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

January 2016

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Document Index

Document	Tab
Equal Employment Opportunity Policy	A
Policy Prohibiting Sexual Harassment (Appendix I to EEO Policy)	B
Reasonable Accommodation Policy (Appendix II to EEO Policy)	C
EEO Staff Members (Appendix III to EEO Policy)	D
Alternative Dispute Resolution Procedures (Appendix IV to EEO Policy)	E
Authorities, Sources and Resources (Appendix V to EEO Policy)	F

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. Pursuant to the Genetic Information Nondiscrimination Act of 2008 ("GINA") and Executive Order 13145, USTDA is prohibited from discriminating on the basis of genetic information in regard to hiring, discharge, compensation, terms, conditions or privileges of employment. Under GINA, USTDA is further prohibited from requesting, requiring or purchasing genetic information about an applicant or employee. In some instances, however, USTDA may inadvertently receive genetic information, including as part of medical documentation provided to USTDA following a request for reasonable accommodation. USTDA will not specifically request any genetic information from an applicant or employee or his/her health care provider and will affirmatively notify the applicant or employee and his/her health care provider not to give USTDA any genetic information (see model notification language included in USTDA's Reasonable Accommodation Policy set forth in Appendix II to this EEO Policy). If, despite notification to the applicant or employee and to his/her health care provider to the contrary, USTDA nonetheless receives genetic information, such information will be treated subject to the same confidentiality and nondisclosure standards as USTDA treats all

medical information (i.e., 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).

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 Director 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 Director 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. Discrimination Complaint Procedure

NOTE: The description of the formal complaint process contained in this EEO Policy is a summary of the procedures codified at 29 CFR 1614.105-29 CFR 1614.110 and 29 CFR 1614.204 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, 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 (please see Section VII below for USTDA's procedures to initiate a complaint for harassment, including sexual harassment).

Commencing the EEO Process

A. If you believe you may have been subjected to illegal discrimination 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.

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.

I. Formal Complaint Process

A. *Complaints*. A formal, written complaint must be filed with the EEO Director within 15 days of receipt of the Notice of Final Interview.

B. The EEO Director 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 Director.

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.

Reporting Structure; Outsourcing of Formal Complaint Process

Due to USTDA's small size, the EEO Director also acts as the Administrative Officer responsible for overseeing the Agency's human resources function. However, USTDA has established a clear distinction between the Administrative Officer's human resources function and his/her EEO function. The Administrative Officer reports to the Director of the Agency with respect to EEO matters, and reports to the Deputy Director of the Agency with respect to human resources issues.

Further, USTDA outsources the management of the EEO formal complaint process. USTDA's practice is for the Director of the Agency to sign any resulting final decisions. This outsourced process ensures that all EEO discrimination complaint proceedings are neutral and free from bias. Whenever USTDA outsources the processing of an EEO complaint, it will continue to follow the procedures and timelines set forth in this EEO Policy, with USTDA's service provider assisting the EEO Director and/or EEO Counselor in carrying out their respective duties.

VII. Harassment Complaint Procedure

Informal Harassment Complaint Procedure

Workplace harassment is a form of unlawful discrimination as described in Section III of this EEO Policy. Sexual harassment is a type of discriminatory harassment and just like any other discriminatory harassment is not tolerated at USTDA. Whenever the term harassment is used in this EEO Policy, it is understood to include sexual harassment.

Early reporting and intervention have proven to be the most effective method of resolving

actual or perceived incidents of harassment. Therefore, while no fixed reporting period has been established, USTDA strongly urges the prompt reporting of complaints or concerns so that rapid and constructive action can be taken. USTDA will make every effort to stop alleged harassment before it becomes severe or pervasive, but can do so only with the cooperation of its employees.

Reporting Harassment

The procedures for reporting incidents of harassing conduct are as follows:

A. Any person who believes that he or she has been the subject of an incident of harassing conduct in violation of this EEO Policy should report this matter to (1) anyone in the complainant's supervisory chain, (2) an EEO Counselor, (3) the EEO Director, or (4) any manager.

B. All information will be maintained on a confidential basis to the greatest extent possible. The maintenance of records and any disclosures of information from these records shall be in complete compliance with the Privacy Act, 5 U.S.C. § 552a. Such information, however, may have to be disclosed to defend the Agency in any litigation to which the information may be relevant and necessary. Further, information may need to be disclosed to those officials and employees within the Agency with a need to know in order to carry out the purpose and intent of this Policy.

Inquiries into Allegations of Harassing Conduct

A. A supervisor or manager who receives an allegation or witnesses harassing conduct shall immediately:

    1. Inform the EEO Director and seek guidance as to further actions;

    2. In consultation with the EEO Director, take action to stop any harassing conduct and prevent further harassment while the allegations are being investigated, including granting of appropriate interim relief to the alleged victim of harassing conduct; and

    3. In consultation with the EEO Director, document the allegation received and his or her efforts to address it.

B. When the EEO Director receives an allegation of harassing conduct, either directly by the complainant or through a supervisor, manager or other sources, he or she shall:

    1. Ensure that a prompt, thorough, impartial and appropriate inquiry is conducted; and

    2. Recommend appropriate action to stop any harassing conduct and prevent further harassment, including granting appropriate interim relief to the alleged victim of

harassing conduct while the allegations are being investigated.

C. Where an investigation is necessary, a written summary of the investigation shall be prepared by the EEO Director or the EEO Counselor (in consultation with the EEO Director) conducting the inquiry. The summary may vary in length, depending on the complexity and seriousness of the case. The summary shall be prepared promptly after completion of the inquiry and shall be submitted to the EEO Director (if the EEO Director did not conduct the inquiry) and the supervisor who would be responsible for taking disciplinary action against the alleged harasser, if the allegations are true. The EEO Director will have the authority to decide who will conduct an inquiry into an allegation of harassment, provided that the person conducting the inquiry has had appropriate training in investigating allegations of workplace misconduct. In making this determination, the EEO Director may consult with the appropriate Agency officials.

D. The summary of the investigation or other documentation prepared under this procedure shall be kept confidential, to the extent possible. The maintenance of records and any disclosures of information from these records shall be in complete compliance with the Privacy Act, 5 U.S.C. § 552a. Such information, however, may have to be disclosed to defend USTDA in any litigation to which the information may be relevant and necessary. Further, information may need to be disclosed to those officials and employees within USTDA with a need to know in order to carry out the purpose and intent of this EEO Policy.

E. As may be appropriate in specific cases, the ADR process may also be used to address allegations of harassment. USTDA's Alternative Dispute Resolution Procedures are fully set forth in Appendix IV to this EEO Policy.

Action to be Taken Upon Completion of the Inquiry

A. Upon completion of the inquiry, and in consultation with the EEO Officer, the Agency Director shall promptly evaluate the evidence and determine the appropriate action to take based on the findings. The responsibility for implementing the action normally shall rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct, unless such supervisor is involved in the allegation. The EEO Director shall be informed of this decision, including a decision not to act. In cases of complex or egregious alleged harassing conduct, the supervisor and EEO Director shall seek the counsel of the Office of General Counsel.

B. Where the inquiry establishes that an employee did engage in harassing conduct under this EEO Policy, he or she shall be subject to immediate and appropriate corrective action, disciplinary or otherwise, up to and including removal.

C. Where the inquiry establishes that a manager or supervisor did not properly carry out the responsibilities provided for under this EEO Policy, he or she shall be subject to

appropriate corrective action, disciplinary or otherwise, up to and including removal.

Formal Harassment Complaint Procedures

USTDA expects that any incident of harassment can be resolved through the informal internal processes outlined above. All employees, however, have the right to file a complaint with the EEOC. In order to do so, an employee must contact one of the Agency's EEO Counselors within 45 days of the alleged occurrence and follow the procedures for the EEO complaint process that are set forth in Section VI of this EEO Policy. A complaint filed with the EEOC must be made within 300 days of the alleged occurrence (not from the date that a complaint is resolved by USTDA). This deadline cannot be extended because of USTDA's internal investigation of the complaint. 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.

Outsourcing of Formal Harassment Complaint Process

As with the EEO complaint process, USTDA will outsource the management of formal harassment complaints. USTDA will continue to follow the procedures set forth in this EEO Policy, with USTDA's service provider assisting the EEO Director and/or EEO Counselor in carrying out their respective duties.

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

Updated 02/2014

APPENDIX I

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

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 Section VII of the Agency's EEO Policy.

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.

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. 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 for having participated in the investigation of such a complaint, you should immediately inform your supervisor, an EEO Counselor, the EEO Director or any senior staff member of the Agency, in accordance with the procedures set forth in Section VII of the Agency's EEO Policy.

V. USTDA Response to Complaints of Sexual Harassment

If USTDA receives a complaint of sexual harassment, it will investigate the allegation in prompt, thorough, impartial and appropriate manner, consistent with the procedures set forth in Section VII of the Agency's EEO Policy, and regardless of whether the complaint conforms to a particular format or is made in writing. 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 Director or Agency 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.

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. All forms referenced in this policy are attached. Other than as specifically set forth in this policy, USTDA will maintain any requests for and provisions of reasonable accommodation confidential.

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 B (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. In addition to current USTDA employees, applicants for employment with USTDA are eligible to submit a request for reasonable accommodation.

B. When Can I Make a Request?

It is the responsibility of a disabled employee or applicant 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 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 Director.

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, Confirmation of 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.

In some circumstances where an individual has a recurring, predictable need for accommodation (for example, sign language interpreters or large print documents), the Agency may be obligated to provide the accommodation as needed, whether or not the individual has requested it.

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 Director will evaluate your request in consultation with the appropriate Agency officials. After such consultation, the EEO Director 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.

3. Where an employee has requested a type of reasonable accommodation that he or she is likely to need on a repeated basis, the Agency does not require the individual to submit a written request each time the accommodation is needed. Once the reasonable accommodation is approved the first time, the employee may obtain the accommodation by notice to the appropriate Agency official (see Section III, Part C – "To Whom Should I Make the Request").

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 (subject to paragraph 4 below).

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 (subject to paragraph 4 below). 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 (subject to paragraph 4 below), 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-2A, HIPPA-Compliant Release for Medical Records and Information Concerning Disability and Reasonable Accommodation Request** or a **Form ADA-2B, HIPPA-Compliant Release for Psychotherapy Records and 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.

4. Management may only request medical documentation supporting your request for reasonable accommodation when your disability and/or need for accommodation is not obvious.

5. As further explained in Section VII(C) below, USTDA is prohibited from receiving genetic information about you. USTDA will not request any genetic information about you and will affirmatively notify you and your the health care provider not to give USTDA any genetic information.

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-4A, HIPAA-Compliant Authorization for Release of Medical Records and Information for Analysis Concerning Disability and Reasonable Accommodation Request** or a **Form ADA-4B, HIPAA-Compliant Authorization for Release of Psychotherapy Records and Information for Analysis Concerning Disability and Reasonable Accommodation Request**. USTDA will bear the 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 Director 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.

6. The EEO Director, in consultation with the appropriate Agency officials, is responsible for making the final decision on reasonable accommodation requests.

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

During the time period between making your request for reasonable accommodation and USTDA's decision, USTDA will explore whether there are temporary measures that could be taken to assist you.

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.

4. Once a reasonable accommodation request is approved, USTDA will strive to provide you the accommodation within thirty (30) calendar days of such approval. Based on the nature of the accommodation, USTDA may need additional time. In the event of a delay in providing the accommodation, USTDA will explore whether there are temporary measures that could be taken to assist you.

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 that the Agency must provide, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position he or she holds. Reassignment is a "last resort" accommodation that USTDA will consider if there are no effective accommodations that would enable the employee to perform the essential functions of his or her current job, or if all other possible accommodations would impose undue hardship.

In considering whether there are positions available for reassignment, the EEO Director will consult with Agency senior management, work with supervisors, other relevant Agency employees and the individual requesting the accommodation to identify (1) all vacant positions within the Agency for which the employee may be qualified, with or without reasonable accommodation; and (2) all positions that the Agency has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. The EEO Director, as the decision maker, will first focus on positions that are equivalent to the employee's current job in terms of pay, status and other relevant factors. If there is no vacant equivalent position, the EEO Director will consider vacant lower level positions for which the individual is qualified. The EEO Director will further consult with the individual requesting the accommodation to determine (1) whether there are limits on the search of positions within the Agency that the employee would like the Agency to

conduct; (2) whether the employee is qualified for a particular job; and (3) whether the employee would need a reasonable accommodation to perform the essential functions of a new position.

As USTDA is a small agency, it may not be possible to locate a vacant position at the employee's same or lower grade level for which he or she is qualified. Also, due to the Agency's limited human resources it is likely that reassignment may impose an undue burden on the Agency, and therefore may be unavailable as a reasonable accommodation. An employee's 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 or to find a new position for the employee outside of the Agency. 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 Director reconsider the decision. The EEO Director 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 Director'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 Agency Director. The Agency 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 Director, the Office of General Counsel, the Agency 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 Director 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 Will USTDA Treat Genetic Information about me that USTDA may Receive in Relation to My Reasonable Accommodation Request?

Pursuant to the Genetic Information Nondiscrimination Act of 2008 ("GINA"), USTDA is prohibited from requesting, requiring or purchasing genetic information about you. In some instances, however, USTDA may inadvertently receive genetic information about you, including as part of medical documentation provided to USTDA following your request for reasonable accommodation. USTDA will not specifically request any genetic information about you from you or your health care provider and will affirmatively notify you and your the health care provider not to give USTDA any genetic information (see model notification language below). If, despite notification to you and your health care provider to the contrary, USTDA nonetheless receives genetic information about you, such information will be treated subject to the same confidentiality and nondisclosure standards as USTDA treats all medical information. Pursuant to GINA, USTDA is prohibited from discriminating against you on the basis of your genetic information in regard to hiring, discharge, compensation, terms, conditions or privileges of your employment.

The following notice, derived from the regulations implementing GINA, will accompany all USTDA requests for medical information:

> *The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.*

D. *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.

E. *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 number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment and whether those requests have been granted or denied;

f. the sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations;

g. The reasons for denial of requests for reasonable accommodation; and

h. 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 (including pursuant to the Americans with Disabilities Act Amendments Act of 2008), 42 USC § 1201, *et. seq.*, 29 CFR § 1630, *et. seq.*
Genetic Information Nondiscrimination Act of 2008, 42 USC § 2000ff, *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 under the Americans with Disabilities Act

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.

"Disability" is to be interpreted in favor of broad coverage.

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

(1) 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.
(2) A major life activity also includes the operation of a major bodily function, 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 may include the operation of an individual organ within a body system. This would include, for example, the operation of the kidney, liver, pancreas, or other organs.

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 body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as intellectual disability (formerly termed "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.

(6) Reasonable accommodation is not available to someone only covered under the "regarded as" prong of the definition of "disability."

Regarded as having such an impairment

An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to a prohibited discriminatory action because of an actual or perceived physical or mental impairment whether or not the impairment substantially limits or is perceived to substantially limit a major life activity (does not apply to impairments that are transitory and minor; a transitory impairment is an impairment with an actual or expected duration of 6 months or less).

Substantially limits

(1) 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 (using a common-sense, individualized analysis without scientific or medical evidence). "Substantially limits" is not meant to be a demanding standard and is to be construed in favor of broad coverage.

a. An impairment need not prevent, or significantly or severely restrict, performance of a major life activity to be "substantially limiting." However, not every impairment will constitute a disability.

b. An impairment need not substantially limit more than one major life activity.

c. Positive effects of mitigating measures (except for ordinary eyeglasses and contact lenses) are ignored in determining whether an impairment is substantially limiting.

(i) Examples of mitigating measures include medication, medical supplies, equipment, or appliances, low-vision devices, prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; learned behavioral or adaptive neurological modifications; or psychotherapy, behavioral therapy, or physical therapy.

(ii) Ordinary eyeglasses and contact lenses are lenses "intended to fully correct visual acuity or eliminate refractive error."

(iii) Low vision devices are devices that magnify, enhance, or otherwise augment a visual image.

(iv) Auxiliary aids and services include the following: qualified interpreters or other effective methods of making aurally delivered

materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices; and other similar services and actions.

d. Episodic impairments or those in remission are nonetheless considered a disability if they would otherwise constitute a disability when active. Examples of impairments that are episodic or in remission include epilepsy, hypertension, multiple sclerosis, asthma, diabetes, major depression, bipolar disorder, schizophrenia and cancer.

(2) Examples Illustrating Definition of Substantially Limited

a. Examples of impairments that should easily be concluded to be disabilities include autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, and a variety of mental impairments.

b. An impairment may still be substantially limiting even if it lasts or is expected to last fewer than 6 months, such as a 20-pound lifting restriction lasting several months.

c. In the rare cases where an individual has a need to demonstrate that an impairment substantially limits him or her in working, the individual can do so by showing that the impairment substantially limits his or her ability to perform a class of jobs or broad range of jobs in various classes as compared to most people having comparable training, skills, and abilities.

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); (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); and (6) *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act* (2002).

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.

Attachment D

Forms

See the following attached forms:

Form	Purpose
FORM ADA-1: Confirmation of Request for Reasonable Accommodation	Use to record an initial request for reasonable accommodation or to confirm an oral request for reasonable accommodation.
FORM ADA-2A: HIPPA-Compliant Release for Medical Records and Information Concerning Disability and Reasonable Accommodation Request	To be given by a requester of reasonable accommodation to his healthcare provider to release medical records to USTDA (excludes psychotherapy records as per HIPPA).
FORM ADA-2B: HIPPA-Compliant Release for Psychotherapy Records and Information Concerning Disability and Reasonable Accommodation Request	To be given by a requester of reasonable accommodation to his healthcare provider to release medical records to USTDA (applies only to psychotherapy records as per HIPPA).
FORM ADA-3: Medical Questionnaire Concerning Disability and Reasonable Accommodation Request	To be given by USTDA to a healthcare provider assisting USTDA in determining whether to grant a request for reasonable accommodation.
FORM ADA-4A: HIPAA-Compliant Authorization for Release of Medical Records and Information for Analysis Concerning Disability and Reasonable Accommodation Request	To be given by a requester of reasonable accommodation to USTDA to allow USTDA to release medical records to a healthcare provider assisting USTDA in determining whether to grant a request for reasonable accommodation (excludes psychotherapy records as per HIPPA).
FORM ADA-4B: HIPAA-Compliant Authorization for Release of Psychotherapy Records and Information for Analysis Concerning Disability and Reasonable Accommodation Request	To be given by a requester of reasonable accommodation to USTDA to allow USTDA to release medical records to a healthcare provider assisting USTDA in determining whether to grant a request for reasonable accommodation (applies only to psychotherapy records as per HIPPA).

U.S. TRADE AND DEVELOPMENT AGENCY

FORM ADA-1:
Confirmation of Request for Reasonable Accommodation

Name: _____ ☐ Employee ☐ Applicant *(check one)*

Date of Original Request: _____ ☐ Verbal ☐ Written *(check one)*

Answer the questions in this box only if you are an applicant—

Vacancy No. (if applicable): _____

Address: _____

Telephone: _____ Email: _____

1. Reason for request:

_____

_____

_____

_____

_____

2. Accommodation requested (be as specific as possible—e.g., interpreter, adaptive equipment, reader, etc.):

_____

_____

_____

_____

_____

3. If accommodation is time-sensitive, please explain:

_____

_____

_____

_____

_____

☐ **Medical Documentation Attached.**

Note: You do not have to attach medical documentation to this request to invoke your rights to reasonable accommodation. USTDA may only request medical documentation supporting a request for reasonable accommodation if your disability and/or need for accommodation is not obvious.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II, including USTDA, from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, please do not provide any genetic information when disclosing medical information to USTDA. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

_____

Requester's Signature

_____

Date

U.S. TRADE AND DEVELOPMENT AGENCY

FORM ADA-2A:
HIPPA-Compliant Release for Medical Records and Information Concerning Disability and Reasonable Accommodation Request

TO: MY HEALTH CARE PROFESSIONAL(S)

In accordance with 45 C.F.R. § 164.508, you are permitted to give to the U.S. Trade and Development Agency (USTDA) and any of its employees copies of all my medical records and information since _____ as it relates to my request for reasonable accommodation. Specifically, this means all my medical records; physician's notes; notes other than psychotherapy notes; test and laboratory results; MRI films; CT scans; x-ray films; all radiologic films and accompanying written reports; pharmacy records; bills and charges; and any other information regarding my examination, evaluation, care and treatment. You may give this information regardless of whether it is written or in the form of electronic data, microfiche, microfilm, radiologic film or any other form.

I am signing this authorization so that USTDA will be able to properly analyze my request for reasonable accommodation. This release is valid and does not expire until the request has been granted or denied and in the latter case, until all appeals processes have ended. I understand that I have the right to revoke this authorization by sending a letter to the EEO Director, U.S. Trade and Development Agency, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209-3901, requesting that this authorization no longer be used or by directing my attorney to send a letter to the above-named person requesting the same on my behalf. In the event that I choose to change my mind and revoke this authorization, I understand that my letter will stop USTDA from requesting additional records with this release and sharing the records with others involved in evaluating my reasonable accommodation request, only after receipt of my letter. Finally, I understand that my treatment, payment, enrollment in any health plan, or eligibility for benefits may not be and are not conditioned upon my agreeing to sign this authorization. USTDA may only request medical documentation supporting a request for reasonable accommodation when the disability and/or need for accommodation is not obvious. A copy of this authorization shall be as valid as the original thereof.

Please note that the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II, including USTDA, from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, please do not provide any genetic information when disclosing medical information to USTDA. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member

sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

_____
Print Name of Patient/Employee

_____
Signature **Date**

_____
Date of Birth

U.S. TRADE AND DEVELOPMENT AGENCY

FORM ADA-2B:
HIPPA-Compliant Release for Psychotherapy Records and Information Concerning Disability and Reasonable Accommodation Request

TO: MY MENTAL HEALTH CARE PROVIDER(S)

In accordance with 45 C.F.R. §§ 164.508(a)(2) and (b)(3)(ii) you are permitted to give the U.S. Trade and Development Agency (USTDA) and any of its employees copies of all my psychotherapy notes since _____. You should give this information regardless of whether it is written, in the form of electronic data on cassette, microfiche, microfilm or any other form. This authorization does not permit you to confer with any employee of USTDA about any substantive matters unless I or my attorney is present.

I am signing this authorization so that USTDA will be able to properly analyze my request for reasonable accommodation. This release is valid and does not expire until the request has been granted or denied and in the latter case, until all appeals processes have ended. I understand that I have the right to revoke this authorization by sending a letter to the EEO Director, U.S. Trade and Development Agency, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209-3901, requesting that this authorization no longer be used or by directing my attorney to send a letter to the above named person requesting the same on my behalf. In the event that I choose to change my mind and revoke this authorization, I understand that my letter will stop USTDA from requesting additional records with this release and sharing the records with others involved in evaluating my reasonable accommodation request, only after receipt of my letter. Finally, I understand that my treatment, payment, enrollment in any health plan, or eligibility for benefits may not be and are not conditioned upon my agreeing to sign this authorization. USTDA may only request medical documentation supporting a request for reasonable accommodation when the disability and/or need for accommodation is not obvious. A copy of this authorization shall be as valid as the original thereof.

_____
Print Name of Patient/Employee

_____
Signature **Date**

_____
Date of Birth

U.S. TRADE AND DEVELOPMENT AGENCY

FORM ADA-3:
Medical Questionnaire Concerning Disability and Reasonable Accommodation Request

Name of Patient/Employee: _____

INSTRUCTIONS TO HEALTH CARE PROVIDER:

Included with this form is also a HIPAA-compliant release for medical information concerning the above-named patient/employee. The above-named patient/employee has made a request to the U.S. Trade and Development Agency (USTDA) for reasonable accommodation due to a disability. In order to properly review and analyze the request, please complete the questions listed below. If you feel that you need more space to answer questions (by attaching more complete answers on additional pages) or would like to attach medical documentation to support your statements below, please feel free to do so. Note that USTDA may only request medical documentation supporting a request for reasonable accommodation when the disability and/or need for accommodation is not obvious.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II, including USTDA, from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, please do not provide any genetic information when disclosing medical information to USTDA. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Please answer the questions below regarding the above-named patient/employee:

1. Does the patient/employee have a relevant medical impairment? If so, what is the nature of the impairment and what is your diagnosis?

_____

_____

_____

_____

_____

2. Does the impairment limit any major life activity(ies)? If so, what major life activity(ies) does it limit and how does it limit it?

_____

_____

_____

_____

_____

3. Is the limitation substantial (i.e., limiting when compared to the abilities of most people)?

_____

_____

_____

_____

_____

4. List any reasonable accommodations you believe would assist in relieving any workplace barriers to the employee performing the essential functions of his/her job.

_____

_____

_____

_____

_____

5. Is there any other medical information that would assist USTDA in determining whether or not to grant the employee's reasonable accommodation request?

_____

_____

_____

_____

_____

_____

Printed Name of Health Care Professional

Signature of Health Care Professional **Date**

Address of Health Care Professional

Phone Number of Health Care Professional

U.S. TRADE AND DEVELOPMENT AGENCY

FORM ADA-4A:
HIPAA-Compliant Authorization for Release of Medical Records and Information for Analysis Concerning Disability and Reasonable Accommodation Request

TO: U.S. TRADE AND DEVELOPMENT AGENCY

You are permitted to give _____ (the "Authorized Recipient") and any of its employees copies of all my medical records and information since _____ as it relates to my request for reasonable accommodation, in accordance with 45 C.F.R. § 164.508. Specifically, this means all my medical records; physician's notes; notes other than psychotherapy notes; test and laboratory results; MRI films; CT scans; x-ray films; all radiologic films and accompanying written reports; pharmacy records; bills and charges and any other information regarding the examination, evaluation, care and treatment of myself that I provided previously to the U.S. Trade and Development Agency (USTDA). You may give this information to the Authorized Recipient regardless of whether it is written or in the form of electronic data, microfiche, microfilm, radiologic film or any other form.

I am signing this authorization so that USTDA will be able to properly analyze my request for reasonable accommodation. This release is valid and does not expire until the request has been granted or denied and in the latter case, until all appeals processes have ended. I understand that I have the right to revoke this authorization by sending a letter to the EEO Director, U.S. Trade and Development Agency, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209-3901, requesting that this authorization no longer be used or by directing my attorney to send a letter to the above-named person requesting the same on my behalf. In the event that I choose to change my mind and revoke this authorization, I understand that my letter will stop USTDA from sharing my aforementioned medical records with the Authorized Recipient, only after receipt of my letter. Finally, I understand that my treatment, payment, enrollment in any health plan, or eligibility for benefits may not be and are not conditioned upon my agreeing to sign this authorization. USTDA may only request medical documentation supporting a request for reasonable accommodation when the disability and/or need for accommodation is not obvious. A copy of this authorization shall be as valid as the original thereof.

_____
Print Name of Patient/Employee

_____
Signature **Date**

_____
Date of Birth

U.S. TRADE AND DEVELOPMENT AGENCY

FORM ADA-4B:
HIPAA-Compliant Authorization for Release of Psychotherapy Records and Information for Analysis Concerning Disability and Reasonable Accommodation Request

TO: U.S. TRADE AND DEVELOPMENT AGENCY

You are permitted to give _____ (the "Authorized Recipient") and any of its employees copies of all my psychotherapy notes since _____ as it relates to my request for reasonable accommodation, in accordance with 45 C.F.R. §§ 164.508(a)(2) and (b)(3)(ii). You may give this information to the Authorized Recipient regardless of whether it is written, in the form of electronic data on cassette, microfiche, microfilm or any other form.

I am signing this authorization so that USTDA will be able to properly analyze my request for reasonable accommodation. This release is valid and does not expire until the request has been granted or denied and in the latter case, until all appeals processes have ended. I understand that I have the right to revoke this authorization by sending a letter to the EEO Director, U.S. Trade and Development Agency, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209-3901, requesting that this authorization no longer be used or by directing my attorney to send a letter to the above named person requesting the same on my behalf. In the event that I choose to change my mind and revoke this authorization, I understand that my letter will stop USTDA from sharing my aforementioned medical records with the Authorized Recipient, only after receipt of my letter. Finally, I understand that my treatment, payment, enrollment in any health plan or eligibility for benefits may not be and are not conditioned upon my agreeing to sign this authorization. USTDA may only request medical documentation supporting a request for reasonable accommodation when the disability and/or need for accommodation is not obvious. A copy of this authorization shall be as valid as the original thereof.

_____
Print Name of Patient/Employee

_____
Signature **Date**

_____
Date of Birth

APPENDIX III

U.S. Trade and Development Agency
EEO Staff Members
As of January 2016

EEO Director:	Carolyn Hum (703-875-4296)
EEO Counselor:	Lisa Coppe (703-516-1944)
EEO Counselor:	Keith Eischeid (703-875-4060)
ADR Program Manager:	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 statues 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, of 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 Manager.** This person manages USTDA's ADR Program. The ADR Program Manager 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 Manager 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 Manager will provide information about the EEO complaint process to you. In particular, the ADR Program Manager 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 Manager has explained the mediation process and obtained all the relevant information about the dispute, the case file will be forwarded to the Agency Director. After review of the case file and consultation with the parties concerned, the Agency 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 Agency Director on a case-by-case basis. However, the Agency Director will not accept matters that, in the Agency 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 Agency 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 Agency 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 Manager. The mediator will contact the parties promptly upon receipt of the assignment.

Mediations may be conducted in-person or by telephone, if the Agency 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 Agency 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 Manager 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 Manager.

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 Manager. 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 Agency Director, before they become final. The ADR Program Manager 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 Manager, 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 Agency Director, ADR Program Manager 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 Manager 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 Manager 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 Manager 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.

Americans with Disabilities Act Amendments Act of 2008, PL 110-325, amends the American with Disabilities Act of 1990 (ADA), 42 U.S.C. Chapter 126, to, among other things, expand the number of individuals protected under the ADA.

The Genetic Information Nondiscrimination Act of 2008, PL 110-233, 42 USC § 2000ff, *et. seq.*, prohibits discrimination against applicants or employees as a result of genetic information, and prohibits employers from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by law.

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