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# ADS Chapter 110 Equal Employment Opportunity

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 ADS 110 - Equal Employment Opportunity  
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## ADS 110 - Equal Employment Opportunity

### 110.1 OVERVIEW

Effective Date: 10/03/2005

This chapter sets forth the authority, responsibilities, and procedures under which the U.S. Agency for International Development (USAID) manages complaints of discrimination in employment based on race, color, religion, national origin, physical or mental disability, sex, age, sexual orientation, or reprisal. The chapter also delineates the policy directives, required procedures, and external regulations under which USAID conducts a continuing affirmative program for equal opportunity in employment and personnel management.

### 110.2 PRIMARY RESPONSIBILITIES

Effective Date: 10/03/2005

All levels of Agency management must be responsible and will be held accountable for the successful implementation of USAID's equal opportunity program goals and objectives. Supervisory and managerial performance is evaluated annually on these and other major Agency objectives. Specific responsibilities for the various components of the program follow.

**a. The USAID Administrator is responsible for**

- (1) Exercising statutory responsibility for the development, maintenance, and implementation of the USAID equal opportunity programs and policies as required by law, rule, and regulation;
- (2) Establishing and maintaining an affirmative program of equal employment opportunity for all civilian employees and applicants for employment;
- (3) Designating a Director of Equal Opportunity Programs (D/EOP) under the Administrator's immediate supervision to assist in carrying out the functions of this directive in all USAID organizational units and locations; and
- (4) Exercising equal employment opportunity (EEO) program oversight responsibility and assuming jurisdiction over the processing of discrimination complaints against the D/EOP and employees under his or her direct supervision. The assumption of jurisdiction is subject to the Administrator's discretion so as to preclude a conflict of interest.

**b. The Director of Equal Opportunity Programs (D/EOP)**

The Administrator designates the D/EOP to be responsible for equal employment opportunity (EEO) within the Agency and delegates authority from, and on behalf of, the Administrator to manage EEO programs, including the following functions and

responsibilities:

- (1) Implement, administer, and monitor anti-discrimination laws, regulations, Executive Orders, procedures, and programs applicable to the Agency, its employees and applicants for employment, and beneficiaries of USAID Federal financial assistance;
- (2) Manage the Agency's Federal discrimination complaints process, including EEO counseling, dispute resolution, investigations, settlements and remedial actions (where warranted), determinations as to the merits of EEO complaints, and issuance of Final Agency Decisions on such matters;
- (3) Ensure that Final Agency Decisions and representations to the U.S. Equal Employment Opportunity Commission (EEOC) are consistent with legal requirements and precedents and are legally sufficient, consulting with the Office of General Counsel in this regard;
- (4) Evaluate periodically the total Agency program of equal opportunity and civil rights, including recommendations of any improvement or correction needed, and any remedial or disciplinary actions that should be initiated against USAID employees found to have failed in their responsibilities or found to have engaged in illegal discriminatory practices, or against any beneficiary of USAID financial assistance found in violation of anti-discrimination provisions;
- (5) Advise the Administrator on the status of USAID's EEO programs and on significant issues and activities that have an impact and that warrant change, modification, or clarification;
- (6) Ensure that personnel operations and other program activities conform to regulations governing equal opportunity and prohibited discrimination in employment and Federal financial assistance programs;
- (7) Ensure that managers, supervisors, and employees know and understand USAID policies and programs prohibiting discrimination and denial of reasonable accommodation for religious needs and for persons with qualified mental and physical disabilities;
- (8) Review, evaluate, and influence managerial and supervisory performance to ensure a continuing affirmative application and vigorous enforcement of EEO policy;
- (9) Provide orientation, training, and advice to facilitate compliance and cooperation with EEO laws and policies; and
- (10) Provide recognition to employees, supervisors, managers, and organizational units demonstrating superior accomplishment in equal

employment opportunity.

**c. Bureau/Office Heads and Mission Directors**

Bureau/Office Heads and Mission Directors are responsible for assisting the D/EOP in carrying out the EEO program within their organizational components. While each director will be held accountable for program results, authority for EEO program management may be redelegated to a level no lower than principal deputy, in order to carry out the following functions:

- (1) Maintain liaison with the D/EOP on all EEO matters;
- (2) Ensure complete fairness in the selection, assignment, promotion, training, and evaluation of personnel within their organizational units;
- (3) Exercise authority and responsibility for the prevention of sexual harassment and for correcting the conduct of their employees when sexual harassment occurs;
- (4) Provide guidance and assistance to all supervisory personnel within their respective organizations in carrying out their responsibilities in implementing USAID's equal opportunity program; and
- (5) Evaluate personnel practices within their respective organizational units, and hold supervisory personnel accountable, to ensure continuing conformity to USAID's equal opportunity program.

**d. Deputy Director of EOP (Complaints Adjudication Manager)**

The Deputy Director of EOP assists the D/EOP in all delegated tasks listed above. The Deputy Director

- (1) Coordinates and monitors the Complaints Adjudication Program, including the selection, training, and supervision of collateral duty EEO Counselors as they perform the duties described in [29 CFR 1614.105](#) and in [EEOC Management Directive 110, Chapter 2](#)
- (2) Implements the Alternative Dispute Resolution/Mediation program in select EEO complaints, consistent with [29 CFR 1614.102](#) and [105](#), as well as [EEOC Management Directive 110, Chapter 3](#); and
- (3) Participates in the Senior Management Group (SMG) subcommittee as it recommends which officers are assigned to SMG positions.

**e. Affirmative Employment Program (AEP) Manager**

The AEP Manager is responsible for managing, planning, developing, and monitoring USAID affirmative employment programs. These required activities include

- (1) Preparing the Agency's affirmative action plans for internal application and external review, including submission to EEOC for evaluation;
- (2) Maintaining and using effectively EEO data systems to support and implement equal opportunity programs;
- (3) Coordinating with the Office of Human Resources and other program officials to ensure compliance with USAID commitments on recruitment and employment activities;
- (4) Supervising the special emphasis employment programs for Asian/Pacific Americans, African Americans, Hispanic Americans, Native Americans, women, and employees with disabilities; and
- (5) Analyzing and evaluating Agency and related employment trends in order to assist in EEO policy development and implementation.

The AEP Manager also chairs the Agency's Disability Review Committee, discussed in section 110.3.6.

**f. The Office of Equal Opportunity Programs (EOP)** is responsible for processing EEO complaints and implementing affirmative employment requirements.

## **110.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES**

### **\*110.3.1 EEO Complaints**

Effective Date: 06/21/2011

The Agency must adhere to the regulations in [29 CFR 1614](#), *Federal Sector Equal Employment Opportunity*, for processing Equal Employment Opportunity (EEO) complaints filed with USAID by individual employees or applicants for employment, or by any person intending to file a complaint on behalf of such individuals. (See [110mab, Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 \(P.L. 107-174\)](#).)

Bases for EEO complaints include race, color, religion, national origin, sex, physical or mental disability, and age. Complaints alleging prohibited retaliation based on participation in the EEO complaint process, or based on opposition to any practice made unlawful by the laws cited in section **110.4, Mandatory References**, are also considered actionable complaints. Complaints based on sexual orientation also may be filed and will be investigated, but there are no statutory rights to appeal to the Equal

Employment Opportunity Commission (EEOC) or to file a civil suit. (See [110mac, USAID's Policy on Diversity in the Workforce, Equal Employment Opportunity, and Non-Discrimination.](#))

### 110.3.1.1 Pre-Complaint Process

Effective Date: 10/03/2005

#### a. EEO Counseling

USAID must nominate, select, train, and make available to aggrieved persons EEO Counselors. EEO Counselors serve in collateral duty status under the direction of the Office of Equal Opportunity Programs (EOP). EEO Counselors' names and locations must be posted prominently in Agency business locations. If USAID EEO Counselors are absent or unavailable at Missions, or if Washington-based EEO Counselors are not available, aggrieved persons may request counseling from State Department EEO Counselors in their respective locations.

Every employee or applicant who perceives discrimination or retaliation prohibited by Title VII of the Civil Rights Act of 1964 (referred to as Title VII) and related statutes must consult an EEO Counselor prior to filing a formal complaint, in order to seek informal resolution of the matter. An aggrieved person must initiate contact with a Counselor, or with EOP, within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. Otherwise, the complaint must be dismissed for failure to seek counseling on a timely basis, unless EOP grants a waiver of the 45-day requirement. The 45-day time limit may be extended if an individual shows that one of the following conditions exists:

- (1) The individual was not notified of or was not aware of the time limits;
- (2) The individual did not know and reasonably could not have known that the discriminatory matter or personnel action occurred; or
- (3) Despite due diligence, the individual was prevented by circumstances beyond his or her control from contacting the Counselor within the time limits, or other circumstances impacting timeliness exist, about which EOP must be informed.

EEO Counselors must conduct counseling activities in accordance with [29 CFR 1614, Federal Sector Equal Employment Opportunity](#), and [EEOC Management Directive 110, Chapter 2](#). Managers and supervisors must cooperate with EEO Counselors as they perform this collateral duty responsibility. Counselors must conduct the final interview with the aggrieved person and provide Notice of Right to File a formal complaint within 30 days of initial contact. Any approved extension of counseling by EOP, up to a maximum of 60 additional days, must be approved by EOP and the aggrieved person through written or electronic correspondence, and must be properly recorded by EOP.



- (1) At the initial and final counseling sessions, Counselors must advise individuals that, if resolution attempts fail and a formal complaint is subsequently filed, EOP is permitted to accept for investigation only those matters raised in counseling.
- (2) If the matter is not resolved within the required time frames, the Counselor must notify the person of the right to file a formal complaint within 15 days of the receipt of the Notice of Right to File, and of the appropriate official with whom to file a complaint. The Counselor must not attempt in any way to restrain the aggrieved person from filing a formal complaint.
- (3) Counselors must file with EOP an EEO Counselor's Report, within 15 days of the filing of a formal complaint, clearly recording the alleged discriminatory issues, relevant circumstances, contacts with appropriate officials, and attempted informal resolution efforts.

**b. Alternative Dispute Resolution (ADR)**

Instead of EEO counseling, the Director of Equal Opportunity Programs (D/EOP) may accept a case for Alternative Dispute Resolution (ADR), after the aggrieved individual has an initial meeting with an EEO Counselor. In ADR, mediation sessions managed by professionals from the U.S. Federal Mediation and Conciliation Service will attempt resolution of the matters at issue. If the matter is referred to the ADR mediation process, the pre-complaint processing period is 90 days. If the matter is not resolved by ADR, the EEO Counselor gives the aggrieved individual a Notice of Right to File a formal complaint. The Counselor must file a report with EOP that lists the issues raised in the initial meeting with the aggrieved person, within 15 days of the filing of a formal complaint.

**110.3.1.2 Representation**

Effective Date: 10/03/2005

The aggrieved person/complainant has the right to be accompanied, represented, and advised by a representative or attorney of choice at all stages of the complaint process. A complainant must inform the D/EOP in writing when he or she retains counsel or a representative. In cases where the representation of a complainant would conflict with the official or collateral duties of the representative, the D/EOP may disqualify the representative after full and fair consideration of the representative's opportunity to show cause against disqualification. The decision of the D/EOP is not appealable, but the decision, and the reasons for it, must be recorded and made a part of the complaint file. If the representative is disqualified, the complainant will be granted reasonable time to obtain other representation.

**110.3.1.3 Official Time**

Effective Date: 10/03/2005

Complainants who are employees of USAID are entitled to a reasonable amount of official time to present the complaint and to respond to Agency and Equal Employment Opportunity Commission (EEOC) requests for information. If the complainant is an employee of USAID and designates another USAID employee as representative, the representative also is entitled to a reasonable amount of official time, if otherwise on duty, to assist in complaint preparation and any required responses. Both are in a duty status when their presence is authorized or required by EOP or EEOC during the investigation, resolution attempts, or hearing on the complaint. USAID is not obligated to change work schedules, incur overtime, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer.

The amount of time considered "reasonable" is based on the nature of the particular action being taken, the current workload of the employee, and the amount of time granted for similar actions in other cases. The employee's supervisor, with appropriate guidance concerning the particular action and similar actions from EOP, and in certain cases the Office of General Counsel, makes this determination. Any request for official time must be made in advance and granted in advance in accordance with applicable leave rules. This provision does not preclude appropriate administrative actions in cases in which an employee has not followed the applicable leave rules in requesting and obtaining official time.

**110.3.1.4 Attorney's Fees**

Effective Date: 10/03/2005

If a complaint is resolved favorably for the complainant, even on only one of several complaint issues, the Agency may pay reasonable attorney's fees, consistent with [29 CFR 1614.501](#), *Remedies and Relief*. Upon submission of a written statement of legal services rendered, the Agency pays attorney's fees only for services related to the formal complaint process. The Agency will pay reasonable attorney fees in connection with attorney efforts on an age discrimination case.

**110.3.2 Formal Complaint Process****110.3.2.1 Time Limit and Presentation**

Effective Date: 10/03/2005

**a.** An aggrieved individual or his or her representative must file a complaint with the Director of Equal Opportunity Programs (D/EOP) within 15 days of receipt of the Notice of Right to File. The D/EOP may waive the time requirement when sufficient reasons for untimely filing of a complaint are presented.

**b.** A complaint must be signed and dated by the complainant or his or her representative, and must contain sufficient information to describe the action(s) or

practice(s) at issue in the complaint and any related date(s), as well as the basis for the alleged discrimination.

c. A complaint is deemed filed on the date it is received by the D/EOP, or on the date postmarked if mailed to the D/EOP.

#### **110.3.2.2 Acceptance or Dismissal of Complaint**

Effective Date: 10/03/2005

a. The D/EOP must acknowledge the receipt and filing date of a complaint in writing. The D/EOP also must notify the complainant of the allegations accepted for investigation or dismissed, and of the complainant's right to a Final Agency Decision and rights of appeal.

b. The D/EOP must make a Final Agency Decision regarding the dismissal of any complaint issues for the reasons stated in [29 CFR 1614.107](#), *Dismissals of Complaints*.

#### **110.3.2.3 Investigation**

Effective Date: 10/03/2005

a. The Office of Equal Opportunity Programs (EOP) must develop a complete and impartial factual record upon which to make findings on the claim(s) accepted by D/EOP for adjudication. EOP must conduct the investigation in accordance with [29 CFR 1614.108](#), *Investigation of Complaints*, and [EEOC Management Directive 110, Chapter 6](#). EOP must complete the investigation of an individual complaint and forward the investigative report to the complainant within 180 days of the filing date or within other time requirements set by EEOC on appeal.

b. All USAID employees must cooperate with the investigative process by promptly providing affidavits or documents as requested.

c. EOP must provide the complainant with a copy of the completed investigative report, so that the complainant may choose either a Final Agency Decision or a hearing before an administrative judge at the EEOC.

If the investigation is not completed and the investigative report not forwarded to the complainant within 180 days of the filing date, the complainant may request an EEOC hearing or file a civil action in Federal District Court anytime after that, and must so notify the D/EOP.

#### **110.3.2.4 EEOC Hearings**

Effective Date: 10/03/2005

a. When a complainant exercises the right to a hearing, prior to issuance of a Final Agency Decision, EOP must provide copies of the investigative and administrative files to the administrative judge within 30 days of receipt of the complainant's request for a

hearing, in accordance with [29 CFR 1614.109](#), *Hearings*.

- b.** USAID must provide for the attendance at hearings of all employees approved as witnesses by an administrative judge.
- c.** The hearing must be recorded and USAID must arrange and pay for verbatim transcripts. All documents submitted to and accepted by the administrative judge at the hearing are part of the record of the hearing.
- d.** Administrative judges may hold full or limited hearings, or may issue findings of fact and conclusions of law on the case merits without a hearing. The administrative judge determines whether a hearing is or is not held, based on a showing by the complainant or the Agency that the information and evidence of record reveal no genuine dispute or issue of credibility. Hearings are closed to the public because they are part of the investigative process.
- e.** Unless the administrative judge makes a written determination that good cause exists for extending the time of the hearing, the administrative judge is required to issue a decision on the complaint, and order appropriate remedies and relief where discrimination is found, within 180 days of the date EEOC received the request for the hearing.

#### **110.3.2.5 Final Agency Decision**

Effective Date: 10/03/2005

- a.** The Agency must take final action on the complaint by issuing a final order within 40 days of receipt of the administrative judge's decision. The final order must notify the complainant whether the Agency will fully implement the decision of the administrative judge, and must contain notice of the complainant's right to appeal to the EEOC or to file a civil action in Federal district court. If the final order does not fully implement the decision of the administrative judge, the Agency must simultaneously file an appeal in accordance with [29 CFR 1614.403](#), *How to appeal*. Any statement or brief on behalf of the Agency in support of its appeal must be submitted to the EEOC Office of Federal Operations within 20 days of filing the notice of appeal.
- b.** When a complainant waives the right to a hearing or requests an immediate Final Agency Decision, the D/EOP must issue a Final Agency Decision within 60 days of the complainant's request, consistent with [29 CFR 1614.110](#), *Final action by agencies*. The Final Agency Decision issued by the D/EOP must consist of findings on the merits of each claim accepted and, when discrimination is found, the appropriate remedies and relief. Rights of appeal or filing a civil suit must be included with this decision. If the complainant makes no request, EOP must produce a Final Agency Decision on the complaint within 90 days of the complainant's receipt of the investigative file.

**110.3.2.6 Appeal to the Equal Employment Opportunity Commission**

Effective Date: 10/03/2005

- a.** If an appeal of a Final Agency Decision is desired, the complainant must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission. The appeal may be mailed to the Director at P.O. Box 19848, Washington, DC 20036; personally delivered to the EEOC Office of Federal Operations at 1801 L Street, N.W., Washington, DC 20036; or faxed to (202) 663-7022.
- b.** The complainant must submit an appeal to EEOC within 30 calendar days of the complainant's receipt of the Final Agency Decision, using EEOC Form 573, which the D/EOP must provide, along with the Final Agency Decision. The complainant must simultaneously provide a copy of the appeal to the D/EOP.
- c.** The complainant may submit a statement or brief to EEOC in support of the appeal, but must do so within 30 days of filing the appeal and must simultaneously send a copy to the USAID Director, EOP.
- d.** The D/EOP must provide a copy of the administrative file and the investigative file to EEOC within 30 days of receiving notice that an appeal has been filed. Any statement or brief in opposition to the appeal must be filed within 30 days of receipt of the statement or brief supporting the appeal, or if no supporting document is filed, within 60 days of the receipt of the appeal. A copy of the USAID appeal statement or brief must be provided to the complainant at the time of the response.
- e.** A complainant or representative may appeal USAID's final decision based on
- (1) The merits of an individual complaint of employment discrimination;
  - (2) The dismissal of all of an individual complaint;
  - (3) The award of attorney's fees;
  - (4) Alleged noncompliance with the terms of a settlement agreement;
  - (5) Dismissal of all or a portion of a class complaint, or final decision on a class complaint;
  - (6) A grievance when an issue of employment discrimination was raised in the USAID/AFGE (American Federation of Government Employees) or USAID/AFSA (American Foreign Service Association) negotiated grievance procedure and is not appealable to the Merit Systems Protection Board; or
  - (7) Final discrimination decisions rendered by an arbitrator or the Federal Labor Relations Authority (FLRA).

Such appeals must be filed within 30 days of an individual's receipt of a Final Agency Decision. An appeal also may be filed on final discrimination decisions rendered by an

arbitrator or the FLRA.

f. An EEOC appellate decision is final within the meaning of [29 CFR 1614.407](#), *Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act*, unless either the complainant or USAID files a timely request for reconsideration or the Commission on its own motion reconsiders the case.

### **110.3.2.7 Remedial Actions and Compliance with Final EEOC Decisions**

Effective Date: 10/03/2005

#### **a. Appropriate Relief**

(1) If either USAID or EEOC makes a final decision that an individual employee or applicant has been discriminated against, USAID must provide appropriate relief, as described in [29 CFR 1614.501](#), *Remedies and relief*; [502](#), *Compliance with final Commission decisions*; and [505](#), *Interim relief*.

(2) Relief ordered in a final decision on appeal to EEOC is mandatory and binding on USAID. USAID must provide the ordered relief not later than 60 days after receipt of the final decision, unless otherwise ordered in the decision, when no request for reconsideration is filed or when a request for reconsideration is denied.

#### **b. Noncompliance**

To petition EEOC for enforcement of an appellate decision, a complainant must submit a petition to EEOC's Office of Federal Operations, specifically setting forth the reasons why USAID is in noncompliance with the decision. The Office of Federal Operations may clarify the appellate decision to ensure understanding of meaning or intent, or may refer the matter to the Commission with recommendations for enforcement and further Commission action. The Commission may issue a notice to show cause why there is noncompliance to the USAID Administrator; may refer the matter, as appropriate, to the Office of Special Counsel; or may notify the complainant of the right to seek judicial review of any alleged noncompliance. Failure to implement ordered relief may be subject to judicial enforcement as specified in [29 CFR 1614.503](#), *Enforcement of final Commission decisions*.

#### **c. Reconsideration**

(1) If desired, either the Agency or the complainant must submit a request for reconsideration to the EEOC Office of Review and Appeals within 30 days of receipt of a decision. In support of a request for reconsideration of a Commission decision, USAID or the complainant must submit a statement or brief that contains arguments or evidence which tend to establish that

(a) The appellate decision involved a clearly erroneous interpretation of

material fact or law; or

(b) The decision will have a substantial impact on the policies, practices, or operations of the Agency.

Regardless of whether the reconsideration request is initiated by the complainant or USAID, the party opposing such reconsideration has 20 days from the date of service or notice to submit any statement or brief in opposition to the request.

(2) If USAID requests reconsideration by the Commission of a Commission decision that included an order of relief, USAID must notify the EEOC and the affected employee in writing, at the same time it requests reconsideration, that any relief it provides is temporary or conditional, pending a final decision on reconsideration, consistent with [29 CFR 1614.502](#) and [505](#).

### **110.3.2.8 Attorney's Fees**

Effective Date: 10/03/2005

- a.** When there is a finding of discrimination, which raises a presumption of entitlement to an award of reasonable attorney's fees under Title VII and the Rehabilitation Act, USAID must pay reasonable attorney's fees as appropriate. Attorney's fees are not allowed by the Age Discrimination in Employment Act.
- b.** The amount of attorney's fees or costs to be awarded the complainant must be determined by agreement between the complainant, the complainant's representative, and the Agency. The parties must immediately record this agreement.
- c.** If the complainant, the representative, and the Agency cannot reach an agreement on the amount of attorney's fees or costs within 20 days of the Agency's receipt of the verified statement from the attorney, the Agency must issue a decision determining the amount of attorney's fees or costs due within 30 days of receipt of the statement and affidavit. The decision must include a Notice of Right to Appeal to EEOC and [EEOC Form 573, Notice of Appeal/Petition](#), and must include the specific reasons for determining the amount of the award.
- d.** Witness fees are awarded in accordance with the provisions of [28 U.S.C. 1821](#), except that no award will be made for a Federal employee who is in a duty status when made available as a witness.
- e.** The following guidelines apply to the payment of attorney's fees:
- (1) Attorney's fees are allowable only for the services of members of the Bar and law clerks, paralegals, or law students under the supervision of members of a Bar, except that no award is allowable to an employee of the Federal Government who serves in such legal capacity.



(2) Attorney's fees are paid only for services performed after the filing of a written complaint and after the complainant has notified the Director of Equal Opportunity Programs (D/EOP) that he or she is represented by an attorney. Services performed in reaching a determination to represent the complainant are allowable for a reasonable period of time prior to notification of representation.

(3) In order to file a claim for fees, the attorney must submit a verified statement of costs and attorney's fees (including expert witness fees) to the D/EOP within 30 calendar days of receipt of the decision, unless a request for reconsideration is filed.

(4) The amount of attorney's fees must be calculated in accordance with existing case law using the following standard:

The starting point is the number of hours reasonably expended multiplied by a reasonable hourly rate. This amount may be reduced or increased in consideration of the following factors, although ordinarily many of these factors are subsumed within the calculation set forth in this paragraph:

- The time and labor required;
- The novelty and difficulty of the questions;
- The skill requisite to perform the legal service properly;
- The attorney's preclusion from other employment due to acceptance of the case;
- The customary fee;
- Whether the fee is fixed or contingent;
- Time limitations imposed by the client or the circumstances;
- The amount involved and the results obtained;
- The experience, reputation, and ability of the attorney;
- The undesirability of the case;
- The nature and length of the professional relationship with the client; and
- The awards in similar cases.

Only in cases of exceptional success should any of these factors be used to enhance an award computed by the formula set forth in this paragraph.

(5) Additional attorney's fees that may be awarded are those authorized by [28 U.S.C.1920](#), including



- Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case;
- Fees and disbursements for printing and witnesses; and
- Fees for copies necessarily obtained for use in the case.

### **110.3.2.9 Complaint Settlement**

Effective Date: 10/03/2005

**a.** As required by [29 CFR 1614.603](#), USAID "shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, administrative processing of complaints, including the pre-complaint counseling stage." Any settlement reached must be in writing, approved by the Director of Equal Opportunity Programs (D/EOP), and signed by the complainant and the D/EOP.

**b.** EEO Counselors must advise aggrieved persons that when the Agency agrees to offer ADR in the particular case, they may choose between participation in the Alternative Dispute Resolution (ADR) program and the counseling activities provided for in [29 CFR 1614.105\(c\)](#).

**c.** Alleged Agency noncompliance with a settlement agreement is governed by the following procedures:

(1) If USAID fails to comply with the terms of a settlement agreement, for reasons not attributable to acts or conduct of the complainant, the complainant is required to notify the D/EOP. This notification must request that the terms of settlement be implemented or that the complaint be reinstated for continued processing from the point processing ceased.

(2) In order to initiate a claim of USAID noncompliance, the complainant must so notify the D/EOP in writing within 30 calendar days of when the complainant knew or should have known of the alleged noncompliance.

(3) If the complainant is not satisfied with the response of the D/EOP, or if the complainant is not satisfied with the resolution attempts, the complainant may appeal to EEOC. This appeal may be made 35 days after written notice of noncompliance to the D/EOP, and must be made within 30 days of receipt of any decision by the D/EOP.

(4) Allegations that subsequent acts of discrimination violate a settlement agreement will be processed as separate complaints.

### **110.3.2.10 Civil Actions**

Effective Date: 10/03/2005

**a.** A complainant who has filed an individual complaint has the option to file a civil action in an appropriate United States District Court pursuant to [Title VII of the Civil Rights Act, as amended](#), the [Age Discrimination in Employment Act](#), and the [Rehabilitation Act](#). A civil action must be filed in the following timeframes:

- (1) Within 90 days of receipt of the final decision on an individual or class complaint, if no appeal has been filed;
- (2) After 180 days of the date of filing an individual or class complaint, if an appeal has not been filed and a final decision has not been issued;
- (3) Within 180 days from the date of filing an appeal with the EEOC, if there has been no final decision by the Commission; or
- (4) Within 90 days of receipt of a Commission decision on appeal.

**b.** Filing a civil action terminates administrative processing of a complaint by USAID or of an appeal by EEOC. If a civil suit is filed subsequent to the filing of an appeal, the appellant must notify EEOC in writing.

### **110.3.3 Class Complaints**

Effective Date: 10/03/2005

A class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that

- The class is so numerous that a consolidated complaint of the members of the class is impractical;
- There are questions of fact common to the class;
- The claims of the agent of the class are typical of the claims of the class; and
- The agent of the class, or the agent's representative, if any, will fairly and adequately protect the interests of the class.

**a.** An employee or applicant who wishes to file a class complaint must receive EEO counseling in accordance with [29 CFR 1614.105](#).

**b.** A class complaint must be signed by the class agent or representative and must identify the policy or practice adversely affecting the class, as well as the specific action or matter affecting the class agent.

c. The complaint must be filed with the D/EOP not later than 15 days after the agent's receipt of the Notice of Right to File a class complaint.

d. USAID must process class complaints in accordance with the provisions of [29 CFR 1614.204](#), Class Complaints.

### **110.3.4 Affirmative Employment**

#### **110.3.4.1 Affirmative Employment Program**

Effective Date: 10/03/2005

It is the policy of USAID that the Agency must promote the full realization of equal employment opportunity through a continuing affirmative employment program. This policy applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal government. (See Mandatory References, [29 CFR 1608](#) and [Executive Order 11478](#))

The USAID Administrator must establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment. (See Mandatory Reference, [Executive Order 11478](#))

USAID must meet the specific requirements of Federal laws and regulations that govern affirmative employment practices. An affirmative action program must contain three elements: a reasonable self-analysis; a reasonable basis for concluding that action is appropriate; and reasonable action. (See Mandatory Reference, [29 CFR 1608.4](#))

Recruitment now includes targeted efforts directed at educational institutions and private organizations that may be able to refer minority and women candidates with the requisite experience and/or education.

The Office of Equal Opportunity Programs (EOP) must clear all Merit Promotion Certificates to ensure that management decisions on personnel actions are consistent with affirmative employment objectives, as appropriate. For more information, please see [ADS 418.5.16](#).

#### **110.3.4.2 Foreign Service Promotion Process**

Effective Date: 10/03/2005

Affirmative employment principles are applied to the Foreign Service promotion process, as follows:

a. EOP provides program briefings to Foreign Service Selection Boards on EEO matters before board deliberations begin;

b. EOP receives for appropriate action Selection Board reports of bias in

evaluations or by board members; and

**c.** EOP certifies the application of the affirmative employment policy agreed to by the American Foreign Service Association (AFSA) and management. Where under-representation of minority group persons or women occurs, promotion lines are dropped to include additional officers "A" ranked for promotion by board deliberations. Under-representation occurs when the proportion of minority group members or women is less than that reflected in the National Civilian Labor Force. The number of spaces the promotion line is dropped is calculated according to the following formula: 30 percent (of the original number to be promoted to a given grade) plus one, if the additional one is an under-represented minority or female. All officers above the new line are promoted.

In considering Senior Management Group appointments, nominating Bureaus must submit three names, whenever possible, one of which is either an under-represented minority or a woman, so that the Deputy Administrator is assured of having diversity among candidates considered for selection. Final selection is made on merit.

USAID must establish and maintain a system to collect and report accurate employment information on the race, national origin, sex, and disability of its employees. (See Mandatory Reference, [29 CFR 1614.601](#)) Data on race, national origin, and sex must be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the Agency must advise the employee of the importance of the data and of the Agency's obligation to report it. If the employee still refuses to provide the information, the Agency must make a visual identification and inform the employee of data it will report. The information collected by USAID must be disclosed only in the form of gross statistics. USAID does not collect or maintain any information on the race, national origin, or sex of individual employees, except when an automated data processing system is used in accordance with standards and requirements prescribed by the EEOC to ensure individual privacy and the separation of that information from personnel records.

#### **110.3.4.3 Sexual Harassment**

Effective Date: 10/03/2005

It is the policy of the Agency to provide a work environment free of sexual harassment; to prohibit explicit or implicit sexual harassment; to comply with the letter and spirit of all laws and regulations governing sexual harassment; to conduct inquiries into allegations of sexual harassment; to take corrective action when sexual harassment conduct is established; and to ensure that formal complaint channels for sexual harassment are available to all employees.

All USAID employees must refrain from sexually harassing behavior in the workplace. When sexual harassment is alleged to have occurred, management must report the matter to the Director of Equal Opportunity Programs (D/EOP) and the Office of General

Counsel to ensure that proper prevention and investigation by D/EOP occurs, and to provide for proper counseling of the employees involved. Although it is the responsibility of the Office of Equal Opportunity Programs (EOP) to ensure that the Agency exercises reasonable care to prevent and correct promptly any harassing behavior, in consultation with the Office of General Counsel, EOP must notify and consult with the Office of Human Resources (OHR) regarding any immediate corrective or personnel actions that are needed. Such actions include reassigning employees, promotions, demotions, shifting supervisors, and changing work hours, workspace, or work assignments, as appropriate, to prevent and correct the harassing behavior. Managers and supervisors must exercise authority and responsibility for the prevention of sexual harassment and for correcting the conduct of their employees who violate these regulations.

It is the policy of the Agency that there must be no discrimination in employment based on an employee's sexual orientation. Complaints of employment discrimination on this basis are processed as EEO complaints, with the exception that there is no right of appeal to EEOC or right to file civil suit.

### **110.3.5 Equal Employment Opportunity for Persons with Disability**

Effective Date: 10/03/2005

USAID must give full consideration to the hiring, placement, and advancement of qualified persons with disabilities and must not discriminate against a qualified person with a disability. This section sets forth the policy under which USAID establishes a continuing program to ensure nondiscrimination on account of disability and the procedures by which USAID makes determinations on requests for reasonable accommodations of disabilities.

- a.** A person with a disability is defined as a person who
  - (1) Has a physical or mental impairment that substantially limits one or more of his or her major life activities,
  - (2) Has a record of such an impairment, or
  - (3) Is regarded as having such an impairment.
- b.** A physical or mental impairment is defined as:
  - (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or
  - (2) Any mental or psychological disorder, such as mental retardation, organic

brain syndrome, emotional or mental illness, and specific learning disabilities.

**c.** Exclusions from the definition of "person with disability" include:

(1) The term does not include an individual who is currently engaging in the illegal use of drugs, when the Agency acts on the basis of such use.

(a) The term "drug" means a controlled substance defined in schedules I through V of Section 202 of the Controlled Substance Act (2 U.S.C. 812).

(b) The term "illegal use of drugs" means the use of drugs, possession or distribution of which is unlawful under the Controlled Substance Act, but does not include use of a drug taken under supervision of a licensed health care professional or other uses authorized by the Act or other provisions of law.

(2) The exclusion in c (1), above does not exclude an individual with disabilities who

(a) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(b) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(c) Is erroneously regarded as engaging in such use.

**d.** USAID is not precluded from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in c(1) above is no longer engaging in the illegal use of drugs. (See [Rehabilitation Act of 1973](#), Section 501)

**110.3.5.1 Employment Tests**

Effective Date: 10/03/2005

Regarding employment criteria, USAID must not use any employment test or other selection criteria that screen out or tend to screen out qualified persons with disabilities or any class of persons with disabilities, unless

**a.** The test scores or other selection criteria, as used by USAID, are shown to be job-related for the position in question; and

**b.** Alternative job-related tests or criteria are not shown by the Office of Personnel Management's Personnel Research and Development Center to be available.

USAID must not select and administer employment tests to applicants/employees with disabilities that impair sensory, manual, reading, writing, or speaking skills, such that test results reflect the applicants'/employees' impairment(s) rather than accurately reflect the applicants'/employees' ability to perform the job or type of job in question. This prohibition applies except where sensory, manual, reading, writing, or speaking skills are the factors that the tests purport to measure.

### **110.3.5.2 Pre-Employment Medical Examinations**

Effective Date: 10/03/2005

USAID must not conduct pre-employment medical examinations and must not make pre-employment inquiries of an applicant as to whether the applicant has a disability or as to the nature or severity of the disability, except as provided in this section.

**a.** Nothing in this section prohibits USAID from conditioning an employment offer on the results of a medical examination conducted prior to the employee's entrance on duty, provided that

(1) All entering employees are subjected to such an examination regardless of disability, or when the pre-employment medical questionnaire used for positions that do not routinely require medical examination indicates a condition for which further examination is required because of the job-related nature of the condition; and

(2) The results of such an examination are used only in accordance with the requirements of this section. Nothing in this section will be construed to prohibit the gathering of pre-employment medical information for the purposes of special appointing authorities for persons with disabilities.

**b.** Information obtained in accordance with this section regarding the medical condition or history of the applicant is collected and maintained according to the existing maintenance, use, and disposition schedules for medical records, except that

(1) Supervisors and managers may be informed of necessary accommodations; and

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment.

### **110.3.5.3 Physical Access**

Effective Date: 10/03/2005

USAID must not discriminate against qualified disabled applicants or employees due to the fact that Agency facilities are inaccessible. For the purpose of this section, a facility is deemed accessible if it is in compliance with the Architectural Barriers Act of 1968.

(See Mandatory Reference, **the Architectural Barriers Act of 1968, codified at [42 U.S.C 4151-4157](#)**)

#### **110.3.5.4 Reassignment**

Effective Date: 10/03/2005

Under [29 CFR 1614.203\(g\)](#), reassignment, when a non-probationary employee becomes unable to perform the essential functions of an encumbered position, even with reasonable accommodation due to a disability, USAID is required to reassign the individual to a funded vacant position for which the individual is qualified, located in the same commuting area and serviced by the same appointing authority, and at the same grade or level, the essential functions of which the individual would be able to perform with reasonable accommodation if necessary. Such an offer is not required if USAID can demonstrate that the reassignment would impose an undue hardship on the operation of its program.

In the absence of a position at the same grade or level, an offer of a reassignment to a vacant position, for which the individual is qualified, at the highest available grade or level below the employee's current grade or level is required. The availability of such a vacancy does not affect the employee's entitlement, if any, to disability retirement according to [5 U.S.C. 8337](#) or [5 U.S.C. 8451](#).

If USAID has already posted a notice or announcement seeking applications for a specific vacant position at the time it is determined that an employee is disabled, the Agency does not have an obligation to offer such reassignment, but the individual must be considered on an equal basis with other applicants for the position.

#### **110.3.5.5 Discrimination Complaints**

Effective Date: 10/03/2005

USAID processes discrimination complaints filed by persons with a physical or mental disability in accordance with the provisions of [29 CFR 1614.103-110](#) and [1614.203](#), the Rehabilitation Act.

#### **110.3.6 Disability Review Committee (DRC)**

Effective Date: 10/03/2005

For the purposes of ensuring equal employment opportunity for persons with disabilities, the Agency has established a Disability Review Committee (DRC) to make determinations on requests for reasonable accommodation. The DRC also considers, as necessary, disability issues related to certification, employment criteria, tests, pre-employment inquiries, physical access to buildings, reassignment, and discrimination complaints, and makes appropriate recommendations on policy changes.



**110.3.6.1 Composition of the DRC**

Effective Date: 10/03/2005

The Director of the Office of Equal Opportunity Programs (D/EOP) or designee serves as chair and convenes meetings of the DRC.

The DRC is composed of one representative each from the Office of Equal Opportunity Programs, the Office of General Counsel, the Office of Human Resources, the Office of Administrative Services, and, on an annual rotating basis, an employee from the Agency's disability community, designated by the D/EOP. When the DRC discusses accommodation issues, it invites, on a nonvoting basis, a representative of the Bureau/Office within which the request for accommodation arose.

**110.3.6.2 Reasonable Accommodation**

Effective Date: 04/08/2009

**a.** USAID must make reasonable accommodation to the documented physical or mental limitations of a qualified applicant or employee with a disability unless USAID demonstrates that the accommodation would impose an undue hardship on the operation of its program. Reasonable accommodation means any change in the work environment, or in the way things are customarily done, that enables a qualified applicant or employee with a disability to perform the essential functions of a job. It also means a modification or adjustment that enables an applicant or employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

Where appropriate, reasonable accommodation may include, but may not be limited to

- Making facilities readily accessible to and usable by persons with disabilities;
- Job restructuring and part-time or modified work schedules;
- Acquisition or modification of equipment or devices such as Telecommunication Device for the Deaf (TDD);
- Adjustment or modification of examinations; and
- Provision of readers or interpreters, reassignments, and other similar actions.

**b.** If reasonable accommodation is desired, an applicant, employee, or family member, health professional, or other representative who is acting on the individual's behalf may request an accommodation on behalf of an employee or applicant. A request can be initiated either orally or in writing. USAID begins processing all reasonable accommodation requests immediately following receipt of the oral or written request. The request can be made to the D/EOP, the Disability Employment Program Manager in EOP, the employee's supervisor(s), or in the application process, any Agency employee with whom the applicant has contact. The supervisor or

Bureau/Office management must notify the D/EOP or the Disability Employment Program Manager in EOP within five working days of each request made to the employee's supervisor. (See Mandatory Reference, [5 CFR 339.101-104](#))

**c.** The DRC convenes as necessary to review requests for reasonable accommodation, including medical documentation submitted by the employee or applicant, as appropriate, and approves or disapproves the requested accommodation. The DRC determines whether the requested accommodation imposes an undue hardship on USAID, and, if so, whether alternative accommodation are deemed appropriate.

**d.** The DRC may request medical documentation when appropriately warranted by the circumstances. The DRC may refer the medical documentation to other health care professionals to obtain additional information regarding submitted medical documentation, the nature of the disability, or the nature of the proposed or alternative accommodation. Reports on any such additional information must be provided in writing to the DRC and must be provided to the person seeking the accommodation.

**\*110.3.6.3 Factors to be Considered**

Effective Date: 04/08/2009

**a.** In approving an accommodation, or disapproving an accommodation based on undue hardship, the DRC must consider the following factors:

- The nature and cost of the accommodation requested, and its impact on the Agency;
- The mission of the organization, which the accommodation would impact;
- The structure and composition of the organization;
- Any pertinent legal or Agency precedents;
- The function, with or without accommodation, of the employee/applicant requesting the accommodation;
- Whether the medical documentation, as appropriate, met the requirements of [5 CFR 339.104](#); and
- \*Any written input by the supervisor. (See [110maa, Procedures for Providing Reasonable Accommodation for Individuals with Disabilities](#)).

**b.** The DRC must make a decision on the request, by majority vote, within 30 days or less of receiving a request for accommodation. The time limit will be in abeyance if medical documentation is required, but will commence running upon receipt of sufficient

documentation.

**c.** Medical documentation is required in support of an accommodation request if the disability or need for accommodations are not obvious or already known.

**d.** It is the responsibility of the employee or applicant requesting reasonable accommodation to provide appropriate medical information related to the functional impairment and the requested accommodation if the disability or need for accommodation is not obvious.

**e.** USAID has a right to request relevant supplemental medical information if the information submitted

- does not clearly explain the nature of the disability or the need for the reasonable accommodation;
- does not otherwise clarify how the requested accommodation will assist the employee in performing the essential functions of the job;
- does not otherwise clarify how the requested accommodation will allow the employee to enjoy the benefits and privileges of the workplace; or
- in the case of an applicant, does not otherwise clarify how the requested accommodation will assist him or her with the application process.

**f.** The Agency has a right to have medical information reviewed by a medical expert of the Agency's choosing at the Agency's expense.

**g.** The DRC prepares any necessary implementation directions and sends them to the appropriate Agency offices. The Management Bureau provides funds required for reasonable accommodations approved by the DRC when it receives an implementation memorandum from the DRC.

**h.** Once the DRC approves a request for a reasonable accommodation, the employee or applicant does not have to file another request for the same or similar accommodation if he or she requires the accommodation on a repetitive basis. (e.g., a sign language interpreter). However, if a request for accommodation is based on a new or different disability, or requires an accommodation that is significantly different from that previously approved, the employee or applicant must submit a new request in accordance with this regulation. See section **110.3.5.4** for the circumstances and implementation directions for when reassignment is required as a reasonable accommodation.

**i.** The DRC also provides determinations regarding reasonable accommodation in the following circumstances:

- (1) When the Agency is required to provide a certification regarding accommodation pursuant to a civil service disability retirement application; or
- (2) When the Agency is requested or otherwise required to provide an opinion or determination regarding accommodation in a case before the Department of Labor, Office of Workers' Compensation Programs (OWCP).

In the cases set forth in paragraphs a. and b. above, the DRC must apply the same standards and criteria (including the medical documentation requirements) as when making decisions on employee requests for reasonable accommodation. In all cases under this provision, the DRC must coordinate all actions with the Office of Human Resources, Personnel Operations Division (M/HR/POD).

#### **110.3.6.4 Denial of Requests for Reasonable Accommodation**

Effective Date: 10/03/2005

Denial of a request for reasonable accommodation must be in writing and specifically explain the reasons the request was denied, for example

- Why the medical documentation is inadequate to establish that the individual has a disability or needs reasonable accommodation;
- Why the requested accommodation would not be effective; or
- Why the accommodation would pose an undue hardship.

All denials of requests for reasonable accommodation include information regarding appeal rights and the right to file an EEO complaint or engage other statutory processes, as appropriate. An employee/applicant may file an EEO complaint with the Office of Equal Opportunity Programs (EOP) if he or she is not satisfied with the accommodation decision or if the accommodation is not implemented. A copy of the accommodation request and response, and any implementation documents, must remain on file in EOP for the duration of the employee's employment.

#### **110.3.6.5 Reconsideration of a Request**

Effective Date: 10/03/2005

If the employee or applicant desires reconsideration, he or she can submit an oral or written request for reconsideration to either

- a.** The Disability Review Committee (DRC) within 15 calendar days of receipt of the initial DRC decision, if additional information is available. The DRC will respond to the request within 15 calendar days; or
- b.** The D/EOP within 15 calendar days of receipt of the initial DRC decision, or the DRC response for reconsideration. The D/EOP will respond to the request within 15 calendar days.

The above appeals **do not** prevent, or in any way change, the requirements or time limits for any other appeal processes (EEO complaints, Agency grievances, Merit Systems Protection Board (MSPB) appeals) that may be available to the employee/applicant.

#### **110.3.6.6 Tracking Appeals**

Effective Date: 10/03/2005

The Agency is required to track the processing of requests for reasonable accommodation. EOP maintains a system of records to track the processing of requests for reasonable accommodation and to maintain the confidentiality of medical information received in accordance with applicable laws and regulations. Supporting documentation, specifically relating to medical information, must not become part of an official personnel file. The decision maker must forward all records involving reasonable accommodation requests to the Disability Program Manager or DRC Chairperson for storage and maintenance in EOP. The Disability Program Manager prepares an annual report that is made available to all employees upon request and is submitted to the EEOC. The annual report contains the following data:

- a. The number of reasonable accommodations, by type, that were requested in the application process and whether those requests were granted or denied;
- b. The jobs (occupational series, grade level, and Agency component) for which reasonable accommodations were requested;
- c. The types of reasonable accommodations that were requested for each of those jobs;
- d. The number of reasonable accommodations, by type, for each job, that were approved, and the number of accommodations, by type, that were denied;
- e. The number of requests for reasonable accommodation, by type, that relate to the benefits or privileges of employment, and whether those requests were granted or denied;
- f. The reasons for denial of requests for reasonable accommodation;
- g. The amount of time taken to process each request for reasonable accommodation; and
- h. The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

The DRC process and the factors that the DRC must consider (see **110.3.6.3**) confer no rights on any employee in addition to those granted in the [Rehabilitation Act, 29 CFR](#)

[1614.103-110](#), and [29 CFR 1614.203](#).

#### 110.4 MANDATORY REFERENCES

##### **\*110.4.1 External Mandatory References**

Effective Date: 06/21/2011

a. [Age Discrimination in Employment Act](#) (P.L. 90-202)

This Act prohibits job discrimination in Federal employment against workers at least 40 years of age.

b. **Architectural Barriers Act of 1968, codified at [42 U.S.C 4151-4157](#)**

c. [5 CFR 339.101-104](#)

d. [29 CFR 1608](#), Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964, As Amended

e. [29 CFR 1614, Federal Sector Equal Employment Opportunity](#)

f. [Civil Rights Act of 1964, Title VII](#) (P.L. 88-352)

This Act, and implementing regulations, prohibits employment discrimination based on race, color, religion, sex, or national origin.

g. [Civil Rights Act of 1991](#) (P.L. 102-166)

This Act provides for monetary damages in cases of intentional employment discrimination.

h. **EEOC Management Directive 110 [Due to the size of this Directive, please visit the following web site to view the entire document:**

<http://www.eeoc.gov/federal/directives/md110.cfm> ]

i. [Equal Pay Act of 1963](#) (P.L. 88-38)

This Act prohibits sex-based wage discrimination when men and women perform substantially equal work in the same establishment. This concept was first established in law in the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 206(d).

j. [Executive Order 11478](#), **Equal Employment Opportunity in the Federal Government**

This Executive Order, issued by President Nixon in 1969, required Federal

agency equal employment opportunity and affirmative action programs. In 1972, the Congress amended Title VII of the Civil Rights Act of 1964, mandating Federal agencies to maintain affirmative action programs and to ensure enforcement of Federal EEO policy. The enactment of this mandate was a consequence of the specific findings of pervasive discrimination in Federal employment evidenced by: (a) serious under-representation and exclusion of minority group members and women in specific occupational areas, grade levels, agencies, and regions; and (b) systemic, institutional barriers operating through various Civil Service regulations and procedures, particularly non-job-related selection and promotion techniques.

**k. Government Performance and Results Act of 1993**

The purpose of this Act is to improve the confidence of the American people in the capability of the Federal Government by systematically holding Federal agencies accountable for achieving program results. The Act establishes requirements for Agency strategic plans, annual performance plans, and annual performance reports. Affirmative employment plan actions must be included in Agency GPRA reports.

**l. Rehabilitation Act of 1973 (P.L. 93-112)**

This Act prohibits discrimination against qualified individuals with disabilities who work in the Federal Government, and requires affirmative employment action for persons with disabilities and submission to EEOC of an annual plan for the hiring, placement, and advancement of individuals with disabilities in the Federal Government.

**m. 5 U.S.C. 8337**

**n. 5 U.S.C. 8451**

**o. 28 U.S.C. 1821**

**p. 28 U.S.C. 1920**

**q. Veterans Readjustment Assistance Act of 1974 (38 U.S.C. 4212)**

This Act requires affirmative employment action in the employment and advancement of disabled and Vietnam era and post-Vietnam era veterans, and submission to the Office of Personnel Management of an annual action plan.

**\*110.4.2 Internal Mandatory References**

Effective Date: 06/21/2011

- \*a. [ADS 110maa, Procedures for Providing Reasonable Accommodation for Individuals with Disabilities](#)
- \*b. [ADS 110mab, Notification and Federal Employee Antidiscrimination and Rehabilitation Act of 2002 \(Public Law 107-174\)](#)
- \*c. [ADS 110mac, USAID's Policy on Diversity in the Workforce, Equal Employment Opportunity, and Non-Discrimination](#)
- d. [ADS 418, Promotion and Internal Placement](#)

**110.5 ADDITIONAL HELP**

Effective Date: 10/03/2005

There are no Additional Help documents for this chapter.

**110.6 DEFINITIONS**

Effective Date: 10/03/2005

The terms and definitions listed below have been included in the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

**administrative judge**

Formerly hearing examiner, a person appointed by EEOC to conduct hearings on equal employment opportunity complaints. (Chapter 110)

**age**

Refers to individuals who are at least 40 years old. (Chapter 110)

**agent of the class**

A class member who acts for the class during the processing of the class complaint. (Chapter 110)

**aggrieved person**

Any person or class of individuals presenting a complaint to an EEO Counselor. (Chapter 110)

**class**

A group of USAID employees, former USAID employees, and/or applicants for employment with USAID alleging an adverse effect of an Agency personnel management policy or practice which the Agency has the authority to rescind or modify, based on common race, color, religion, sex, national origin, physical or mental disability, and/or age. (Chapter 110)



**class complaint**

A written complaint of discrimination filed on behalf of a class by the agent of the class alleging that

- a. The class is so numerous that a consolidated complaint of the members of the class is impractical;
- b. There are questions of fact common to the class;
- c. The claims of the agent of the class are typical of the claims of the class; and
- d. The agent of the class, or the agent's representative, if any, will fairly and adequately protect the interests of the class. (Chapter 110)

**complainant**

Any individual who files a formal equal employment opportunity complaint with USAID. (Chapter 110)

**days**

For the purposes of the EEO complaint process, the term days refers to calendar days. Due dates that fall on weekends or holidays require action on the next business day. (Chapter 110)

**EEO Counselor**

An individual appointed by the D/EOP to provide EEO counseling on a collateral duty basis. (Chapter 110)

**EEOC**

U.S. Equal Employment Opportunity Commission. (Chapter 110)

**employee**

Includes all USAID U.S. citizen direct-hire personnel and personal service contractors. (Chapter 110)

**has a record of such impairment**

Has a history of, or has been classified (or misclassified) as having a mental or physical impairment that substantially limits one or more major life activities. (Chapter 110)

**is regarded as having such an impairment**

- a. Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation;
- b. Has a physical or mental impairment that substantially limits major life activities

only as a result of the attitude of an employer toward such impairment; or

c. Has none of the impairments defined in b. above but is treated by an employer as having such an impairment. (Chapter 110)

**major life activities**

Includes functions such as: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (Chapter 110)

**person with disability**

a. A person who

(1) Has a physical or mental impairment that substantially limits one or more of his or her major life activities,

(2) Has a record of such an impairment, or

(3) Is regarded as having such an impairment.

b. Exclusions from the definition of "person with disability":

(1) The term does not include an individual who is currently engaging in the illegal use of drugs, when the Agency acts on the basis of such use.

(a) The term "drug" means a controlled substance defined in schedules I through V of Section 202 of the Controlled Substance Act (2 U.S.C. 812).

(b) The term "illegal use of drugs" means the use of drugs, possession or distribution of which is unlawful under the Controlled Substance Act, but does not include use of a drug taken under supervision of a licensed health care professional or other uses authorized by the Act or other provisions of law.

(2) The exclusion in (1) above does not exclude an individual with disabilities who

(a) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(b) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(c) Is erroneously regarded as engaging in such use.

c. USAID is not precluded from adopting or administering reasonable policies or

procedures, including but not limited to drug testing, designed to ensure that an individual described in c(1) above is no longer engaging in the illegal use of drugs. (Source: Rehabilitation Act of 1973, Section 501) (Chapter 110)

**physical or mental impairment**

a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (Chapter 110)

**qualified person with a disability**

A person who, with or without reasonable accommodation, can perform the essential functions of the position in question, and

a. Meets the experience and/or education requirements (which may include passing a written test) of the position in question; or

b. Meets the criteria for appointment under one of the special appointing authorities for disabled persons. (Chapter 110)

**reasonable accommodation**

Any change in the work environment, or in the way things are customarily done, that enables a qualified applicant or employee with a disability to perform the essential functions of a job. Also, a modification or adjustment that enables an applicant or employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities. (Chapter 110)

**undue hardship**

An action requiring significant difficulty or expense when considered in light of factors such as the nature and cost of the accommodation requested; the mission of the organization the accommodation would impact; the structure and composition of the organization; any pertinent legal or Agency precedents; and the function, with or without accommodation, of the employee/applicant requesting the accommodation. (Chapter 110)

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