



U.S. TRADE AND DEVELOPMENT AGENCY

Reasonable Accommodation Policy

January 2020

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 and qualified job applicants have equal access to employment opportunity. 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 to an otherwise qualified individual with: (1) a physical or mental impairment that substantially limits a major life activity (actual disability); or (2) a record of physical or mental impairment that substantially limits a major life activity (record of), 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. Other than as specifically set forth in this policy, USTDA will maintain any requests for and provisions of reasonable accommodation confidential. These procedures and all attached forms referenced are available to job applicants and employees in written and accessible formats.

II. Understanding Reasonable Accommodation

A. What Is Reasonable Accommodation?

1. A reasonable accommodation is a change to the work environment or in the way things are customarily done 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 either: (1) a physical or mental impairment that substantially limits a major life activity (actual disability); or (2) a record of physical or mental impairment that substantially limits a major life activity (record of) who needs reasonable accommodation to perform the essential functions of their job is entitled to reasonable accommodation. These procedures apply to all applicants for employment and employees, as defined by applicable federal laws, regulations, and USTDA policies and procedures, but do not apply to contract personnel, who are covered in the Federal Acquisition Regulation (FAR), subpart 22.14.

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 they need a 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. You may make a request for a reasonable accommodation to your immediate supervisor orally or in writing. Additionally, you may make the request to the Reasonable Accommodation Manager (RAM), who is USTDA's Reasonable Accommodation deciding official. The RAM is functionally USTDA's Director of Management Operations (DMO), reachable at 703-875-4357.

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 RAM.

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

For Supervisors: The request does not have to include any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." If the nature of the initial accommodation request is unclear, the supervisor may seek clarification from the requestor to determine whether a reasonable accommodation is being sought. Notwithstanding, the supervisor may not ask the requestor to disclose the underlying medical condition for which the accommodation is sought.

For Requestors: 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 may be made orally or in writing at any time. 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. Your request will be considered initiated as of the date you make the oral or written request, not necessarily the date you submit the Form ADA-1 to the Agency. However, any delays in submitting information requested by the Agency may also prolong the decision and or implementation.

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.

All reasonable accommodation forms, **ADA-1, ADA-2A, ADA-2B, ADA-3, ADA-4A, and ADA-4B**, are available as attachments to this policy and in a format that is accessible to individuals with disabilities.

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

B. How Is My Request Processed?

1. If the 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 processed as soon as possible.
2. If the accommodation requested requires more than a slight adjustment, then the request process will involve an interactive process with you and management to determine the most appropriate resolution.
3. Where an employee has requested a type of reasonable accommodation that they are 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 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 accommodation request. Also, you have the right to refuse requests for medical information where the need for accommodation is obvious or if you have previously provided the Agency with enough 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 a 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 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 because 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 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. USTDA has the right to request relevant supplemental medical information if the first submission does not provide enough information to substantiate a disability and the need for a reasonable accommodation. The Equal Employment Opportunity Commission allows employers to ask employees requesting reasonable accommodation to sign a limited medical release (subject to paragraph 4 below), which enables the employer to submit a list of medical questions to the employee's treating health care professional. For this reason, USTDA 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**. Failure to cooperate with USTDA in this process may constitute bad faith participation in the interactive process and result in denial of your reasonable accommodation request.
4. USTDA may only request medical documentation supporting your request for accommodation when your disability and/or need for accommodation is not obvious.
5. As further explained in Section VIII(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 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 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 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, 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. Submission of the ADA-2A, ADA-2B, ADA-4A, and ADA-4B may be required whenever medical information is requested or may be limited to specific supplemental requests for medical information, depending on the situation. Requests for medical information are limited to information that is enough to substantiate the disability and the need for reasonable accommodation.
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 may discuss possible accommodations. Management may ask you any relevant questions to help it understand your situation and render 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 several factors, including, the nature of the accommodation and whether it is necessary to obtain supporting medical information, the requestor's active and timely participation in the process, the procurement process, and the hiring process. This policy allows USTDA up to thirty (30) days to provide a decision, absent extenuating circumstances. The Agency will strive to resolve all reasonable accommodation requests as soon as practical.
2. Also contributing to the length of the interactive process are 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. It may be necessary for the agency to suspend the timeframe for processing the request while waiting for the requestor to provide documentation, however the Agency cannot indefinitely

suspend the timeframe while it determines the sufficiency of the documentation provided and will make every effort to approve or deny a request within 30 days. 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 the requestor's duty to expedite provision of any relevant information management requests. A requestor's failure to actively participate in the processing of a reasonable accommodation request or provide timely responses to the RAM's request for pertinent information (typically within 10 business days from the date of request), may result in the denial of the request. If a requestor is denied due to the requestor's non-responsiveness, the requestor may reinstate the request at any time. However, the process will start over from the beginning.

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.* When extenuating circumstances exist, a decision will be made within a reasonable period after the initial thirty (30) day guideline, while striving to process all reasonable accommodation requests as quickly as practical. 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 RAM must notify the requestor 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 RAM, 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?

When all facts and circumstances are provided to the Agency and it is likely that the employee qualifies for a reasonable accommodation, USTDA will determine an interim accommodation, if it is possible to do so without

imposing undue hardship on the agency, that can be made to allow you to perform some or all of the essential functions of your job until a final decision has been made..

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 to provide a cost-effective solution, as long as that solution will effectively remove the barrier giving rise to the reasonable accommodation request. Decisions on requests for reasonable accommodation cannot be based solely on cost, and individuals with disabilities are not excluded from employment due to the anticipated cost of a reasonable accommodation, provided that resources are available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation.
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 entirely, 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 an 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 for which an employee is qualified 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 they hold. 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 supervisor and requesting employee may search for potential reassignment opportunities by: (1) contacting the Agency Human Resources liaison for potential reassignment opportunities; and (2) reviewing competitive job announcements on USAJobs. The RAM will 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 RAM, 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 RAM will consult with the USTDA Executive Team, who may be aware of possible pre-decisional opportunities and/or consider vacant lower level positions for which the individual is qualified. The RAM will further consult, as appropriate, with the individual requesting the accommodation to determine: (1) whether the employee is qualified for a particular job; and (2) whether the employee would need a reasonable accommodation to perform the essential functions of a new position. The RAM is the point of contact on utilizing reassignment as reasonable accommodation.

USTDA will make every effort to provide a vacant position as a reasonable accommodation, whenever possible when it is determined that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position. 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. However, if the request for accommodation is denied, the RAM will issue a written decision with a basis for denial, at the time of the denial. This notice will be provided in an accessible format, upon request.
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 RAM reconsider the decision. The RAM 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 RAM'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 period afterwards.
3. If you believe that you have been discriminated against in the denial of your reasonable accommodation request and based on 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.

VI. Personal Assistance Services

A. What are Personal Assistance Services?

The term personal assistance service means assistance with performing activities of daily living that an individual would typically perform if they did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom.

B. What are the Procedures for Processing Requests for Personal Assistance Services?

The process for requesting personal assistance services, the process for determining whether such services are required, and the agency's right to deny

such requests when provision of the services would pose an undue hardship, are the same as for reasonable accommodations, as outlined in this policy and procedures.

VII. 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 they have 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 a 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.

VIII. 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 RAM, the Office of General Counsel, the Agency Director, and any medical provider contracted to assist in rendering 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 RAM 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 RAM will maintain the confidential files for the duration of your employment with USTDA, and the only persons entitled to access 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 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 based on 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?

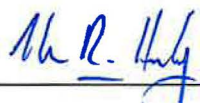
Your medical documentation will be kept for the duration of your employment, as allowed by federal law.

E. Tracking

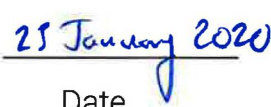
Employees and job applicants may track the processing of their requests for reasonable accommodation by contacting the RAM, who is the agency's sole deciding official.

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.



Thomas R. Hardy
Director (Acting)



Date

APPENDICES

- A. Legal Authorities
- B. Definitions under the Americans with Disabilities Act
- C. Selected Reasonable Accommodation Resources
- D. Index of USTDA Reasonable Accommodation Forms

Appendix 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 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).

Appendix 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.

Interactive process

Proactive, informal process by which the employee and management communicate with each other to determine how best to respond to a reasonable accommodation request. During the interactive process, management will analyze job functions to establish essential and nonessential job tasks, identify barriers to job performance, consult with the employee to learn his or her precise limitations and discover the types of accommodations that would be most effective.

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 (3) of the definition of "disability" detailed above.

Regarded as having such an impairment

An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that they have 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.

Appendix 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 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 exchanges and recycling programs.

Appendix D

Forms

Index of USTDA Reasonable Accommodation forms:

<u>Form</u>	<u>Purpose</u>
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).