as a modification or adjustment that "seems reasonable on its face, i.e., ordinarily or in the run of cases;" this means it is "reasonable" if it appears to be "feasible" or "plausible." A reasonable accommodation also must be effective in meeting the needs of the individual. In the context of job performance, this means that a reasonable accommodation enables the individual to perform the essential functions of the position. Similarly, a reasonable accommodation enables an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job. Finally, a reasonable accommodation allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy. Of course, other factors are considered in the test for reasonableness such as the need, impact on business needs and other employees, uniqueness of a position, and other relevant information.

In most instances, employees should make RA requests to their supervisors as it usually is something to assist in job duties. However, employees can make requests to others as appropriate such as an HR Specialist, ER Specialist, OWCP Coordinator, training coordinators, secretaries or assistants who schedule interviews, or EEO Counselors. Employees who use interpreting services also can make interpreter requests to DPM, who coordinates these services. These are usually times that the supervisor does not have or may not have direct involvement with the activity that may require RA or have asked the employee to make the request. Some examples where employees would request RA from other personnel would be:

- To an HR Specialist for assistance with the application process or to the OWCP Coordinator in regard to a claim.
- To an ER Specialist when applying for FMLA or disability retirement.
- To administrative personnel who are scheduling appointments for interviews, performance appraisals, training, and similar activities.

- To EEO Counselors for counseling sessions or during sessions related to workplace disputes or concerns.
- To DPM for interpreter services for meetings, training sessions, or other events.

The supervisors usually have to be and will be notified of requests if made to other personnel because they relate to the employees' job duties or other aspects of the position. DPM will be notified as well to provide guidance if necessary, coordinate interpreting services when needed, and for record-keeping purposes. Supervisors and other personnel involved should contact DPM for guidance. Employees can also contact DPM for information on the RA process and questions regarding it.

By Federal regulations, RA requests do not have to be in writing or formal; they can be verbal. The requestor does not have to use the words RA or disability to make the request. However, supervisors should document requests and provide summaries to employees after requests are made and interactive discussions held.

Supervisors can ask employees if they need some type of assistance or possibly RA when employees indicate that they may be having difficulties performing essential functions of their positions due to disabilities or medical conditions they have made known to the supervisors. Supervisors should not assume the employees have disabilities or need RA, but open an avenue for employees to make requests for RA if they feel the need. An example would be if an employee stated that his diabetes was causing the need for larger print. The supervisor can ask if he thinks a screen magnifier would help. Other personnel can also do this when the situation arises.

Supervisors are not expected to guess at or intuitively know of employees' possible RA needs, nor are they to assume any health condition or difficulty with work is due to a disability that needs RA. Erroneously guessing or assuming an employee has a disability and/or needs RA could be considered patronizing and can result in the appearance that the employee is "regarded as" a person with a disability, giving the perception that there is discrimination due to the misperception.

Additionally, there are circumstances that an employee cannot ask for RA personally. The law allows for someone privy to and having a vested interest in the person's needs to make RA requests. For example, a spouse can make an RA request to the supervisor because the employee is incapacitated and incapable of doing it. A job coach from a vocational agency for people with disabilities can make RA requests for employees with cognitive disabilities who are not capable of doing it themselves. However, this does not mean that coworkers, or especially supervisors, should take it upon themselves to request RA for employees with disabilities or perceived disabilities. Most employees with

disabilities are quite capable of speaking up for themselves and do not like being patronized, no matter how well meaning someone may be. Additionally, what someone may think a coworker with a disability wants or needs quite often may not at all be what they want or need.

RA does not have to be the employee's preferred item or service; it merely has to be effective. Supervisors and others involved in the RA process may consider initial and maintenance costs, availability, and history of successful use of items considered for RA, as long as the items are effective. Multiple forms of RA do not have to be provided if one is effective. RA's purpose is to give equal access to employees; and if RA can be shown to provide equal access, it is sufficient.

Supervisors and other personnel providing RA should keep a record of requests and their outcomes for reporting purposes. Because not all requests require guidance from others and the Agency should attempt to resolve requests at the lowest lever, a record of such requests helps reporting requirements, especially for ones that are granted with no further processing necessary. Routine and/or recurring RA requests such as for interpreting services or the use of RCC, VRS, or VRI do not need to be reported individually as it would be too time consuming and likely to be easily forgotten due to its frequency. RA documentation should be readily available if the DPM or other appropriate personnel request the information.

**26. Reassignment** – A potential RA when no other forms of RA in the requestor's current position is possible to keep the requestor employed. It is not appropriate for employees to request reassignments unless the RA process in the occupied position has been exhausted and none are possible. The reason for possible reassignment is an attempt to find a position where the employee can perform the essential duties with or without RA. It is not a means to placing employees in positions with perceived lesser duties and/or responsibilities, nor is it used as a solution for personality conflicts between the requesting employees and coworkers and/or supervisors.

Reassignment is a non-competitive transfer to an equivalent, funded, vacant, or soon-to-be vacant position that the employee can perform with or without RA. It should only be considered when employees with disabilities cannot perform one or more of the essential functions of their positions, there are no effective RA that will enable the employees to perform the essential functions of their positions, and/or providing RA would cause an undue hardship to the Agency. Reassignments are not made to positions at higher grades or with the potential of promotions to higher grades; i.e., placed in positions with promotion potential known as "career-ladder" positions.

Reassignment can also include a change to a lower grade if a vacant, funded position cannot be found at the employee's current grade level or if modifications of job duties can be done, but would cause the position to be at a lower grade than the employee's current grade level.

If a position is offered to an employee and he/she declines to be reassigned, the Agency does not have to search for other positions and has met its responsibility to provide RA. By declining an offer of reassignment, the employee has refused RA and the RA process ends. The employee will receive an options letter as a result. (See "*Reassignment as Reasonable Accommodation*")

27. **Refusal of RA by Employee** – Employees have the right to refuse any RA offered by the Agency. If the supervisors or other personnel have made good-faith efforts to find effective RA, even if it is not the exact RA the employees requested, and the employees refuse them, the Agency has met its burden of providing RA. The employees do not have to accept RA. However, if the employees cannot perform the essential functions of their positions, then they are not qualified to occupy the positions and can be removed from them and employment. This includes if an effective RA has been used successfully by employees previously, but the employees then refuse them and request other types of RA. As long as nothing has changed medically or with the RA and it is still effective, the agency is meeting its burden to provide RA.
28. **Relay Services** – Services of the Federal Relay Service (FRS) provided by the General Services Administration for all Federal agencies. These services allow people with speech or hearing impairments and people without these impairments communicate by telephone. The calls occur with the assistance of Interpreters or relay assistants during the calls. These intermediaries voice what the callers say if they cannot speak for themselves and either type the spoken conversation or use American Sign Language (ASL) to convey the message to callers. Relay calls via TTYs (text telephones) or through the Internet type the spoken messages to the callers who are hearing impaired and speak the conversation to the callers who can hear.

Video Relay Services (VRS) use the Internet and video cameras for calls. Users who are hearing impaired use Interpreters on screen to read the messages. They either respond using ASL or speak for themselves if they have intelligible speech. The participant who can hear listens to the Interpreter speak the message or to the other caller, as applicable. VRS tend to allow for more natural calls and are faster than calls using relay services that provide typed messages.

Relay Conference Captioning (RCC) is another service of the Federal Relay Service that provides equal access to phone services, Webinars, and other activities that people with hearing impairments and/or speech impairments cannot use without RA. Captionists listen to speakers through a conference phone and provide real-time captions on a Website for users who are hearing-impaired to read. It is the same type technology as captioning on televisions and looks similar. (See “*Relay Conference Captioning*”)

29. **Routine, Repeat, or Intermittent RA Requests** – RA requests that already are established and/or ongoing such as Interpreter or reader requests for employees, RCC, adaptive equipment for training, relay services, and service animal access. These are known and/or repetitive RA for employees that have a known disability and an intermittent need for them. Employees who request such items or services for the first time may need to provide information on the disability if not obvious. If obvious or shown to be needed, they can often begin using them immediately with little to no change because of the similarity in use. However, some situations may need the interactive process and some modifications of items and services depending on individual needs.
30. **Section 508 of the Rehabilitation Act (Section 508)** – Law that requires all electronic and information technology (EIT) to be accessible to people with disabilities. EIT must be configured for accessibility and/or work with adaptive technology or equipment to provide accessibility.
31. **Senior Staff Review Team (SSRT)** – OCFO Senior Staff members who review RA requests and make a final decision when they meet the following criteria: denials by lower levels; reassignment requests as RA; complex RA requests; delayed RA responses or provision; and RA requests when discipline is involved.
32. **Service Animals** – Animals that assist people with disabilities to perform tasks that they cannot do themselves or have difficulty doing. The most widely used are dogs, but there are a variety of animals that can be trained to provide assistance. True service animals are highly trained and well-disciplined. By law, they are allowed in workplaces and public places such as restaurants, stores, and hotels. (See “*Service Animals in the Workplace*”)
33. **Substantially Limits** – Unable to perform a major life activity that the average person in the general population can perform; or significantly restricted as to the impairment, manner, or duration under which an individual can perform a particular major life activity as compared to how the average person in the general population can perform that same major life activity.

The EEOC's nine rules of construction apply when determining whether impairment substantially limits an individual in a major life activity:

1. The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA (Rehab Act, as amended, for Federal agencies.) "Substantially limits" is not meant to be a demanding standard.
2. An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of this section.
3. The primary object of attention in cases brought under the ADA (Rehab Act) should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment "substantially limits" a major life activity should not demand extensive analysis.
4. The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term "substantially limits" shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for "substantially limits" applied prior to the ADAAA.
5. The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical analysis. Nothing in this paragraph is intended, however, to prohibit the presentation of scientific, medical, or statistical evidence to make such a comparison where appropriate.
6. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

7. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
8. An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment.
9. The six-month “transitory” part of the “transitory and minor” exception to “regarded as” does not apply to the definition of “disability” under actual the disability prong (first prong) or “record of” prong (second prong) of this section. Additionally, the effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this section depending on the situation.

**34. Telework** – An option as RA; encouraged by EEOC and supported by case law for employees and situations that meet the necessary criteria. Not all employees with disabilities need to or can work from home (or at an alternate worksite), but when someone has medical needs due a disability that makes it impossible or extremely difficult to work at the worksite, it should be considered to see if their duties can be done remotely. Teleworking can occur one day a week to everyday as RA, as well as partial telework days with leave being used for the remainder of the work day or part of the day at the worksite, as applicable. Telework as RA is outside of the Agency’s routine telework policy because RA are individualized and, therefore, considerations of granting telework are more flexible. However, the basic rules of routine telework are still followed such as behavior rules, accountability for work completion, protection of information, leave usage, and other items in the telework policy.

Telework can be a win-win situation with an applicant gaining employment, an employee being able to continue to work, better manage leave, and the Agency having a productive employee who is performing the duties of the position. As with any RA, when receiving the request at it should not be automatically denied due to requested arrangements not in the routine policy, an area or position normally cannot telework, it has not been done previously, or similar reasons without due consideration. DPM should be consulted, along with HR, possibly ITSD for equipment and access logistics, and other personnel in order to make an informed and fair decision.

When telework is granted as RA or assistance to employees for temporary medical situations, the terms of the telework should be given to the employees in writing so that they and the supervisors fully understand what is expected. The agreement should also include expected length of time for the telework and any other details such as if the request is to be periodically reviewed. The routine telework form should not be used, nor should the information on telework as RA be sent to HRMS where routine telework



agreements are kept. This is due to privacy reasons for medical conditions and information. (See “*Telework as Reasonable Accommodations*”)

35. **Termination** – Possible last action when requestors cannot perform the essential functions of their positions or any other positions and there are no RA that would be effective or possible. The employees will be given an options letter explaining choices they have to make such as resigning, retirement when eligible (regular or disability), or they will be removed from Federal service if the employees make no choice and cannot perform the essential duties of their current positions.
36. **Undue Hardship** – Specific RA requiring significant difficulty, expense, and/or would impact the mission of an organization or Agency. This determination is made on a case-by-case basis and considers the nature, cost of the accommodation, the financial resources of USDA as a whole, and/or impact of the accommodation on the operations of the particular office or facility involved. If the cost of an individual item or service is considered, the entire budget of the Agency and USDA is considered and not just the area where the employee works. This type of claim is very hard to prove as an undue hardship. However, if the RA would cause work to be affected, other employees to be unduly affected, or other major changes at the Agency, it may be considered and found to be an undue hardship.

EEOC advises agencies to look at the effect RA has on the workplace in many cases. It has ruled RA caused an undue hardship on several agencies because of the negative impact of the RA on the business of the agencies. For example, both EEOC and Federal courts have ruled that it is an undue hardship and virtually impossible for agencies to have a fragrance-free workplace because it affects all employees, visitors, customers, and many other aspects of the environment. Likewise, a workplace cannot allow employees with a disability, or without for that matter, to not meet deadlines or produce/process the required amount of work because some employees claim a disability and request less work and no time constraints due to stress. The very reason employees are there is to meet deadlines and complete required work.

37. **Video Remote Interpreting (VRI)** – Interpreting services using the Internet and video cameras and provided by the Federal Relay Service. It uses the same equipment as VRS to provide interpreting services where telephone calls are not part of the communication. Interpreters are at an interpreting center at another location in the country and are shown on computer screens. They listen to the conversation through a conference phone and sign the conversation to the employees who are deaf. The employees who are deaf can speak for themselves if they have intelligible speech or the Interpreter will voice what they say as needed.

VRI can be used sometimes when on-site Interpreters are not available and information has to be imparted to employees. However, VRI should not be used in all situations where Interpreters are needed and does not replace the need for proper planning for events and activities that require interpreting services. It should not be used for critical situations such as disciplinary action discussions, many interviews, large group settings, or when employees express problems understanding the communication through this medium. DPM should be consulted for guidance regarding the use of this service.

38. **Workplace Modification or Assistance** – Changes to work situations that assist employees to perform job duties while managing temporary, transitory, or other health issues that may not meet the definition of disabilities eligible for RA; or can be provided while the RA process is in progress until a decision is made on the RA request or RA can be obtained. Workplace modifications or assistance are ways that management work with employees to address their personal needs in order to allow them to perform their duties. Such additions or alterations do not indicate that the employees have documented disabilities, are seen as having such, or are entitled to RA. They are merely good-faith efforts to provide for employees' needs.

Modifications are partial alterations in what is the norm for a position or in the workplace. These can be done at anytime at the discretion of the supervisor or other responsible personnel without consideration of whether or not employees have a disability as defined by the Rehab Act, qualify for RA, or if the modification fits the RA definition. They can be something permanent such as a computer mouse or temporary such as allowing telework while recuperating due to temporary medical situations. Quite often these minor alterations can be easily provided due to availability, minor costs, no or minor change in routine procedures, and just make sense. Agencies and management can always provide items or services that are above the norm at their discretion if possible, even with RA. In situations where supervisors or other personnel agree to provide a modification, they can do so without requiring medical documentation, accepting very brief medical information, or going through the RA process. More detailed and complex RA requests normally do not fit into this category and would follow RA procedures.

All modifications provided to employees should be documented by supervisors and kept as reference. Some modifications such as temporary changes in work, allowing less than a full work day along with the use of leave, or allowing telework changes should be documented in an agreement with the terms clarified for both the employees' and supervisors' understanding.

Regarding telework for this type of assistance, it can be approved for partial tours of duty with the use of leave for the remainder of the hours not worked when the employee is not able to work a full tour, have doctor appointments, or needs breaks for medical treatment

or rest. Another scenario is that employees can work some days at the worksite and some telework according to the situation. Additionally, telework approval can be for less than the full tour of duty based on the type and amount of work that can be done at the alternate worksite. The employees would use leave for the hours not worked just as would normally be done. (See *“Telework as Reasonable Accommodations”*)

## **ACRONYMS**

**ADA** – Americans with Disabilities Act

**ADAAA** - Americans with Disabilities Act Amendment Act

**ART** – Accommodation Review Team

**CRCMO** – Civil Rights and Conflict Management Office

**DPM** – Disability Program Manager

**EEO** – Equal Employment Opportunity

**EEOC** – Equal Employment Opportunity Commission

**ER** – Employee Relations

**FMLA** – Family Medical Leave Act

**HP** – Healthcare Provider

**HR** – Human Resources

**HRMS** – Human Resources Management Staff

**OCFO** – Office of the Chief Financial Officer

**OWCP** – Office of Workers’ Compensation Program

**RA** – Reasonable Accommodations

**SSRT** – Senior Staff Review Team

**VLTP** – Voluntary Leave Transfer Program

**VRI** – Video Relay Interpreting

**VRS** – Video Relay Service