



**U.S. Trade and Development Agency
Equal Employment Opportunity Policy**

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U.S. Trade and Development Agency Equal Employment Opportunity Policy

I. Introduction

This Equal Employment Opportunity Policy (“EEO Policy”) updates the U.S. Trade and Development Agency’s (“USTDA” or the “Agency”) anti-discrimination and anti-harassment policies found in Chapter 15 of the USTDA Handbook and on the Agency’s intranet. USTDA believes that employees and persons seeking employment with the Agency should receive equal access to employment opportunity, regardless of race, color, religion, national origin, sex, age or disability. USTDA further believes that in order to ensure equal employment opportunity, the work place must be free from unlawful discrimination, harassment and retaliation. Accordingly, the goal of USTDA’s EEO Policy is to prevent unlawful discrimination, harassment and retaliation, to provide for the investigation of any such complaints, and to allow for timely and appropriate disciplinary action, up to and including removal, where such unlawful activity has been found to occur in the workplace. In order to achieve this goal, this EEO Policy sets forth USTDA’s:

- Anti-Discrimination Policy;
- Anti-Harassment Policy;
- Policy Prohibiting Sexual Harassment; and
- Reasonable Accommodation Policy.

This EEO Policy also:

- Describes internal and external processes for reporting discrimination, harassment and retaliation (including procedures for Alternative Dispute Resolution); and
- Provides a list of authorities, sources and resources for the policies contained herein.

II. USTDA Anti-Discrimination Policy

A. What is Discrimination?

Unlawful discrimination occurs when, due to a person’s race, color, religion, national origin, sex, age or disability (sometimes collectively referred to as “legally protected characteristics”) he/she is treated less favorably than a similarly situated person with respect to the terms and conditions of employment. Discrimination also occurs when a person suffers retaliation for opposing discriminatory practices or participating in discrimination complaint proceedings. Terms and conditions of employment include, but are not limited to:

- Hiring, placement, promotion, transfer and demotion;
- Recruitment, advertising or solicitation for employment;
- Treatment and working conditions during employment;
- Termination or reduction-in-force;
- Rates of pay and other forms of compensation and benefits; and

- Selection for training and educational programs.

B. *Statement of USTDA's Anti-Discrimination Policy*

1. USTDA will not tolerate discrimination on the basis of race, color, religion, national origin, sex, age, or disability in the employment, development, advancement or treatment of employees or applicants.

2. All employees, without regard to race, color, religion, national origin, sex, age or disability, shall have equal opportunity to be considered for assignments and, as appropriate, training opportunities that are compatible with their career development.

3. USTDA will maintain a work environment that is free of any form of unlawful discrimination. USTDA is committed to providing prompt, fair and impartial review of all discrimination complaints.

C. *Note on Discrimination on the basis of Sexual Orientation and Genetic Information*

Sexual Orientation. Executive Order 13087 establishes the Executive Branch's policy of non-discrimination on the basis of sexual orientation but does not create any additional enforcement rights, such as the ability to proceed before the EEOC. Title 5 of the Code of Federal Regulations prohibits any employee who has the authority to take certain personnel actions from discriminating for or against employees or applicants for employment on the basis of conduct that does not adversely affect employee performance. The Office of Personnel Management, or OPM, has interpreted this statute to prohibit discrimination based upon sexual orientation. Employees and applicants may not seek relief from the EEOC or file a complaint for discrimination on the basis of sexual orientation under Title VII of the Civil Rights Act of 1964, as amended, because that law does not prohibit discrimination based upon sexual orientation. However, when applicants or employees believe that a prohibited personnel practice that constitutes discrimination based upon sexual orientation has been committed against them, they may seek assistance under this EEO Policy, or in certain circumstances from: (1) the Merit Systems Protection Board; or (2) the Office of Special Counsel.

Genetic Information. Executive Order 13145 prohibits federal executive agencies from discriminating against employees on the basis of protected genetic information, or information about a request for or the receipt of genetic services. Although the Executive Order establishes the Executive Branch's policy, it does not create any right or benefit, substantive or procedural, enforceable at law, by a party against the United States, its officers or employees. However, if an applicant or employee believes that a prohibited personnel practice that constitutes discrimination based on genetic information has been committed against him or her, they may seek assistance under this EEO Policy. Individuals may contact the EEOC Office of Legal Counsel with any questions about Executive Order 13145.

III. USTDA Anti-Harassment Policy

A. What is Workplace Harassment?

Workplace harassment is a form of unlawful discrimination. Specifically, unwelcome verbal or physical conduct based on any of the legally protected characteristics, or retaliation, constitutes harassment when:

1. The conduct is sufficiently severe or pervasive to create a hostile work environment; or
2. A supervisor's harassing conduct results in a tangible change in an employee's employment status or benefits (for example, demotion, termination or failure to promote).

A hostile work environment may be created when unwelcome statements or actions directed towards an employee, due to that employee's race, color, religion, national origin, sex, age or disability, or because of retaliation, unreasonably interferes with such employee's work performance or creates an intimidating or offensive work environment. Some examples of conduct that might be considered harassment include:

- Use of racially derogatory words, phrases, epithets or slurs;
- Demonstrations of a racial or ethnic nature such as a use of pictures or drawings that would offend a particular racial or ethnic group;
- Mocking, ridiculing or mimicking another's culture, accent, appearance or disability;
- Disparaging remarks about an individual's gender that are not sexual in nature;
- Expressing negative stereotypes regarding an employee's birthplace or ancestry;
- Negative comments about an employee's age when referring to employees 40 and over; or
- Derogatory or intimidating references to an employee's mental or physical impairment.

B. Sexual Harassment

Sexual harassment is a type of discriminatory harassment and just like any other discriminatory harassment is not tolerated at USTDA. USTDA's Policy Prohibiting Sexual Harassment is attached to this EEO Policy as Appendix I.

C. Statement of USTDA's Anti-Harassment Policy

USTDA maintains a strict policy prohibiting harassment, and will make every reasonable effort to prevent and correct any such situations that may arise. It is USTDA's policy to maintain a work environment that is free from harassment based on race, color, religion, national origin, sex, age or disability. In addition, it is USTDA's policy that retaliation against any employee for reporting harassment under this or any other policy or procedure, or for assisting in any inquiry about such a report will not be tolerated.

Each USTDA employee is responsible for implementing the anti-harassment policy and for cooperating fully in its enforcement. Whenever possible, USTDA employees are also responsible for preventing harm that could have been avoided and for taking steps to lessen or mitigate the effects of any allegedly discriminatory action or event. Employees must not engage in harassing conduct. Employees subjected to harassment should promptly follow the procedures in this policy to bring the matter to the attention of management. Supervisors and other management officials must act promptly and effectively to correct any harassment that may occur. Any questions about these responsibilities should be directed to the EEO Counselors (described below) or to the Office of General Counsel.

IV. EEO Staff

USTDA maintains up to three staff members trained in EEO procedures and USTDA policies, who are available, upon request, to discuss any EEO-related matter. These staff members consist of an EEO Officer and up to two EEO Counselors. Generally, EEO Counselors:

- A. Provide counseling to employees who believe that they have been discriminated against in a work-related incident because of race, color, religion, national origin, sex, age or disability, or because of retaliation;
- B. Conduct an informal inquiry into allegations of discrimination raised in the counseling process;
- C. Assist parties in the pursuit of informal remedies prior to the filing of a formal complaint of discrimination; and
- D. Provide reports on counseling activities as required.

A current list of USTDA's EEO staff members is found at [Appendix III](#).

V. Reporting Discrimination, Harassment and Retaliation

USTDA strongly encourages the prompt reporting of all incidents of discrimination, harassment, retaliation or other inappropriate workplace behavior, even if it seems insignificant.

Any employee who feels she/he is being harassed, retaliated or discriminated against, or has witnessed someone subject to such illegal activity, should report the incident to their immediate supervisor, an EEO Counselor, the EEO Officer or any senior staff member of the Agency. Any employee who feels that she/he has been subjected to discrimination, harassment or retaliation can enforce their rights in accordance with the complaint reporting procedures described below.

Confidentiality. USTDA will promptly investigate any reports of unlawful discrimination, harassment or retaliation in accordance with its complaint processing procedures. Confidentiality will be maintained throughout the investigation to the greatest extent possible, while still meeting USTDA's obligation to conduct a thorough and reasonable investigation. Employees are expected to fully cooperate in any such investigations.

Retaliation. USTDA will not tolerate any form of retaliation directed against an applicant or an employee. Protection against retaliation extends to employees who oppose unlawful discriminatory practices and/or who file a complaint, participate in an investigation, or request reasonable accommodation. All employees are entitled to enjoy an environment free of discrimination, harassment and retaliation and to invoke her/his rights to ensure that such an environment exists.

VI. Complaint Processing

NOTE: The description of the formal complaint process contained in this EEO Policy is a summary of the procedures codified at 29 CFR 1614.101 et seq. (the "Code"), and as such, is qualified by the procedures set forth in the Code as may be amended from time to time.

Under normal conditions if an employee has a job-related issue regarding discrimination or harassment, she/he should discuss it with her/his supervisor. The simplest, quickest and most satisfactory solution will often be reached at this level. If an employee desires to initiate a discrimination complaint, she/he must follow the procedures outlined below.

Commencing the EEO Process

- A. If you believe you may have been subjected to illegal discrimination, harassment or retaliation, you should promptly contact an EEO Counselor. This begins the EEO process.
- B. You must contact an EEO Counselor within 45 days of the occurrence of the matter that is alleged to be discriminatory.

EEO Mandatory Counseling/Informal Process

- A. The first stage of the EEO process is EEO Counseling, which is also called Informal Complaint Processing. You must complete the Informal Complaint Processing prior to filing a formal complaint.

- B. Contact with the EEO Counselor begins the Informal Complaint Processing. The EEO Counselor will provide you with information concerning how the EEO process works, including time frames and appeal procedures, and attempt to informally resolve the matter. The purpose of this informal stage is to obtain more information about the complaint and to determine whether a fair and expedient resolution exists to which all parties can agree. A complaint alleging harassment, whether written or oral, should include the specific nature of the incident, date and place of the incident, names of all parties involved, as well as a detailed report of all the pertinent facts.
- C. During the informal complaint processing, any contact and discussions held by the EEO Counselor with the parties involved are kept confidential (with the exception of statistical data which must be reported to the EEOC).
- D. *Initial Interview.* At the initial counseling session, the EEO Counselor must advise you in writing of your rights and responsibilities in the EEO process.
- E. Following the initial counseling session, the counselor will perform a limited fact-finding investigation and seek a resolution of the matter on an informal basis.
- F. *Notice of Final Interview.* The EEO counselor must complete the initial investigation within 30 days of the date you initially contacted the EEO Counselor to request counseling. If the matter is not resolved in that time period, the EEO Counselor must advise you in writing of your right to file a formal discrimination complaint (the “Notice of Final Interview”).
- G. The 30-day counseling period may be extended for an additional 60 days if: (1) you agree to such extension in writing; or (2) you choose to participate in an Alternative Dispute Resolution procedure (described below).
- H. If your claim is not resolved before the 90th day after your initial contact with EEO Counselor, the Notice of Final Interview described above must be issued to you.

Alternative Dispute Resolution (ADR)

- A. ADR is a process by which all the parties involved attempt to resolve a complaint without resort to administrative litigation. ADR techniques can include mediation, in which a neutral, third-person attempts to help the parties come to a mutual understanding.
- B. You may choose between participation in the ADR program or the EEO counseling/complaint process, however, you cannot choose both.
- C. ADR is available for both the pre-complaint process and the formal complaint process.

- D. If the matter is not resolved in the ADR process within 90 days of the date of your initial contact with the EEO Counselor, a Notice of Final Interview must be issued to you, allowing you to proceed with a formal complaint.
- E. If you enter into the ADR procedure after a formal complaint is filed, the time period for processing the complaint may be extended by agreement for not more than 90 days. If the dispute is not resolved using the ADR procedure, the complaint must be processed within the extended time period.
- F. USTDA's Alternative Dispute Resolution Procedures are fully set forth in Appendix IV to this EEO Policy.

Formal Complaint Process

- A. *Complaints.* A formal, written complaint must be filed with the EEO Officer within 15 days of receipt of the Notice of Final Interview.
- B. The EEO Officer must acknowledge receipt of the complaint in writing (the "Notice of Complaint Receipt") and inform you of your rights and responsibilities with respect to the complaint.

Representation

During the processing of a complaint, including during the pre-complaint counseling stage, you have the right to be accompanied, represented or advised by a representative of your choice. If necessary, you will be allowed a reasonable amount of official time to prepare the complaint. You must request official time in advance and in writing, and specify that the time requested is for preparing an EEO complaint. Your supervisor will consider your work situation in scheduling/approving such requests, and will make every effort to reasonably accommodate your request.

Dismissal of Complaints

- A. Prior to a request for a hearing, USTDA may dismiss an entire complaint for any of the reasons described in the Code.
- B. If the Agency believes that some, but not all, of the claims in a complaint should be dismissed for any of the reasons described in the Code, it must notify you in writing of the rationale for this determination, identify the allegations which will not be investigated, and place a copy of this notice in the investigative file.

Investigations

- A. USTDA must develop an impartial and appropriate factual record upon which to make findings on the claims raised by the complaint.

- B. The investigation must be completed within 180 days from the filing of the complaint, unless the parties agree to extend the time period. A copy of the investigative file must be provided to you. Within 30 days of receipt of the file, you have the right to request a hearing and a decision from an EEOC administrative judge or may request an immediate final decision from USTDA.

Hearings

- A. You must send any request for a hearing to the EEOC office indicated in the Notice of Complaint Receipt, with a copy to USTDA's EEO Officer.
- B. Within 15 days of receipt of the request for a hearing, USTDA must provide a copy of the complaint file to the EEOC.

Final Agency Action

When an EEOC administrative judge has issued a decision, USTDA must take final action on the complaint in accordance with the procedures described in the Code.

APPENDICES

- I. Policy Prohibiting Sexual Harassment
- II. Reasonable Accommodation Policy
- III. USTDA EEO Staff Members
- IV. Alternative Dispute Resolution Procedures
- V. Authorities, Sources and Resources

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APPENDIX I

U.S. Trade and Development Agency Policy Prohibiting Sexual Harassment

I. Policy Statement

The U.S. Trade and Development Agency (“USTDA” or the “Agency”) is committed to providing a work place that is free from all forms of discrimination and harassment, including sexual harassment. Sexual harassment of employees in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by USTDA. Similarly, any retaliation against an individual who has complained about sexual harassment, or against individuals for cooperating with an investigation of a sexual harassment complaint, is unlawful and will not be tolerated by the Agency. To achieve the Agency’s goal of a workplace free from sexual harassment, all inappropriate conduct of a sexual nature will be dealt with promptly in accordance with the procedures set forth in the Agency’s EEO Policy.

II. Definition of Sexual Harassment

Sexual harassment means any unwelcome sexual attention, sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

III. Examples of Sexual Harassment

Although it is not possible to list all of the circumstances that may constitute sexual harassment, the following are some examples of conduct, which if unwelcome, may constitute sexual harassment depending on the totality of circumstances, including the severity of the conduct and its pervasiveness:

- Either explicitly or implicitly conditioning any term of employment on the provision of sexual favors;
- Threatening adverse employment actions if sexual favors are not granted;
- Promising preferential treatment in return for sexual favors;
- Unwelcome sexual advances – whether they involve physical touching or not;
- Unwelcome and unnecessary physical contact;

- Offensive remarks including unwelcome comments about an individual's body or appearance, obscene jokes or other use of sexually explicit language, either in person, in writing or via e-mail;
- The display in the workplace of sexually suggestive objects, pictures or cartoons;
- Unwelcome sexual advances by visitors to USTDA when such advances are condoned, either explicitly or implicitly by the Agency.

Employees are advised that all sexual harassment is prohibited, regardless of the gender of the harasser. Sexual harassment is not limited to behavior directed by a man towards a woman: a woman can be held liable for sexually harassing a man and sexual harassment can occur between members of the same sex. Furthermore, sexual harassment is not limited to harassment of a subordinate by a superior; it can also occur between co-workers.

IV. Procedure for Filing a Complaint of Sexual Harassment

If you believe that you have been subjected to sexual harassment or to retaliation for having brought a complaint of sexual harassment or participated in the investigation of such a complaint, you should immediately inform your supervisor, an EEO Counselor, the EEO Officer, or any senior staff member of the Agency, in accordance with the procedures set forth in the Agency's EEO Policy.

V. USTDA Response to Complaints of Sexual Harassment

If USTDA receives a complaint of sexual harassment, it will promptly investigate the allegation in a fair and expeditious manner, consistent with the procedures set forth in the Agency's EEO Policy. When the investigation is complete, the Agency will inform the person making the complaint and the person alleged to have committed the conduct of the results of the investigation and of what actions will be taken to ensure that the harassment, if found to exist, will cease.

Employees are advised that USTDA is committed to take action if it becomes aware of sexual harassment, even if the aggrieved employee does not wish to make a complaint. Every person in a supervisory role is responsible for promptly responding to or reporting to the EEO Officer or Deputy Director, any complaint or suspected act of sexual harassment.

Confidentiality. Investigations undertaken by the Agency will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Care will be taken to protect the identity of the person making the complaint and of the accused party or parties, except as may be necessary to successfully complete the investigation.

Disciplinary Action. If it is determined that sexual harassment has occurred, the Agency will act promptly to eliminate the offending conduct and impose disciplinary

action on the person found to have committed the offensive conduct. Such action may range from a verbal warning to termination from employment and may include such other forms of disciplinary action as the Agency deems appropriate under the circumstances. If the allegation is not found to be credible, the person making the complaint and the accused person shall be so informed, with appropriate instruction provided to each, including the right of the person bringing the complaint to make a formal complaint to the EEOC and/or the applicable Virginia state agency.

Retaliation Prohibited. USTDA will not tolerate any form of retaliation directed against a person who makes a complaint of sexual harassment. Protection against retaliation extends to employees who oppose unlawful discriminatory practices and/or participate in an investigation into such practices. It is unlawful and a violation of this policy for any employee to take any retaliatory action against any person involved in an investigation and any such retaliation will itself be a cause for disciplinary action.

VI. State and Federal Remedies

USTDA expects that any incident of sexual harassment can be resolved through the internal processes outlined above as well as in the Agency's EEO Policy. All employees, however, have the right to file a formal complaint with the EEOC. In order to do so, an employee must contact one of the Agency's EEO Counselors and follow the procedures for the EEO complaint process that are set forth in USTDA's EEO Policy. A complaint filed with the EEOC must be made within 300 days of the alleged occurrence. Employees also have the right to file a complaint with the Commonwealth of Virginia's Council on Human Rights, 900 E. Main Street, Pocahontas Building, 4th Floor, Richmond, Virginia 23219, tel: (804) 225-2292. A complaint filed with the Council on Human Rights must be filed within 180 days of the alleged occurrence.

APPENDIX II

U.S. Trade and Development Agency Reasonable Accommodation Policy

I. Introduction

The U.S. Trade and Development Agency (“USTDA” or the “Agency”) is fully committed to maintaining a work environment in which all employees have equal access to employment opportunity. In order to ensure such rights for qualified individuals with a disability, USTDA has established this policy. Many people with disabilities can apply for and perform jobs without the need for accommodation. However, the purpose of this policy is to ensure that people with disabilities who need reasonable accommodation to perform the essential functions of their job or to enjoy benefits and privileges of employment granted to employees without disabilities, can receive such accommodation.

USTDA will provide reasonable accommodation for known physical and mental limitations of qualified applicants and for employees with known disabilities unless an accommodation would impose an undue hardship on USTDA or endanger the health and safety of the applicant, employee or others. Furthermore, USTDA will not tolerate discrimination against qualified individuals with a disability in the hiring process or any other stage of employment.

II. Understanding Reasonable Accommodation

A. What Is Reasonable Accommodation?

1. A reasonable accommodation is a change to the workplace that enables a person with a disability to enjoy equal employment opportunities. Reasonable accommodations remove barriers that prevent people with disabilities from applying for, or performing, jobs for which they are qualified or benefits and privileges of employment to which they are entitled. “Reasonable accommodation” is a legal term. To see the legal definition of reasonable accommodation and other terms used in this policy, see *Attachment A (Definitions)*.
2. Examples of reasonable accommodations (depending upon the situation) include making existing facilities used by employees readily accessible to and usable by individuals with disabilities; acquisition or modifications of equipment or devices; job restructuring; part-time or modified work schedules; reassignment to a vacant position; appropriate adjustment or modifications of examinations, training materials, or policies; the

provision of qualified readers or interpreters; and other similar accommodations.

B. Who Is Entitled to Reasonable Accommodation?

Any qualified applicant or employee with a disability who needs reasonable accommodation to perform the essential functions of her or his job is entitled to reasonable accommodation.

III. Submitting Requests For Reasonable Accommodation

A. Who Can Make a Request?

You, a family member, your health professional or another representative may, on your behalf, request reasonable accommodation.

B. When Can I Make a Request?

It is the responsibility of a disabled employee who believes he or she needs reasonable accommodation to make a request. USTDA will not assume that an individual has a disability or needs reasonable accommodation, unless the need for reasonable accommodation is obvious. You should make the request as soon as you become aware of the need for reasonable accommodation, but you have the right to make a request for reasonable accommodation at any time.

C. To Whom Should I Make the Request?

1. Requests for reasonable accommodation should be made to your immediate supervisor. In the event that you feel uncomfortable making a request to your immediate supervisor, you may make the request to your secondary or higher-up supervisor in your chain-of-command. Additionally, you may make the request to the EEO Officer or the Deputy Director.
2. If you are an applicant, you can make a request for reasonable accommodation with the USTDA official with whom you have contact.
3. USTDA employees who receive requests for reasonable accommodation should forward such requests to the EEO Officer.

D. How Do I Make the Request? Does It Have to Be in Writing?

There are no magic words that must be used to make a request for reasonable accommodation. You merely need to convey, in your own words, that you need assistance in performing job tasks, due to a disability and functional limitations. The request does not have to be in writing. However, once you do make a request for reasonable accommodation, you will be asked to complete a **Form ADA-1, Request for Reasonable Accommodation**, so that the Agency can clarify and better understand your request. The processing of your request will be determined as of the date you make the oral or written request, not the date you submit the Form ADA-1 to the Agency.

E. Do I Have to Indicate a Specific Accommodation I Want?

No. As detailed below, the Agency will work with you and your health care professional to determine an effective reasonable accommodation. However, you should describe the problems posed by the workplace barrier in question.

F. Do I Have to Submit a Doctor's Certification or Anything Else with the Request?

No. However, as detailed below, the Agency may need more specific information from your treating health care professional concerning your disability and possible accommodations. In that event, you may be asked to provide medical documentation from a health care professional or to allow the Agency to communicate with such persons.

IV. Processing of Reasonable Accommodation Requests

A. What Happens Once I Make My Request for Reasonable Accommodation?

The EEO Officer will evaluate your request in consultation with the appropriate Agency officials. After such consultation, the EEO Officer will issue the decision on your request.

B. How Is My Request Processed?

1. If the reasonable accommodation requested requires only a slight adjustment to the work environment or a job function, as determined by your first-line supervisor, then it will be granted as soon as possible.

2. If the accommodation requested requires more than a slight adjustment, then management will engage in an interactive process with you to determine if the request should be granted.

C. What Is the Interactive Process?

The interactive process is the proactive, informal process by which you and management communicate with each other to determine how best to respond to your request. During the interactive process, management will analyze job functions to establish essential and nonessential job tasks, identify barriers to job performance, consult with you to learn your precise limitations and discover the types of accommodations that would be most effective.

D. What Are My Responsibilities During the Interactive Process?

You are required to engage in the interactive process in good faith. You are responsible for answering the Agency's reasonable requests for information, including assistance in securing medical documentation from an appropriate health care professional. Also, you should be willing to try accommodations and discuss alternatives with the Agency. Failure to engage in the interactive process in good faith may result in denial of your request for reasonable accommodation.

E. What Are My Rights During the Interactive Process?

1. You have the right not to respond to requests for medical information that are unreasonable. For example, you have the right to refuse a request for medical information that is not relevant to your disability or reasonable accommodation request. Also, you have the right to refuse requests for medical information where the need for reasonable accommodation is obvious or if you have previously provided the Agency with sufficient information to document the existence of your disability and functional limitations.
2. You have the right to request from the Agency information that will assist your health professional in understanding the nature of your job, the essential functions which you are required to perform and any other relevant information.
3. You have the right not to be harassed due to your disability or retaliated against due to your request for reasonable accommodation.

F. How Does the Interactive Process Work and What Medical Information Can USTDA Request?

1. The interactive process commences after you submit your request for reasonable accommodation. If you wish, you may provide management with medical documentation concerning your disability, limitations and possible accommodations or management may request medical information from your provider.
2. Management is entitled to and may request medical information related to your disability and any functional limitations you have as a result of the disability. This includes, but is not limited to:
 - a. The nature, severity and duration of your impairment;
 - b. The activities the impairment limits;
 - c. The extent to which the impairment limits your ability to perform any activities;
 - d. Why you require reasonable accommodation or the particular accommodation requested; and
 - e. How the reasonable accommodation requested will assist you to apply for a job, perform the essential functions of your job, or enjoy a benefit of the workplace.
3. The Equal Employment Opportunity Commission allows employers to ask employees requesting reasonable accommodation for a limited medical release, which enables the employer to submit medical questionnaires to the employee's treating health care professionals. Management may ask you to complete a **Form ADA-2, HIPAA-Compliant Release for Medical Information Concerning Disability and Reasonable Accommodation Request** and may submit to your health care professional, a **Form ADA-3, Medical Questionnaire Concerning Disability and Reasonable Accommodation Request** or a similar form with questions tailored to your individual situation. Failure to cooperate with management in this process may constitute bad faith participation in the interactive process and result in denial of your reasonable accommodation request.

G. From Whom Can USTDA Obtain Information Concerning My Disability and Workplace Limitations?

Any appropriate health professional such as, but not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

H. What If the Medical Documentation Provided By My Health Care Professional Is Insufficient?

1. The Agency is entitled to sufficient medical documentation in order to make a sound, reasoned and informed decision on your reasonable accommodation request. If documentation provided by you or by your health care professional in response to the Agency's request for information is insufficient, the Agency may request from your health care professional further information or clarification of the information previously provided. Documentation is insufficient if it does not clearly explain the nature of your disability or the need for reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist you in performing the essential functions of your job.
2. If, on repeated occasions and after repeated requests from the Agency, your health care professional fails to provide sufficient medical documentation, your reasonable accommodation request may be denied.
3. If the medical documentation provided by your health care professional is unclear or inadequate, USTDA may enlist a health care provider of its choosing to analyze the medical documentation provided by you and your health care professional, in order to make a determination on your reasonable accommodation request. In that case, you will be asked to complete a **Form ADA-4, HIPAA-Compliant Request for Release of Medical Information for Analysis**. USTDA will bear any expense involved in having your medical information reviewed by its own medical expert.
4. If the medical documentation provided by your health care professional is unclear or inadequate, the Agency may require you to submit to a medical examination by a medical provider of the Agency's choice. However, this option is only available after you have received an explanation of why the documentation provided is inadequate; the medical information sought has been

identified; and you been given reasonable opportunity to provide the missing information. The examination will be limited to a determination of whether you have a disability and any functional limitations that require reasonable accommodation. If you are required to submit to an exam by a medical provider of USTDA's choice, the Agency will pay all costs associated with the medical exam. Under the circumstances described above, your failure to submit to a medical exam may result in denial of your reasonable accommodation request.

I. Is There Any Other Information USTDA May Request From Me During the Interactive Process?

Yes. USTDA may ask you questions concerning your job duties and limitations and discuss with you possible accommodations. Management may ask you any relevant questions to help it understand your situation and make a decision on your request.

J. When Does the Interactive Process End?

When the Agency has all the necessary information it feels it needs to make a sound, reasoned and informed decision on your reasonable accommodation request.

V. Decisions on Reasonable Accommodation Requests

A. How Long Does USTDA Have to Respond to My Request for Reasonable Accommodation?

1. The amount of time it takes to respond to a request for reasonable accommodation will depend on the nature of the accommodation and whether it is necessary to obtain supporting medical information. This policy allows USTDA up to thirty (30) days to respond to your request, absent extenuating circumstances. However, if a particular reasonable accommodation can be provided in less than thirty (30) days, the Agency's failure to respond promptly to the request may result in a Rehabilitation Act violation.
2. Remember that the length of the interactive process depends on numerous factors such as: the time it takes to secure information from your physician; whether more information is required from your physician and time it takes for such repeated requests; whether USTDA's chosen physician analyzes your medical documentation and the time it takes for such review/analysis; or whether you are required to submit to medical exam by

USTDA's chosen physician and the time it takes to do so. To maintain an efficient interactive process, it is management's duty to determine what information it needs and to analyze information received in a prompt manner. It is your duty to expedite provision of any relevant information management requests.

3. *Expedited Cases.* USTDA is required to expedite reasonable accommodation requests where the reasonable accommodation is needed to enable an individual to apply for a job or the reasonable accommodation is needed for a specific USTDA activity that is scheduled to occur shortly.
4. *Extenuating circumstances.* If extenuating circumstances exist, a decision will be made within a reasonable period after the initial thirty (30) day guideline. Extenuating circumstances are factors that could not reasonably have been avoided in advance of the request for accommodation. These can include situations in which equipment must be back-ordered or a vendor has unexpectedly gone out-of-business. In addition, USTDA is not expected to adhere to its usual time frames if your health care professional fails to provide needed documentation in a timely manner.
5. *Delays.* If a delay occurs in processing a request for, or delivering, a reasonable accommodation, the EEO Officer must notify you of the reason for delay. To the extent possible, USTDA will keep you informed of the date on which the process is to be completed.

B. What Happens During the Time Period Between Making My Request for Reasonable Accommodation and USTDA's Decision?

It is in the Agency's discretion whether or not to provide you any type of temporary accommodation during the interactive process and while a decision is being made. Any accommodation that is provided has no bearing upon your request and the Agency is under no legal obligation to provide a temporary accommodation.

C. Decision on Reasonable Accommodation Request

1. If you are entitled to reasonable accommodation, USTDA is obligated to provide you an effective accommodation, not necessarily the accommodation you want most or the "best" accommodation. Every effort will be made to provide you the accommodation you desire, so long as it is effective. However,

your right is to an effective accommodation, which may or may not be the accommodation you requested initially. USTDA has the right to select one accommodation over another in order to provide a cost-effective solution, as long as that solution will effectively remove the barrier giving rise to the reasonable accommodation request.

2. If you are denied a specific reasonable accommodation but offered another, the written decision must specify the reason for denial of the requested accommodation and a statement as to why the chosen accommodation would be effective.
3. If your reasonable accommodation request is denied, you are entitled to a written decision on your request that specifies the reasons for denial.

D. Do I Have to Accept a Reasonable Accommodation I Don't Want?

No. USTDA cannot require you to accept an accommodation. If, however, you need a reasonable accommodation to perform an essential function of your job or to eliminate a direct threat, and you refuse to accept an effective accommodation, you may not be qualified to remain in your job.

E. Reassignment as a Reasonable Accommodation

Reassignment to a vacant position is a form of reasonable accommodation and may be available when you are qualified for the new position and reassignment does not impose an undue burden on the Agency. When available, reassignment is a reasonable accommodation of last resort. As USTDA is a small agency, it may not be possible to locate a vacant position at your same or lower grade level for which you are qualified. Also, due to the Agency's limited human resources it is likely reassignment may impose an undue burden on the Agency, and therefore may be unavailable as a reasonable accommodation. Please also note that your right to reassignment does not require USTDA to create a new position or move a current employee from his or her position to create a vacancy. Reassignment is a potential reasonable accommodation available only to current USTDA employees; it is unavailable to applicants.

F. What Can I Do If My Request Is Denied?

1. The purpose of the interactive process is to encourage as much communication as possible between you and management to eliminate the need for further evaluation once a decision has

been reached. Both you and the Agency should first attempt to resolve any differences or disagreements during the interactive process.

2. USTDA's informal dispute resolution procedures with respect to reasonable accommodation requests is as follows:
 - a. Within seven (7) calendar days of the denial of your request, you should request in writing that the EEO Officer reconsider the decision. The EEO Officer must reconsider your request and render a decision within seven (7) calendar days of receipt of your written request for reconsideration.
 - b. If you wish to appeal the EEO Officer's reconsideration on your request, you must do so within seven (7) calendar days of the decision following reconsideration. Appeals must be in writing addressed to the Deputy Director. The Deputy Director will render a decision within seven (7) calendar days or a reasonable time period afterwards.
3. If you believe that you have been discriminated against in the denial of your reasonable accommodation request and on the basis of your disability, you may file an EEO complaint within forty-five (45) days of the occurrence of the discriminatory event, in accordance with the EEO complaint process described in the Agency's EEO Policy.
4. You may request to enter into the Agency's Alternative Dispute Resolution process, as described in Appendix IV hereto.

VI. Additional Information Relevant to Applicants

A. Can USTDA Ask Me If I Have a Disability?

No. USTDA cannot conduct a medical examination or ask a job applicant whether he or she has a disability or inquire into the nature or severity of a job applicant's disability, if any.

B. Can USTDA Ask Me Whether I Can Perform Job Related Functions?

Yes. After a conditional offer of employment is extended, USTDA can ask you about your ability to perform job-related functions (both essential and marginal) and may ask you to describe or demonstrate how, with or without reasonable accommodation, you would perform job-related functions.

C. Can USTDA Ask Me If I Need Reasonable Accommodation When I Have Not Made a Request?

1. USTDA may inform all applicants of the Agency's hiring process and inquire whether any applicant requires reasonable accommodation to engage in the process.
2. In addition, if USTDA knows of an applicant's disability (i.e., such disability is obvious or the applicant discloses a disability) and if USTDA reasonably believes an applicant may need a reasonable accommodation to perform an essential job function, the Agency may ask if the applicant will need a reasonable accommodation. If the answer is in the affirmative, USTDA may inquire as to the type of reasonable accommodation that would be needed.

D. Can USTDA Ask me to Take a Medical Exam?

Yes. USTDA can require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant. USTDA may condition an offer of employment on the results of such examination, as long as all entering employees are subjected to such an examination regardless of disability. Medical records obtained as a result of such exams are subject to the privacy rights as described below.

VII. Medical Documentation and Privacy

A. Who is Entitled to See the Medical Documentation I Submit in Support of My Reasonable Accommodation Request?

1. USTDA may share your relevant medical information with any person involved in determining whether to grant your reasonable accommodation request. Typically, this will include your supervisor(s), the Administrative Officer, the EEO Officer, the Office of General Counsel, the Deputy Director, the Director and any medical provider contracted to assist in making a decision on your request.
2. Supervisors and managers who need to know may be told about necessary restrictions on the work or duties and the necessary accommodation(s);
3. First aid and safety personnel may be told if the disability might require emergency treatment;

4. Appropriate government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;
5. USTDA's EEO Officer may be given the information to maintain records and evaluate and report on USTDA's performance in processing reasonable accommodation requests.
6. When medical information is disclosed to any Agency official, such officials will be informed about confidentiality requirements.

B. Where Will the Medical Documentation I Submit in Support of My Reasonable Accommodation Request be Kept?

Any medical information you submit is required to be kept in a confidential file, separate and apart from your regular personnel file. The only persons entitled to access to such files are those listed above, on a need to know basis. Your records are subject to the confidentiality provisions of the Rehabilitation Act of 1973, the Privacy Act of 1974 and the Health Insurance Portability and Accountability Act of 1996.

C. How Long Will the Medical Documentation I Submit in Support of My Reasonable Accommodation Request be Kept?

Your medical documentation will be kept for the duration of your employment, as allowed by federal law.

D. Tracking

1. Executive Order 13164 requires executive agencies to track certain information with respect to reasonable accommodation requests, including but not limited to:
 - a. The number and types of reasonable accommodations that have been requested in the application process and whether those requests have been granted or denied;
 - b. The jobs for which reasonable accommodations have been requested;
 - c. The types of reasonable accommodations that have been requested for each of those jobs;
 - d. The number and types of reasonable accommodations for each job, that have been approved, and the number and types that have been denied;

- e. The reasons for denial of requests for reasonable accommodation; and
 - f. The amount of time taken to process each request for reasonable accommodation.
2. Cumulative records used to track USTDA's performance with respect to reasonable accommodation must be kept for at least three (3) years.

Attachment A

Legal Authorities

Rehabilitation Act of 1973, as amended, 29 USC § 701, et. seq.; 29 CFR § 1614.203.

Americans with Disabilities Act, as amended, 42 USC § 1201, et. seq., 29 CFR § 1630, et. seq.

Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation.

EEOC Enforcement Guidance, Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (October 2002).

EEOC Enforcement Guidance, Americans with Disabilities Act and Psychiatric Disabilities (March 1997).

EEOC Enforcement Guidance, Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person Is a "Qualified Individual with a Disability" Under the Americans with Disabilities Act of 1990 (February 1997).

EEOC Enforcement Guidance, Workers' Compensation and the ADA (September 1996).

EEOC Enforcement Guidance, Preemployment Disability-Related Questions and Medical Examinations (October 1995).

EEOC Technical Assistance Manual Addendum (October 2002).

EEOC Compliance Manual

EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (October 2000).

EEOC Enforcement Guidance, Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (July 2000).

EEOC Instructions for Field Offices: Analyzing ADA Charges After Supreme Court Decisions Addressing "Disability" and "Qualified" (December 1999).

Attachment B

Definitions

Disability

- (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (2) A record of such an impairment; or
- (3) Being regarded as having such an impairment.

Essential functions

- (1) In general, the term essential functions means the fundamental job duties of the employment position the individual with a disability holds or desires. The term “essential functions” does not include the marginal functions of the position.
- (2) A job function may be considered essential for any of several reasons, including but not limited to the following:
 - a. The function may be essential because the reason the position exists is to perform that function;
 - b. The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or
 - c. The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.
- (3) Evidence of whether a particular function is essential includes, but is not limited to:
 - a. The employer’s judgment as to which functions are essential;
 - b. Written job descriptions prepared before advertising or interviewing applicants for the job;
 - c. The amount of time spent on the job performing the function;
 - d. The consequences of not requiring the incumbent to perform the function;
 - e. The terms of a collective bargaining agreement;
 - f. The work experience of past incumbents in the job; and/or
 - g. The current work experience of incumbents in similar jobs.

Major life activities

Functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Medical documentation or documentation of a medical condition

A statement from a licensed physician or other appropriate practitioner which provides information the agency considers necessary to enable it to make an employment decision.

Physical or mental impairment

- (1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
- (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Qualified individual with a disability

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 such position.

Reasonable accommodation

- (1) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
- (2) 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; or
- (3) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.
- (4) Reasonable accommodation may include but is not limited to:
 - a. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
 - b. Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.
- (5) To determine the appropriate reasonable accommodation it may be necessary for the agency to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Substantially Limits

- (1) The term substantially limits means:

- a. Unable to perform a major life activity that the average person in the general population can perform; or
 - b. Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
- (2) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:
- a. The nature and severity of the impairment;
 - b. The duration or expected duration of the impairment; and
 - c. The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.
- (3) With respect to the major life activity of working -
- a. The term substantially limits means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.
 - b. In addition to the factors listed above, the following factors may be considered in determining whether an individual is substantially limited in the major life activity of working:
 - (i) The geographical area to which the individual has reasonable access;
 - (ii) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or
 - (iii) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

Undue hardship

- (1) In general, undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by an agency, when considered in light of the factors set forth in paragraph (2) of this definition.
- (2) Factors to be considered in determining whether an accommodation would impose an undue hardship on an agency include:
- a. The nature and net cost of the accommodation needed under;

- b. The overall financial resources of the agency involved in the provision of the reasonable accommodation, the number of persons employed at such agency, and the effect on expenses and resources;
 - c. The type of operation or operations of the agency, including the composition, structure and functions of the workforce of such agency, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the agency; and
 - d. The impact of the accommodation upon the operation of the agency, including the impact on the ability of other employees to perform their duties and the impact on the agency's ability to conduct business.
- (3) Undue hardship means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.

Vacant

A position that is open at the time an employee requests reasonable accommodation or that the employer knows will become available within a reasonable amount of time.

Attachment C

Selected Reasonable Accommodation Resources

U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

<http://www.eeoc.gov/>

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. § 12101 et seq., and the regulations, 29 C.F.R. § 1630. In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The three main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. §§ 1630.2(o), (p), 1630.9; (2) *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*, 8 FEP Manual 405:7601 (1999); and (3) *A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992) (*Technical Assistance Manual*). The *Technical Assistance Manual* includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidances and documents: (1) *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) *Enforcement Guidance: Workers' Compensation and the ADA* at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) *Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities* at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); (4) *Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964* at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); and (5) *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act* at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000).

All of the above-listed documents, with the exception of the *Technical Assistance Manual* are also available through the Internet at www.eeoc.gov. All of these documents provide guidance that applies to federal agencies through the Rehabilitation Act of 1973, 29 U.S.C. § 791.

Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TT)

<http://janweb.icdi.wvu.edu/>

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TT)

<http://www.rid.org/>

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project

(703) 524-6686 (Voice) (703) 524-6639 (TT)

<http://www.resna.org/>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities.

Services may include:

- information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products);
- centers where individuals can try out devices and equipment;
- assistance in obtaining funding for and repairing devices; and
- equipment exchange and recycling programs.

APPENDIX III

**U.S. Trade and Development Agency
EEO Staff Members
As of January 2007**

EEO Officer: Carolyn Hum (703.875.4296)
EEO Counselor: Anne McKinney (703.875.4395)
EEO Counselor: Michele Bivins (703.875.4270)
ADR Program Officer: Carolyn Hum (703.875.4296)

APPENDIX IV

U.S. Trade and Development Agency Alternative Dispute Resolution Procedures

I. Introduction

Alternative Dispute Resolution (ADR) generally refers to various processes that are designed to resolve disputes in a manner that avoids cost, delay and the unpredictability of more traditional adversarial and adjudicatory processes, such as litigation, hearings and appeals. Many types of ADR techniques exist, and each federal agency has the discretion to create an ADR program that is best suited for its particular office environment. The form of ADR that will be used at the U.S. Trade and Development Agency (“USTDA” or the “Agency”) is mediation. The purpose of this policy is to describe the procedure for the use of USTDA’s mediation process, which may, at the discretion of the Agency, be used to address disputes arising under statutes enforced by the Equal Employment Opportunity Commission (“EEOC”).

II. Coverage

USTDA has the discretion to determine whether a given dispute is appropriate for ADR. It is intended that the ADR process, when used, will address workplace disputes involving allegations of discrimination on the basis of race, color, religion, national origin, sex, age, disability or retaliation. The ADR process may also be used to address allegations of sexual harassment. There are some issues and disputes that are generally inappropriate for ADR. For example, where a definitive resolution of a matter is required, or if the matter significantly affects other parties not part of the Mediation process, or if a full public record of the proceeding is important. In addition, the following types of disputes would be ineligible for resolution under USTDA’s ADR program:

- A. Issues under investigation by the Office of Personnel Management (OPM), the Office of Special Counsel, or state and federal police agencies;
- B. Issues over which EEOC does not have jurisdiction;
- C. Cases of egregious misconduct (e.g., threats of violence);
- D. Issues that are the subject of an EEO class complaint; and
- E. Disputes involving applicants for employment, except when the applicant has requested ADR during the EEO complaint process.

III. Definitions

- A. **Alternative Dispute Resolution (ADR).** A variety of techniques, methods, or processes involving a neutral third party, which are used as alternatives to the traditional dispute resolution processes. ADR includes but is not limited to the following ADR techniques: mediation; early neutral evaluation; mini-trial;

and arbitration. Although it is USTDA's policy to use mediation as the preferred method of ADR, another ADR process may be selected if the Agency determines that it is appropriate and the parties concerned agree.

- B. **ADR Program Officer.** This person manages USTDA's ADR Program. The ADR Program Officer is responsible for coordinating case intake and mediator assignment, maintaining the integrity of the process, and monitoring the effectiveness of the program.
- C. **Days.** Unless otherwise indicated, the term "days" means calendar days.
- D. **Mediation.** A form of ADR. Mediation is an informal process in which a trained mediator assists the parties to reach a negotiated resolution of a dispute.
- E. **Mediator.** A person trained in mediation techniques who serves as a neutral third party on behalf of USTDA's ADR program. The mediator facilitates open discussions between the parties and assists them in negotiating a mutually acceptable resolution. The mediator does not have the authority to impose a decision or resolution on the parties. However, if the parties resolve a dispute, the mediator will help them draft a Settlement Agreement.
- F. **Settlement Agreement.** A written document signed by the parties containing the terms they agree will resolve their dispute.

IV. **Mediation Procedures**

A. *The Intake Process*

If you contact or are referred to USTDA's ADR program, you will initially go through an intake process. During intake, the ADR Program Officer will provide information about the mediation process, collect information related to the dispute, and generally gather sufficient information to assist in the Agency's determination of whether ADR will be offered. The intake process, including the Agency's determination of whether ADR will be offered in an attempt to resolve the dispute should be completed in 5 business days.

B. *Relationship between the ADR Procedures and the EEO Complaint Process*

If you contact the ADR Program before you contact an EEO Counselor, the ADR Program Officer will provide information about the EEO complaint process to you. In particular, the ADR Program Officer will inform you that you must contact an EEO Counselor within 45 days of the date of the alleged discrimination if you wish to preserve your right to file an EEO complaint. Contacting the ADR program will not satisfy the requirement to contact an EEO Counselor within 45 days of the date of the alleged discrimination.

If your initial contact in attempting to resolve the issue is with an EEO Counselor, the EEO Counselor will inform you of all your rights and responsibilities in the EEO process, including the option to choose ADR. If you wish to preserve your right to pursue an EEO complaint, but you decide to participate in the ADR Program, if offered by the Agency, the informal EEO counseling period will be extended from thirty (30) to ninety (90) days. If the matter is not resolved in the mediation process within the 90-day time period, you will be given a final interview by the EEO Counselor and informed of your right to file a formal EEO complaint.

If you have a formal EEO complaint already pending, but you subsequently choose to participate in the ADR program, the time period for processing the formal complaint may be extended by agreement for not more than ninety (90) days. If the dispute is not resolved using the mediation process, the formal complaint must be processed within the extended time period.

C. Determination of Eligibility for ADR

After the ADR Program Officer has explained the mediation process and obtained all the relevant information about the dispute, the case file will be forwarded to the Deputy Director of the Agency. After review of the case file and consultation with the parties concerned, the Deputy Director will determine whether the matter will be accepted for ADR. The decision to accept or reject a dispute for ADR will be made by the Deputy Director on a case-by-case basis. However, the Deputy Director will not accept matters that, in the Deputy Director's judgment, are brought to the ADR program for a purpose other than to make a good faith effort to resolve a genuine dispute concerning workplace discrimination, harassment or retaliation. In determining whether a matter is appropriate for ADR, the Deputy Director may also consider the nature and complexity of the dispute, the relationship of the parties, and the relief sought by the parties.

If a dispute is accepted for resolution through USTDA's ADR program, the relevant supervisors and managers are required to participate in the mediation process. The Deputy Director will ascertain the USTDA official(s) who should participate in the mediation, notify them that a dispute has been submitted and that the dispute has been accepted for resolution using ADR.

Prior to the beginning of the mediation session, the relevant participants will be required to sign an **Agreement to Mediate** and a **Confidentiality Agreement**.

D. The Mediation Process

A mediator will be assigned to assist the parties in resolving the dispute within ten (10) business days of the initial contact with the ADR Program Officer. The mediator will contact the parties promptly upon receipt of the assignment.

Mediations may be conducted in-person or by telephone, if the Deputy Director determines that a mediation by telephone is appropriate.

1. The Participants in the Mediation Process

Participants in the mediation process include the parties to the dispute, the mediator, and a management official with the authority to agree, on behalf of USTDA, to the resolution of the dispute.

In addition, the employee may bring a representative to participate in the ADR process. The representative may be an attorney. An employee who is a participant is entitled to a reasonable amount of official or administrative time (as appropriate) to participate in the mediation process. "Reasonable" means whatever is appropriate, under the particular circumstances of the case. The actual number of hours will vary depending on the nature and complexity of the dispute and length of the mediation process. In determining what is reasonable, the Deputy Director will also consider the mission of the Agency and the Agency's need to have its employees available to perform their normal duties on a regular basis.

The role of the parties is to present their respective versions of the dispute, their interests and to specify what is needed, from their perspective, to resolve the dispute and/or improve the working relationship. They must make a good faith effort to resolve the dispute. Each party should prepare for mediation by thinking about the causes of the dispute and how it can be resolved.

2. The Mediators in the ADR Process

The ADR Program Officer shall develop and maintain a list of qualified mediators. Mediators will come from the following sources: the Alliance for Education in Dispute Resolution at Cornell University; the Federal Mediation and Conciliation Service (FMCS) or the federal shared neutrals program.

Role of the Mediator. The mediator conducts the mediation session. He or she is a neutral third party with no stake in the outcome of the mediation process. The mediator helps the parties develop solutions to the dispute and may suggest ways of resolving the dispute. However, the mediator does not decide the dispute or impose a settlement on the parties. The mediator's sole function is to assist the parties in reaching an agreement to resolve the dispute themselves. If the parties resolve the dispute, the mediator assists the parties in drafting a Settlement Agreement, which, when signed, is an enforceable contract.

The mediator shall ensure that he or she has no conflict of interest with respect to the proceeding (e.g., material or financial interest in the outcome, personal friend or relative of a party, working relationship with a party), unless such interest is fully disclosed in writing to all parties and all parties agree that the mediator may mediate the case. Generally, the mediator will attempt in every case to accomplish the following objectives:

- a. Explain the mediator's role in the process and the purpose of the proceeding;
- b. Allow the parties to present their side of the dispute uninterrupted by the other party;
- c. Clear up misunderstandings;
- d. Determine the underlying interests and concerns of both parties;
- e. Improve the flow of communication;
- f. Assist the parties in finding areas of agreement;
- g. Assist the parties in incorporating the areas of agreement into a resolution of the dispute; and
- h. Assist the parties to prepare a written Settlement Agreement.

3. The Location of the Mediation Proceeding

In-Person Mediations. In-person mediations must take place in a location that provides a sufficient level of privacy. In some cases it may be necessary to conduct the mediation away from the workplace. The mediator is responsible for selecting the location for the mediation session, with assistance, as necessary, from the ADR Program Officer.

Telephone Mediations. Telephone mediations must also be held at a location that provides a sufficient level of privacy.

4. The Steps of the Mediation Process

The Mediation Proceeding. There are no required steps or phases to mediation and the mediation session(s). Typically, the mediator will ask both parties to present their versions of the matter in dispute. The mediator may also meet with the parties individually in private caucus sessions, which allow each party to provide confidential information to the mediator. The mediator will not reveal any information from an individual caucus to the other party without permission from the party who disclosed the information.

Concluding Mediation. Mediations may conclude within one day, although some may take longer, depending on the complexity of the matter being resolved.

USTDA's ADR program seeks to complete the mediation process within 45 days of the date the employee initially contacted the ADR Program Officer. An employee can end the mediation process at any time in order to pursue a formal dispute resolution process.

Settlement Agreement. If an agreement is reached, a Settlement Agreement will be drafted, containing the terms of the agreement and the time frames for execution of the terms. Once agreed upon, the parties must sign and date the Settlement Agreement. Certain Settlement Agreements, such as agreements involving personnel actions or Settlement Agreements that impose any obligations on USTDA, must have the approval of the Director of the Agency, before they become final. The ADR Program Officer will monitor the Settlement Agreement to ensure that the terms are fully complied with. In signing a Settlement Agreement, an employee waives his/her right to pursue the same dispute through the EEO complaint process.

Breach of a Settlement Agreement. If you believe that the other party to a Settlement Agreement has breached it, you must notify the Agency's ADR Program Officer, in writing, of the alleged breach within thirty (30) days of when you knew or should have known of the breach. If you are not satisfied with the Agency's attempt to resolve the matter, you may file an appeal with the Office of Federal Operations. The procedures to be followed in the event of a breach of a Settlement Agreement are set forth in 29 C.F.R. §1614.504.

Confidentiality in the ADR Process. Confidentiality of the ADR proceedings must be maintained by the parties and the mediator. This means that information concerning the underlying facts of the Mediation (or other ADR proceeding) and the records generated as part of such proceeding must be kept confidential and may not be made part of the EEO complaint record. The mediator may not voluntarily disclose dispute resolution communications, although there are some exceptions to this rule. For example, if a party confesses to the commission of a criminal offense, or to an act of fraud, waste, or abuse, or that the party plans to commit a violent physical act, the mediator may be required to share this information with appropriate authorities. If a judge determines that disclosure of private confidential discussions is necessary to prevent a manifest injustice, establish a violation of law, or prevent harm to the public health or safety, the mediator may be required by a court to disclose the private discussions. Note that neither Settlement Agreements nor Agreements to Mediate are confidential.

V. Case Tracking Process

USTDA establishes and maintains ADR case files. These files are confidential. Only the Deputy Director, ADR Program Officer and any USTDA staff member or management official responsible for representing the Agency in an ADR procedure will have access to these files.

Settlement Agreements are kept on file for four (4) years, or until the ADR Program Officer is certain that the agreement has been fully implemented, whichever is later.

VI. Evaluation of USTDA's ADR Program

In order to evaluate the effectiveness of USTDA's ADR program, the ADR Program Officer will track the use of mediation, including acceptance rates and resolution rates, the average processing time of cases from the date the employee initially contacts the ADR Program Officer and the benefits obtained through the program.

APPENDIX V

U.S. Trade and Development Agency Authorities, Sources and Resources

EEOC Laws and Regulations (Source: EEO Commission website at www.eeoc.gov)

Laws:

Equal Pay Act of 1963, 29 U.S.C. § 206, prohibits employers from discriminating on the basis of sex in the payment of wages where substantially equal work is performed under similar working conditions. Under this Act, the employer can establish different wage rates on the basis of (1) a seniority system, (2) a merit system, (3) a system that measures earnings by quantity or quality of production, and (4) a differential based on any factor other than sex.

Civil Rights Act of 1964, 42 U.S.C. Chapter 21, is the major Federal law prohibiting discrimination in employment. Title VII prohibits discrimination based on race, sex, color, religion, or national origin, and covers all areas of the employee-employer relationship, from advertising open positions through termination or retirement. Enforced by EEOC.

The Age Discrimination in Employment Act of 1967, PL 90-202, 29 U.S.C. §§ 621-634, protects employees and job applicants who are 40 years of age or older from employment discrimination based on age with respect to any term, condition, or privilege of employment -- including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.

The Rehabilitation Act of 1973, 29 U.S.C. §§ 791, 793, 794(a), Section 503 and 504, prohibits discrimination against the disabled and requires institutions to take affirmative action to hire and promote qualified disabled persons. Institutions are required to recruit and consider disabled persons for vacant positions, and they must make reasonable accommodation to the physical or mental limitations of otherwise qualified disabled employees. Section 501 also requires affirmative action for hiring, placement, and promotion of qualified individuals with disabilities.

Americans With Disabilities Act of 1990, 42 U.S.C. Chapter 126, prohibits private employers, state and local governments, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. Enforced by DOJ and EEOC.

Civil Rights Act of 1991, PL 102-166, amends the Civil Rights Act of 1964 by providing remedies for intentional discrimination and unlawful harassment in the workplace.

Sexual Orientation Policy The Civil Service Reform Act of 1978 describes prohibited personnel practices. One of them, contained in 5 U.S.C. § 2302(b)(10), prohibits any employee who has authority to take certain personnel actions from discriminating for or

against employees or applicants for employment on the basis of conduct that does not adversely affect employee performance. OPM has interpreted this statute to prohibit discrimination based upon sexual orientation. Sexual orientation means homosexuality, bisexuality, or heterosexuality. For more information, please visit www.opm.gov.

Regulations:

29 CFR Part 1614, EEOC regulations concerning Federal Sector Equal Employment Opportunity.

Management Directive 110: This guidance describes in detail the procedures that must be followed when processing complaints of discrimination filed by Federal employees and applicants for Federal employment alleging employment discrimination under the amended 1614 regulations.

Executive Orders:

Executive Order 11478 (1998): Equal Employment Opportunity in the Federal Government, as amended by Executive Order 13087 (1998)

Executive Order 13164 (2000): Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodations

Executive Order 13163 (2000): Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government

Executive Order 13145 (2000): To Prohibit Discrimination in Federal Employment Based on Genetic Information

Recent EEOC Guidance:

EEOC Management Directive 715 (2003): This Directive provides policy guidance and standards for establishing and maintaining effective affirmative programs of equal employment opportunity under Title VII of the Civil Rights Act and effective affirmative action programs under Section 501 of the Rehabilitation Act. The Directive also sets forth general reporting requirements.

Reasonable Accommodation

Please see Attachments A and C to USTDA's Reasonable Accommodation Policy for authorities and resources related to Reasonable Accommodation.

Resources:

1. U.S. Equal Employment Opportunity Commission
1801 L. Street, NW
Washington, DC 20507
Tel: 202.663.4900
Fax: 703.997.4890
EEO Hotline: 1.800.669.4000
info@ask.eeoc.gov
www.eeoc.gov

By Mail: U.S. Equal Employment Opportunity Commission
P.O. Box 7033
Lawrence, Kansas 66044
2. U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036-4505
Tel: 202.254.3600
Fax: 202.653.5151
3. Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419
Tel: 202.653.7200
Fax: 202.653.7130
4. Commonwealth of Virginia Council on Human Rights
900 E. Main Street
Pocahontas Building, 4th Floor
Richmond, VA 23219
Tel: 804.225.2292