Presidio Trust Procedures Related to Claims of Workplace Discrimination

General Statement

The Presidio Trust ("the Trust" or "agency") is committed to the principles of equal employment opportunity and to maintaining a workplace that is free from unlawful discrimination. These "Presidio Trust Procedures Related to Claims of Workplace Discrimination" (the "Procedures") shall be applicable to all Presidio Trust employees and job applicants who believe they may have been unlawfully discriminated against in the work context.

The Presidio Trust's policy is to provide equal employment opportunity for all persons and to prohibit discrimination in the workplace because of race, color, religion, sex, national origin, age, handicap, or sexual orientation. In addition, no person shall be subjected to retaliation for opposing any practice proscribed by this policy or for participating in any proceedings covered under the Procedures.

The Trust intends to prevent illegal discrimination before it happens and to provide a rational and fair framework for adjudicating complaints of discrimination where issues arise. The Trust intends to adjudicate these complaints quickly and fairly in order to preserve harmony and efficiency in the workplace and to promote equal treatment and opportunity for our employees and job applicants.

Section 103 (c)(7) of the Presidio Trust Act (16 U.S.C. section 460bb appendix) authorizes the Trust to appoint, terminate, compensate, and assign duties to its employees without regard to title 5 of the United States Code or other laws related to the appointment, compensation, or termination of federal employees. Thus, to the extent that federal legislation regulates the appointment, compensation, duties, or termination of federal employees, those provisions are inapplicable to the Trust. To the extent that such legislation covers employment actions other than appointment, compensation, duties, or termination (e.g., hostile work environment), the Trust is subject thereto. The Procedures provide a framework for processing claims in the former category through Final Agency Decision by the Trust and claims in the latter category by processing initially by the Trust and then by the Equal Employment Opportunity Commission ("EEOC" or the "Commission").

Overview

To promote efficient administration and provide for a consistent process between those matters that are under the sole jurisdiction of the Presidio Trust and those matters that are under the jurisdiction of the EEOC, the Trust, as appropriate, will look to the EEOC regulations found at Title 29, Code of Federal Regulations, Part 1614 as the basis for its Procedures. In addition, the Presidio Trust will look for guidance in the decisions of the federal judiciary and the EEOC as they relate to the EEOC regulations.

The Procedures address all complaints of discrimination through processes parallel to those contained in 29 C.F.R. § 1614.105 through § 1614.108(e) and other sections as specifically noted. At critical points in the process (i.e., at the end of counseling and at the end of the investigation where a Report of Investigation ("ROI") is issued), the Trust shall make a determination as to whether a claim or claims raised in a complaint can be made without reference to appointment, compensation, duties, or termination. If the Trust finally determines that a claim or claims can be made without reference to these matters, then the procedures contained in 29 CFR Part 1614 shall be used to process such claim(s) to final resolution. If the Trust finally determines that a claim or claims cannot be made without reference to appointment, compensation, duties and/or termination, then the Procedures shall continue to govern the processing of such claim(s) through the issuance of a Final Agency Decision. Under the latter circumstance, the Trust shall offer the complainant alternative dispute resolution ("ADR"), consisting of mediation and/or advisory arbitration, which shall result in a written opinion by the arbitrator and a written Final Agency Decision by the Presidio Trust Executive Director following review and consideration of the arbitrator's written opinion. Any resolution between the complainant and the Trust at any stage of the process will be set forth in writing, will be signed by both parties, and will identify the complaints settled.

For ease of reference to the EEOC regulation that underlies a specific Trust Procedure, and where appropriate, the Procedures use the same numbering system as the EEOC regulations but are distinguished by the prefix "PT."

Presidio Trust Procedures

I. Procedures for Processing All Claims (EEOC or Trust Jurisdiction).

§ PT 1614.103 Claims of discrimination covered by these Procedures.

To the extent that individual and class complaints of employment discrimination or retaliation contain claims that cannot be made without reference to the appointment, compensation, duties, or termination of employees and are prohibited by Title VII (discrimination on the basis of race, color, religion, sex and national origin), the Age Discrimination in Employment Act ("ADEA") (discrimination on the basis of age when the aggrieved individual is at least 40 years of age), the Rehabilitation Act (discrimination on the basis of handicap), the Equal Pay Act (sex-based wage discrimination) or allege discriminatory or retaliatory acts based on sexual orientation, such claims shall be processed exclusively in accordance with these Procedures and will not be raised to the EEOC. Claims based on sexual orientation (whether or not related to appointment, compensation, duties or termination) shall only be processed according to the Procedures and will not be raised to the EEOC.

Complaints of employment discrimination that the Trust determines contain claims that can be made without reference to the appointment, compensation, duties, or termination of employees shall be processed in accordance with these Procedures through the

issuance of a Report of Investigation as defined below. Once this determination has been made, such claims shall be processed through final resolution in accordance with 29 C.F.R. 1614.

PT 1614.104 Intentionally omitted.

§ PT 1614.105 Pre-complaint processing.

(a) An aggrieved person who believes he/she has been discriminated against on the basis of race, color, religion, sex, national origin, age, sexual orientation or handicap must consult an equal employment opportunity counselor appointed by the Trust ("Counselor") prior to filing a complaint in order to try to informally resolve the matter.

(1) An aggrieved person must initiate contact with a Counselor within 45 days after the date of the allegedly discriminatory incident or, in the case of a personnel action, within 45 days of the effective date after the action. Aggrieved persons who wish to initiate EEO counseling shall contact the Presidio Trust EEO office for referral to a Counselor.

(2) The 45-day time limit in paragraph (a)(1) of this section may be extended when the aggrieved person shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the Counselor within the time limits, or for other reasons considered sufficient.

(b)(1) At the initial counseling session, the Counselor must advise the aggrieved person in writing of the rights and responsibilities specific to his/her claim(s). These rights may include the right to request a hearing or ADR or an immediate final decision after an investigation by the agency in accordance with § PT 1614.108(f), the right to file a notice of intent to sue pursuant to § 1614.201(a), the duty to mitigate damages, administrative and court time frames, and that only the claims raised in pre-complaint counseling (or issues or claims like or related to issues or claims raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the agency. Counselors must advise individuals of their duty to keep the agency and, if applicable, the Commission informed of their current address and, if applicable, to serve copies of appeal papers on the agency. The notice required by paragraphs (d) or (e) of this section shall include a notice of the right to file a class complaint. If the aggrieved person informs the Counselor that he or she wishes to file a class complaint, the Counselor shall explain the class complaint procedures and the responsibilities of a class agent.

(2) Counselors shall advise an aggrieved person that, where the agency agrees to offer mediation at the pre-complaint stage in the particular case, he/she may then choose between participation in mediation or the counseling activities provided for in paragraph (c) of this section. In the event mutually satisfactory resolution is not achieved through mediation, counseling activities provided hereunder shall resume.

(c) Counselors shall conduct counseling activities consistent with instructions contained in Commission Management Directives. When advised that a complaint has been filed by an aggrieved person, the Counselor shall submit a written report within 15 days to the Trust EEO office and the aggrieved person concerning the issues discussed and actions taken during counseling.

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, or the aggrieved person chooses mediation in accordance with paragraph (b)(2) of this section, the Counselor shall conduct the final interview with the aggrieved person within 30 days after the date the aggrieved person contacted the Trust EEO office to request counseling. If the matter has not been resolved, the aggrieved person shall be informed in writing by the Counselor, not later than the thirtieth day after contacting the Counselor, of the right to file a discrimination complaint. The notice shall inform the complainant of the right to file a discrimination complaint within 15 days after receipt of the notice, of the appropriate official with whom to file a complaint and of the complainant's duty to assure that the agency is informed immediately if the complainant retains counsel or a representative.

(e) Prior to the end of the 30 day period, the aggrieved person may agree in writing with the Trust to postpone the final interview and extend the counseling period for an additional period of no more than 60 days. If the matter has not been resolved before the conclusion of the agreed extension, the notice described in paragraph (d) of this section shall be issued.

(f) Where the aggrieved person chooses to participate in mediation in accordance with paragraph (b)(2) of this section, the pre-complaint processing period shall be 90 days. If the claim has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall be issued.

(g) The Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The Counselor shall not reveal the identity of an aggrieved person who consulted the Counselor, except when authorized to do so by the aggrieved person, or until the agency has received a discrimination complaint under this part from that person involving that same matter.

§ PT 1614.106 Individual complaints.

(a) A complaint must be filed with the agency that allegedly discriminated against the complainant.

(b) A complaint must be filed within 15 days after receipt of the notice required by §§ PT1614.105 (d), (e), or (f).

(c) A complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This statement must be sufficiently precise to

identify the aggrieved individual and the agency and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted.

(d) A complainant may amend a complaint by filing a written request at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing or ADR, as applicable, a complainant may file a motion with the administrative judge or arbitrator, as applicable, to amend a complaint to include issues or claims like or related to those raised in the complaint.

(e) The Trust shall acknowledge receipt of a complaint or an amendment to a complaint in writing and shall inform the complainant of the date on which the complaint or amendment was filed. The Trust shall advise the complainant that the Trust is required to conduct an impartial and appropriate investigation of the complaint.

(f) Based on the Counseling Report, the Trust EEO Officer will make a preliminary determination as to whether the EEOC or the Trust appears to have jurisdiction over the claims stated in the complaint based on whether the claims can be made without reference to the appointment, compensation, duties, or termination of employees. After this review, the Trust EEO Officer will inform the complainant in writing as to what procedures will control further processing of the matter. Notwithstanding the Trust's preliminary determination, the complainant may modify his/her claims as otherwise provided in these Procedures.

If the Trust's EEO Officer makes a preliminary determination that the Trust has jurisdiction over a claim or claims, then the determination and request for investigation will clearly specify that the Presidio Trust has jurisdiction over the processing of that claim or claims through resolution. This determination will be made where a claim or claims cannot be made without reference to appointment, compensation, duties or termination. If the Trust's EEO Officer makes a preliminary determination that EEOC has jurisdiction, then the determination and request for investigation will clearly specify EEOC jurisdiction in the processing of that claim or claims. This determination will be made where a claim or claims can be made without reference to appointment, compensation, duties, or termination.

§ PT 1614.107 Dismissals of complaints.

(a) Prior to a request for a hearing or ADR in a case, the Trust shall dismiss an entire complaint:

(1) That fails to state a claim under §§ PT 1614.103, PT 1614.106 (a), or states the same claim that is pending before or has been decided by the Trust, another agency, or Commission, as applicable;

(2) That fails to comply with the applicable time limits contained in §§ PT 1614.105, PT 1614.106, and 1614.204(c) unless the Trust or EEOC as applicable extends the time limits, or that raises a matter that has not been brought to the attention of a Counselor and is not like or related to a matter that has been brought to the attention of a Counselor;

(3) That is the basis of a pending civil action in a United States District Court in which the complainant is a party provided that at least 180 days have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a United States District Court in which the complainant was a party;

(4) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory;

(5) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 days to a notice of proposed dismissal sent to his or her last known address;

(6) Where the agency has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days after its receipt or the complainant's response does not address the agency's request, provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available;

(7) That alleges dissatisfaction with the processing of a previously filed complaint; or

(8) Where the agency, strictly applying the criteria set forth in Commission decisions, finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. A clear pattern of misuse of the EEO process requires:

(i) Evidence of multiple complaint filings; and

(ii) Allegations that are similar or identical, lack specificity or involve matters previously resolved; or

(iii) Evidence of circumventing other administrative processes, retaliating against the agency's in-house administrative processes, or overburdening the EEO complaint system.

(b) Where the agency believes that some but not all of the claims in a complaint should be dismissed for one or more of the reasons contained in paragraphs (a)(1) through (8) of this section, the agency shall notify the complainant in writing of its

determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under this paragraph is reviewable by an administrative judge or arbitrator, as applicable, if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.

§ PT 1614.108 Investigation of complaints.

(a) The investigation of complaints shall be conducted by the Trust.

(b) In accordance with instructions contained in Commission Management Directives, the agency shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact-finder to draw conclusions as to whether discrimination occurred. The Trust may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue. The Trust may incorporate alternative dispute resolution techniques into its investigative efforts in order to promote early resolution of complaints.

(c) The procedures in paragraphs (c) (1) through (3) of this section apply to the investigation of complaints:

(1) The complainant, the Trust, and any employee of a federal agency shall produce such documentary and testimonial evidence as the investigator deems necessary.

(2) Investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Trust, or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the investigator may note in the investigative record that the decisionmaker should, or if applicable, the Commission on appeal may, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as it deems appropriate.

(d) Any investigation conducted under circumstances requiring security clearances will be conducted by investigators with appropriate security clearances.

(e) The agency shall complete its investigation within 180 days after the date of filing of an individual complaint or if applicable within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal pursuant to section 1614.107. By written agreement within those time periods, the complainant and the Trust may voluntarily extend the time period for not more than an additional 90 days. The agency may unilaterally extend the time period or any period of extension for not more than 30 days where it must sanitize a complaint file that may contain information classified pursuant to Exec. Order No. 12356, or successor orders, as secret in the interest of national defense or foreign policy, provided the investigating agency notifies the parties of the extension.

(f) Within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal if applicable, or within any period of extension provided for in paragraph (e) of this section, the agency shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days after receipt of the investigative file, the complainant has the right to request 1) in the case of complaints under EEOC jurisdiction, a hearing and decision from an administrative judge or an immediate final decision pursuant to § 1614.110 from the Trust; or 2) in the case of complaints under Trust jurisdiction, ADR and/or a Final Agency Decision as detailed in Part II below.

(g) Where the complainant has received the notice required in paragraph (f) of this section or at any time after 180 days have elapsed from the filing of the complaint: 1) the complainant may request if applicable a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the Trust's acknowledgment letter and shall send a copy of the request for a hearing to the Trust’s EEO office (Within 15 days of receipt of the request for a hearing, the Trust shall provide a copy of the complaint file to EEOC and, if not previously provided, to the complainant); or 2) where the complaint is under the Trust’s jurisdiction, the complainant may request ADR and/or a Final Agency Decision by submitting a written request to the Trust’s EEO Office. Within 15 days after receipt of the request for ADR or Final Agency Decision, the Trust shall provide a copy of the complaint file to the complainant if it has not previously done so.

II. Presidio Trust Determination of Issues and Jurisdiction.

Based on the Report of Investigation (“ROI”), the Trust will make a written determination as to the claims in the complaint. The Trust shall further determine

whether the EEOC or the Trust has jurisdiction over the claims. The Trust will notify the complainant of its determination, and the complainant will have 10 days from the date of the determination to contest in writing the Trust's conclusions. If the determination is contested, the Trust will review the determination and consider the complainant's submission. The Trust decision is final at this time and will establish which procedures govern.

If the determination is that the Trust has jurisdiction over a claim or claims, then Part III of the Procedures will apply. This determination will be made as to each claim that cannot be made without reference to appointment, compensation, duties or termination.

If the determination is that the EEOC has jurisdiction over a claim or claims, then such claim or claims will be processed further under 29 C.F.R. § 1614.109 et seq. This determination will be made as to each claim that can be made without reference to appointment, compensation, duties, or termination.

III. Further Presidio Trust Procedures when the Trust has Sole Jurisdiction over Claims.

A. **Offer of Resolution**.

Within 10 working days after receiving the ROI, the EEO Officer shall prepare a summary of the ROI and a recommended resolution of the complaint. The EEO Officer shall deliver the recommendation, the ROI, the summary, and the investigative file to the Director of Human Resources who shall convene a Trust panel consisting of one representative from each of the following divisions: Office of the General Counsel, Human Resources, and the complainant's division. The Trust panel shall review the ROI, the investigative file, and the summary and confer with the Trust EEO Officer within 15 days after the ROI has been issued. Based on this review, the Trust shall consider the appropriateness of making an offer of resolution to the complainant. If the panel believes further discussion with the complainant would help resolve the matter, the panel may initiate discussions with the complainant and his/her representative regarding resolution. If the panel declines to make an offer of resolution or no resolution is reached within 15 days after issuance of the ROI, then the complainant shall be entitled to elect alternative dispute resolution ("ADR"). The complainant shall notify the Trust's EEO Officer of his/her election in writing. Such election must occur within 10 days after the expiration of the Panel's 15 day review period. Provided, however, that if discussions are commenced between the Trust and the complainant during the 15 day period, the complainant may elect ADR within 10 days after either party has notified the other in writing that its participation in the discussions is concluded.

B. **Alternative Dispute Resolution (ADR) Process**.

1. The ADR process shall consist of mediation (where jointly agreed to) followed by advisory arbitration. Where the parties agree to mediate, the Trust and the complainant will jointly choose a mediator. Any resolution of the complaint that is

reached during mediation must be reduced to writing using the standard settlement format set forth by the Presidio Trust.

2. If mediation is unsuccessful in resolving the complaint entirely, the complainant may elect either to receive a Final Agency Decision or to engage first in advisory arbitration that will lead to a Final Agency Decision. Such election must be filed in writing with the Trust EEO Officer within 10 days after the mediation process is concluded. In the event that complainant does not timely elect advisory arbitration, the Trust may proceed to render a Final Agency Decision.

Mediation and advisory arbitration under the ADR process will be conducted pursuant to procedures mutually acceptable to the parties. If the parties cannot agree to a set of procedures within 10 days after the complainant has elected ADR, advisory arbitration shall be conducted according to the JAMS Employment Arbitration Rules and Procedures (the Rules), a copy of which is included as an attachment hereto. Provided, however that 1) notwithstanding any reference in the Rules to "binding arbitration," any award shall be deemed advisory only, 2) no award shall be subject to enforcement pursuant to Rule 23 or otherwise, and 3) any reference to the arbitrator's award as "final" including without limitation the reference in Rule 22 (i), shall not preclude the Executive Director from exercising discretion in accordance with section III. C. below as to whether the award will be incorporated in the Final Agency Decision. Costs associated with the provision of mediation and arbitration services shall be borne by the Trust. Each party will be responsible for such party's own expenses, attorney's fees or other fees associated with representation and production of proof in the proceedings, unless otherwise agreed upon.

C. **Final Agency Decision**.

The Final Agency Decision shall consist of findings of discrimination or no discrimination on each claim that was accepted for investigation in the complaint, or as appropriate, the rationale for dismissing any or all claims in the complaint, and, if a finding of discrimination is made, the Final Agency Decision shall include a description of appropriate remedies and relief.

If the matter previously has been submitted to arbitration, the Executive Director will consider and give significant weight to the arbitrator's award. If the Executive Director accepts the award, that award may be incorporated in whole or part into the Final Agency Decision. If the Executive Director rejects or modifies all or part of the arbitrator's award, then the reasons for the rejection or modification will be explained in the Final Agency Decision.

The Executive Director shall issue the Final Agency Decision within 60 days after receipt of the arbitrator's written award, and after reviewing and considering that award.

D. **Other Administrative Matters**.

1. Representation and official time. The right of a complainant to be accompanied, represented, and advised by a representative of the complainant's choice shall comport with the provisions of 29 C.F.R. § 1614.605(a). The right of complainant and his/her representative to official time to prepare the complaint and respond to agency requests for information shall comport with the provisions of 29 C.F.R. § 1614.605(b).

2. Consolidation of complaints. The Trust may consolidate complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter.

3. Remedies and relief. When the Executive Director, in an individual case of discrimination, finds that an applicant or employee has been discriminated against, the Executive Director may provide any remedy or relief that he deems equitable and just provided such relief would have been available under the provisions of 29 C.F.R. § 1614.501 and is not otherwise inconsistent with law.

4. Class Complaints. In class complaints that are under the jurisdiction of the Presidio Trust (i.e., those claims that cannot be made without reference to the appointment, compensation, duties, or termination), the Presidio Trust will look to 29 C.F.R. § 1614.204 for processing guidance to the extent that section is not inconsistent with the Presidio Trust Act.

5. Filing and computation of time.

(a) All time periods above that are stated in terms of days are calendar days unless otherwise stated.

(b) A document shall be deemed timely if it is received or postmarked before the expiration of the applicable filing period, or, in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period.

(c) The time limits in this part are subject to waiver, estoppel and equitable tolling.

(d) The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included, unless it falls on a Saturday, Sunday or Federal holiday, in which case the period shall be extended to include the next business day.

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Exhibit A
JAMS
Employment Arbitration Rules and Procedures