

United States Equal Employment Opportunity Commission

OFFICE OF FEDERAL OPERATIONS



ADR Report: Part I - ADR in the Federal Sector EEO Process

FY 2003-FY 2004

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EXECUTIVE SUMMARY

As a central piece of its Five-Point Plan, the Equal Employment Opportunity Commission (EEOC) seeks to promote and expand the use of alternative dispute resolution (ADR) in an effort to resolve equal employment opportunity (EEO) disputes. In Part 1 of its ADR Study, the EEOC examines ADR in the pre-complaint and formal complaint stages of the federal sector EEO process. This report evaluates the government-wide data, as submitted by the federal agencies, to determine how effectively ADR programs resolved EEO disputes and how efficiently the ADR programs operated. In addition, this report addresses other important ADR issues, including types of ADR techniques, sources of neutrals, and types of settlement benefits.

During the pre-complaint stage in fiscal year (FY) 2003, ADR was used in 42% of all instances of EEO counseling, which is an increase from 23% in FY 2002. This increase was due, in large part, to an ADR offer rate that climbed from 47% in FY 2002 to 73% in FY 2003. In FY 2004, the participation rate rose to 43% and the offer rate rose to 80%. The vast majority of ADR attempts utilized mediation as the ADR technique and neutrals from private organizations as the source of mediators. Since FY 2000, ADR has averaged a resolution rate of 58% in the pre-complaint stage. In FY 2003, ADR efforts resulted in 7,168 settlements, totaling \$1,384,474 in monetary benefits. In FY 2004, ADR efforts resulted in 6,427 settlements, totaling \$1,609,404 in monetary benefits.

During the formal complaint stage in FY 2003, there was a slight increase in ADR usage from 4% in FY 2002 to 7% in FY 2003; however, the usage slipped to 3% in FY 2004. The low ADR participation rate may be attributed to an offer rate of only 7% in FY 2004, which represents a decrease from 12% in FY 2003. Similar to the pre-complaint stage, agencies selected mediation and neutrals from private organizations in the majority of ADR attempts. With regard to the ADR attempts that were completed in the formal complaint stage, the ADR resolution rate declined from 59% in FY 2002 to 42% in FY 2003, but increased significantly in FY 2004 to 77%. Since FY 2000, ADR has averaged a resolution rate of nearly 60% in the formal complaint stage. In FY 2003, ADR efforts resulted in 1,375 settlements, totaling \$6,027,764 in monetary benefits. In FY 2004, ADR efforts resulted in 1,250 settlements, totaling \$3,145,890 in monetary benefits.

INTRODUCTION

Cari M. Dominguez, Chair of the U.S. Equal Employment Opportunity Commission (EEOC or Commission), has initiated the Five-Point Plan, a strategic framework to improve EEOC's overall operations.¹ The centerpiece of the Plan is to promote and expand the use of mediation and other types of alternative dispute resolution (ADR) as a means of resolving equal employment opportunity (EEO) disputes.² When used properly, ADR can provide parties with fast and cost-effective results by allowing them to avoid the time and expense of litigation. While at the same time, ADR can provide significant intangible benefits to the parties by repairing their working relationships and improving workplace communication and morale.³ In furtherance of the Plan's promotion of ADR, the Commission established a government-wide goal that fifty percent of all instances of EEO counseling utilize ADR by FY 2009. To achieve this goal, the Plan includes a broad, progressive approach which encourages the Commission to seek partnerships to enhance the effectiveness of federal agencies' programs and services.

To expand the use of ADR in the federal sector, the EEOC initiated a project to partner with twenty-one (21) federal agencies to identify best practices, provide technical assistance, and develop strategic plans to improve the quality and effectiveness of the agencies' ADR programs.⁴ Due to the scope of the ADR Study, the ADR report will be issued in two separate parts: Part 1 focuses on the efficiency and effectiveness of ADR in the EEO process; and Part 2 will discuss best practices of the partner agencies' ADR programs.

In Part 1 of its ADR Study, the Commission examines the efficiency and effectiveness of ADR in the pre-complaint and formal complaint stages of the federal sector EEO process. The Commission also evaluates the government-wide data, as reported by federal agencies in their annual form 462 submission to the Commission, to determine how successfully ADR programs resolved EEO disputes (effectiveness) and whether the ADR

¹ The goals of the Five Point Plan include proactive prevention, proficient resolution, promote and expand ADR, strategic enforcement and litigation, and EEOC as a model workplace. The Five Point Plan can be viewed in its entirety on the EEOC's webpage <http://www.eeoc.gov/abouteeoc/plan> under the heading, "Strategic Plan For Fiscal Years 2004 - 2009."

² ADR is a process in which a third party neutral assists the disputants in reaching an amicable resolution through the use of various techniques. ADR describes a variety of approaches to resolve conflict which avoid the cost, delay, and unpredictability of the traditional adjudicatory processes.

³ See Jeffrey M. Senger, *Federal Dispute Resolution: Using ADR with the United States Government*, 3 - 10 (Jossey-Bass/John Wiley & Sons, 2003), which is located at www.usdoj.gov/odr/articles.htm.

⁴ The partner agencies include Court Services and Offender Supervision Agency, Defense Commissary Agency, Defense Information Systems Agency, Department of the Air Force, Department of the Army, Department of Education, Department of Justice, Department of Labor, Department of State, Department of Veteran Affairs, Export-Import Bank, Federal Communications Commission, Federal Trade Commission, Government Printing Office, National Gallery of Art, National Guard Bureau, Nuclear Regulatory Commission, Security and Exchange Commission, Small Business Administration, Social Security Administration, and United States Postal Service.

programs operated in a timely manner (efficiency). In addition, this report addresses other important ADR issues, including types of ADR techniques, sources of neutrals, and types of settlement benefits.

ADR Plays Key Role in the Federal Sector EEO Process

The EEOC was established by Title VII of the Civil Rights Act of 1964 with a mission of eradicating discrimination in the workplace. EEOC's regulations, 29 C.F.R. § 1614.603, require agencies to make reasonable efforts to voluntarily settle EEO discrimination complaints as early as possible in, and throughout, the administrative process. The Administrative Dispute Resolution Act of 1996 (ADRA) requires each federal agency to adopt and promote the use of ADR. Since FY 2000, EEOC's regulations have required all federal agencies to establish or make available an ADR program during both the pre-complaint and formal complaint stages of the EEO process. The EEOC has made ADR the centerpiece of its Five-Point Plan to improve the EEO process. In this regard, the requirements for ADR programs in the federal sector EEO complaint process are outlined in 29 C.F.R. § 1614.102(b)(2) (1999), EEO Management Directive 110 (MD-110), and EEO Management Directive 715 (MD-715).

EEOC Implements Model EEO Program Guidelines

To fulfill its Five-Point Plan, the EEOC issued MD-715 in FY 2003, which provides policy guidance for establishing a model EEO program. To become a model EEO program under MD-715, agencies must operate their EEO programs efficiently and take proactive steps to prevent unlawful discrimination from occurring. Agencies are required, among other things, to maintain an efficient, fair, and impartial complaint resolution process. An integral part of establishing a model EEO program is the effective use of ADR to resolve disputes.

All Federal Agencies Have An ADR Program

In FY 2003, 93 out of 94 (99%) agencies reported to the EEOC that they had established or made available an ADR program in their EEO complaint process.⁵ Eighty-four of those agencies reported that 100% of their workforce had access to the ADR program during FY 2003. Another 6 agencies reported that less than 100% of their workforce had access to an ADR program; all but one of those agencies have made ADR available to at least 91% of their total workforce. Three agencies could not provide the size of their workforce due to national security reasons.⁶ By FY 2004, all agencies with more than 100 employees had established or made an ADR program available.

⁵ The Peace Corps reported that it did not establish or make available an ADR program in FY 2003; however, that agency developed an ADR program, which it implemented in FY 2004.

⁶ These agencies included: Central Intelligence Agency; Defense Intelligence Agency; and National Imagery and Mapping Agency, now known as Defense National Geospatial-Intelligence Agency.

Section A *ADR Usage in the Pre-Complaint Stage*

Agencies have the discretion to determine when an EEO matter is appropriate for ADR. They may establish written procedures to identify when ADR will be offered, or they may decide to offer ADR on a case-by-case basis. Agencies may not decline to offer ADR to particular cases solely because of the basis involved (i.e., race, color, religion, national origin, sex, age, disability, or retaliation).

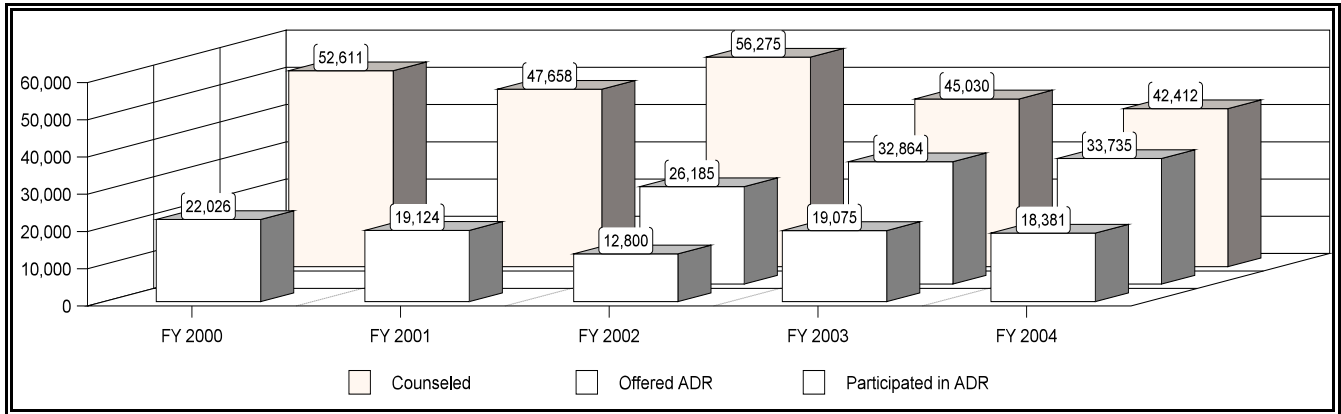
1. **Government-Wide ADR Usage Increased By 19% in FY 2003 and 1% in FY 2004**

During the pre-complaint process in FY 2003, individuals sought counseling from an EEO Counselor or an ADR Intake Officer in 45,030 matters. Agencies offered ADR to individuals in 32,864 instances of counseling (73%). Of the total instances of counseling, 19,075 (42%) agreed to participate and were accepted into the agency's ADR program.

During the pre-complaint process in FY 2004, individuals sought counseling from an EEO Counselor or an ADR Intake Officer in 42,412 matters. Agencies offered ADR to individuals in 33,735 instances of counseling (80%). Of the total instances of counseling, 18,381 (43%) agreed to participate and were accepted into the agency's ADR program.

The EEOC has established a goal that the parties should participate in ADR in 50% of all instances of counseling. Since FY 2000, the ADR participation rate during the pre-complaint stage has averaged 38%. A three-year analysis of the data shows that the ADR participation rate in the pre-complaint process increased by 19 percentage points from 23% in FY 2002 to 42% in FY 2003 and to 43% in FY 2004. The higher ADR participation rate may be due to an ADR offer rate that climbed from 47% in FY 2002 to 73% in FY 2003 to 80% in FY 2004. Because higher offer rates may produce higher participation rates, we recommend that agencies strive to increase their offer rate to at least 75% of all instances of counseling.

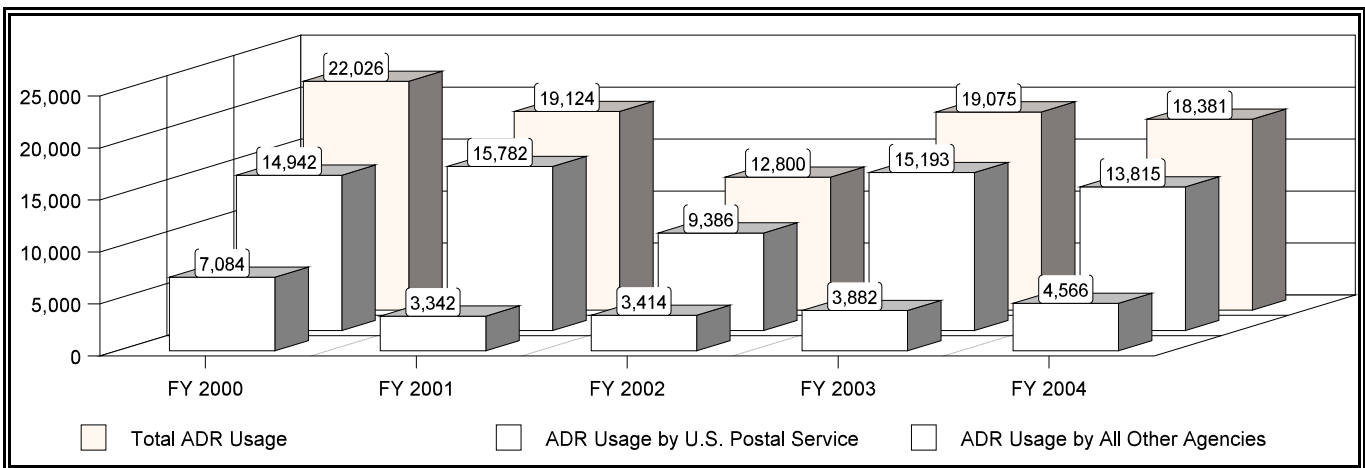
**Figure 1 - ADR Usage in the Pre-Complaint Process⁷
FYs 2000 - 2004**



2. U.S. Postal Service Improved Government-Wide ADR Usage by 23%

Because the U.S. Postal Service reported 19,101 (45%) out of the 42,412 instances of counseling in FY 2004, the government-wide data is largely impacted by that agency. When the FY 2004 government-wide data is examined excluding the U.S. Postal Service, the ADR offer rate decreased from 80% to 62%, and the ADR participation rate decreased significantly from 43% to 20%. A two-year analysis of the data, excluding the U.S. Postal Service, shows that the ADR participation rate increased by 4 percentage points from 16% in FY 2003 to 20% in FY 2004. Since FY 2000, the ADR participation rate during the pre-complaint stage has averaged 21% excluding the U.S. Postal Service.

**Figure 2 - Comparison of ADR Usage Between U.S. Postal Service and All Other Agencies in the Pre-Complaint Process
FYs 2000 - 2004**



⁷ The EEOC did not collect data on ADR offers until FY 2002. The total counseled for FY 2000 has been corrected by excluding the instances of counseling initiated with ADR Intake Officers due to concerns about the accuracy of the data.

3. Five Agencies Tied for Highest ADR Offer Rate in FY 2003

In FY 2003, the Defense Logistics Agency and the four other agencies listed in Table 1, below, reported the highest ADR offer rate among federal agencies. The ADR offer rate is obtained by dividing the number of ADR offers by the total number of instances of counseling.⁸ A table with the complete ranking of agencies by ADR offer rate is located at www.eeoc.gov/federal/adr/datatables/index.html. In FY 2004, seven agencies with at least 125 completed counselings had offer rates of 100%. The agencies are listed in Table 1a.

**Table 1 - Highest ADR Offer Rate in the Pre-Complaint Process⁹
FY 2003**

Agencies	Counselings	ADR Offers	Offer Rate
Defense Logistics Agency	518	519	100%
Army & Air Force Exchange Service	397	397	100%
Department of Labor	229	238	100%
General Services Administration	167	189	100%
National Aeronautics and Space Administration	174	174	100%

**Table 1a - Highest ADR Offer Rate in the Pre-Complaint Process
FY 2004**

Agencies	Counselings	ADR Offers	Offer Rate
U.S. Postal Service	19,101	19,248	100%
Defense Logistics Agency	482	502	100%
Defense Army and Air Force Exchange	309	309	100%
Department of Labor	221	241	100%
Defense Finance and Accounting Service	184	202	100%
Broadcasting Board of Governors	149	157	100%
Environmental Protection Agency	125	125	100%

⁸ In this ADR Report, all ranking tables will exclude agencies with fewer than 10 of the applicable ADR offers, cases processed in ADR, or ADR closures.

⁹ The ADR offer rate was adjusted to 100% for those agencies that submitted data which resulted in an ADR offer rate of over 100%. The number of ADR offers may exceed the instances of counseling because the instances of counseling contains only matters that were completed during the fiscal year while ADR offers include instances of counseling that were pending and/or completed at the end of the fiscal year.

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4. Government Printing Office & Federal Trade Commission had Most Improved ADR Offer Rate in FY 2003

In FY 2003, the Government Printing Office and the Federal Trade Commission tied for the most improved ADR offer rate in the pre-complaint process. The most improved ADR offer rate is determined by subtracting the ADR offer rate for FY 2002 from the offer rate for FY 2003.

**Table 2 - Most Improved ADR Offer Rate in the Pre-Complaint Process
FYs 2002 - 2003**

Agencies	Offer Rate		Increase in ADR Offers
	FY 2002	FY 2003	
Government Printing Office	0%	100%	100%
Federal Trade Commission	0%	100%	100%
Defense National Security Agency	6%	92%	86%
National Aeronautics and Space Administration	34%	100%	66%
U.S. Postal Service	46%	97%	51%

4a. Two Agencies Tied for the Most Improved ADR Offer Rate in 2004

In FY 2004, two agencies tied for the most improved ADR offer rate in the pre-complaint process. The most improved ADR offer rate is determined by subtracting the ADR offer rate for FY 2003 from the offer rate of FY 2004.

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**Table 2a - Most Improved ADR Offer Rate in the Pre-Complaint Process
FYs 2003 - 2004**

Agencies	Offer Rate		Increase in ADR Offers
	FY 2003	FY 2004	
Defense Finance & Accounting Service	0%	100%	100%
Department of Education	0%	100%	100%
Federal Communications Commission	7%	100%	93%
Broadcasting Board of Governors	12%	100%	88%
Export-Import Bank	6%	83%	77%

5. Tennessee Valley Authority Had Largest Decline in ADR Offer Rate in FY 2003

In FY 2003, the Tennessee Valley Authority had the largest decline in its ADR offer rate in the pre-complaint process. The largest decline in ADR offer rate is determined by subtracting the ADR offer rate for FY 2003 from the offer rate in FY 2002.

**Table 3 - Largest Decline in ADR Offer Rate in the Pre-Complaint Process
FYs 2002 - 2003**

Agencies	Offer Rate		Decrease in ADR Offers
	FY 2002	FY 2003	
Tennessee Valley Authority	50%	8%	-42%
Department of the Navy	42%	15%	-27%
Department of Energy	84%	57%	-27%
Department of Commerce	89%	67%	-22%
Federal Deposit Insurance Corporation	89%	71%	-18%

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5a. Defense Office of Inspector General had Largest Decline in ADR Offer Rate in FY 2004

**Table 3a - Largest Decline in ADR Offer Rate in the Pre-Complaint Process
FYs 2003-2004**

Agencies	Offer Rate		Decrease in ADR Offers
	FY 2003	FY 2004	
Defense Office of Inspector General	100%	8%	-92%
Nuclear Regulatory Commission	100%	15%	-85%
Pension Benefit Guaranty Corporation	43%	0%	-43%
National Science Foundation	100%	71%	-29%
General Services Administration	100%	80%	-20%

6. U.S. Postal Service had Highest ADR Participation Rate in FY 2003

In FY 2003, the U.S. Postal Service reported the highest ADR participation rate in the pre-complaint process. The ADR participation rate is obtained by dividing the number of cases processed in ADR by the total number of instances of counseling. A table with the complete ranking of agencies by ADR participation rate is located at www.eeoc.gov/federal/adr/datatables/index.html.

**Table 4 - Highest ADR Participation Rate in the Pre-Complaint Process
FY 2003**

Agencies	Counselings	Participation in ADR	Participation Rate
U.S. Postal Service	20,102	15,193	76%
National Archives & Records Administration	35	16	46%
National Aeronautics and Space Administration	174	78	45%
National Imagery & Mapping Agency	56	18	32%
Department of Transportation	607	184	30%

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6a. In FY 2004, U.S. Postal Service Repeats Having the Highest ADR Participation Rate

In FY 2004, the U.S. Postal Service repeated having the highest ADR participation rate in the pre-complaint process.

**Table 4a - Highest ADR Participation Rate in the Pre-Complaint Process
FY 2004**

Agencies	Counselings	Participation in ADR	Participation Rate
U.S. Postal Service	19,101	13,815	72%
Smithsonian Institution	36	17	47%
Defense Dependent Education Activity	112	52	46%
Federal Deposit Insurance Corporation	53	22	42%
National Archives and Records Administration	53	22	42%

7. U.S. Postal Service had Most Improved ADR Participation Rate in FY 2003

In FY 2003, the U.S. Postal Service had the most improved ADR participation rate in the pre-complaint process. The most improved ADR participation rate is determined by subtracting the ADR participation rate in FY 2002 from the participation rate in FY 2003.

**Table 5 - Most Improved ADR Participation Rate in the Pre-Complaint Process
FYs 2002 - 2003**

Agencies	Participation Rate		Increase in ADR Participation
	FY 2002	FY 2003	
U.S. Postal Service	32%	76%	44%
National Aeronautics and Space Administration	12%	45%	33%
Smithsonian Institute	0%	24%	24%
National Archives & Records Administration	27%	46%	19%
Department of Transportation	17%	30%	13%

7a. Defense Dependent Education Activity had Most Improved ADR Participation Rate in FY 2004

In FY 2004, the Defense Dependent Education Activity had the most improved ADR participation rate in the pre-complaint process. The most improved ADR participation rate is determined by subtracting the ADR participation rate in FY 2003 from the participation rate in FY 2004.

**Table 5a - Most Improved ADR Participation Rate in the Pre-Complaint Process
FYs 2003 - 2004**

Agencies	Participation Rate		Increase in ADR Participation
	FY 2003	FY 2004	
Defense Dependent Education Activity	4%	46%	42%
Consumer Product Safety Commission	25%	60%	35%
Court Services and Offender Supervision	20%	50%	30%
Smithsonian Institution	24%	47%	23%
Defense Intelligence Agency	18%	40%	22%

8. Department of State had Largest Decline in ADR Participation Rate in FY 2003

In FY 2003, the Department of State had the largest decline in ADR participation rate in the pre-complaint process. The largest decline in ADR participation rate is determined by subtracting the ADR participation rate in FY 2003 from the participation rate in FY 2002.

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**Table 6 - Largest Decline in ADR Participation Rate in the Pre-Complaint Process
FYs 2002 - 2003**

Agencies	Participation Rate		Decrease in ADR Participation
	FY 2002	FY 2003	
Department of State	31%	12%	-19%
Department of the Navy	17%	2%	-15%
Department of Justice	15%	5%	-10%
Defense Army & Air Force Exchange Service	19%	13%	-6%
Department of Energy	14%	11%	-3%

8a. National Aeronautics and Space Administration had Largest Decline in ADR Participation Rate in FY 2004

In FY 2004, NASA had the largest decline in ADR participation rate in the pre-complaint process. The largest decline in ADR participation rate is determined by subtracting the ADR participation rate in FY 2004 from the participation rate in FY 2003.

**Table 6a - Largest Decline in ADR Participation Rate in the Pre-Complaint Process
FYs 2003 - 2004**

Agencies	Participation Rate		Decrease in ADR Participation
	FY 2003	FY 2004	
National Aeronautics and Space Administration	45%	8%	-37%
Defense Office Of Inspector General	25%	0%	-25%
Defense Office of the Secretary	21%	2%	-19%
Securities & Exchange Commission	33%	15%	-18%
Department of Labor	25%	11%	-14%

Section B *ADR Techniques Used in the Pre-Complaint Stage*

Federal agencies have flexibility in selecting the types of ADR techniques to use in their respective ADR programs. Agencies may consider their mission and their workplace culture to determine which ADR techniques will best meet the needs of their workforce.

1. Mediation Was Overwhelming Choice as ADR Technique in FY 2003

In FY 2003, agencies reported 15,870 ADR attempts during the pre-complaint process.¹⁰ Mediation was selected in nearly 96% of all instances of counseling in which ADR was attempted. Since FY 2000, mediation has been the overwhelming choice of ADR techniques, averaging 96% of all ADR attempts.

**Table 7 - ADR Attempts During the Pre-Complaint Process
FY 2003**

Types of ADR Attempts	Counselings	Percentage
Mediation	15,222	95.92%
Facilitation	298	1.88%
Settlement Conference	128	0.81%
Multiple Techniques	104	0.66%
Fact Finding	52	0.33%
Other Techniques	32	0.20%
Early Neutral Evaluation	24	0.15%
Ombuds	8	0.05%
Peer Review	2	0.01%
Total ADR Attempts	15,870	100.00%

¹⁰ An ADR attempt includes all instances of counseling that initiated an ADR proceeding during the current fiscal year.

EEOC FY 2003-2004 ADR Report, Part I

1a. Mediation Repeats as Choice ADR Technique in FY 2004

In FY 2004, agencies reported 10,714 ADR attempts during the pre-complaint process. Mediation was selected in 95% of all instances of counseling in which ADR was attempted in FY 2004.

**Table 7a - ADR Attempts During the Pre-Complaint Process
FY 2004**

Types of ADR Attempts	Counselings	Percentage
Mediation	10,196	95.17%
Facilitation	288	2.69%
Settlement Conference	44	0.41%
Multiple Techniques	80	0.75%
Fact Finding	58	0.54%
Other Techniques	12	0.11%
Early Neutral Evaluation	18	0.17%
Ombuds	14	0.13%
Peer Review	4	0.03%
Total ADR Attempts	10,714	100.00%

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2. Excluding U.S. Postal Service, Mediation is Technique of Choice

Because the U.S. Postal Service reported 12,434 out of the 15,870 ADR attempts in FY 2003, the government-wide data is largely impacted by that agency. Even excluding the U.S. Postal Service data, however, mediation was the preeminent ADR technique during the pre-complaint process in FY 2003, as it was utilized in 82% of all ADR attempts as shown in Table 8. Table 8a shows the FY 2004 impact.

**Table 8 - ADR Attempts in the Pre-Complaint Process
(Excluding the U.S. Postal Service)
FY 2003**

Types of ADR Attempts	Counselings	Percentage
Mediation	2,807	81.69%
Facilitation	288	8.38%
Settlement Conference	128	3.73%
Multiple Techniques	104	3.03%
Fact Finding	52	1.51%
Other Techniques	32	0.93%
Early Neutral Evaluation	15	0.44%
Ombuds	8	0.23%
Peer Review	2	0.06%
Total ADR Attempts	3,436	100.00%

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**Table 8a - ADR Attempts in the Pre-Complaint Process
(Excluding the U.S. Postal Service)
FY 2004**

Types of ADR Attempts	Counselings	Percentage
Mediation	3,214	86.14%
Facilitation	288	7.72%
Settlement Conference	44	1.18%
Multiple Techniques	79	2.12%
Fact Finding	58	1.55%
Other Techniques	12	0.32%
Early Neutral Evaluation	18	0.48%
Ombuds	14	0.38%
Peer Review	4	0.11%
Total ADR Attempts	3,731	100.00%

EEOC FY 2003-2004 ADR Report, Part I

3. Efficiency of ADR Attempts Decreased by 10 Days

The maximum time allowed for ADR during the pre-complaint process is 90 days. 29 C.F.R. §1614.105(f). A three-year analysis of the data shows that the average time for ADR attempts during the pre-complaint process increased from 36 days in FY 2002 to 46 days in FY 2004. These processing times, however, remain well within the 90-day maximum allowed for ADR.

**Table 9 - Average Time By ADR Attempts
in the Pre-Complaint Process¹¹
FYs 2002 - 2004**

ADR Techniques	Average Time Per Technique		
	FY 2002	FY 2003	FY 2004
Mediation	36 days	34 days	46 days
Facilitation	27 days	62 days	50 days
Settlement Conference	23 days	33 days	38 days
Multiple Techniques	14 days	33 days	39 days
Fact Finding	25 days	27 days	26 days
Other Techniques	61 days	28 days	31 days
Early Neutral Evaluation	18 days	43 days	8 days
Ombuds	20 days	75 days	8 days
Peer Review	30 days	38 days	39 days
Total ADR Attempts	36 days	34 days	46 days

¹¹ In this table, for each ADR attempt during the pre-complaint process in FY 2003 and FY 2004, the average processing time tracks the number of days between the date that the individual elected ADR (accepted the agency's ADR offer during the reporting period) and the date that the ADR process or the reporting period ended. For the purpose of calculating the average days, ADR attempts were not considered if the agencies did not report the number of days.

Section C **Sources of ADR Neutrals in the Pre-Complaint Stage**

The Administrative Dispute Resolution Act defines a neutral as an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy.¹² In the federal sector, ADR programs have the discretion to select the source(s) of neutrals to conduct ADR proceedings.

Federal sector ADR programs selected neutrals from the following sources: (1) in-house (employees within the agency trained in ADR); (2) another federal agency; (3) private organizations; (4) multiple sources; and (5) other sources.

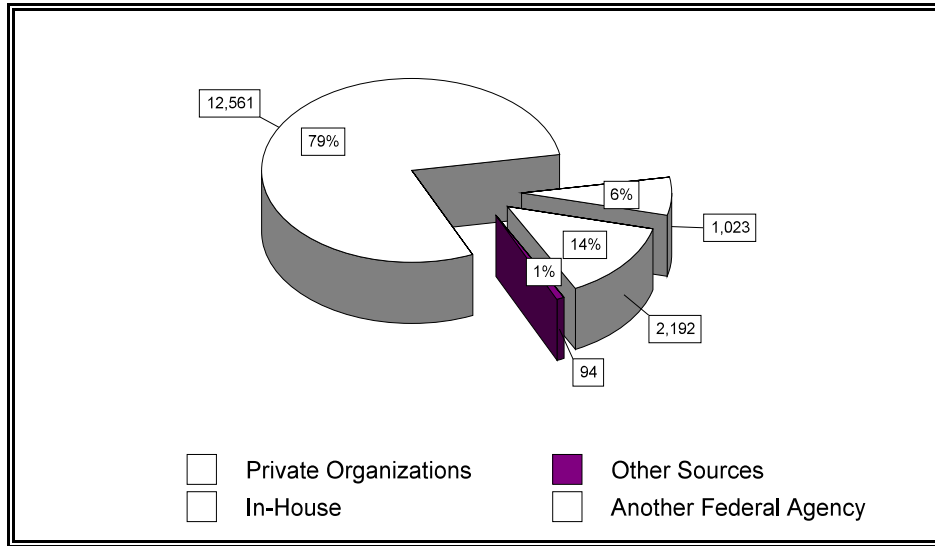
1. **Private Organizations Were Primary Source of Neutrals in FY 2003 and FY 2004**

Government-wide data shows that in FY 2003, neutrals from private organizations (including bar associations, individual volunteers, and contractors) were selected more often than any other source of neutrals. A three-year analysis of the data shows that the percentage of neutrals from private organizations increased from 70% in FY 2002 to 79% in FY 2003. The percentage decreased to 65% in FY 2004. Since FY 2000, neutrals from private organizations have averaged 73% of all ADR attempts.

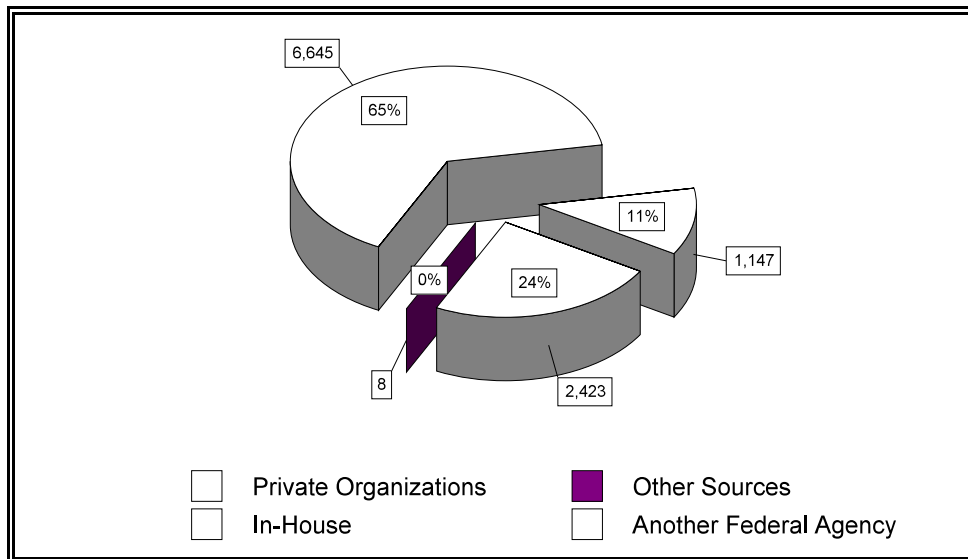
¹² For more information about the use of neutrals in the federal sector EEO process, refer to the Administrative Dispute Resolution Act, 5 U.S.C. Section 571(9), and Chapter 3 of MD-110.

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**Figure 3 - Sources of Neutrals in the Pre-Complaint Process
FY 2003**



**Figure 3a - Sources of Neutrals in the Pre-Complaint Process
FY 2004**

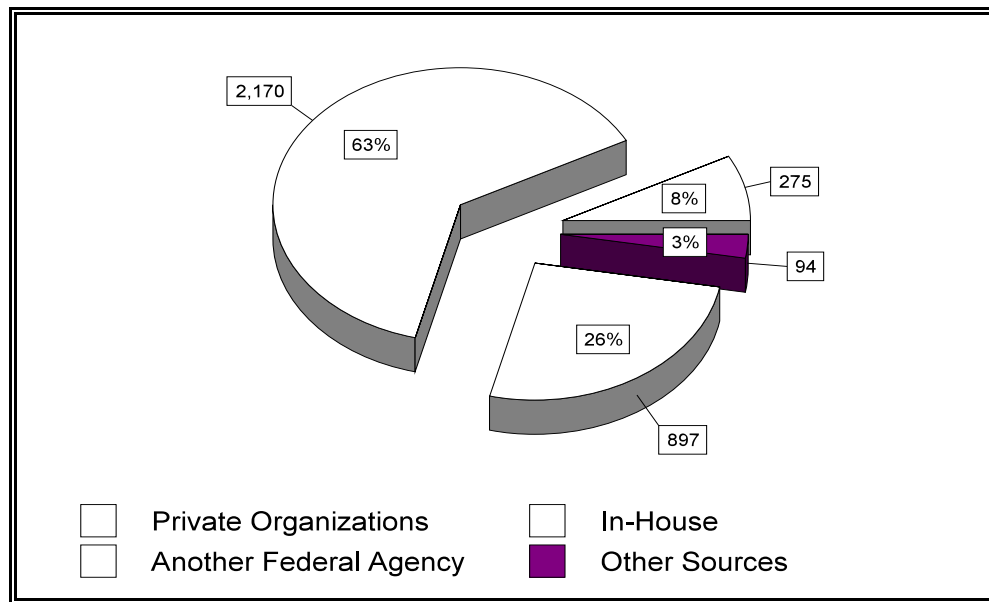


2. Excluding U.S. Postal Service, In-House Neutrals Dominated

The U.S. Postal Service exclusively used private organizations in 12,434 (78%) out of the 15,870 government-wide total instances of counseling that attempted ADR in FY 2003, and in 6,982 (65%) out of the 10,714 total instances of counselings that attempted ADR in FY 2004. When the U.S. Postal Service data is excluded from the number of ADR attempts, federal agencies selected in-house neutrals more frequently than any other source of neutrals in FY 2003 and FY 2004.

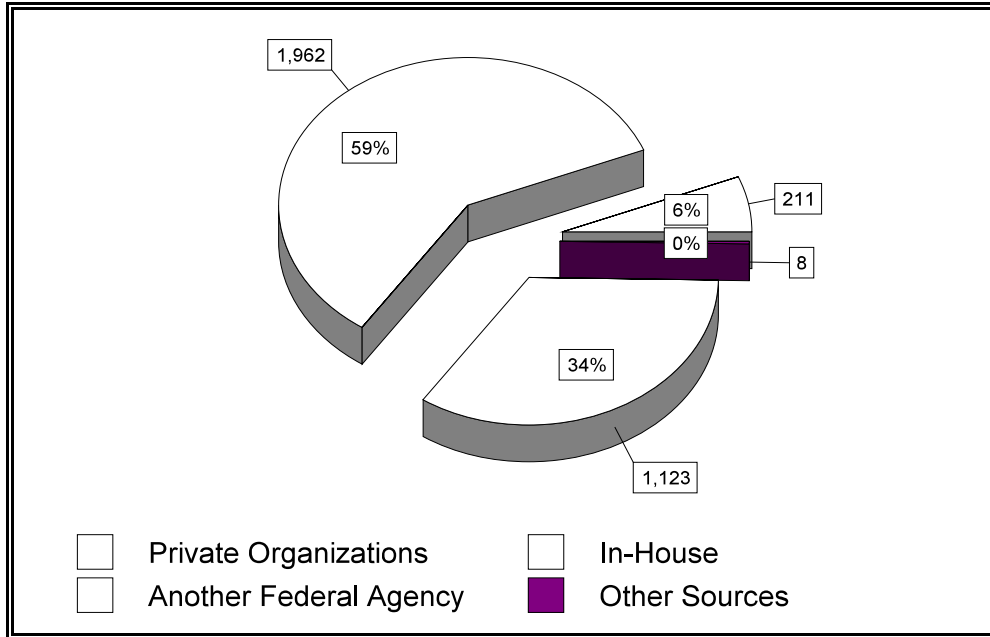
A three-year analysis of the data shows that the use of in-house neutrals decreased from 67% in FY 2002 to 63% in FY 2003 and to 59% in FY 2004. Since FY 2000, the use of in-house neutrals has declined each year; however, it remains the primary source of neutrals, averaging 69% of all ADR attempts over the past 5 years (excluding U.S. Postal Service data).

**Figure 4 - Sources of Neutrals in the Pre-Complaint Process
(Excluding the U.S. Postal Service)
FY 2003**



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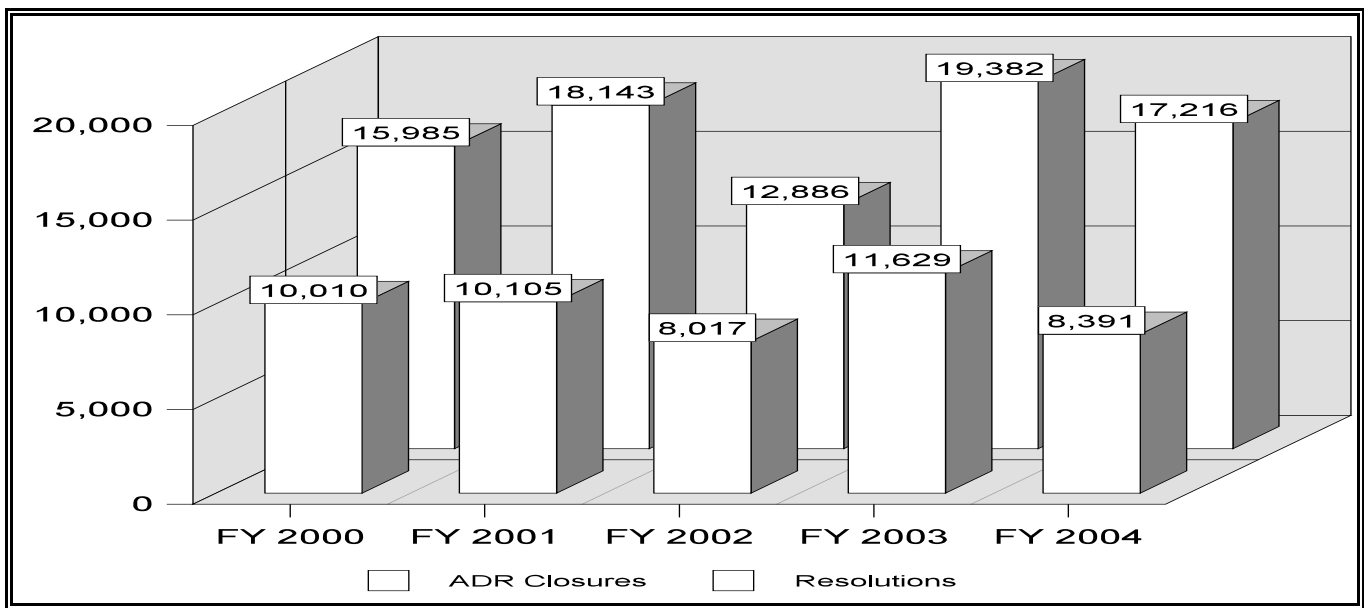
**Figure 4a - Sources of Neutrals in the Pre-Complaint Process
(Excluding the U.S. Postal Service)
FY 2004**



Section D ***Effectiveness of ADR in the Pre-Complaint Stage***

One factor in determining the effectiveness of ADR in the federal sector EEO process is the percentage of EEO disputes that are resolved each fiscal year.¹³ Of the 17,216 ADR closures during the pre-complaint process in FY 2004, the ADR process resulted in 8,391 (49%) resolutions.¹⁴ A three-year analysis of the data shows that the ADR resolution rate decreased from 62% in FY 2002 to 60% in FY 2003 to 49% in FY 2004. Since FY 2000, the ADR resolution rate has declined from 63% in FY 2000 to 49% in FY 2004; however, the ADR resolution rate has averaged 58% over the five-year period.

**Figure 5 - Trends in ADR Resolutions During the Pre-Complaint Process
FYs 2000 - 2004**



¹³ In addition to resolving EEO disputes, ADR may also improve the parties' communication skills, reduce tension in the workplace, and help both parties avoid costly litigation expenses. Presently, there is insufficient data to evaluate ADR's impact on these other factors.

¹⁴ The term "resolutions" includes settlements where individuals received monetary and/or non-monetary benefits, and matters where no formal complaint was filed. The term "no resolutions" includes matters where ADR failed to resolve the dispute and the agency continued processing the complaint.

EEOC FY 2003-2004 ADR Report, Part I

1. **Federal Emergency Management Agency had Highest Resolution Rate in FY 2003**¹⁵

In FY 2003, the Federal Emergency Management Agency (FEMA) had the highest ADR resolution rate in the pre-complaint process. The ADR resolution rate is obtained by dividing the number of ADR resolutions by the number of ADR closures. A table with the complete ranking of agencies by ADR resolution rate is located at www.eeoc.gov/federal/adr/datatables/index.html.

**Table 10 - Highest ADR Resolution Rates During the Pre-Complaint Process
FY 2003**

Agencies	ADR Closures	ADR Resolutions	Resolution Rate
Federal Emergency Management Agency	16	16	100%
Defense National Guard Bureau	36	33	92%
Defense Logistics Agency	58	49	84%
National Archives & Records Administration	22	18	82%
Department of the Army	326	254	78%

¹⁵ In March 2003, FEMA became part of the Department of Homeland Security's Emergency Preparedness and Response Directorate.

EEOC FY 2003-2004 ADR Report, Part I

1a. Defense Dependent Education Activity had Highest Resolution Rate in FY 2004

In FY 2004, the Defense Dependent Education Activity had the highest ADR resolution rate in the pre-complaint process. Department of Veterans Affairs also moved into the top five.

**Table 10a - Highest ADR Resolution Rates During the Pre-Complaint Process
FY 2004**

Agencies	ADR Closures	ADR Resolutions	Resolution Rate
Defense Dependent Education Activity	52	52	100%
Defense Logistics Agency	77	65	84%
Department of Veterans Affairs	448	355	79%
National Archives and Records Administration	20	15	75%
Defense National Guard Bureau	18	13	72%

2. National Aeronautics and Space Administration had Most Improved ADR Resolution Rate in FY 2003

In FY 2003, the National Aeronautics and Space Administration had the most improved ADR resolution rate in the pre-complaint process. The most improved ADR resolution rate is determined by subtracting the ADR resolution rate for FY 2002 from the resolution rate for FY 2003.

**Table 11 - Most Improved ADR Resolution Rate in the Pre-Complaint Process
FYs 2002 - 2003**

Agencies	Resolution Rate		Increase in Resolution Rate
	FY 2002	FY 2003	
National Aeronautics and Space Admin.	20%	61%	41%
Department of the Interior	34%	71%	37%
Department of Agriculture	17%	52%	35%
Department of the Army	53%	78%	25%
Federal Emergency Management Agency	75%	100%	25%

EEOC FY 2003-2004 ADR Report, Part I

2a. Department of Education had Most Improved ADR Resolution Rate in FY 2004

In FY 2004, the Department of Education had the most improved ADR resolution rate in the pre-complaint process. Defense Finance and Accounting Service had the second highest rate increase with a 60% increase.

**Table 11a - Most Improved ADR Resolution Rate in the Pre-Complaint Process
FYs 2003 - 2004**

Agencies	Resolution Rate		Increase in Resolution Rate
	FY 2003	FY 2004	
Department of Education	0%	100%	100%
Defense Finance and Accounting Service	0%	60%	60%
General Services Administration	41%	68%	27%
Department of Veterans Affairs	59%	79%	20%
Department of Housing and Urban Development	37%	54%	17%

3. Department of Labor had Largest Decline In ADR Resolution Rate in FY 2003

In FY 2003, the Department of Labor had the largest decline in ADR resolution rate in the pre-complaint process. The largest decline in ADR resolution rate is determined by subtracting the ADR resolution rate in FY 2003 from the resolution rate in FY 2002.

**Table 12 - Largest Decline in ADR Resolution Rate in the Pre-Complaint Process
FYs 2002 - 2003**

Agencies	Resolution Rate		Decrease in Resolution Rate
	FY 2002	FY 2003	
Department of Labor	82%	31%	-51%
Department of Commerce	81%	33%	-48%
Department of State	81%	37%	-44%
Small Business Administration	100%	67%	-33%
Defense Commissary Agency	89%	59%	-30%

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3a. In FY 2004, Department Of Navy had Largest Decline in ADR Resolution Rate

In FY 2004, the Department of the Navy had the largest decline in ADR resolution rate in the pre-complaint process. The largest decline in ADR resolution rate is determined by subtracting the ADR resolution rate in FY 2004 from the resolution rate in FY 2003.

**Table 12a - Largest Decline in ADR Resolution Rate in the Pre-Complaint Process
FYs 2003 - 2004**

Agencies	Resolution Rate		Decrease in Resolution Rate
	FY 2003	FY 2004	
Department of the Navy	76%	23%	-53%
Smithsonian Institution	70%	35%	-35%
Department of Health and Human Services	75%	43%	-32%
Department of Transportation	67%	36%	-31%
Small Business Administration	67%	46%	-21%

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4. Pre-Complaint ADR Closures Average Processing Time is Increasing

A three-year analysis of the data shows that the average processing time (APT) for ADR closures during the pre-complaint process increased from 38 days in FY 2002 to 39 days in FY 2003 to 61 days in FY 2004. Table 13 shows the average processing time in FY 2003 and Table 13a shows the average processing time in FY 2004.¹⁶

**Table 13 - Average Processing Time in the Pre-Complaint Process
FY 2003**

Types of ADR Closure	ADR Closures	Total Days	Average Processing Time
Settlement	7,168	276,218	39 days
No Resolution	6,020	234,093	39 days
No Complaint Filed	4,461	175,435	39 days
No ADR Attempt*	1,708	66,830	39 days
Other Closures	25	330	13 days
Total ADR Closures	19,382	752,906	39 days

* "No ADR Attempt" means that the both parties agreed to participate in ADR, but one of the parties withdrew from the ADR process prior to the ADR attempt.

¹⁶ To determine the duration of each ADR case, agencies are instructed to add the number of days from the date the counselee elected ADR during the reporting period (accepted the agency's ADR offer) or the first day of the reporting period (for ADR attempts pending at the beginning of the reporting period), to the date that the ADR process ended.

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**Table 13a- Average Processing Time in the Pre-Complaint Process
FY 2004**

Types of ADR Closure	ADR Closures	Total Days	Average Processing Time
Settlement	6,427	342,898	53 days
No Resolution	3,154	165,192	52 days
No Complaint Filed	1,964	111,958	57 days
No ADR Attempt	4,970	392,341	79 days
Other Closures	701	35,751	51 days
Total ADR Closures	17,216	1,048,140	61

5. National Guard Bureau had Fastest APT for ADR Closures in FY 2003 and Defense Logistics Agency in FY 2004

In FY 2003, as shown in Table 14, the National Guard Bureau had the fastest average processing time (APT) for ADR closures in the pre-complaint process. In FY 2004, Defense Logistics Agency had the fastest APT, as shown in Table 14a. The government-wide average in FY 2004 is 61 days. If two or more agencies have the same average processing time, the agency with the most ADR closures was given the highest ranking.

**Table 14 - Fastest Average Processing Time in the Pre-Complaint Process
FY 2003**

Agencies	ADR Closures (Counselings)	Total Days For ADR Closures	Average Processing Time
National Guard Bureau	36	525	15 days
Department of Transportation	203	4,342	21 days
Social Security Administration	97	2,752	28 days
Department of Agriculture	276	8,731	32 days
Department of the Interior	31	1,006	32 days

EEOC FY 2003-2004 ADR Report, Part I

**Table 14a - Fastest Average Processing Time in the Pre-Complaint Process
FY 2004**

Agencies	ADR Closures (Counselings)	Total Days For ADR Closures	Average Processing Time
Defense Logistics Agency	77	1,461	19 days
Defense National Guard Bureau	18	425	24 days
Defense Dependent Education Activity	52	1,299	25 days
Defense Finance and Accounting Service	20	561	28 days
Defense National Geospatial- Intelligence Agency	12	374	31days

6. After Significant Increases in FY 2002 and FY2003, Overall Resolution Rate Returns to FY 2001 Level

Of the 45,030 instances of counseling that were completed in FY 2003, 28,011 (62%) were resolved through EEO Counseling or ADR, including a total of 8,298 settlements.¹⁷ In FY 2004, there were 42,412 instances of counseling and 21,520 (51%) were resolved through EEO Counseling or ADR, including a total of 8,332 settlements. A three-year analysis of the data shows that the total resolution rate increased by 1 percentage point, climbing from 61% in FY 2002 to 62% in FY 2003 but dropped 10 percentage points in FY 2004 to 52% which is 1% above the total resolution rate in FY 2001.

¹⁷ The number of settlements (8,298) in the pre-complaint process differs from the number (8,199) reported in the FY 2003 Annual Report on the Federal Workforce due to a correction of the reported EEO counseling settlements from 1,031 to 1,130.

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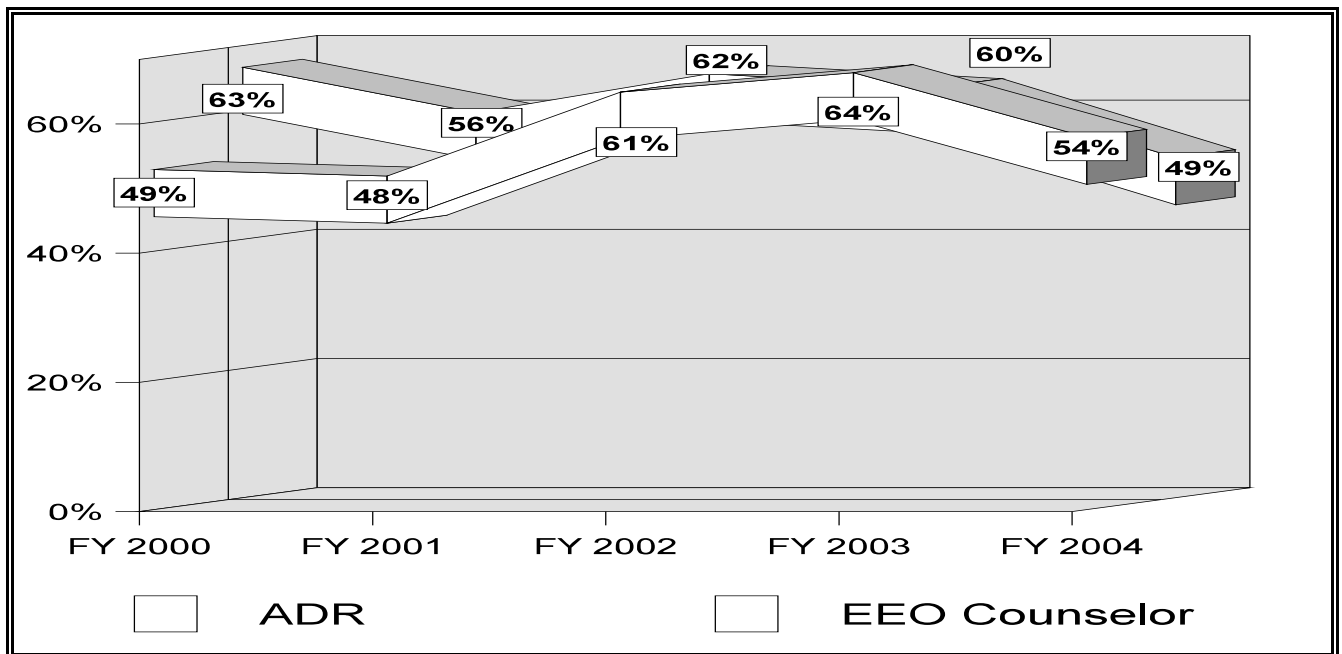
**Table 15 - Comparison of Pre-Complaint Resolutions
FYs 2000 - 2004**

Fiscal Year	Completed Counselings			Settlements		No Formal Complaint		Total Resolutions	
	Total	ADR	EEO Counseling	ADR	EEO Counseling	ADR	EEO Counseling	ADR	EEO Counseling
2000	52,611	15,985	36,626	7,056	7,162	2,954	10,915	10,010	18,077
2001	47,658	18,143	29,515	8,318	3,632	1,787	10,620	10,105	14,252
2002	56,275	12,886	43,389	5,888	3,162	2,129	23,151	8,017	26,313
2003	45,030	19,382	25,648	7,168	1,130	4,461	15,252	11,629	16,382
2004	42,412	17,216	25,196	6,427	1,905	1,964	11,700	8,391	13,605

7. Trends in Resolution Rate in the Pre-Complaint Process with U.S. Postal Service Data

From FY 2000 to FY 2004, ADR has averaged a resolution rate of 58%, while EEO counseling has averaged a resolution rate of 53%. In FY 2003, the EEO counseling resolution rate (64%) exceeded the ADR resolution rate (60%). In FY 2004, the EEO counseling resolution rate (54%) continued to exceed the ADR resolution rate (49%).

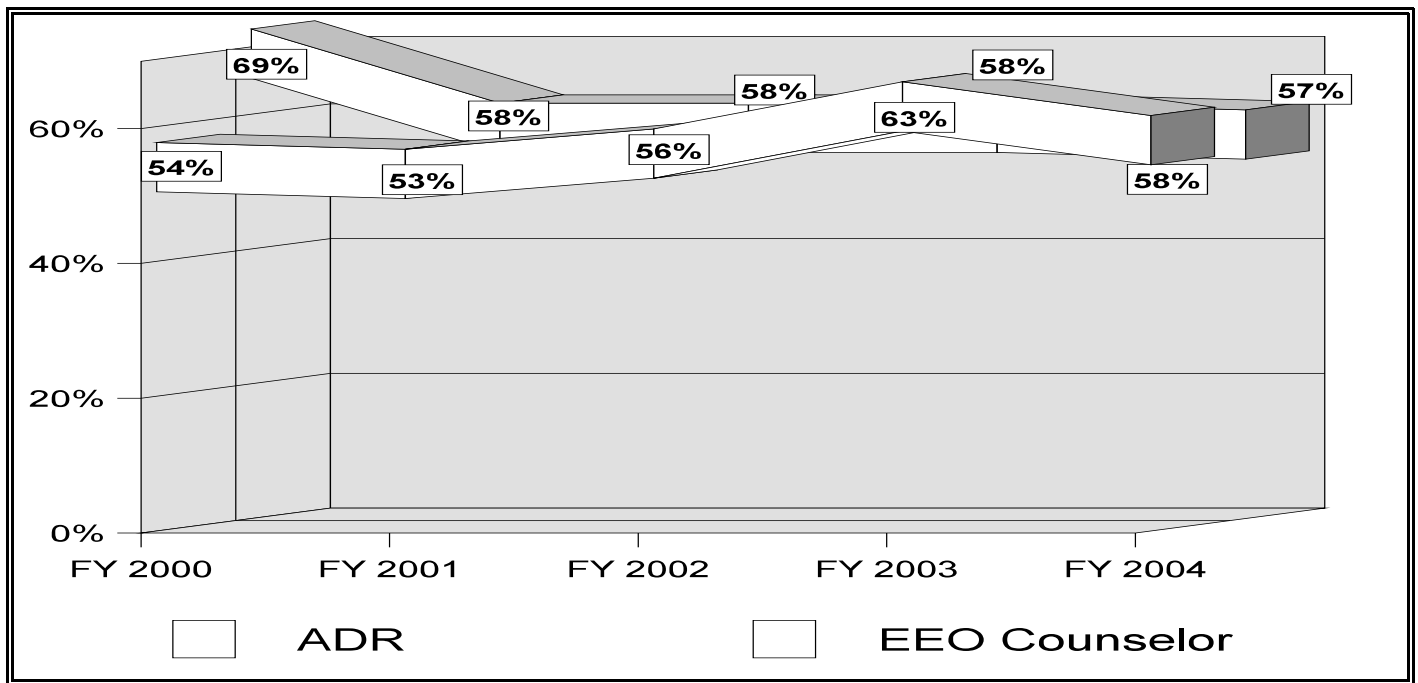
**Figure 6 - Trends in Resolution Rates During the Pre-Complaint Process
FYs 2000 - 2004**



8. Trends in Resolution Rate in the Pre-Complaint Process without U.S. Postal Service Data

Because the U.S. Postal Service reported 12,595 out of the 17,216 ADR closures in FY 2004, the government-wide data is largely impacted by that agency. When the U.S. Postal Service is excluded from the government-wide data, the resolution rate in FY 2004 declined for ADR (from 58% to 57%) and the resolution rate for EEO counseling decreased (from 63% to 58%).

**Figure 7 - Trends in Resolution Rates During the Pre-Complaint Process
(Excluding the U.S. Postal Service)
FYs 2000 - 2004**



Section E Benefits Obtained Through ADR Settlements in the Pre-Complaint Stage

The types of monetary benefits reported were: (1) compensatory damages; (2) back pay/front pay; (3) lump sum; (4) attorney’s fees; and (5) other monetary benefits. The types of non-monetary benefits reported were: (1) new hire; (2) promotion; (3) reinstatement; (4) expungement of records; (5) transfer; (6) rescind removal/voluntary resignation; (7) reasonable accommodation; and (8) other non-monetary benefits.

1. Amount of Pre-Complaint Monetary Benefits on the Rise

During the pre-complaint process in FY 2004, 8,332 instances of counseling were resolved through settlement agreements, either with the use of ADR or traditional EEO counseling. In particular, 9,008¹⁸ settlements were resolved with non-monetary benefits, and 603 settlements were resolved with monetary benefits, totaling \$3,137,911. In FY 2004, the amount of monetary benefits in pre-complaint settlements averaged \$5,204 per case. Over the last three fiscal years, the total amount of monetary benefits in pre-complaint settlements averaged \$4,925 per case.

**Table 16 - Comparison of Pre-Complaint Monetary Benefits¹⁹
FYs 2001 - 2004**

Fiscal Year	Monetary Settlements (Counselings)			Monetary Benefits			Average Monetary Benefits		
	Total	ADR	EEO Counseling	Total	ADR	EEO Counseling	Total	ADR	EEO Counseling
2001	983	692	291	\$4,470,855	\$2,331,867	\$2,138,988	\$4,548	\$3,370	\$7,350
2002	568	435	133	\$2,527,538	\$1,942,638	\$584,900	\$4,450	\$4,466	\$4,398
2003	621	464	157	\$3,160,565	\$1,384,474	\$1,776,091	\$5,089	\$2,984	\$11,313
2004	603	416	187	\$3,137,911	\$1,609,404	\$1,528,507	\$5,204	\$3,896	\$8,174

¹⁸ The total number of instances of counseling that settled does not equal the aggregate of each type of benefit, since one settlement agreement could include more than one type of monetary and/or non-monetary benefit.

¹⁹ Table 16 excludes FY 2000 data due to concerns about the accuracy of the reported instances of counseling that received monetary settlements through ADR.

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2. ADR Settlements Were Less Expensive Than EEO Counseling Settlements in FY 2003

During the pre-complaint process in FY 2003, ADR efforts resulted in 7,168 settlements, including 464 with monetary benefits totaling \$1,384,474, and EEO counseling resulted in 1,130 settlements, including 157 with monetary benefits totaling \$1,776,091. Although more ADR settlements were reported in FY 2003 than in the previous fiscal year, the total amount of ADR settlements decreased by \$558,164. As a result, the average amount of monetary benefits for ADR settlements declined to \$2,984 in FY 2003. With regard to settlements through EEO counseling, both the number and amount of settlements increased in FY 2003. By contrast, the average for EEO counseling settlements increased substantially to \$11,313 in FY 2003. Over the last three fiscal years²⁰, the average amount of monetary benefits was \$3,607 for ADR settlements, while the average for EEO counseling settlements was \$7,687.

The table below shows that in FY 2003, the lump sum payment was the most frequently used type of monetary settlement benefit. Compensatory damages had the highest average of monetary benefits.

**Table 17 - Monetary Benefits in the Pre-Complaint Process²¹
FY 2003**

Types of Monetary Benefits	Counselings		Total Monetary Benefits		Average Amount	
	ADR	EEO Counseling	ADR	EEO Counseling	ADR	EEO Counseling
Lump Sum	189	76	\$725,696	\$1,084,809	\$3,840	\$14,274
Back Pay/Front Pay	136	25	\$179,090	\$228,532	\$1,317	\$9,141
Other Benefits	65	26	\$99,923	\$35,203	\$1,537	\$1,354
Attorney's Fees	63	17	\$223,284	\$88,173	\$3,544	\$5,187
Compensatory Damages	29	13	\$156,481	\$339,374	\$5,396	\$26,106
Total Monetary Benefits	464	157	\$1,384,474	\$1,776,091	\$2,984	\$11,313

²⁰ Fiscal years 2001, 2002, and 2003.

²¹ The total number of instances of counseling that settled with monetary benefits does not equal the aggregate of each type of monetary benefit, since one settlement agreement could include more than one type of monetary benefit.

EEOC FY 2003-2004 ADR Report, Part I

2a. In FY 2004, ADR Settlements Were Again Less Expensive on Average Than EEO Counseling Settlements

During the pre-complaint process in FY 2004, ADR efforts resulted in 6,427 settlements, including 416 with monetary benefits totaling \$1,609,404, and EEO counseling resulted in 1,905 settlements, including 187 with monetary benefits totaling \$1,528,507. Although fewer ADR settlements were reported in FY 2004 than in the previous fiscal year, the total amount of ADR settlements increased by \$224,930. With regard to settlements through EEO counseling, the number of settlements increased while the amount of settlements through EEO counseling decreased in FY 2004. As a result, the average amount of monetary benefits for ADR settlements increased to \$3,869 in FY 2004. By contrast, the average for EEO counseling settlements decreased substantially to \$8,174 in FY 2004. Over the last four fiscal years, the average amount of monetary benefits for ADR settlements was \$3,673, while the average for EEO counseling settlements was \$7,809.

The table below shows that in FY 2004, the lump sum payment was the most frequently used type of monetary settlement benefit. Compensatory damages had the highest average of monetary benefits.

**Table 17 a - Monetary Benefits in the Pre-Complaint Process²²
FY 2004**

Types of Monetary Benefits	Counselings		Total Monetary Benefits		Average Amount	
	ADR	EEO Counseling	ADR	EEO Counseling	ADR	EEO Counseling
Lump Sum	149	92	\$780,650	\$590,503	\$5,239	\$6,419
Back Pay/Front Pay	113	29	\$272,792	\$78,824	\$2,414	\$2,718
Other Benefits	55	19	\$92,939	\$35,048	\$1,690	\$1,845
Attorney's Fees	65	33	\$215,428	\$259,780	\$3,314	\$7,872
Compensatory Damages	45	17	\$247,596	\$294,352	\$5,502	\$17,315
Total Monetary Benefits	416	187	\$1,609,404	\$1,528,507	\$3,869	\$8,174

²² The total number of instances of counseling that settled with monetary benefits does not equal the aggregate of each type of monetary benefit, since one settlement agreement could include more than one type of monetary benefit.

EEOC FY 2003-2004 ADR Report, Part I

3. “Other Non-Monetary Benefits” Were Most Frequently Reported in Pre-Complaint Settlements in FY 2003

During the pre-complaint process in FY 2003, ADR efforts resulted in 7,168 settlements, including 6,779 with non-monetary benefits, and EEO counseling resulted in 1,130 settlements, including 973 with non-monetary benefits.

The table below shows that in FY 2003, “other non-monetary benefits” was the category most frequently reported, appearing in 66% of the ADR settlements and 33% of the EEO counseling settlements. Examples of other non-monetary benefits include a modified appraisal rating, an updated position description, priority consideration, a detail, a desk audit, leave restored/modified, a neutral reference, and a reassignment of duties.

Table 18 - Non-Monetary Benefits in the Pre-Complaint Process²³
FY 2003

Types of Non-Monetary Benefits	Completed Counselings	
	ADR	EEO Counseling
Other Non-Monetary Benefits	4,505	320
Expungement of Records	808	93
Reasonable Accommodation	401	53
Training	400	122
Apology	236	134
Removal Rescinded/Voluntary Resignation	169	69
Transfer	153	101
Promotion	93	45
Reinstatement	90	16
New Hire	36	20
Total Non-Monetary Benefits	6,779	973

²³ The total number of instances of counseling that settled with non-monetary benefits does not equal the aggregate of each type of non-monetary benefit, since one settlement agreement could include more than one type of non-monetary benefit.

EEOC FY 2003-2004 ADR Report, Part I

3a. In FY 2004, “Other Non-Monetary Benefits” Were Again Most Frequently Reported In Pre-Complaint Settlements

During the pre-complaint process in FY 2004, ADR efforts resulted in 6,427 settlements, including 5,978 with non-monetary benefits, and EEO counseling resulted in 1,905 settlements, including 1,515 with non-monetary benefits.

The table below shows that in FY 2004, “other non-monetary benefits” was the category most frequently reported, appearing in 80% of the ADR settlements and 51% of the EEO counseling settlements.

**Table 18 a - Non-Monetary Benefits in the Pre-Complaint Process²⁴
FY 2004**

Types of Non-Monetary Benefits	Completed Counselings	
	ADR	EEO Counseling
Other Non-Monetary Benefits	4,800	768
Expungement of Records	272	159
Reasonable Accommodation	203	112
Training	223	165
Apology	449	160
Removal Rescinded/Voluntary Resignation	160	65
Transfer	186	114
Promotion	89	56
Reinstatement	50	25
New Hire	60	14
Total Non-Monetary Benefits	5,978	1,515

²⁴ The total number of instances of counseling that settled with non-monetary benefits does not equal the aggregate of each type of non-monetary benefit, since one settlement agreement could include more than one type of non-monetary benefit.

Section A *ADR Usage in the Formal Complaint Stage*

Agencies are required by EEOC regulations to have an ADR program available for both the pre-complaint and formal complaint processes. However, they have the discretion to determine when an EEO matter is appropriate for ADR, and at what point in the EEO process to offer ADR. They may establish written procedures to identify when ADR will be offered, or they may decide to offer ADR on a case-by-case basis.

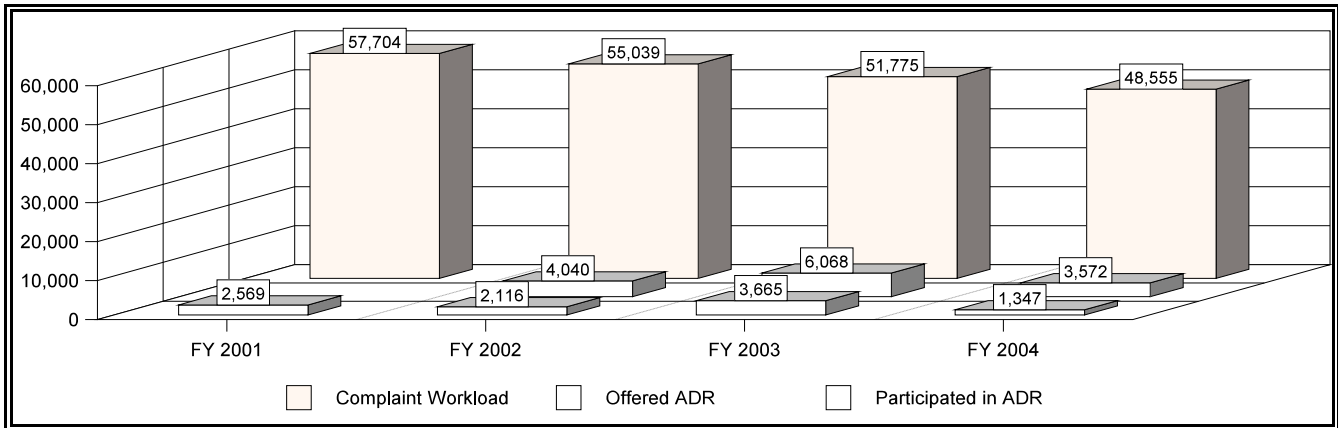
1. Slight Increase in Government-wide ADR Usage in FY 2003 but Declines in FY 2004

In FY 2003, 20,226 formal complaints were filed. When the number of complaints filed (20,226) is combined with complaints pending from the previous fiscal year (30,725) and complaints remanded for investigation (824), there was a complaint workload of 51,775. Agencies offered ADR to individuals in 6,068 complaints (12%). Of the total complaint workload, 3,665 (7%) agreed to participate and were accepted into the agency's ADR program.

In FY 2004, 19,024 formal complaints were filed. When the number of complaints filed (19,024) is combined with complaints pending from the previous fiscal year (29,250) and complaints remanded for investigation (281), there was a complaint workload of 48,555. Agencies offered ADR to individuals in 3,572 complaints (7.36%). Of the total complaint workload, 1,347 (2.77%) agreed to participate and were accepted into the agency's ADR program. The data below shows that ADR is significantly under-utilized at the formal complaint stage of the EEO process, due in large part to agencies' failure to offer ADR once a formal complaint has been filed.

A three-year analysis of the data shows that the ADR participation rate during the formal complaint stage increased from 4% in FY 2002 to 7% in FY 2003 but decreased to 2.77% in FY 2004. Since FY 2001, the ADR participation rate has averaged merely 4.44% of the complaint workload.

Figure 8 - ADR Usage in the Formal Complaint Process²⁵
FYs 2001 - 2004

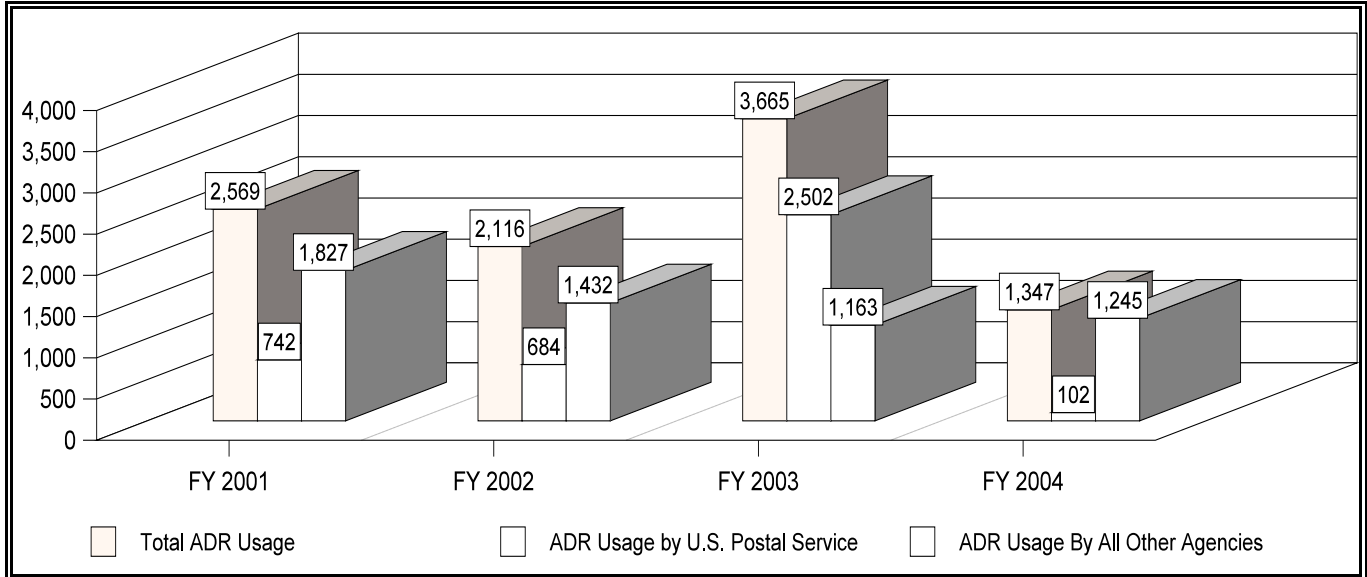


2. In FY 2004, U.S. Postal Service Low Offer Rate Impacts Government-Wide Usage

Because the U.S. Postal reported 18,748 (38.6%) out of the 48,555 complaint workload in FY 2004, the government-wide data is largely impacted by that agency. When the FY 2004 data is examined excluding the U.S. Postal Service, the ADR offer rate at the formal complaint stage increased from 7.36% to 11.3%, and the ADR participation rate increased from 2.77% to 4.18%. Despite an increase in the ADR offer rate from 7% in FY 2002 to 7.36% in FY 2004, the ADR participation rate decreased statistically from over 4% in FY 2002 to less than 3% in FY 2004.

²⁵ During the formal complaint stage, the EEOC did not collect data on the number of ADR offers until FY 2002 and data on ADR participation rates until FY 2001.

**Figure 9 - Comparison of ADR Usage Between U.S. Postal Service and All Other Agencies in the Formal Complaint Process
FYs 2001 - 2004**



3. In FY 2003, National Imagery & Mapping Agency had Highest ADR Offer Rate

In FY 2003, the National Imagery & Mapping Agency, now known as Defense National Geospatial-Intelligence Agency had the highest ADR offer rate in the formal complaint process. The ADR offer rate is obtained by dividing the number ADR offers by the number of the complaint workload. A table with the complete ranking of agencies by ADR offer rate is located at www.eeoc.gov/federal/adr/datatables/index.html.

**Table 19 - Highest ADR Offer Rate in the Formal Complaint Process
FY 2003**

Agencies	Complaint Workload	ADR Offers	Offer Rate
National Imagery & Mapping Agency	35	24	69%
National Gallery of Art	21	13	62%
Department of the Air Force	1,297	589	45%
Defense Commissary Agency	368	141	38%
National Aeronautics and Space Administration	132	50	38%

EEOC FY 2003-2004 ADR Report, Part I

3a. In FY 2004, National Gallery of Art had Highest ADR Offer Rate

In FY 2004, the National Gallery of Art had the highest ADR offer rate in the formal complaint process moving to the top from its second position in FY 2003.

**Table 19a - Highest ADR Offer Rate in the Formal Complaint Process
FY 2004**

Agencies	Complaint Workload	ADR Offers	Offer Rate
National Gallery of Art	18	11	61%
Broadcasting Board of Governors	49	24	49%
Defense Commissary Agency	353	148	42%
Central Intelligence Agency	40	15	38%
Defense Information Systems Agency	34	13	38%

4. In FY 2003, National Imagery & Mapping Agency had Most Improved ADR Offer Rate

In FY 2003, the National Imagery & Mapping Agency had the most improved ADR offer rate in the formal complaint stage. The most improved ADR offer rate is determined by subtracting the ADR offer rate for FY 2002 from the offer rate for FY 2003.

**Table 20 - Most Improved ADR Offer Rate in the Formal Complaint Process
FYs 2002 - 2003**

Agencies	Offer Rate		Increase in ADR Offers
	FY 2002	FY 2003	
National Imagery & Mapping Agency	31%	69%	38%
Broadcasting Board of Governors	1%	34%	33%
Defense Commissary Agency	7%	38%	31%
National Labor Relations Board	4%	20%	16%
Department of the Interior	2%	15%	13%

EEOC FY 2003-2004 ADR Report, Part I

4a. Central Intelligence Agency had Most Improved ADR Offer Rate in FY 2004

In FY 2004, the Central Intelligence Agency had the most improved ADR offer rate in the formal complaint stage. The most improved ADR offer rate is determined by subtracting the ADR offer rate for FY 2003 from the offer rate for FY 2004.

**Table 20a - Most Improved ADR Offer Rate in the Formal Complaint Process
FYs 2003 - 2004**

Agencies	Offer Rate		Increase in ADR Offers
	FY 2003	FY 2004	
Central Intelligence Agency	0%	38%	38%
Environmental Protection Agency	4%	31%	27%
Defense Information Systems Agency	13%	38%	25%
Defense National Guard Bureau	19%	34%	15%
Broadcasting Board of Governors	34%	49%	15%

5. In FY 2003, Department of the Air Force had Largest Decline in ADR Offer Rate

In FY 2003, the Department of the Air Force had the largest decline in ADR offer rate in the formal complaint process. The largest decline in ADR offer rate is determined by subtracting the ADR offer rate for FY 2003 from the offer rate for FY 2002.

**Table 21 - Largest Decline in ADR Offer Rate in the Formal Complaint Process
FYs 2002 - 2003**

Agencies	Offer Rate		Decrease in ADR Offers
	FY 2002	FY 2003	
Department of the Air Force	64%	45%	-19%
Department of Commerce	18%	3%	-15%
Department of Health & Human Services	14%	6%	-8%
Defense Army & Air Force Exchange Service	25%	18%	-7%
National Gallery of Art	67%	62%	-5%

EEOC FY 2003-2004 ADR Report, Part I

5a. In FY 2004, Defense National Geospatial-Intelligence had Largest Decline in ADR Offer Rate

In FY 2004, the Defense National Geospatial-Intelligence had the largest decline in ADR offer rate in the formal complaint process.

**Table 21a - Largest Decline in ADR Offer Rate in the Formal Complaint Process
FYs 2003 - 2004**

Agencies	Offer Rate		Decrease in ADR Offers
	FY 2003	FY 2004	
Defense National Geospatial-Intelligence Agency	69%	14%	-55%
Department of the Air Force	45%	25%	-20%
United States Postal Service	15%	1%	-14%
National Aeronautics and Space Administration	38%	27%	-11%
Department of the Interior	15%	5%	-10%

6. Defense Commissary Agency had Highest ADR Participation Rate in FY 2003

In FY 2003, the Defense Commissary Agency had the highest ADR participation rate in the formal complaint process. The ADR participation rate is obtained by dividing the number cases processed in ADR by the number of the complaint workload. A table with the complete ranking of agencies by ADR offer rate is located at www.eeoc.gov/federal/adr/datatables/index.html.

**Table 22 - Highest ADR Participation Rate in the Formal Complaint Process
FY 2003**

Agencies	Complaints Workload	Participation in ADR	Participation Rate
Defense Commissary Agency	368	66	18%
National Aeronautics and Space Administration	132	18	14%
Equal Employment Opportunity Commission	99	13	13%
U.S. Postal Service	19,809	2,502	13%
Department of the Army	2,267	276	12%

EEOC FY 2003-2004 ADR Report, Part I

6a. In FY 2004, Smithsonian Institution and Department of Education had Highest ADR Participation Rate

In FY 2004, the Smithsonian Institution and Department of Education had the highest ADR participation rate in the formal complaint process.

**Table 22a - Highest ADR Participation Rate in the Formal Complaint Process
FY 2004**

Agencies	Complaints Workload	Participation in ADR	Participation Rate
Smithsonian Institution	353	84	24%
Department of Education	121	29	24%
National Archives and Records Administration	306	55	18%
National Labor Relations Board	34	6	18%
Defense Office of the Inspector General	1,399	204	15%

7. In FY 2003, Defense Commissary Agency had Most Improved ADR Participation Rate

In FY 2003, the Defense Commissary Agency had the most improved ADR participation rate in the formal complaint process. The most improved ADR participation rate is determined by subtracting the ADR participation rate for FY 2002 from the participation rate for FY 2003.

**Table 23 - Most Improved ADR Participation Rate in the Formal Complaint Process
FYs 2002 - 2003**

Agencies	Participation Rate		Increase in ADR Participation
	FY 2002	FY 2003	
Defense Commissary Agency	6%	18%	12%
U.S. Postal Service	3%	13%	10%
Equal Employment Opportunity Commission	6%	13%	7%
Department of the Interior	2%	7%	5%
Defense Contract Management Agency	1%	6%	5%

EEOC FY 2003-2004 ADR Report, Part I

7a. In FY 2004, Department of Education had Most Improved ADR Participation Rate

In FY 2004, the Department of Education had the most improved ADR participation rate in the formal complaint process. The most improved ADR participation rate is determined by subtracting the ADR participation rate for FY 2003 from the participation rate for FY 2004.

Table 23a - Most Improved ADR Participation Rate in the Formal Complaint Process

FYs 2003 - 2004

Agencies	Participation Rate		Increase in ADR Participation
	FY 2003	FY 2004	
Department of Education	0%	24%	24%
Smithsonian Institution	2%	24%	22%
National Labor Relations Board	2%	18%	16%
National Archives and Records Administration	3%	18%	15%
Federal Election Commission	0%	14%	14%

8. National Aeronautics and Space Administration had Largest Decline in ADR Participation Rate in FY 2003

In FY 2003, the National Aeronautics and Space Administration had the largest decline in ADR participation rate in the formal complaint process. The largest decline in ADR participation rate is determined by subtracting the ADR participation rate for FY 2003 from the participation rate for FY 2002.

**Table 24 - Largest Decline in ADR Participation Rate
in the Formal Complaint Process
FYs 2002 - 2003**

Agencies	Participation Rate		Decrease in ADR Participation
	FY 2002	FY 2003	
National Aeronautics and Space Admin.	22%	14%	-8%
Department of the Air Force	15%	11%	-4%
Department of Agriculture	6%	2%	-4%
Department of Justice	4%	1%	-3%
Department of Labor	9%	6%	-3%

8a. In FY 2004, Defense Commissary Agency had Largest Decline in ADR Participation Rate

In FY 2004, the Defense Commissary Agency had the largest decline in ADR participation rate in the formal complaint process. The largest decline in ADR participation rate is determined by subtracting the ADR participation rate for FY 2004 from the participation rate for FY 2003.

**Table 24a - Largest Decline in ADR Participation Rate
in the Formal Complaint Process
FYs 2003 - 2004**

Agencies	Participation Rate		Decrease in ADR Participation
	FY 2003	FY 2004	
Defense Commissary Agency	18%	5%	-13%
National Gallery of Art	10%	1%	-9%
United States Postal Service	13%	5%	-8%
Defense Information Systems Agency	10%	5%	-5%

Section B	<i>ADR Techniques Used in the Formal Complaint Stage</i>
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Federal agencies have flexibility in selecting the types of ADR techniques to use in their respective ADR programs. Agencies may consider their mission and their workplace culture to determine which ADR techniques will best meet the needs of their workforce.

1. In FY 2003, Mediation was Primary Choice as ADR Technique

In FY 2003, agencies reported 3,293 ADR attempts during the formal complaint process. Mediation was selected in 85% of all formal complaints which attempted ADR in FY 2003. The use of mediations in ADR attempts increased by 12 percentage points, climbing from 73% in FY 2002 to 85% in FY 2003.

**Table 25 - ADR Attempts in the Formal Complaint Process
FY 2003**

ADR Attempts	Complaints	Percentage
Mediation	2,804	85.15%
Settlement Conference	331	10.05%
Facilitation	74	2.25%
Fact Finding	56	1.70%
Multiple Techniques	14	0.43%
Minitrial	6	0.18%
Early Neutral Evaluation	5	0.15%
Ombuds	2	0.06%
Other Techniques	1	0.03%
Total ADR Attempts	3,293	100.00%

EEOC FY 2003-2004 ADR Report, Part I

1a. In FY 2004, Mediation was Again Primary Choice as ADR Technique

In FY 2004, agencies reported 2,202 ADR attempts during the formal complaint process. Mediation was selected in 90% of all formal complaints which attempted ADR in FY 2004. The use of mediation in ADR attempts increased by 5 percentage points, climbing from 85% in FY 2003 to 90% in FY 2004. Since FY 2000, mediation has been used more than any other ADR technique at the formal complaint stage of the EEO process, averaging 79% of all ADR attempts.

**Table 25a - ADR Attempts in the Formal Complaint Process
FY 2004**

ADR Attempts	Complaints	Percentage
Mediation	1,977	89.78%
Settlement Conference	123	5.59%
Facilitation	59	2.68%
Fact Finding	15	0.68%
Multiple Techniques	23	1.04%
Minitrial	0	0.00%
Early Neutral Evaluation	3	0.14%
Ombuds	2	0.09%
Other Techniques	0	0.00%
Total ADR Attempts	2,202	100.00%

EEOC FY 2003-2004 ADR Report, Part I

2. In FY 2003, Excluding U.S. Postal Service, Mediation Still Most Popular Technique

Because the U.S. Postal Service reported 2,109 out of the 3,293 ADR attempts during the formal complaint process in FY 2003, the government-wide data is largely impacted by that agency. Even excluding the U.S. Postal Service data, mediation continued to be the preeminent ADR technique during the formal complaint process in FY 2003 at 65%. The second most popular ADR technique at the formal complaint stage was the settlement conference, used in nearly 22% of the ADR attempts.

**Table 26 - ADR Attempts During the Formal Complaint Process
(Excluding the U.S. Postal Service)
FY 2003**

ADR Attempts	Complaints	Percentage
Mediation	770	65.03%
Settlement Conference	256	21.62%
Facilitation	74	6.25%
Fact Finding	56	4.73%
Multiple Techniques	14	1.18%
Minitrial	6	0.18%
Early Neutral Evaluation	5	0.15%
Ombuds	2	0.06%
Other Techniques	1	0.08%
Total ADR Attempts	1,184	100.00%

EEOC FY 2003-2004 ADR Report, Part I

2a. In FY 2004, Excluding U.S. Postal Service, Mediation was Still Most Popular Technique

Because the U.S. Postal Service reported 973 out of the 2,202 ADR attempts during the formal complaint process in FY 2004, the government-wide data is largely impacted by that agency. Even excluding the U.S. Postal Service data, mediation continued to be the preeminent ADR technique during the formal complaint process in FY 2004 at 82%. The second most popular ADR technique at the formal complaint stage was the settlement conference, used in 10% of the ADR attempts.

**Table 26a - ADR Attempts During the Formal Complaint Process
(Excluding the U.S. Postal Service)
FY 2004**

ADR Attempts	Complaints	Percentage
Mediation	1004	81.69%
Settlement Conference	123	10.01%
Facilitation	59	4.80%
Fact Finding	15	1.22%
Multiple Techniques	23	1.87%
Minitrial	0	0.00%
Early Neutral Evaluation	3	0.25%
Ombuds	2	0.16%
Other Techniques	0	0.00%
Total ADR Attempts	1,229	100.00%

EEOC FY 2003-2004 ADR Report, Part I

3. Efficiency of ADR Attempts Decreased by 27 days

The maximum time allowed for ADR during the formal complaint process is 90 days. A three-year analysis of the data shows that the average processing time (APT) for ADR attempts during the formal complaint process decreased from 65 days in FY 2002 to 58 days in FY 2003 but increased to 92 days in FY 2004.²⁶ As such, the efficiency of the ADR attempts decreased by 27 days in the three year period. The average processing time over the three year period is 72 days.

**Table 27 - Average Processing Time By ADR Attempts
During the Formal Complaint Process
FYs 2002 - 2004**

ADR Techniques	Average Processing Time		
	FY 2002	FY 2003	FY 2004
Mediation	62 days	58 days	95 days
Settlement Conference	85 days	64 days	103 days
Facilitation	28 days	58 days	31 days
Fact Finding	125 days	54 days	6 days
Multiple Techniques	N/A	6 days	25 days
Minitrial	N/A	88 days	0 days
Early Neutral Evaluation	20 days	12 days	63 days
Ombuds	N/A	40 days	13 days
Other Techniques	45 days	28 days	0 days
Total ADR Attempts	65 days	58 days	92 days

²⁶ For each ADR attempt during the formal complaint process in FY 2003, the average processing time tracks the number of days between the date that the individual elected ADR and the date that the ADR attempt was completed. For the purpose of calculating the average days, ADR attempts were not considered if the agencies did not report the number of days.

Section C **Sources of Neutrals in the Formal Complaint Stage**

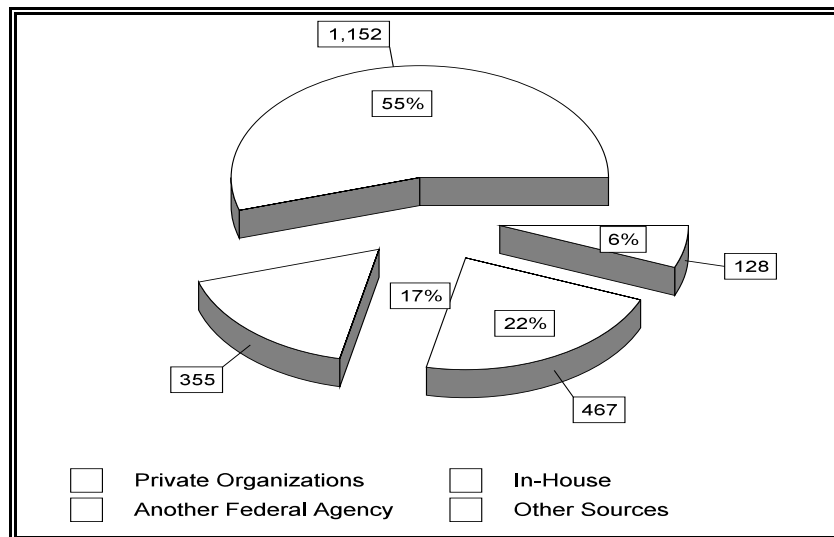
The Administrative Dispute Resolution Act defines a neutral as an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy.²⁷ In the federal sector, ADR programs have the discretion to select the source(s) of neutrals to conduct ADR proceedings.

During FY 2004, federal sector ADR programs selected neutrals from the following sources: (1) in-house (employees within the agency); (2) another federal agency; (3) private organizations; (4) multiple sources; and (5) other sources.

1. Private Organizations Were Most Popular Source of Neutrals

Government-wide data shows that in FY 2004, neutrals from private organizations (including bar associations, individual volunteers, and contractors) were selected more often than any other source of neutrals. A three-year analysis of the data shows that neutrals from private organizations were used at an increasing rate, climbing from 41% in FY 2002 to 67% in FY 2003 but then declining to 55% in FY 2004. Since FY 2000, neutrals from private organizations have averaged 47% of all ADR attempts.

**Figure 10 - Sources of Neutrals Used in the Formal Complaint Process
FY 2004**



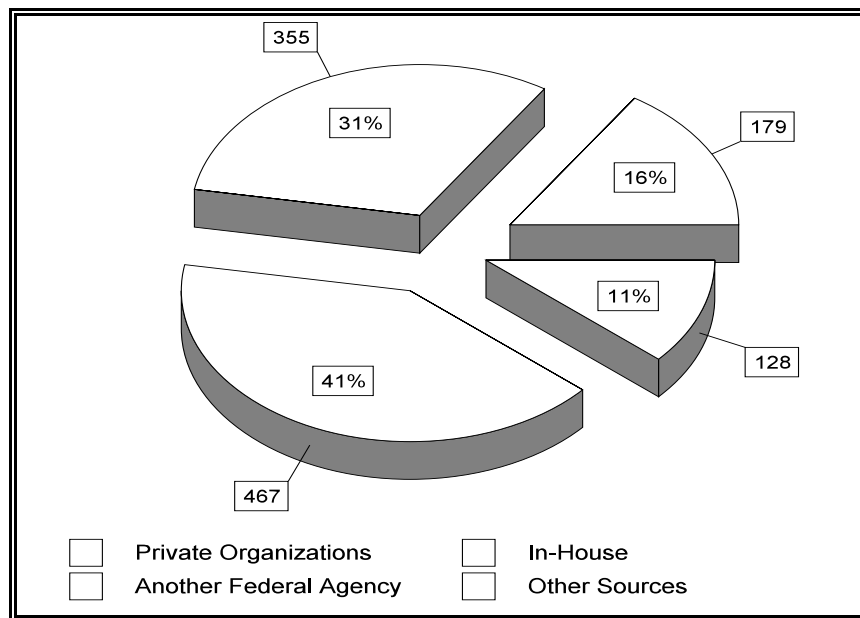
²⁷ For more information about the use of neutrals in the federal sector EEO process, refer to the Administrative Dispute Resolution Act, 5 U.S.C. Section 571(9), and Chapter 3 of MD-110.

2. **Excluding U.S. Postal Service, Majority of Neutrals Were From Another Agency**

Because the U.S. Postal Service reported 973 out of the 2,202 total complaints in which ADR was utilized in FY 2004, the government-wide data is largely impacted by that agency. When the U.S. Postal Service data is excluded from the number of ADR attempts, federal agencies selected neutrals from another federal agency more frequently than any other source of neutrals in FY 2004.²⁸

A three-year analysis of the data shows that neutrals from another agency were used at an increasing rate, climbing from 40% in FY 2002 to 47% in FY 2003 but decreased to 41% in FY 2004. Since FY 2000, the use of in-house neutrals has averaged 41% of all ADR attempts, while neutrals from another federal agency has averaged 42%.

**Figure 11 - Sources of Neutrals Used During the Formal Complaint Process
(Excluding the U.S. Postal Service)
FY 2004**

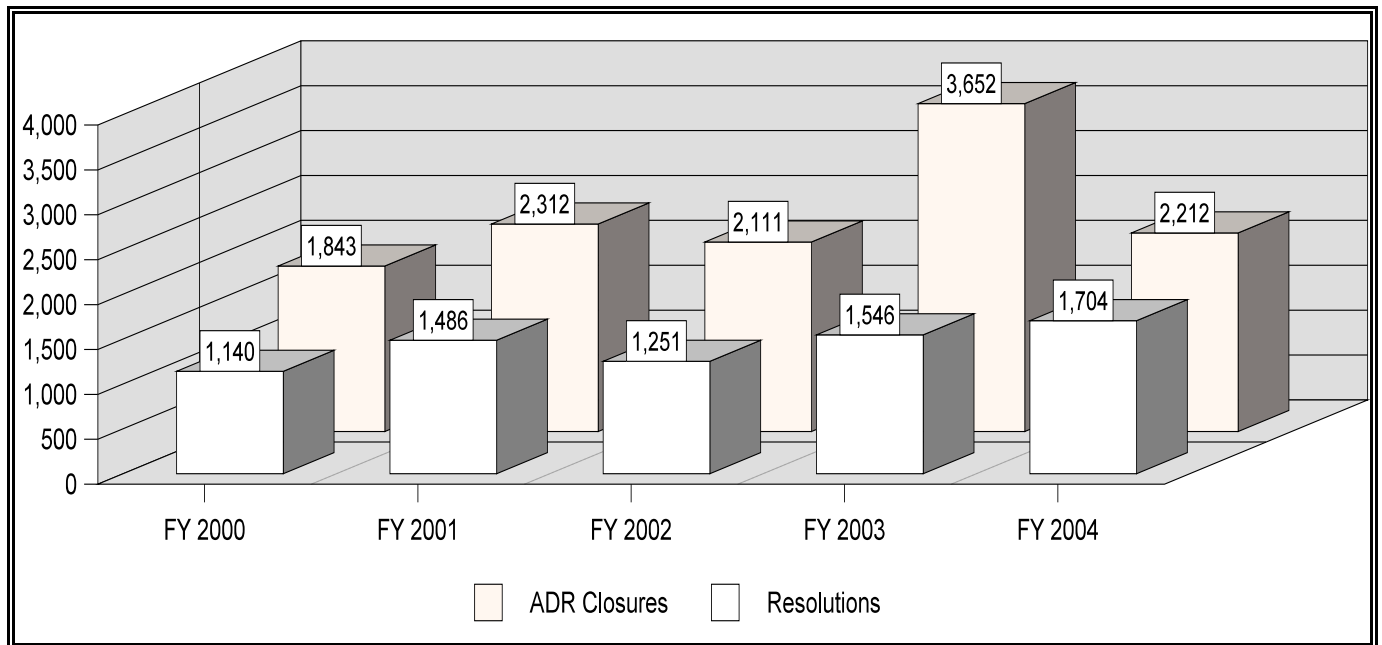


²⁸ Neutrals from another agency may include agencies that conduct ADR services for a fee, such as the Federal Mediation and Conciliation Service and the Equal Employment Opportunity Commission, as well as agencies that provide free ADR service through a Shared Neutrals Program.

Section D Effectiveness of ADR in the Formal Complaint Stage

One factor in determining the effectiveness of ADR in the federal sector EEO process is the percentage of EEO disputes that are resolved each year.²⁹ Of the 2,212 ADR closures during the formal complaint process in FY 2004, 1,704 (77%) resulted in a settlement or withdrawal.³⁰ A three-year analysis of the data shows that the ADR resolution rate at the formal complaint stage decreased by 17 percentage points, falling from 59% in FY 2002 to 42% in FY 2003 but increasing by 35 percentage points to 77% in FY 2004. Since FY 2000, the ADR resolution rate has increased by 15 percentage points, increasing from 62% in FY 2000 to 77% in FY 2004. The ADR resolution rate has averaged nearly 61% over the five-year period.

**Figure 12 - Trends in ADR Resolutions During the Formal Complaint Process
FYs 2000 - 2004**



²⁹ In addition to resolving EEO disputes, ADR may also improve parties' communication skills, reduce tension in the workplace, and help both parties avoid costly litigation expenses. Presently, there is insufficient data to evaluate ADR's impact on these factors.

³⁰ The term "resolutions" includes settlements where individuals received monetary and/or non-monetary benefits, and complaints withdrawn from the EEO process. The term "no resolutions" includes matters where ADR failed to resolve the dispute and the agency continued processing the complaint.

EEOC FY 2003-2004 ADR Report, Part I

1. In FY 2003, Department of Labor had Highest ADR Resolution Rate

In FY 2003, the Department of Labor had the highest ADR resolution rate in the formal complaint process. The ADR resolution rate is obtained by dividing the number of ADR resolutions by the number of ADR closures. A table with the complete ranking of agencies by ADR resolution rate is located at www.eeoc.gov/federal/adr/datatables/index.html.

**Table 28 - Highest ADR Resolution Rate in the Formal Complaint Process
FY 2003**

Agencies	ADR Closures	ADR Resolutions	Resolution Rate
Department of Labor	32	32	100%
National Archives & Records Admin.	13	12	92%
Department of the Interior	64	58	91%
Department of the Air Force	145	126	87%
Department of Transportation	60	52	87%

1a. In FY 2004, United States Postal Service had Highest ADR Resolution Rate

In FY 2004, the United States Postal Service had the highest ADR resolution rate in the formal complaint process.

**Table 28a - Highest ADR Resolution Rate in the Formal Complaint Process
FY 2004**

Agencies	ADR Closures	ADR Resolutions	Resolution Rate
United States Postal Service	977	911	93%
Department of the Navy	22	20	91%
Department of Energy	11	10	91%
Department of Labor	57	50	88%
Department of Agriculture	133	101	76%

EEOC FY 2003-2004 ADR Report, Part I

2. In FY 2003, National Archives & Records Administration had Most Improved ADR Resolution Rate

In FY 2003, the National Archives & Records Administration had the most improved ADR resolution rate in the formal complaint process. The most improved ADR resolution rate is determined by subtracting the ADR resolution rate for FY 2002 from the resolution rate for FY 2003.

**Table 29 - Most Improved ADR Resolution Rate in the Formal Complaint Process
FYs 2002 - 2003**

Agencies	Resolution Rate		Increase in Resolutions
	FY 2002	FY 2003	
National Archives & Records Admin.	0%	92%	92%
Department of Justice	18%	79%	61%
Department of the Interior	46%	91%	45%
Department of Transportation	45%	87%	42%
Department of Agriculture	43%	70%	27%

EEOC FY 2003-2004 ADR Report, Part I

2a. **In FY 2004, United States Postal Service had Most Improved ADR Resolution Rate**

In FY 2004, the United States Postal Service had the most improved ADR resolution rate in the formal complaint process. The most improved ADR resolution rate is determined by subtracting the ADR resolution rate for FY 2003 from the resolution rate for FY 2004.

**Table 29a - Most Improved ADR Resolution Rate in the Formal Complaint Process
FYs 2003 - 2004**

Agencies	Resolution Rate		Increase in Resolutions
	FY 2003	FY 2004	
United States Postal Service	30%	93%	63%
Defense Army & Air Force Exchange Services	17%	73%	56%
Department of Energy	53%	91%	38%
Department of Health and Human Services	38%	65%	27%
Department of State	33%	60%	27%

EEOC FY 2003-2004 ADR Report, Part I

3. **In FY 2003, Defense Finance & Accounting Service had Largest Decline in ADR Resolution Rate**

In FY 2003, the Defense Finance & Accounting Service had the largest decline in ADR resolution rate in the formal complaint process. The largest decline in ADR resolution rate is determined by subtracting the ADR resolution rate for FY 2003 from the resolution rate for FY 2002.

**Table 30 - Largest Decline in ADR Resolution Rate
in the Formal Complaint Process
FYs 2002 - 2003**

Agencies	Resolution Rate		Decrease in Resolutions
	FY 2002	FY 2003	
Defense Finance & Accounting Service	80%	53%	-27%
U.S. Postal Service	51%	30%	-21%
Department of the Army	85%	65%	-20%
Department of Treasury	76%	58%	-18%
Defense Commissary Agency	89%	77%	-12%

EEOC FY 2003-2004 ADR Report, Part I

3a. In FY 2004, Department of the Interior had Largest Decline in ADR Resolution Rate

In FY 2004, the Department of the Interior had the largest decline in ADR resolution rate in the formal complaint process. The largest decline in ADR resolution rate is determined by subtracting the ADR resolution rate for FY 2004 from the resolution rate for FY 2003.

**Table 30a - Largest Decline in ADR Resolution Rate
in the Formal Complaint Process
FYs 2003 - 2004**

Agencies	Resolution Rate		Decrease in Resolutions
	FY 2003	FY 2004	
Department of the Interior	91%	37%	-54%
Department of Justice	79%	35%	-44%
Defense Commissary Agency	77%	51%	-26%
Department of Transportation	87%	62%	-25%
Defense Contract Management Agency	62%	43%	-19%

4. In FY 2003, Resolutions of Complaints Averaged 118 Days Faster than Final Actions

In FY 2003, the combined average processing time (APT) for settlements and withdrawals of all complaint closures was 470 days, while the merit decisions and dismissals were 588 days. Hence, resolutions of complaint closures were completed, on average, 118 days faster than final actions.

EEOC FY 2003-2004 ADR Report, Part I

**Table 31 - Average Processing Time of All Complaint Closures
FY 2003**

Type of Complaint Closure	Complaint Closures	Total Days of Complaint Closures	Average Processing Time
Dismissals	2,723	684,597	251 Days
Withdrawals	2,296	872,885	380 Days
Settlements	5,573	2,827,300	507 Days
Merit Decisions	9,180	6,311,842	688 Days
Total Closures	19,772	10,696,624	541 Days

4a. In FY 2004, Resolutions of Complaints Averaged 73 Days Faster than Final Actions

In FY 2004, the combined average processing time (APT) for settlements and withdrawals of all complaint closures was 417 days, while the merit decisions and dismissals were 490 days. Hence, resolutions of complaint closures were completed, on average, 73 days faster than final actions.

**Table 31a - Average Processing Time of All Complaint Closures
FY 2004**

Type of Complaint Closure	Complaint Closures	Total Days of Complaint Closures	Average Processing Time
Dismissals	5,444	816,262	150
Withdrawals	2,325	716,228	308
Settlements	4,469	2,116,007	473
Merit Decisions	10,915	7,200,470	660
Total Closures	23,153	10,848,967	469

EEOC FY 2003-2004 ADR Report, Part I

5. Average Processing Time of ADR Closures Increases

A three-year analysis of the data shows that the average processing time (APT) for ADR closures during the formal complaint process decreased substantially from 82 days in FY 2002 to 62 days in FY 2003 but more than doubled to 127 days in FY 2004. As such, the average APT over the last three years has been 90 days.

**Table 32 - Average Processing Time in the Formal Complaint ADR Process
FY 2004**

Types of ADR Closure	ADR Closures	Total Days of ADR Closures	Average Processing Time
Settlement	1,250	181,520	145 days
Withdrawal	454	48,466	107 days
No Resolution	492	50,225	102 days
Other	16	1,178	74 days
Total	2,212	281,389	127 days

6. In FY 2003, Department of Transportation had Fastest APT for ADR Closures

In FY 2003, the Department of Transportation had the fastest average processing time for ADR closures in the formal complaint process.

**Table 33 - Fastest Average Processing Time in the Formal Complaint Process
FY 2003**

Agencies	ADR Closures	Total Days of ADR Closures	Average Processing Time
Department of Transportation	60	223	4 days
Department of the Interior	64	418	7 days
National Aeronautics and Space Administration	22	210	10 days
Social Security Administration	13	163	13 days
Department of the Air Force	145	2,452	17 days

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6a. **In FY 2004, Defense National Guard Bureau had Fastest APT for ADR Closures**

In FY 2004, the Defense National Guard Bureau had the fastest average processing time for ADR closures in the formal complaint process.

**Table 33a - Fastest Average Processing Time in the Formal Complaint Process
FY 2004**

Agencies	ADR Closures	Total Days of ADR Closures	Average Processing Time
Defense National Guard Bureau	16	248	16
Defense Finance and Accounting Service	16	364	23
National Aeronautics and Space Administration	18	540	30
Department of the Air Force	190	6,319	33
Department of Transportation	52	1,857	36

7. **Overall Resolution Rate of Formal Complaints Decreased by 2%**

Of the 23,147 complaint closures in FY 2004, there were 6,794 (29%) resolutions, including a total of 4,469 settlements. These resolutions were obtained through ADR and other negotiation processes during the formal complaint stage (i.e., non-ADR process). A three-year analysis of the data shows that the total resolution rate increased by 6 percentage points, climbing from 34% in FY 2002 to 40% in FY 2003 but decreased to 29% in FY 2004. Since FY 2000, the total resolution rate has decreased by 2 percentage points, from 31% in FY 2000 to 29% in FY 2004.

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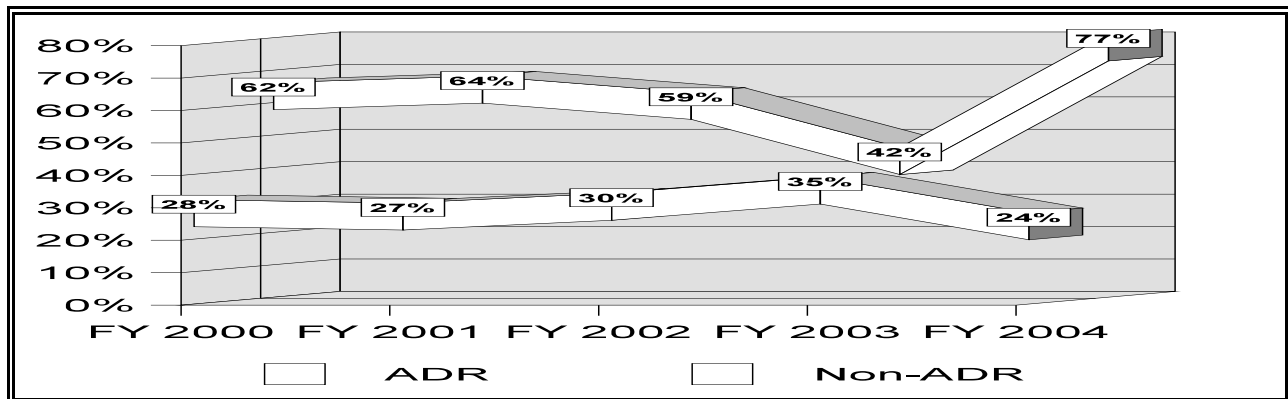
**Table 34 - Comparison of Formal Complaint Resolutions³¹
FYs 2000 - 2004**

Fiscal Year	Total Complaint Closures			Settlements (Complaints)		Withdrawals (Complaints)		Total Resolutions (Complaints)	
	Total	ADR	Non-ADR	ADR	Non-ADR	ADR	Non-ADR	ADR	Non-ADR
2000	27,177	1,843	26,037	980	4,814	160	2,405	1,140	7,219
2001	25,283	2,312	23,797	1,336	3,925	150	2,397	1,486	6,322
2002	22,889	2,111	21,638	1,131	4,475	120	2,085	1,251	6,560
2003	19,772	3,652	18,226	1,375	4,198	171	2,125	1,546	6,323
2004	23,147	2,212	21,443	1,250	3,219	454	1,871	1,704	5,090

8. Trends in Resolution Rates During the Formal Complaint Process

In FY 2004, the ADR resolution rate of 77% exceeded the non-ADR resolution rate of 24%. From FY 2000 to FY 2004, ADR has averaged a resolution rate of 61%, while non-ADR has averaged a resolution rate of 29%. The chart below identifies the trend in resolution rates for ADR and non-ADR processes during the formal complaint stage of the EEO process from FY 2000 to FY 2004.

**Figure 13 - Trends in Resolution Rates
During the Formal Complaint Process
FYs 2000 - 2004**

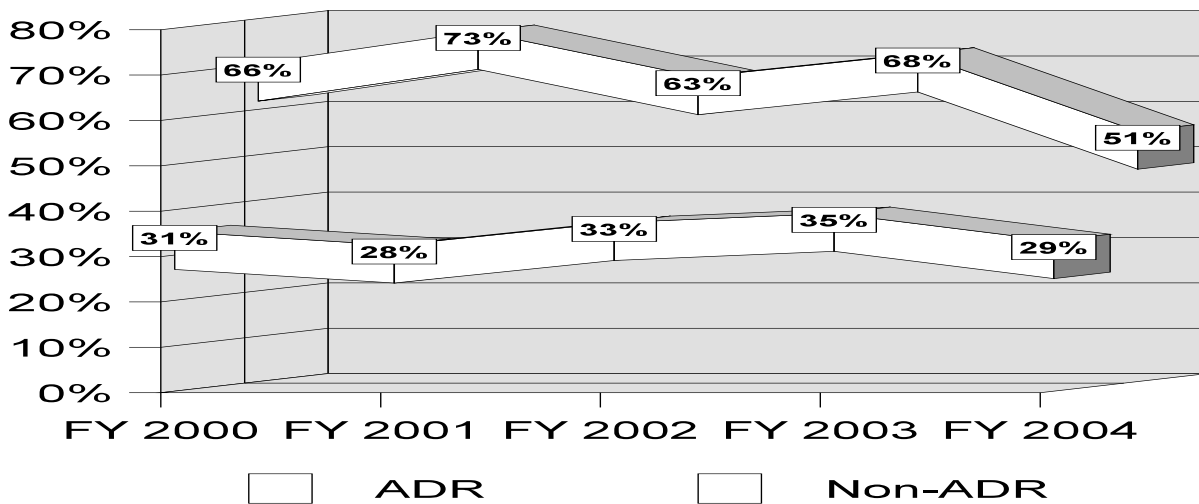


³¹ ADR closures cannot be added to non-ADR closures to obtain the total complaint closures because ADR closures include cases which failed to settle and are pending investigation.

9. Trends in Resolution Rates without U.S. Postal Service Data During the Formal Complaint Process

Because the U.S. Postal Service reported 977 out of the 2,212 ADR closures in FY 2004, the government-wide data is largely impacted by that agency. When the U.S. Postal Service is excluded from the government-wide data, the resolution rate in FY 2004 sharply decreased for ADR (from 77% to 51%) and increased slightly for non-ADR (from 24% to 29%). Over the last five years, the average resolution rate declined for ADR (from 68% to 64%) and slightly improved for non-ADR (from 30% to 31%).

**Figure 14 - Trends in Resolution Rates
During the Formal Complaint Process
(Excluding the U.S. Postal Service)
FYs 2000 - 2004**



Section E	<u>Benefits Obtained Through ADR Settlements in the Formal Complaint Stage</u>
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The types of monetary benefits reported were: (1) compensatory damages; (2) back pay/front pay; (3) lump sum; (4) attorney’s fees; and (5) other monetary benefits. The types of non-monetary benefits reported were: (1) new hire; (2) promotion; (3) reinstatement; (4) expungement of records; (5) transfer; (6) rescind removal/voluntary resignation; (7) reasonable accommodation; and (8) other non-monetary benefits.

1. Amount of Complaint Settlement Benefits

During the formal complaint process in FY 2004, 4,739 complaint closures received monetary benefits, totaling \$29,695,920, with either ADR or non-ADR settlements. In FY 2004, the average amount of monetary benefits for the complaint closures (i.e., settlements and findings of discrimination) was \$6,266 per case. Since FY 2001, the average amount of monetary benefits in the complaint closures was \$6,222 per case.

**Table 35 - Comparison of Formal Complaint Monetary Benefits
FYs 2001 - 2004**

Fiscal Year	Complaints Receiving Monetary Benefits ³²			Monetary Benefits			Average Monetary Benefits		
	Total	ADR	Non-ADR	Total	ADR	Non-ADR	Total	ADR	Non-ADR
2001	5,522	694	4,828	\$32,941,218	\$6,790,337	\$26,150,881	\$5,965	\$9,784	\$5,417
2002	5,854	655	5,199	\$33,528,757	\$5,914,384	\$27,614,373	\$5,727	\$9,030	\$5,311
2003	5,823	785	5,038	\$40,328,926	\$6,027,764	\$34,301,162	\$6,926	\$7,679	\$6,808
2004	4,739	485	4,254	\$29,695,920	\$3,209,199	26,486,721	\$6,266	\$6,617	\$6,226

³² Table 35 excludes FY 2000 data due to concerns about the accuracy of the reported complaints that received monetary settlements through ADR. Of the complaints that received monetary benefits, the non-ADR complaints include both settlements through means other than ADR and findings of discrimination because the data does not report the monetary benefits obtained in non-ADR settlements.

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2. Average Amount of ADR Monetary Benefits Decreased in FY 2003

During the formal complaint process in FY 2003, there were 1,375 ADR settlements, including 785 with monetary benefits totaling \$6,027,764, and 4,198 settlements out of the 5,038 non-ADR complaint closures that received monetary benefits. In FY 2003, the average amount of monetary benefits was \$7,679 for ADR settlements.

The table below shows that in FY 2003, lump sum payments were the most frequently used type of monetary settlement benefit; however, compensatory damages had the highest average of monetary benefits.

**Table 36 - ADR Monetary Benefits in the Formal Complaint Process³³
FY 2003**

Types of Monetary Benefits	ADR Settlements (complaints)	ADR Monetary Benefits	Average Monetary Benefits
Lump Sum	360	\$2,407,430	\$6,687
Attorney's Fees	150	\$945,564	\$6,304
Compensatory Damages	152	\$1,920,879	\$12,637
Back Pay/Front Pay	119	\$712,577	\$5,988
Other Benefits	21	\$41,314	\$1,967
Total Monetary Benefits	785	\$6,027,764	\$7,679

³³ The total number of complaints that settled with monetary benefits does not equal the aggregate of each type of monetary benefit, since one settlement agreement could include more than one type of monetary benefit.

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2a. In FY 2004, Average Amount of ADR Monetary Benefits Again Decreases

During the formal complaint process in FY 2004, there were 1,250 ADR settlements, including 485 with monetary benefits totaling \$3,209,199, and 996 settlements out of the 2,527 non-ADR complaint closures that received monetary benefits. In FY 2004, the average amount of monetary benefits was \$6,617 for ADR settlements. Since FY 2001, the average amount of monetary benefits was \$8,278 for ADR settlements.

The table below shows that in FY 2004, lump sum payments were the most frequently used type of monetary settlement benefit with the highest average of monetary benefits.

**Table 36a - ADR Monetary Benefits in the Formal Complaint Process³⁴
FY 2004**

Types of Monetary Benefits	ADR Settlements (complaints)	ADR Monetary Benefits	Average Monetary Benefits
Lump Sum	237	\$1,851,880	\$7,814
Attorney's Fees	117	\$589,365	\$5,037
Compensatory Damages	77	\$470,607	\$6,112
Back Pay/Front Pay	41	\$270,602	\$6,600
Other Benefits	33	\$26,745	\$810
Total Monetary Benefits	485	\$3,209,199	\$6,617

3. “Other Non-Monetary Benefits” Were Most Frequently Reported In ADR Settlements in FY 2003

During the formal complaint process in FY 2003, ADR efforts resulted in 1,375 settlements, including 936 with non-monetary benefits. The table below shows that in FY 2003, other non-monetary benefits was the most frequently used, appearing in 43% of the ADR settlements. Examples of other non-monetary benefits include a modified appraisal rating, an updated position description, priority consideration, a detail, a desk audit, leave restored/modified, a neutral reference, and a reassignment of duties.

³⁴ The total number of complaints that settled with monetary benefits does not equal the aggregate of each type of monetary benefit, since one settlement agreement could include more than one type of monetary benefit.

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Table 37 - ADR Non-Monetary Benefits in the Formal Complaint Process³⁵
FY 2003

Types of Non-Monetary Benefits	ADR Settlements (Complaints)
Other Non-Monetary Benefits	404
Expungement of Records	193
Transfer	96
Training	85
Reasonable Accommodation	56
Apology	54
Removal Rescinded/Voluntary Resignation	54
Promotion	52
Reinstatement	32
New Hire	21
Total Non-Monetary Benefits	936

³⁵ The total number of complaints that settled with non-monetary benefits does not equal the aggregate of each type of non-monetary benefit, since one settlement agreement could include more than one type of non-monetary benefit.

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3a. **In FY 2004, “Other Non-Monetary Benefits” Were Again Most Frequently Reported In ADR Settlements**

During the formal complaint process in FY 2004, ADR efforts resulted in 1,250 settlements, including 966 with non-monetary benefits. The table below shows that in FY 2004, other non-monetary benefits was the most frequently used, appearing in 61% of the ADR settlements.

**Table 37a - ADR Non-Monetary Benefits in the Formal Complaint Process³⁶
FY 2004**

Types of Non-Monetary Benefits	ADR Settlements (Complaints)
Other Non-Monetary Benefits	585
Expungement of Records	110
Transfer	59
Training	79
Reasonable Accommodation	25
Apology	131
Removal Rescinded/Voluntary Resignation	37
Promotion	62
Reinstatement	17
New Hire	7
Total Non-Monetary Benefits	966

³⁶ The total number of complaints that settled with non-monetary benefits does not equal the aggregate of each type of non-monetary benefit, since one settlement agreement could include more than one type of non-monetary benefit.

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GLOSSARY

ADR Attempts - The number of counselings or complaints that started an ADR technique(s) during a specific fiscal year.

ADR Closures - The number of counselings or complaints that complete the ADR process during a fiscal year. This term does not indicate that the agency has closed these counselings or complaints in either the pre-complaint stage or the formal complaint stage.

ADR Election Rate - Of the completed counselings or complaint workload that received an ADR offer, the election rate represents the percentage that participated in the ADR process.

ADR Intake Officers - An individual in the ADR program who has been trained to conduct counseling duties for aggrieved individuals who have not contacted the EEO office.

ADR Offer Rate - The percentage of completed counselings or complaint workload that received an ADR offer.

ADR Offers - The decision by an agency to offer ADR to an individual during the EEO process.

ADR Participation Rate - The percentage of completed counselings or complaint workload where both parties agreed to participate in ADR.

ADR Resolution Rate - The percentage of ADR closures that were resolved by either settlement or withdrawal from the EEO process.

ADR Techniques - The methods used by an ADR program to resolve disputes. Types of ADR techniques include mediation, settlement conference, facilitation, early neutral evaluation, peer review, ombuds, fact finding, and mini-trial.

ADR Usage - The agreement by both parties to participate in the ADR process.

Alternative Dispute Resolution - A term used to describe a variety of approaches to resolve conflict rather than traditional adjudicatory methods. ADR is a process in which a third party neutral assists in resolving disputes by using various techniques to reach a resolution acceptable to the parties.

Average Processing Time - The total number of days divided by the number of ADR attempts or ADR closures.

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Complaint Closures - The agency's decision to close a complaint during the formal complaint stage as a result of settlement, withdrawal, dismissal, or merit decision.

Complaint Workload - The combined total of complaints filed, complaints pending from the previous fiscal year, and complaints remanded for investigation.

Complaints - An EEO dispute during the formal complaint stage of the EEO process.

Counselings - An EEO dispute during the pre-complaint stage of the EEO process.

Neutrals - An impartial third party who has no vested interest in the outcome of a dispute.

Parties - The parties in an EEO dispute include the aggrieved individual (or complainant) and the agency that is named in the complaint.

Resolutions - Resolutions include settlements where individuals received monetary and/or non-monetary benefits, and matters where the individual withdrew a counseling or a complaint from the EEO process.

Settlements - A counseling or complaint where the individual received monetary and/or non-monetary benefits from the agency in return for withdrawing the matter from the EEO process.

Withdrawals (No Formal Complaint Filed) - A counseling or complaint where the individual withdrew the matter from the EEO process without receiving any monetary and/or non-monetary benefits from the agency. In the pre-complaint stage, a withdrawal is also referred to as "No Formal Complaint Filed."