U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

DEPARTMENTAL REGULATION	Number: 4710-001
SUBJECT: Alternative Dispute Resolution	DATE: April 5, 2006
	OPI: Conflict Prevention and Resolution Center

1 PURPOSE

This regulation establishes the Department of Agriculture's (USDA) policy on the use of Alternative Dispute Resolution (ADR) techniques designed to work towards preventing and resolving workplace and program conflicts within USDA.

2 REFERENCES

The following authorities, among others, authorize this regulation: Administrative Dispute Resolution Act of 1996 (ADR Act); Agricultural Credit Act of 1987, as amended by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, and the Grain Standards and Warehouse Improvement Act of 2000 (Public Law No. 106-472); the Equal Employment Opportunity Commission (EEOC) regulations on Federal sector equal employment opportunity (EEO) complaint processing, 29 C.F.R. 1614; Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613); and administrative grievance system regulations, 5 C.F.R. 771.

This regulation will operate in conjunction with the Federal Sector Complaint Processing Manual, EEOC MD-110, Processing Equal Employment Opportunity (EEO) Complaints of Discrimination, USDA DR-4300-7 and EEO Complaint Processing Procedures, USDA DM 4300-001

3 SPECIAL INSTRUCTIONS/CANCELLATIONS

This regulation supersedes and modifies the USDA Alternative Dispute Resolution Policy, Departmental Regulation 4710-001, dated July 20, 2001.

4 DEFINITIONS

a Alternative Dispute Resolution (ADR) - Any of a number of conflict resolution techniques that use a neutral third party to assist employees, managers, agencies, and USDA customers in resolving disputes. (See examples of ADR techniques in Appendix A).

b Conflict - Any disagreement, discord, argument, complaint, or legal action, as well as the circumstances leading up to it.

c Customer - Individuals, organizations, or businesses external to USDA that provide services to or receive services from USDA or that have contact with any USDA office or employee.

d Equal Employment Opportunity (EEO) Complaint process stages and ADR:

(1) Informal Process - The counseling stage of an EEO complaint and during which ADR *is* offered and conducted.

(2) Formal Process - The stage of an EEO complaint initiated by the filing of a written complaint with the Office of Civil Rights and during which ADR *is* offered and conducted.

e Good faith - An effort to honestly, sincerely, and fully discuss problems and matters in conflict, and to explore solutions to those problems or conflicts.

f Mediation - An ADR technique that involves a confidential discussion among two or more parties in conflict, with one or more mediators present to facilitate the discussion in an attempt to reach a resolution that is acceptable to all parties.

g Neutral - The person who is authorized to conduct, lead, or facilitate an ADR session. The neutral has no personal interest in the outcome of the conflict, and acts impartially and without bias. Neutrals include mediators, facilitators, and arbitrators.

h Parties - The agencies, employees, managers, or customers who are in conflict.

i Resolution – A decision reached by the parties that results in the total or partial end or closure of a conflict, complaint, grievance, appeal, or litigation.

j Resolving Official – In an EEO complaint, the ADR session official who the responding agency has designated and assigned the authority to make, change, accept and approve proposals for resolution during an ADR session. The Resolving Official binds a responding agency by signing an EEO settlement.

k Responsible Management Official (RMO)– The EEO ADR session official(s) who, according to the complainant's allegations, is (are) responsible for the action or made the decision that harmed the complainant. A RMO may not be the designated Resolving

Official in an ADR session. The RMO is sometimes identified as the "Responding Management Official."

5 POLICY

It is the policy of USDA to prevent conflicts whenever possible and, when conflicts do occur, to make every effort to reach the earliest possible, consensual resolution of conflicts and issues, using ADR as an essential tool toward achieving that goal. The goal of ADR processes is to achieve effective and mutually satisfactory conflict resolutions to foster a culture of respect and trust among USDA, its customers, and employees. The benefits of using ADR can include decreasing time, cost, and other resources expended in resolving conflicts and increasing customer satisfaction, and employee morale.

a General Provisions

(1) The USDA should utilize ADR as a standard tool for resolving workplace conflicts and conflicts between USDA and its customers.

(2) The USDA, its representatives, employees, customers and contractors, shall seek to resolve conflicts at the earliest stage possible consistent with laws, and regulations.

(3) In any ADR proceeding involving a conflict with a USDA agency or other organizational entity, an individual with authority to fully resolve the matter on behalf of the agency or entity must be in attendance or readily accessible to the parties during the proceeding.

(4) All parties participating in ADR are expected to participate in good faith. Participation in ADR is voluntary for all, except in those instances specified in this regulation.

(5) Agreement to resolve a conflict shall be voluntary for all parties participating in ADR.

(6) Parties are entitled to be accompanied, represented, and advised by a personally chosen representative in ADR proceedings consistent with laws and regulations.

(7) The use of ADR shall not adversely affect the rights of individuals to seek resolution of their issues through the established complaint, grievance, and appeal systems, provided established time frames in each system are otherwise met.

(8) No employee shall commit, authorize, or condone any retaliation against any employee or customer because of the pursuit of, or participation in, ADR.

(9) Agencies shall make available training and educational services designed to promote effective conflict management. These shall include explanations of available ADR services and employees' responsibilities relating to ADR participation.

(10) Consistent with its legal and regulatory obligations, the USDA shall provide reasonable accommodations to persons with disabilities or special needs, and persons who require alternative means of communication at any ADR session or activity.

(11) All parties are entitled to and shall receive a copy of any settlement agreement or resolution, which they signed.

(12) Every ADR program shall maintain an agency ADR file separate from individual EEO files.

b ADR in Workplace Disputes (Early Intervention Programs, Non-EEO)

(1) ADR, including, at a minimum, mediation shall be available for the early resolution of workplace conflicts during the period before the initiation of a grievance or a complaint.

(2) All employees, e.g., GS, WG, Supervisory, SES, volunteers, contract, Stay-In-School, Summer Interns, etc., are strongly encouraged to use mediation or other ADR processes to resolve workplace conflicts at the earliest stage possible. Employees may request the use of ADR at any point they believe assistance is needed.

(3) In a workplace conflict that is not an EEO complaint, managers and supervisors are expected to participate in ADR when requested to do so, absent compelling reasons.

(4) Agencies and labor organizations are encouraged to work cooperatively to include or enhance ADR provisions in future negotiated agreements, partnership agreements, separate addenda, or memoranda of understanding. Management and bargaining units are encouraged to consider suspending time frames for a mutually agreed upon period in order to use ADR before and during the grievance process.

(5) Within the administrative grievance system, either the grievant or management may request or propose the use of ADR to facilitate the informal and voluntary resolution of workplace disputes. The parties may mutually agree to suspend the timeframes for completing the grievance process for the purpose of participating in ADR.

(6) Management must fulfill its notice and any bargaining obligations under the Federal Labor Management Relations Act, and applicable collective bargaining agreements prior to implementation of any new ADR procedures or programs affecting bargaining unit employees.

(7) ADR may not be appropriate for, and need not be used by an agency, in every non-EEO workplace dispute. A decision that ADR is not appropriate should be the

exception. Before the decision is final, it should be discussed with the appropriate ADR Program Manager.

(8) Each USDA agency/mission area shall establish a permanent ADR Awareness Program or effort within their respective area. The ADR Awareness Program shall be designed to bring Early Intervention Program (EIP) ADR to the attention of all employees and to promote understanding of EIP ADR and its usefulness within the USDA workplace. Each program shall be designed to provide all employees with the following information:

(a) the Agency's/mission area's support for EIP ADR,
(b) the requirement explaining that ADR is available for all employees,
(c) examples of the kinds of conflicts and situations in which ADR may be appropriate,
(d) a description of the EIP ADR techniques available in the agency/mission area,
(e) the participant's rights to representation in the EIP ADR process if applicable**,**
(f) the requirement that, as ADR participants, agency officials must participate in good faith, and
(g) an official/contact office to learn more about the EIP ADR programs.

Agencies/mission areas may select any of the suggested components outlined in Appendix D to build their ADR Awareness Programs. In order to satisfy this requirement, other components not listed in Appendix D may also be selected upon the prior approval of CPRC.

c ADR in Workplace Disputes (EEO only)

(1) Consistent with the USDA policy that Agency representatives, employees, customers and contractors should seek to resolve conflicts at the earliest stage possible. All USDA agencies should use ADR as early as possible in the EEO complaint process.

(2) Agencies shall offer ADR to all aggrieved employees/complainants at the informal (pre-complaint) stage except when an agency documents an incident reasonably related to the complaint that involved workplace violence, sexual assault/battery, or other criminal activity. Agencies should strongly consider offering ADR to all aggrieved employees/complainants at the formal stage even when ADR was conducted during the informal stage, except in those situations referenced above involving workplace violence, sexual assault/battery, or other criminal activity. If an agency decides not to offer ADR for other reasons, at the formal stage, the agency shall document the decision. The completed documentation must cite merit-based reasons, be signed and dated by the decision maker and be placed in the agency ADR file. The documentation shall not also be placed in the EEO complaint file. The decision maker shall, as soon as possible, send a copy of the completed documentation to the Conflict Prevention and Resolution Center (CPRC). To ensure consistency, agencies shall use the forms in Appendix E, or one with similar

content for all formal EEO cases in which ADR is offered and/or conducted. Having offered and/or conducted ADR at the informal stage is not considered, by itself, to be a merit-based reason for not offering ADR at the formal complaint stage. The completed documentation will be available to CPRC for review as needed and during internally or externally conducted compliance reviews.

(3) Whenever an agency decides to offer ADR in exception cases and has any concerns about the safety of participants in the ADR process, the agency is obliged to take appropriate safety precautions.

(4) An agency need not offer ADR if to do so would conflict with any law, government-wide, or departmental regulation that limits its use in that agency.

(5) ADR is voluntary for the aggrieved party or complainant. Once an agency offers ADR to a complainant and the complainant elects ADR, management is required to participate in ADR in good faith.

(6) Agencies may determine which ADR technique, as provided in Appendix A, is offered in each case. However, complainants' preferences may be considered.

(7) To ensure the effective transmittal of complaints to ADR units, EEO Counselors (for informal complaints) or civil rights offices (for formal complaints) must first collect certain information via the EEO counselor's routine limited inquiries. The EEO counselor or office must then provide the ADR unit the following information

(a) the complainant's specific allegations;
(b) the names of the agency and all the parties involved in the complaint (including titles, addresses (mailing and e-mail), and phone numbers);
(c) the names and titles of the responsible and resolving officials;
(d) the name of the complainant's representative (if applicable);
(e) the case numbers of any pending formal EEO complaints, and
(f) other relevant information routinely compiled.

Whether or not the agency will be offering ADR, EEO Counselors must provide all complainants a detailed explanation of the agency's available EEO ADR and counseling programs in all informal complaints.

EEO Counselors should make both written and oral ADR offers to informal complainants as soon as possible during the counseling process consistent with their responsibilities. In addition, as part of the ADR offer to a complainant and so that the complainant may make an informed decision, the EEO Counselor shall identify on the ADR Offer Form (Appendix B) and describe in detail the specific ADR technique the agency has chosen to offer the complainant. Once a complainant accepts an ADR offer, the ADR technique offered will be provided to the complainant. The complainants shall either accept or decline ADR offers as soon as possible after receiving an offer. The counseling process will continue if the

complainant has not accepted the ADR offer within a reasonable period of time after it was made.

(8) To ensure consistency in the manner EEO ADR is offered and in the effective transmittal of informal and formal complaints to ADR units, Agencies shall use the forms in Appendices B & C, or ones with similar content for all EEO cases in which ADR is offered and/or conducted.

(9) Each USDA agency/mission area shall establish a permanent ADR Awareness Program or effort within their respective area. The ADR Awareness Program shall be designed to bring EEO ADR to the attention of all employees and to promote understanding of EEO ADR and its usefulness within the EEO complaint process. Each program shall be designed to provide all employees with the following information:

(a) the Agency's/mission area's support for EEO ADR,
(b) the requirement explaining that ADR must be offered in the EEO process,
(c) the specific exception(s) to offering ADR in EEO complaints,
(d) a description of the EEO ADR techniques available in the agency/mission area, (e) the complainant's right to representation during the EEO ADR process,
(f) the requirement that officials must participate in good faith on behalf of the agency, and
(g) an official/contact office to learn more about the EEO ADR programs.

Agencies/mission areas may select any of the suggested components outlined in Appendix D to build their ADR Awareness Programs. In order to satisfy this requirement, other components not listed in Appendix D may also be selected upon the prior approval of CPRC.

d ADR in Program Disputes

(1) The USDA encourages the use of ADR as a tool to prevent or minimize escalation of conflicts with its customers and to resolve such conflicts at the earliest possible stage.

(2) In states that have a USDA-certified State Agricultural Mediation Program, the USDA agencies shall offer mediation to customers to whom they issue an adverse decision relating to agricultural loans, wetlands determinations, compliance with farm programs, including conservation programs, agricultural credit, rural water loans, grazing on National Forest System lands, pesticides, rural housing loans, rural business loans, crop insurance, and other issues the Secretary may subsequently consider appropriate. If a customer chooses mediation under this subsection, the USDA agencies shall participate.

(3) In States in which there is no USDA-certified State Agricultural Mediation Program, the USDA agencies shall advise all customers to whom they issue an adverse decision relating to the program issues identified in c(2) of this section that mediation

may be an option and offer it to the customers as appropriate. If the customer expresses interest in mediation, the agency shall participate in mediation in good faith. In States in which there is a State Agricultural Mediation Program but the program is not certified to mediate each and every program issue, as to the non-certified issues, mediation shall be governed by the procedures for non-certified states.

e Neutrals

(1) General Mediator Requirements (Workplace)

(a) Any individual who mediates USDA workplace disputes as a lead or solo mediator must have at least 40 classroom hours of mediation skills training, except that the minimum training standards for mediators of Shared Neutrals Programs operated by Federal Executive Boards or the Department of Health and Human Services (Washington, D.C.) are deemed to meet all of the USDA's minimum training requirements.

(b) To serve as a lead or solo mediator of an USDA workplace dispute, an individual must have mediated or co-mediated at least three workplace disputes.

(c) Mediators must be familiar with and follow the Model Standards of Conduct for Mediators promulgated by the Society of Professionals in Dispute Resolution (now the Association for Conflict Resolution), the American Arbitration Association, and the American Bar Association. All USDA mediators are required to complete the USDA Ethics training (on-line).

(d) After six months from the effective date of this regulation and beginning the first day of the following month, in order to maintain their qualified status, all USDA mediators must complete at least eight hours of supplemental training in ADR, i.e., mediation, facilitation, factfinding, etc. or in ADR-related areas, i.e., human resources, inter-personal communications, group dynamics, etc., prior to the end of every successive 2 year period. Mediators who lose their qualified status because they failed to complete the required supplemental training, may be considered qualified upon completion of eight supplemental hours of training, whenever that may occur.

(e) After six months from the effective date of this regulation and beginning the first day of the following month, in order to maintain their qualified status, the USDA lead or solo mediators must lead or co-mediate at least two mediations prior to the end of each succeeding twelve month period.

(2) EEO Mediator Requirements

In addition to the requirements in e(1), the following requirements must be satisfied for a mediator to conduct mediations for EEO complaints:

(a) After six months from the effective date of this regulation and beginning the first day of the following month, lead or solo mediators for USDA EEO complaints must have completed at least 24 hours of EEO training. In addition, they must have mediated or co-mediated at least five EEO informal or formal complaints.

(b) Beginning one year from the date in (2)A, in order to maintain their qualified status, USDA EEO lead or solo mediators must add eight supplemental hours of EEO training each annually beginning after their initial year of qualification and prior to the end of the following year. Lead or solo mediators who lose their qualified status because of a missed supplemental EEO training, may be considered qualified upon completion of eight supplemental hours of EEO training, whenever that may occur.

(3) Agencies may choose to supplement the minimum requirements in (1) and (2) with additional training and are encouraged to periodically evaluate all ADR neutrals and to maintain records of all mediator evaluation results.

(4) Each agency must maintain documentation for individual neutrals indicating that the neutrals used in their program have met the standards of certification required in this section. Documentation will be subject to review upon request from the CPRC.

f Evaluation

All ADR programs are to engage in and support the evaluation of ADR's use and benefits to ensure quality ADR services. At a minimum, evaluators should attempt to capture and analyze ADR usage, timesavings, cost avoidance, customer satisfaction, improved relationships, and other indicatorsconsistent with the agency's strategic goals and objectives.

g Confidentiality

(1) Confidentiality in ADR sessions is intended to allow parties to candidly discuss their interests in order to reach the best possible resolution, without fear that statements made during ADR will later be used against them. Confidentiality provides protection from disclosure by an ADR neutral to individuals outside of an ADR session of information discussed or presented during an ADR session. Confidentiality also provides the assurance that an ADR neutral will not disclose to one party of an ADR session information shared with the neutral in confidence by another party.

(2) Information, including resolution options, discussed during or specifically prepared for ADR proceedings may not be introduced as evidence in subsequent hearings or other legal proceedings, except as permitted under the ADR Act.

6 RESPONSIBILITIES

a Sub-cabinet officials and Agency Administrators are responsible for:

(1) Ensuring that all employees are aware of, have access to, and are encouraged to use ADR programs consistent with this regulation.

(2) Endorsing and actively supporting the earliest possible use of ADR to avoid and resolve workplace and program complaints.

(3) Reporting to the Assistant Secretary for Civil Rights (ASCR) at least annually on agency ADR programs and usage.

(4) Ensuring that agency officials who participate in EEO-ADR are appropriately informed of the specifics of the EEO matters involved in advance and fulfill their EEO ADR responsibilities while participating.

(5) Ensuring that agency officials who participate in program ADR are appropriately informed of the specifics of the program matters involved in advance and fulfill their program responsibilities while participating.

(6) Establishing Agency limits or criteria for resolution or settlement of conflicts and complaints.

b The ASCR provides the overall leadership, coordination, and direction for the USDA's programs of civil rights, including program delivery, compliance, EEO, and conflict resolution. The ASCR is also responsible for:

(1) Establishing the regulatory, logistical, and practical tools necessary to eliminate conflict at USDA, not only in the workplace, but with external customers through the use of ADR.

(2) Issuing Department-wide policies, regulations, and guidance on the use of ADR and the evaluation of programs.

(3) Administering the Department's EEO and ADR Programs.

(4) Oversight and management of the EEO counseling function for USDA.

(5) Ordering such corrective measures in EEO complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to engage in a discriminatory practice.

c The Director, CPRC is responsible for:

(1) Developing and issuing standards for qualifications and evaluation of mediators and other neutrals.

(2) Coordinating ADR activities throughout USDA.

(3) Assisting and supporting agency ADR programs.

(4) Promoting and encouraging the use of ADR.

(5) Monitoring agencies' programs, tracking usage, determining compliance with Departmental standards, and reporting at least annually to the Secretary on ADR activities.

(6) Maintaining information on available neutrals and providing a variety of additional ADR services.

(7) Providing ADR services to the Office of the Secretary, Offices of the Under Secretaries, Departmental Staff Offices, offices reporting to the ASCR, Assistant Secretary for Administration (Departmental Administration), and to any other officer or agency of the USDA as may be agreed.

d The Directors of Agency Civil Rights Offices are responsible for:

(1) Promoting and encouraging the use of ADR in the EEO process.

(2) Assisting the Agency Administrator in determining which ADR technique(s) is selected to fulfill the EEO ADR requirements found within this regulation.

(3) Issuing to all agency officials who may serve as either a RMO or a Resolving Official written copies of their rights and responsibilities in the EEO ADR processes.

(4) Ensuring that all neutrals performing EEO ADR within their agency have received the required training or are deemed qualified per this regulation prior to mediating complaints.

e The Agency/Mission Area ADR Program Managers are responsible for:

(1) Developing and issuing standards for qualifications and evaluation of mediators and other neutrals within their respective Agency/Mission Area consistent with these regulations.

(2) Providing ADR activities throughout their Agency/Mission Area.

(3) Promoting and encouraging the use of ADR.

(4) Assisting the Agency Administrator in determining which ADR technique(s) is selected to fulfill the EEO ADR requirements found within this regulation. (Applicable in agencies where the ADR Program Manager is responsible for providing EEO ADR.)

(5) Monitoring their programs, tracking usage, ensuring compliance with Departmental requirements, and reporting at least annually to CPRC on ADR activities.

(6) Maintaining information on neutrals and providing a variety of any additional ADR services as needed.

f The General Counsel is responsible for:

Working with the client agency, the Department of Justice, and CPRC, as appropriate, in recommending and using ADR in appropriate administrative and litigation matters.

g Employees are responsible for:

Participating in good faith during all phases of any ADR process in which they are involved.

END

Appendix A

EXAMPLES OF ADR TECHNIQUES

1. Mediation

Mediation is currently the most popular form of ADR used in employment-related conflicts. It is a form of ADR that is often used as an alternative to traditional EEO counseling. Mediation is an informal process in which a neutral third party assists the parties in conflict in reaching a voluntary, mutually agreeable settlement. It gives the parties the opportunity to discuss the issues, clear up misunderstandings, determine the parties' underlying interests or concerns, find areas of agreement, and, ultimately, to incorporate those areas of agreement into resolutions. The mediator does not impose a decision on the parties, but rather, helps the parties to agree to their own mutually acceptable resolution.

2. Fact-Finding

Fact-Finding is the use of an impartial expert (or group) with the authority to determine what the "facts" are in a conflict. The Fact Finder is authorized only to investigate or evaluate the matter presented and to file a report establishing the facts in the matter. The Fact Finder may also issue either a situation assessment or a specific procedural or a substantive recommendation as to how a conflict might be resolved. The findings of fact must remain confidential in order to comply with the core principles of ADR.

3. Facilitation

Facilitation involves the use of techniques to improve the flow of information in a meeting between parties to a conflict. The techniques may also be applied to decision-making meetings where a specific outcome is desired (e.g., resolution of a conflict or dispute). A facilitator does not typically become as involved in the substantive issues, as does a mediator. The facilitator focuses more on the process involved in resolving a matter.

The facilitator works with all of the participants at once and provides procedural directions as to how the group can efficiently move through the problem-solving steps of the meeting and arrive at the jointly agreed-upon goal. The facilitator focuses on procedural assistance and remains impartial with regard to the topics under discussion.

4. Early Neutral Evaluation

Early Neutral Evaluation is a process whereby a Neutral, usually with substantive expertise, evaluates the relative merits of the parties' cases. This process usually involves an informal presentation to the Neutral of the highlights of the parties' positions. The Neutral provides a non-binding evaluation that can give the parties a more objective assessment of their positions, thereby increasing the chances that further negotiations will be

productive. Following the evaluation, the Neutral may assume the role of a mediator and assist the parties in reaching a mutually acceptable resolution.

5. Non-binding Arbitration

Arbitration involves presenting a conflict to an impartial or neutral individual (arbitrator) or panel (arbitration panel) for issuance of an advisory opinion. Under the process, the parties have input into the selection process, giving them the ability to select an individual or panel with some expertise and knowledge of the disputed issues. Generally, persons chosen are those known to be impartial, objective, and fair, and who have the ability to evaluate and make judgments about data or facts. The opinions issued by the third party in such cases must be non-binding.

6. Settlement Conferences

Settlement conferences may be conducted by a settlement judge or referee, and attended by representatives of the opposing parties and/or the parties themselves, in order to reach a mutually acceptable settlement of the disputed matter. Agencies are not precluded from having their own settlement conferences without a settlement judge, provided the parties agree.

The role of a settlement judge is similar to that of a mediator in that he/she assists the parties procedurally in negotiating an agreement. Such judges may have much stronger authoritative roles than mediators, since they may provide the parties with specific substantive and legal information about what the disposition of the case might be if it were to go to court or hearing. They also provide the parties with possible settlement ranges for their consideration. In the event a settlement is not reached, the case is then processed by an administrative judge other than the settlement judge. Because these conferences are not conducted by the administrative judge hearing the case on the merits, traditional ex parte communication constraints are not applicable.

7. Ombuds

Ombuds are individuals who rely on a number of techniques to resolve conflicts. These techniques include counseling, mediating, conciliating, and fact-finding. When an ombud receives a complaint, he/she interviews parties, reviews files, and makes recommendations to the disputants. Ombuds typically do not impose solutions. The power of the ombud lies in his/her ability to persuade the parties to accept his/her recommendations. Generally, an individual not accepting the proposed solution of the ombud is free to pursue a remedy in other forums for conflict resolution.

8. Med-Arb

Med-Arb (mediation-arbitration) is a process whereby a third party Neutral begins by facilitating discussions between parties in conflict (mediation), which may enable the parties to reach a mutually acceptable resolution of the issues and concerns in the conflict. If the

parties fail to reach a mutually acceptable resolution, the Neutral is empowered to issue a non-binding decision after hearing evidence and arguments from both parties (arbitration).

9. Minitrials

Minitrials involve a structured settlement process in which each side to a dispute presents abbreviated summaries of their case before the parties and/or their representatives who have authority to settle the dispute. The summaries contain explicit data about the legal bases and the merits of a case.

The process generally follows more relaxed rules for discovery and case presentation than might be found in a court or other administrative proceedings and usually the parties agree on specific limited periods of time for presentations and arguments.

10. Peer Review

Peer Review is a problem-solving process where an employee takes a dispute to a group or panel of fellow employees and managers for a decision. The decision is usually not binding on the employee, and s/he would be able to seek relief in traditional forums for dispute resolution if dissatisfied with the decision. The principal objective of peer review is to resolve disputes early before they become formal complaints or grievances.

Typically, the panel is made up of employees and managers who volunteer for this duty and who are trained in listening, questioning, and problem-solving skills as well as the specific policies and guidelines of the panel. A peer review panel may be a standing group of individuals who are available to address whatever disputes employees might bring to the panel at any given time. Other panels may be formed on an ad hoc basis through some selection process initiated by the employee, e.g., blind selection of a certain number of names from a pool of qualified employees and managers.

11. Combinations of Techniques

Often techniques may be combined to provide advantageous aspects of more than one method. For example, if in a mediation the mediator finds that the parties are able to speak directly to each other in a productive way, the mediator may utilize the facilitator role and follow-up with the mediator role later. In some cases, fact finding may precede a facilitation or mediation session. Agencies are not limited to using only one method or technique in their ADR programs. They may find that using various methods in combination may also yield fruitful results and be very effective in reaching resolution.

Appendix B

EEO Informal/Formal Complaint Process
ADR Offer/Selection Form

TO:

_____
Complainant's Name

_____
Complainant's Office Address

_____
Complainant's Office Phone Number

FROM:

_____
Name of EEO Counselor/Civil Rights Office Contact Person

This agency is offering you an opportunity to seek resolution of your EEO complaint through Alternative Dispute Resolution (ADR) [or traditional EEO Counseling (for informal EEO complaints only)]. Please indicate your decision to opt for ADR [or to continue with the traditional EEO Counseling process (if applicable)]. Then sign, date and return the form.

Please note that your acceptance and participation in ADR during the informal EEO complaint stage does not affect the ADR offering requirement during the formal EEO complaint stage.

SELECTION OF EEO COMPLAINT PROCESS
(Please choose only one)

_____ Alternative Dispute Resolution – *[Name of ADR Technique Offered]*
_____ EEO Counseling (only for the informal EEO complaint stage)
_____ Formal Complaint Processing (only after filing a formal EEO complaint)

My ADR, EEO counseling (if applicable) and formal complaint options have been fully explained to me. Also, written materials providing information about these options have been provided to me. If I have chosen ADR, I understand that the participating agency officials may not be the officials identified by the EEO counselor.

_____ _____
Signature Date

*If you selected ADR as your option and have not been contacted by the ADR program within 7 days, please contact your EEO Counselor/Civil Rights Contact Person or the ADR program. You may contact the ADR program at ###-###-#### or ###-###-####.

Appendix C

EEO-ADR Complaint Notification Form

INFORMAL_____
FORMAL _____

COMPLAINANT INFORMATION

1. Date form prepared _____

2. Complainant's full name _____

3. Complainant's full work address _____

_____

4. Complainant's full home address _____

_____

5. Complainant's work phone number(s) _____

6. Complainant's home phone number(s) _____

7. Complainant's e-mail address & Fax number_____

8. Is Complainant a member of a Bargaining Unit? _____Yes _____No

9. Name of Complainant's attorney/representative(s)_____

10. Attorney/Representative phone number _____

11. Attorney/Representative full address _____

_____

12. Attorney/Representative e-mail address and Fax number _____

_____

AGENCY INFORMATION

13. Name of Agency the complaint is filed against _____

14. Responsible Management Official(s):

Name _____
Title _____
Name of Work Unit _____
City & State_____
Phone & FAX numbers _____

Name _____
Title _____
Name of Work Unit _____
City & State _____
Phone & FAX numbers _____

Name _____
Title _____
Name of Work Unit _____
City & State _____
Phone & FAX numbers _____

15. Resolving Official (if known):

Name _____
Title _____
Name of Work Unit_____
City & State_____
Phone & FAX numbers_____

16. Agency/Office ADR Contact Person:

Name _____
Title _____
Phone Number _____

COMPLAINT INFORMATION

17. ADR Election:
    a. Date ADR was offered?_____
    b. Date ADR offer was accepted? _____
    c. ADR Technique offered and accepted? _____

18. If an informal complaint:
    a. Date informal complaint was initiated with counselor _____
    b. Date of 90th day of informal complaint period _____
    c. Name and Phone number of EEO Counselor_____

_____

19 If a formal complaint, provide dates for item 18 AND provide the date the formal complaint was filed _____

20. If a formal complaint, check the current stage of the complaint:
_____ Filed _____ Accepted _____ ALJ Decision Requested _____Ongoing Investigation
_____ ROI Completed ____ Hearing Date Set _____ Hearing Held _____ Appealed

21. Indicate basis(es) identified by complainant OR (if a formal complaint was filed) accepted by the Office of Civil Rights (may attach acceptance letter)

____ Sex:
___ Male
___ Female
____ Race
___ African-American
___ Native American
___ Asian
___ Pacific Islander
___ White
___ Alaskan Native
___ Native Hawaiian
___ Other (specify:_____)
____ Color
Specify: _____
____ Age
Date of Birth:____/____/____

____ Religion
Specify:_____
____ Sexual Harassment
____ National Origin, e.g. Hispanic
Specify:_____
____ Mental Disability
____ Reprisal
____ Parental Status
____ Sexual Orientation
____ Political Affiliation
____ Marital Status
____ Genetic Information

22. Briefly list issue(s)/claim(s) identified by pre-complainant OR, if a formal complaint was filed, accepted by the Office of Civil Rights (may attach CR acceptance letter)

1. _____
_____

2. _____
_____

3. _____
_____

4. _____
_____

5. _____
_____

23. How many formal complaints does this complainant currently have pending with this agency? _____ Total with USDA (if different)? _____

Please list the formal complaint numbers and agencies for those complaints here:

#_____Agency:_____
Issues: _____
_____
Basis(es): _____

#_____Agency:_____
Issues: _____
_____
Basis(es):_____

#_____Agency:_____
Issues: _____
_____
Basis(es):_____

(Attach additional pages as necessary)

24. This form prepared by:

Name_____
Title_____
Phone number_____

ATTACHMENTS:

-If informal complaint - Please attach the Option Form
-If formal complaint - Attach the following, *if available*:

a. Formal Complaint filed by complainant
b. Counselors Report
c. Formal Complaint Acceptance Letter

Appendix D

ADR AWARENESS PROGRAM SUGGESTIONS

I. Promotional Meetings

- Schedule regular or traveling meetings, teleconferences, throughout the agency to focus on EEO-ADR/EIP-ADR.
- All employees must attend at least one meeting per year
- Frequency of meetings based on accessibility to all employees, i.e., field offices, DC offices, etc.
- Meeting Topics/Areas: Same as above

II. Posters

- Posters should be either specifically for EEO-ADR/EIP-ADR or (for EEO-ADR) combined with EEO Counseling poster
- Posters can be posted wherever the agency posts the required EEO counseling posters
- Explain key program aspects i.e. same as above

III. New Agency/Mission Area Policy

- Formally write the basic provisions of EEO-ADR/EIP-ADR and key aspects of the agency's EEO-ADR/EIP-ADR program into either the agency's civil rights policy or administrative policy, and then distribute the amended policy to all employees and post it on any available websites. Create policy specifically for EEO-ADR/EIP-ADR if none exists.

IV. Booklet, Brochure or Manual

- Publish a booklet, brochure or manual designed solely for the purpose of describing and publishing the agency's EEO-ADR/EIP-ADR program and distribute it to all employees.

V. ADR Promotion Training for EEO Counselors

- Have all EEO counselors attend training specifically designed around promoting EEO-ADR/EIP-ADR
- Require that all EEO counselors promote ADR in the counseling process prior to offering ADR

VI. Incentive Program

- Set EEO-ADR/EIP-ADR participation goals for each (area, division, …?) of the agency
- Provide financial or other kinds of incentives to any area meeting its goals
  -Annual publishing of successful areas
  -Framed certificates for offices

VII. ADR Video

- Develop and distribute a video demonstrating how ADR works
- Require that all employees view the video in person or on line.

VIII. ADR Training Requirement for all Managers

- Require all managers to attend at least one ADR training, e.g., interest-based negotiations, etc.
- Specify which courses/classes fulfill the requirement

IX. ADR Training Module

- Include a brief, pre-designed and rehearsed ADR module in all existing employee training/presentation sessions

X. Institutionalized Promotional Effort

- Require that a well-respected manager give opening remarks about and in support of EEO-ADR/EIP-ADR/Both at all meetings and events as part of the agenda or itinerary
- Provide ADR training to all union reps
- Require that all managers make a quick presentation during every All Employee meeting.

Appendix E

NON-OFFER OF ADR
DURING THE EEO FORMAL STAGE

_____
USDA EEO Formal Complaint Number

Date Formal Complaint was filed: _____

Date Formal Complaint was Accepted by OCR: _____

Date "Not to Offer ADR" Decision was Made: _____

Name of Official who Decided Not to Offer ADR: _____

Reason(s) Decision Not to Offer ADR was Made: (Include, as appropriate, any relevant regulation citations, any offices/personnel (by name) that contributed to the decision, any information/data supporting the decision, etc.)

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

(Attach additional sheets and additional documents as needed.)

_____ _____
Signature of Official deciding not to offer ADR Date Signed

_____
Title of Signing Official

Attachment(s) (if applicable)

cc: Conflict Prevention and Resolution Center