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

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

I. Introduction

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, disability, or genetic information. USTDA further believes that in order to ensure equal employment opportunity, the workplace must be free from unlawful discrimination, harassment and retaliation. Accordingly, the goal of USTDA's Equal Opportunity Policy ("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; and
- Policy Prohibiting Sexual Harassment.

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, disability, sexual orientation, gender identity and expression, or genetic information (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, disability, sexual orientation, gender identity and expression, or genetic information, in the employment, development, advancement or treatment of employees or applicants.

2. All employees, without regard to race, color, religion, national origin, sex, age, disability, sexual orientation, gender identity and expression, or genetic information, 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 the ability to proceed before the EEOC. 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. 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.

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. USTDA will not specifically request any genetic information from an applicant or employee or his/her health care provider. USTDA treats all medical information with the same confidentiality and nondisclosure standards (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, disability, sexual orientation, gender identity and expression, or genetic information, 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, disability, sexual orientation, gender identity and expression, or genetic information. 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, disability, sexual orientation, gender identity and expression, genetic information, 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 USTDAs 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 they are being harassed, retaliated or discriminated against, or have 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 they have been subjected to discrimination, harassment or retaliation can enforce their rights in accordance with the complaint reporting procedures described below.

Confidentiality. USTDAs 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 USTDAs obligation to conduct a thorough and reasonable investigation. Employees are expected to fully cooperate in any such investigations.

Retaliation. USTDAs 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 their 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, they should discuss it with their supervisor. The simplest, quickest and most satisfactory solution will often be reached at this level. If an employee desires to initiate a discrimination complaint, they 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. Employees who believe they may have been subjected to illegal discrimination or retaliation, should promptly contact an EEO Counselor. This begins the EEO process.

B. Employees 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. Employees 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 the employee 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 the employee in writing of their 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 Right to File. The EEO Counselor must complete the initial investigation within 30 days of the date the employee initially contacted the EEO Counselor to request counseling. If the matter is not resolved in that time period, the EEO Counselor must conduct a final interview and advise the employee in writing of their right to file a formal discrimination complaint (the “Notice of Right to File (NORTF)”). Employees have fifteen (15) days to file a formal complaint after receipt of the NORTF in order to retain their rights.

G. The 30-day counseling period may be extended for an additional 60 days if: (1) the employee agrees to such extension in writing; or (2) the employee chooses to participate in an Alternative Dispute Resolution procedure (described below).

H. If the claim is not resolved before the 90th day after the employee’s initial contact with the EEO Counselor, the NORTF described above must be issued to the employee.

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. Employees may choose between participation in the ADR process or the EEO counseling/complaint process; however, they 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 the employee’s initial contact with the EEO Counselor, a final interview must be conducted and an NORTF must be issued to the employee, allowing them to proceed with a formal complaint.

E. If the employee enters into the ADR process 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 II 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 NORTF.

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, the employee has the right to be accompanied, represented or advised by a representative of their choice. If necessary, the employee will be allowed a reasonable amount of official time to prepare the complaint. Employees must request official time in advance and in writing and specify that the time requested is for preparing an EEO complaint. The employee's supervisor will consider the employee's work situation in scheduling/approving such requests and will make every effort to reasonably accommodate their 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 the employee 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. This record is called the Report of Investigation (ROI).
B. The ROI 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 ROI must be provided to the employee. Within 30 days of receipt of the file, the employee has 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. Employees 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 or appeal it to the EEOC’s Office of Federal Operations (OFO).

Reporting Structure; Outsourcing of Formal Complaint Process

Due to USTDA’s small size, the EEO Director also acts as the Administrative Officer. While the Administrative Officer is responsible for overseeing the execution of the Agency’s human resources function, the Agency’s human resources function has been entirely outsourced to the Interior Business Center of the Department of Interior. Additionally, USTDA has established a clear distinction between the Administrative Officer’s human resources oversight 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 Director of Management Operations 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 II 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 Director, 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. 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.

Thomas R. Hardy  
Director (Acting)  
Date 23 January 2020
APPENDICES

I. Policy Prohibiting Sexual Harassment  
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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
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, or if a full public record of the proceeding is important. In addition, the following types of disputes would be ineligible for resolution under USTDA’s ADR program:

A. Issues under investigation by the Office of Personnel Management (OPM), the Office of Special Counsel, or state and federal police agencies;

B. Issues over which EEOC does not have jurisdiction;

C. Cases of egregious misconduct (e.g., threats of violence);

D. Issues that are the subject of an EEO class complaint; and

E. Disputes involving applicants for employment, except when the applicant has requested ADR during the EEO complaint process.
III. **Definitions**

A. **Alternative Dispute Resolution (ADR).** A variety of techniques, methods, or processes involving a neutral third party, which are used as alternatives to the traditional dispute resolution processes. ADR includes but is not limited to the following ADR techniques: mediation; early neutral evaluation; mini trial; and arbitration. Although it is USTDA's policy to use mediation as the preferred method of ADR, another ADR process may be selected if the Agency determines that it is appropriate, and the parties concerned agree.

B. **ADR Program 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. The Director of Management Operations serves as USTDA's ADR Program Manager.

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 ADR Program Manager will consult with the Agency Director to determine 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 III

U.S. Trade and Development Agency
EEO Staff Members
As of January 2020

EEO Director: Lisa Lawn (703-875-4296)
EEO Counselor: Lisa Coppe (703-516-1944)
EEO Counselor: Keith Eischeid (703-875-4060)
ADR Program Manager: Matt Cox (703-875-4357)
APPENDIX IV

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.

**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](http://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:**


**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 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.

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

   900 E. Main Street  
   Pocahontas Building, 4th Floor  
   Richmond, VA 23219  
   Tel: 804.225.2292