

**ALTERNATIVE DISPUTE RESOLUTION PROGRAM
CENTRAL OFFICE**

- 1. REASON FOR ISSUE:** To establish procedures for the Department of Veterans Affairs Central Office (VACO) Alternative Dispute Resolution (ADR) Program.
- 2. SUMMARY OF CONTENTS:** The handbook contains VACO policy on the ADR Program. It establishes an internal process for VACO and defines procedures and responsibilities for implementation in accordance with VA Directive 5978.
- 3. RESPONSIBLE OFFICE:** The Office of Resolution Management (08), Deputy Dispute Resolution Specialist (DRS) for Workplace ADR.
- 4. RELATED DIRECTIVE:** VA Directive 5978, Alternative Dispute Resolution.
- 5. RESCISSIONS:** VA Early Mediation Program (EMP) Summary and Information Sheets.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY OF
VETERANS AFFAIRS:**

/s/
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Distribution: Electronic Only

**ALTERNATIVE DISPUTE RESOLUTION PROGRAM
CENTRAL OFFICE**

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ALTERNATIVE DISPUTE RESOLUTION PROGRAM CENTRAL OFFICE

1. PURPOSE. To establish the Alternative Dispute Resolution (ADR) Program for the Department of Veterans Affairs, Central Office (VACO) and to define policy, procedures, and responsibilities for its implementation. The VACO ADR Program is also available to assist organizations such as the Veterans Canteen Service and Emergency Management Strategic Healthcare Group in resolving workplace disputes. The VACO ADR Program abolishes the VA Early Mediation Program (VA-EMP) formerly administered by the Board of Contract Appeals. This handbook rescinds VA-EMP Summary and Information Sheets.

2. POLICY

a. The Department of Veterans Affairs' policy is to foster open communication and respect in the workplace.

b. ADR processes, including mediation and facilitation, support and encourage the Department's core values by providing employees and managers with access to effective and efficient mechanisms for managing conflict and resolving workplace disputes.

c. If the employee agrees, VACO staff offices and organizations should use ADR, particularly mediation, at the earliest possible stage to prevent, minimize, and resolve conflicts and disputes between and among employees. ADR should also be used to the maximum extent practicable and in lieu of formal administrative proceedings or litigation whenever appropriate to address workplace disputes.

3. SCOPE

a. The VACO ADR Program is available to all current VACO employees, including temporary employees. ADR is also available to former employees and applicants for employment.

b. ADR can be requested at any time by a VACO employee or manager to address a workplace dispute.

c. ADR can be used in lieu of, prior to, or after engaging an administrative process such as the Equal Employment Opportunity (EEO) complaint process, negotiated or administrative grievance procedure, or filing an appeal with the Merit Systems Protection Board (MSPB).

d. ADR will not be entertained in cases that indicate waste, fraud, or abuse, sexual harassment, or removal based on the commission of a felony.

e. In addition to the VACO ADR Program, VA engages in other programs such as Equal Employment Opportunity Commission (EEOC), Federal Labor Relations Authority (FLRA) and MSPB ADR Programs. Parties are also free to engage in ADR programs external to VA if they so choose.

4. DEFINITIONS

a. **Alternative Dispute Resolution:** Processes used to resolve disputes and issues in controversy, including, but not limited to settlement negotiations involving third parties, facilitation, mediation, fact-finding, arbitration, ombudsman, or any combination thereof.

b. **Conflict Coaching:** Blends the field of coaching with ADR to help individuals develop creative, effective, and constructive ways to address conflict in the workplace. In conflict coaching, a third party works with the individual to resolve or prevent a dispute, prepare for a conflict conversation, or generally improve competency in conflict management. The coach acts as “the other side” and provides feedback that helps the person in his/her efforts to respond to a challenging interaction.

c. **Facilitation:** Facilitation involves the use of techniques to improve the flow of information between parties to a dispute. The term “facilitator” is often used interchangeably with the term “mediator,” but a facilitator does not typically become as involved in the substantive issues as does a mediator. The facilitator focuses more on the process of effective communication.

d. **Mediation:** An informal way for employees and managers to address disputes with a fellow employee, manager, or colleague. Mediation involves a trained neutral third party or mediator who assists two or more parties find a mutually acceptable solution to their dispute without deciding or imposing a solution upon the parties. Mediation provides a structured process that enables the parties to share information, listen to different perspectives, and jointly consider various options for resolution.

e. **Neutral:** A neutral is an impartial third party, whether a coach, facilitator, or mediator, who assists the parties to manage conflict and resolve disputes. The neutral’s role includes assisting the parties to identify issues, fostering joint problem-solving, and exploring mutually acceptable outcomes. The neutral is not a decision-maker and does not have the power to impose a decision on either party. Neutrals are individuals who should have no bias towards or against either party to a dispute or a relationship to either party that would present a conflict of interest.

f. **ADR Coordinator:** An individual whose duties include facilitating the day to day operations of the ADR program and interfacing with various ADR elements throughout the Department. ADR coordinators have clearly defined duties and responsibilities associated with ADR activities such as providing information on ADR, obtaining mediators, scheduling mediation sessions, and conducting follow-up as necessary.

g. **Dispute Resolution Communication:** Any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes, or work product of the neutral, parties or nonparty participants not including written agreements that resolve the dispute.

5. ROLES AND RESPONSIBILITIES

a. **Deputy Dispute Resolution Specialist for Workplace ADR:** Responsible for administering the VACO ADR Program to include measuring the use and effectiveness of ADR efforts at VACO and coordinating training activities to increase awareness and understanding of ADR.

b. **Under Secretaries, Assistant Secretaries, Deputy Assistant Secretaries, Directors, and Management Officials:** Responsible for supporting and promoting the use of ADR to resolve workplace disputes and encouraging employees to use conflict management, early dispute resolution, and other ADR processes to resolve disputes, where appropriate.

c. **Employees:** Employees are encouraged to use ADR to resolve workplace disputes at the lowest organizational level.

d. **American Federation of Government Employees (AFGE), Local 17:** As the labor organization representing VACO employees, AFGE Local 17 is responsible for making employees aware of ADR processes, such as facilitation and mediation, as an alternate method of dispute resolution. Key stakeholder in ensuring the VACO ADR Program is implemented consistent with the VA collective bargaining agreement and used to the maximum extent practicable.

e. **VACO ADR Program Coordinator:** Responsible for receiving requests for mediation, obtaining VA or non-VA mediators, scheduling the session, coordinating the logistics, distributing and maintaining appropriate documentation, and following the ADR process through to completion. The VACO ADR coordinator monitors the ADR process for satisfaction, quality, and timeliness.

f. **VACO ADR Liaisons:** Responsible for supporting and encouraging the use of ADR within their administration, staff office, or organization. ADR liaisons serve as a resource to employees and managers in their respective organizations. ADR liaisons educate and inform colleagues about using ADR to resolve workplace disputes, market and promote the use of ADR to address conflicts and disputes in the work environment, and direct staff to contact the VACO ADR coordinator/Workplace ADR program manager/specialist if interested in pursuing ADR.

g. **Mediators:** Responsible for protecting the integrity of the mediation process. Mediators will guide discussions and further communication among the mediation participants by seeking to create sufficient understanding of the issues in dispute and permit successful problem-solving. When feasible, VACO will use the co-mediation model, where two mediators assist the parties through the process. Mediators are expected to adhere to specific standards of conduct and confidentiality provisions.

h. **ADR Manager/Specialist:** Responsible for responding to requests for information or interest in ADR. Explains various ADR options to VACO employees and managers. May assist in determining if individuals involved in a dispute are willing to use ADR, and if so, refers these requests to the VACO ADR coordinator for processing. Also, may provide ADR-related services or training for VACO employees and managers as requested.

6. PROCEDURES

a. **Conflict Coaching:** If a VACO employee or manager is interested in working with a conflict coach to improve conflict management skills, he or she can contact the Workplace ADR Program by phone or e-mail WorkplaceADR@va.gov . Conflict coaching sessions are confidential unless the employee or manager gives the conflict coach permission to share information discussed.

b. **Facilitation:** If a VACO employee or manager is interested in using a facilitator to improve the flow of information and communication, he or she can contact the Workplace ADR Program by phone or e-mail. A facilitated conversation between/among the parties is contingent on the parties' mutual agreement to use the facilitation process to resolve a dispute.

c. **Mediation:** A VACO employee or manager can request mediation to resolve a workplace dispute. The request can be made either prior to, in lieu of, or during an administrative process such as the EEO complaint or grievance process.

(1) For workplace disputes, where no EEO complaint or grievance is pending, the employee or manager should contact a Workplace ADR manager/specialist, either by phone, e-mail, or by submitting a Request for Mediation in Non-EEO Cases, VA Form 0889a at http://vaww1.va.gov/adr/Docs/REQUEST_MEDIATION_NON-EEO_CASES.pdf thereafter:

(a) The ADR manager/specialist explains the VACO ADR Program to the individual, provides a copy of the VACO Mediation Information Sheet, and answers any questions.

(b) The ADR manager/specialist determines whether the matter falls within the scope of the program.

(c) If the individual is interested in using ADR and the matter falls within the scope of the program, the ADR manager/specialist contacts the other party(ies) involved to determine if they are willing to engage in ADR. If there is not mutual interest in ADR, the matter proceeds no further in the process, and a VA Form 0889b, Refusal to Mediate Form is completed by the manager declining to mediate. If the parties are amenable to ADR, the ADR manager/specialist provides the Agreement to Mediate and Confidentiality Agreement to the parties and secures the signatures of all involved, to include any representatives designated. The ADR manager/specialist also determines if the parties desire a VA or non-VA neutral.

(d) The ADR manager/specialist forwards the fully signed Agreement to Mediate and Confidentiality Agreement to the VACO ADR coordinator to coordinate the ADR session.

- (e) Upon receipt of the fully signed Agreement to Mediate and Confidentiality Agreement, the VACO ADR coordinator will contact the parties, or their representatives, if designated, to obtain dates of availability for scheduling the ADR session. ADR sessions should be scheduled within 2 weeks of receipt of the request.
- (f) The VACO ADR coordinator will then solicit either VA or non-VA neutral(s) and assign a neutral(s) to the request.
- (g) The VACO ADR coordinator will confirm date, time, and location of the ADR session with the parties and in cases involving a member of the bargaining unit, notify the union that the ADR session is taking place.
- (h) On the day of the ADR session, the VACO ADR coordinator will provide technical support to the neutral(s) and provide them with all the requisite ADR forms, such as the Agreement to Mediate and Confidentiality Agreement, Mediation Agreement, and VA Forms 0890a and 0890b, Mediation Process Assessment Forms.
- (i) If a mediated agreement is reached, the neutral(s) will draft the agreement. It is recommended that the Office of General Counsel (OGC) review all settlement agreements. Therefore, the VACO ADR coordinator will contact OGC to ensure availability prior to the session to review settlement agreements before the neutral(s) obtain the signatures of all parties. A copy of the agreement will be provided to the parties and the VACO ADR coordinator to monitor compliance.
- (j) If no mediated agreement is reached, the VACO ADR coordinator will take the necessary actions to close out the request.
- (k) The administration's ADR coordinator should be notified when the mediation has been scheduled and should be notified of the outcome of the mediation.
- (2) When an EEO complaint has been filed with the Office of Resolution Management, and the VACO staff office/organization and the aggrieved employee/complainant both agree to mediate, a signed Agreement to Mediate and Confidentiality Agreement is obtained by the EEO counselor, intake specialist, or EEO investigator and forwarded to the VACO ADR coordinator. Upon receipt of the referenced document, the VACO ADR coordinator proceeds with steps (e)-(k) as outlined above.
- (3) The VACO ADR coordinator may also receive referrals from AFGE, Employee Relations, Labor Relations, Human Resources, or the OGC for matters pending in the grievance process or before the MSPB, or FLRA.

7. VACO ADR PROGRAM EVALUATION. VACO employees and managers participating in ADR may voluntarily complete VA Form 0890a, Mediation Process Assessment upon conclusion of the process. Information submitted is for program evaluation purposes and to assess overall satisfaction with the program. Feedback will be provided to the VACO ADR coordinator throughout to assure quality service. VA Form 0890a, Mediation Process Assessment Form is located at <http://www1.va.gov/adr/page.cfm?pg=89>.

8. CONFIDENTIALITY. The Administrative Dispute Resolution Act (ADRA) establishes requirements regarding confidentiality of dispute resolution communications during Federal ADR proceedings. The VACO ADR Program, Agreement to Mediate and Confidentiality Agreement describes these protections. In ADR, private conversations held separately with the neutral are confidential unless a party authorizes the neutral to disclose information shared.

9. CLAIMS OF BREACH OF AGREEMENT. In workplace disputes, the VACO ADR Program is responsible for monitoring the parties' compliance with any written agreement that is executed. Allegations of non-compliance with mediated agreements reached outside the EEO process should be raised with the VACO ADR coordinator and/or Workplace ADR manager/specialist, in writing, within 30 calendar days of the alleged violation. In EEO disputes, allegations of non-compliance involving a written agreement reached through mediation must be raised, in writing, with the Deputy Assistant Secretary for Resolution Management within 30 calendar days of the date of the alleged breach. Breach claims shall be addressed to: Office of Resolution Management (08) Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

10. TRAINING

a. Section 3(c) of ADRA requires agencies to provide ADR training on a regular basis. In addition, VA Directive 5978 3(e) (5) requires that all VA employees be trained to use ADR techniques to help resolve workplace and other disputes.

b. As a training measure, a web-based ADR presentation entitled the Mediation Zone is available for employee viewing on the Internet at <http://www.va.gov/orm/ADR.asp>. All VACO new employees will receive information during orientation and new supervisors will receive information as part of mandatory training. Training will be provided to current VACO employees and supervisors on a regular basis.

11. REFERENCES

a. A Guide for Federal Employee Mediators: A Supplement to and Annotation of the Model Standards of Conduct for Mediators Issued by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution (2006)

b. Administrative Dispute Resolution Act, as amended (5 USC §§ 571-584)

c. Equal Employment Opportunity (EEO) Management Directive-110

d. Master Agreement between VA and AFGE, Article 6

e. Protecting the Confidentiality of Dispute Resolution Proceedings: A Guide for Federal Workplace ADR Program Administrators (2006)

f. VA Directive 5978, Alternative Dispute Resolution

g. 29 Code of Federal Regulations, Part 1614

**MEDIATION INFORMATION SHEET
CENTRAL OFFICE****1. The VA Central Office Alternative Dispute Resolution Program**

Alternative Dispute Resolution (ADR) consists of a variety of approaches and techniques for early intervention and dispute resolution. The VA Central Office (VACO) ADR Program supports the use of mediation, the most commonly used ADR process, to resolve workplace disputes. Using mediation demonstrates a commitment to a positive approach and joint ownership of concerns and solutions. Mediation can resolve problems before the parties get involved in more formal processes and can be used anytime both parties agree.

2. Mediation

a. Mediation is an informal way for employees to address disputes with a fellow employee, manager, or colleague. In mediation, a neutral person called a mediator helps two or more persons explore ways to resolve their differences and reach an agreement that best addresses their interests. Mediation allows the parties to create their own unique solutions, instead of taking the problem to an outside decision-maker and having that person's solution imposed on them.

b. Mediation does not focus on who is right and who is wrong. It focuses on forward thinking and solving the problem. The mediator has no authority to make decisions for the parties. The parties decide what is important to each of them and make decisions based on those factors. The mediator helps the parties communicate, make informed decisions by understanding and listening to each other, and work together to create options and acceptable solutions.

3. Request Mediation

a. While conflict is a natural part of our daily lives, unresolved disputes may become unproductive and negatively impact the work environment. In these instances, mediation can save time and resources for all involved. Mediation can improve communication and prevent future misunderstandings. Mediation provides an opportunity to discuss sensitive issues and concerns in a private setting. Mediation helps the parties to look realistically at the best and worst case alternatives to resolving the dispute, and when possible, develop mutually satisfactory solutions.

b. By agreeing to mediate, neither party gives up any rights to other processes that may be available to address the dispute. Parties can designate a representative to attend the mediation and provide support and advice during the process.

4. Beginning the Mediation Process

The mediation process is initiated by contacting the VACO ADR coordinator. If the request does not involve an issue of fraud, waste, abuse, sexual harassment, or removal based on the commission of a felony, the other party involved in the dispute will be contacted to see if (s)he is amenable to mediation. If the other party is willing to mediate, the VACO ADR coordinator obtains mediators from within VA or another Federal agency, depending on the parties' preference. In some instances, where a party is a member of the bargaining unit, the union may be notified of and invited to participate in the mediation session.

5. The Mediation Session

Generally, the mediator begins with an introduction, explaining the process, each party's role, and establishing ground rules. Then, each party is afforded an opportunity to share information about the dispute. The mediator may continue with all parties in a joint session, exploring ways to address the issues raised or the mediator may meet separately with each party in private caucuses. Any information shared only with the mediator will be kept confidential unless permission is given to the mediator to disclose to the other party. If the parties can find common ground and agree to terms, those terms are documented in an agreement.

6. If an Agreement Is Reached

The mediators typically draft the agreement for the parties to sign. If a higher level official is expected to sign the agreement, this can be facilitated by the VACO ADR coordinator. Settlement authority and concurrence should be explored prior to the mediation to ensure the right parties are at the table or available should an agreement be reached. Once the agreement is signed by all parties, the contract is binding and enforceable. The parties may agree not to disclose the terms of the agreement to those who do not have a need to know; however, the document itself is not confidential and may be disclosed to establish compliance.

7. If an Agreement Is Not Reached

If mediation was elected during the EEO complaint or grievance procedure, or other forum, the process resumes at the point mediation was requested. If the time frames have not expired, the party requesting mediation can explore initiating an EEO complaint, grievance, or other available process to address the dispute.

8. Questions

If you would like additional information, please contact the VACO ADR Program at 202-501-2800. You may also obtain information at <http://www1.va.gov/adr/page.cfm?pg=86>.

FORM

**VA HANDBOOK 5978.1
APPENDIX B**

**REQUEST FOR MEDIATION IN NON-EEO CASES
(Central Office Employees Only)**

VA Form 0889a
Sep 2007

NOTICE OF REFUSAL TO MEDIATE FOR CENTRAL OFFICE

FOR USE IN NON-EEO RELATED CASES

AGREEMENT TO MEDIATE AND CONFIDENTIALITY AGREEMENT

This is an agreement by the parties identified below to participate in mediation and adhere to the confidentiality provisions applicable to the mediation process as described in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 574.

1. The parties understand that mediation is being used to discuss, and potentially resolve, issues that have arisen in the workplace. The parties understand that the mediator's role is to facilitate communication among the parties and assist them in exploring options for resolving the dispute. The mediator(s) does not make decisions for the parties, render a determination on the merit of the issue(s) raised, or act as an advocate for either party. Should either party designate an individual to serve as their representative, providing advice and counsel during the process, such information will be shared with all parties in advance of the session.
2. Mediation sessions are not recorded or transcribed. All notes taken by the mediator(s) are destroyed at the completion of the mediation process. The parties agree not to subpoena the mediator(s) or compel the mediator(s) to produce documents provided by a party in a pending or future administrative or judicial procedure. Also, the mediator(s) will not voluntarily testify on behalf of a party in any pending or future administrative or judicial proceeding.
3. The parties understand that any oral statement, or any written communication prepared specifically for the mediation, which is provided only to the mediator(s) in confidence will be kept confidential by the mediator(s) with the exception of information concerning fraud, waste, abuse, criminal activity, sexual harassment, or threats of imminent harm. The parties also understand that oral and written communications shared with all parties are not protected and may be disclosed and matters that are admissible in a court of law or other administrative process continue to be admissible even though brought up in the mediation process.
4. Although communications made in the presence of all parties and written materials shared with all parties may be disclosed, no party shall be bound by anything said or done during the mediation process unless a written agreement is reached and executed by all necessary parties.
5. If an agreement is reached, it shall be reduced to writing and when signed and approved by the appropriate authorities for all parties, the document shall be legally binding upon the parties to the agreement.
6. If the matter is not resolved through mediation, a party may pursue other available avenues of redress. However, it is that party's responsibility to be aware of and comply with all time limits and deadlines associated with those processes. By electing to use mediation, such deadlines are not waived or tolled unless otherwise agreed to in writing.

BY SIGNATURE BELOW, I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND, AND AGREE TO THE PROVISIONS OF THIS AGREEMENT.

Employee

Date

Employee's Representative

Date

Management Official

Date

Management Official's Representative

Date

FOR USE IN EEO RELATED CASES

AGREEMENT TO MEDIATE AND CONFIDENTIALITY AGREEMENT

ORM Case No.:

This is an agreement by the parties identified below to participate in mediation and adhere to the confidentiality provisions applicable to the mediation process as described in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 574.

1. The parties understand that mediation is being used to discuss, and potentially resolve, issues that have arisen in the workplace and are the subject of the above-referenced EEO complaint. The parties understand that the mediator's role is to facilitate communication among the parties and assist them in exploring options for resolving the dispute. The mediator(s) does not make decisions for the parties, render a determination on the merit of the issue(s) raised, or act as an advocate for either party. Should either party designate an individual to serve as their representative, providing advice and counsel during the process, such information will be shared with all parties in advance of the session.
2. Mediation sessions are not recorded or transcribed. All notes taken by the mediator(s) are destroyed at the completion of the mediation process. The parties agree not to subpoena the mediator(s) or compel the mediator(s) to produce documents provided by a party in a pending or future administrative or judicial procedure. Also, the mediator(s) will not voluntarily testify on behalf of a party in any pending or future administrative or judicial proceeding.
3. The parties understand that any oral statement, or any written communication prepared specifically for the mediation, which is provided only to the mediator(s) in confidence will be kept confidential by the mediator(s) with the exception of information concerning fraud, waste, abuse, criminal activity, sexual harassment, or threats of imminent harm. The parties also understand that oral and written communications shared with all parties are not protected and may be disclosed and matters that are admissible in a court of law or other administrative process continue to be admissible even though brought up in the mediation process.
4. Although communications made in the presence of all parties and written materials shared with all parties may be disclosed, no party shall be bound by anything said or done during the mediation process unless a written agreement is reached and executed by all necessary parties.
5. If an agreement is reached, it shall be reduced to writing and when signed and approved by the appropriate authorities for all parties, the document shall be legally binding upon the parties to the agreement.
6. If the matter is not resolved through mediation, a party may pursue other available avenues of redress. However, it is that party's responsibility to be aware of and comply with all time limits and deadlines associated with those processes. By electing to use mediation, such deadlines are not waived or tolled unless otherwise agreed to in writing.

BY SIGNATURE BELOW, I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND, AND AGREE TO THE PROVISIONS OF THIS AGREEMENT.

Aggrieved/Complainant

Date

Aggrieved/Complainant's Representative

Date

Management Official

Date

Management Official's Representative

Date

FOR USE IN NON-EEO RELATED CASES

MEDIATION AGREEMENT (NON-EEO)

This agreement is entered into between (name of employee), hereinafter referred to as the "Employee," and the Department of Veterans Affairs, (specify the administration or staff office), hereinafter referred to as the "Agency."

1. In return for, and in consideration of the actions of the Agency set forth in paragraph 2 below, the Employee hereby:

a. Waives any and all actions, claims, complaints, EEO complaints, grievances, appeals and proceedings of whatever nature against the Agency, its past and present officers and employees, in their personal as well as their official capacities, including attorney fees, which are now or hereafter may be asserted by him/her or on his/her behalf based on any action taken as of the date of the Employee's execution of this agreement, with the exception of any claims that may arise by reason of breach of any term of this mediation agreement.

b. The Employee further agrees that the Agency may submit the agreement as evidence of withdrawal or waiver of any claim to be withdrawn or waived hereunder.

c. The Employee also agrees to promptly provide any documents or take other action necessary to effectuate the withdrawal, dismissal, or waiver of any claim in compliance with this agreement, or to determine the amount payable by the Agency under this agreement.

2. The Agency shall:

(Specify, in detail, whatever terms have been agreed upon)

[If monetary relief is part of this agreement, add....Any tax liability arising from this payment to the Employee is the sole responsibility of the Employee. The Agency makes no representation as to the taxability of this payment or as to the tax treatment this payment will receive from the Internal Revenue Service.]

3. Both parties also stipulate and agree that:

a. This agreement does not constitute an admission of guilt or liability on the part of either party and is entered into solely for the purpose of resolving the stated matters in a manner mutually satisfactory to both parties.

b. This agreement constitutes the entire understanding between the parties. There are no other terms or commitments; either oral or written, to this agreement except those specified herein.

c. This agreement shall not serve as a precedent for resolving any other complaints, which have been or may be filed by the Employee or any other person.

d. If the Employee believes that the Agency has not complied with the terms of this agreement, s/he must notify the ADR Program Administrator in writing within thirty (30) days of the effective date of the alleged violation, requesting that the terms of the agreement be specifically implemented or that her/his right to proceed in an administrative process be reinstated from the date the agreement was reached. Alternatively, s/he may request to return to mediation to resolve any compliance issues.

e. The parties enter into this Mediation Agreement freely and voluntarily with no unwarranted duress or undue influence from any person or source. The Employee was advised of her/his right to consult with an attorney prior to executing this agreement.

This agreement shall become effective the date of the last signature to the agreement.

Name
Employee

Date

Name
Management Official

Date

FOR USE IN EEO RELATED CASES NOT ALLEGING AGE DISCRIMINATION

Mediation Agreement (EEO w/o Age)

This agreement is entered into between (name of employee), hereinafter referred to as the "Aggrieved Person or Complainant," and the Department of Veterans Affairs, (specify the administration or staff office), hereinafter referred to as the "Agency."

1. In return for, and in consideration of the actions of the Agency set forth in paragraph 2 below, the Aggrieved Person/Complainant hereby:

a. By execution of this agreement, Aggrieved Person/Complainant voluntarily withdraws all pending informal and formal EEO complaints, including but not limited to EEO Case No. _____.

b. Waives any and all actions, claims, complaints, EEO complaints, grievances, appeals and proceedings of whatever nature against the Agency, its past and present officers and employees, in their personal as well as their official capacities, including attorney fees, which are now or hereafter may be asserted by him/her or on his/her behalf based on any action taken as of the date of Aggrieved Person/Complainant's execution of this agreement, with the exception of any claims that may arise by reason of breach of any term of this mediation agreement.

b. The Aggrieved Person/Complainant further agrees that the Agency may submit the agreement as evidence of withdrawal or waiver of any claim to be withdrawn or waived hereunder.

c. The Aggrieved Person/Complainant also agrees to promptly provide any documents or take other action necessary to effectuate the withdrawal, dismissal, or waiver of any claim in compliance with this agreement, or to determine the amount payable by the Agency under this agreement.

2. The Agency shall:

(Specify, in detail, whatever terms have been agreed upon)

[If monetary relief is part of this agreement, add....Any tax liability arising from this payment to the Aggrieved Person/Complainant is the sole responsibility of the Aggrieved Person/Complainant. The Agency makes no representation as to the taxability of this payment or as to the tax treatment this payment will receive from the Internal Revenue Service.]

3. The parties specifically acknowledge the Aggrieved Person/Complainant has preserved the following rights and responsibilities through the execution of this agreement:

a. The Aggrieved Person/Complainant has thoroughly reviewed the entire agreement and understands its provisions.

b. The Aggrieved Person/Complainant has not waived any rights or claims that may arise after the date this agreement is signed.

c. The Aggrieved Person/Complainant is advised of her/his right to consult with an attorney prior to signing the agreement.

4. Both parties also agree that:

a. This agreement does not constitute an admission of guilt or liability on the part of either party and is entered into solely for the purpose of resolving the stated matters in a manner mutually satisfactory to both parties.

b. This agreement constitutes the entire understanding between the parties. There are no other terms or commitments; either oral or written, to this agreement except those specified herein.

c. This agreement shall not serve as a precedent for resolving any other complaints, which have been or may be filed by the Aggrieved Person/Complainant or any other person.

d. The Aggrieved Person/Complainant acknowledges that if s/he believes the Agency has not complied with the terms of this Mediation Agreement, s/he may notify the Deputy Assistant Secretary for Resolution Management, in writing, within 30 days of the alleged violation and request the terms of this Mediation Agreement be specifically implemented. Alternatively, s/he may request that the EEO complaint be reinstated for further processing from the point processing ceased. Thereafter, the Aggrieved Person/Complainant may appeal to the Equal Employment Opportunity Commission pursuant to 29 Code of Federal Regulations, Section 1614.504 if s/he believes that the Agency has either not fully implemented this Mediation Agreement or improperly failed to reinstate the complaint. The Equal Employment Opportunity Commission states that allegations of subsequent acts of discrimination shall be processed as separate complaints under §1614.106 or § 1614.204. If the Aggrieved Person/Complainant believes that s/he has experienced reprisal since signing the Mediation Agreement, s/he should bring the matter to the attention of an EEO Counselor immediately.

e. The parties enter into this Mediation Agreement freely and voluntarily with no unwarranted duress or undue influence from any person or source.

The agreement shall become effective the date of the last signature to the agreement.

Name of Aggrieved Person/Complainant

Date

Name of Management Official

Date

FOR USE IN EEO RELATED CASES ALLEGING AGE DISCRIMINATION

Mediation Agreement (EEO w/Age)

This agreement is entered into between (name of employee), hereinafter referred to as the "Aggrieved Person or Complainant," and the Department of Veterans Affairs, (specify the administration or staff office), hereinafter referred to as the "Agency."

1. In return for, and in consideration of the actions of the Agency set forth in paragraph 2 below, the Aggrieved Person/Complainant hereby:

a. By execution of this agreement, Aggrieved Person/Complainant voluntarily withdraws all pending informal and formal EEO complaints, including but not limited to EEO Case No. _____

b. Waives any and all actions, claims, complaints, EEO complaints, grievances, appeals and proceedings of whatever nature against the Agency, its past and present officers and employees, in their personal as well as their official capacities, including attorney fees, which are now or hereafter may be asserted by him/her or on his/her behalf based on any action taken as of the date of Aggrieved Person/Complainant's execution of this agreement, with the exception of any claims that may arise by reason of breach of any term of this mediation agreement.

b. The Aggrieved Person/Complainant further agrees that the Agency may submit the agreement as evidence of withdrawal or waiver of any claim to be withdrawn or waived hereunder.

c. The Aggrieved Person/Complainant also agrees to promptly provide any documents or take other action necessary to effectuate the withdrawal, dismissal, or waiver of any claim in compliance with this agreement, or to determine the amount payable by the Agency under this agreement.

2. The Agency shall:

(Specify, in detail, whatever terms have been agreed upon)

[If monetary relief is part of this agreement, add...Any tax liability arising from this payment to the Aggrieved Person/Complainant is the sole responsibility of the Aggrieved Person/Complainant. The Agency makes no representation as to the taxability of this payment or as to the tax treatment this payment will receive from the Internal Revenue Service.]

3. In signing the agreement, the Aggrieved Person/Complainant understands that he/she is entitled to certain rights and protections under the Older Workers Benefit Protection Act (OWBPA) and the Age Discrimination in Employment Act. The parties specifically acknowledge that the Aggrieved Person/Complainant has preserved and/or executed the following rights and responsibilities:

a. That Aggrieved Person/Complainant has thoroughly reviewed the entire agreement and understands its provisions; and

b. That Aggrieved Person/Complainant has not waived any rights or claims that may arise after the date this agreement is signed; and

c. That Aggrieved Person/Complainant has not waived any rights or claims to benefits under the OWBPA to which he/she is entitled or which may arise after the date this agreement is signed; and

d. That Aggrieved Person/Complainant has the right to consult with an attorney prior to signing the agreement; and

e. That Aggrieved Person/Complainant has a reasonable period of time, but not less than fourteen (14) calendar days to consider the agreement; and

f. That Aggrieved Person/Complainant has seven (7) calendar days following the execution of the agreement to revoke the agreement, and that the agreement will not become effective or enforceable until the seven-day revocation period has expired; and

g. That Aggrieved Person's/Complainant's relinquishment of any of the claims and rights set forth above is specifically conditioned upon the Agency's performance of the actions set forth hereinabove.

4. Both parties also agree that:

a. This agreement does not constitute an admission of guilt or liability on the part of either party and is entered into solely for the purpose of resolving the stated matters in a manner mutually satisfactory to both parties.

b. This agreement constitutes the entire understanding between the parties. There are no other terms or commitments; either oral or written, to this agreement except those specified herein.

c. This agreement shall not serve as a precedent for resolving any other complaints, which have been or may be filed by the Aggrieved Person/Complainant or any other person.

d. The Aggrieved Person/Complainant acknowledges that if s/he believes the Agency has not complied with the terms of this Mediation Agreement, s/he may notify the Deputy Assistant Secretary for Resolution Management, in writing, within 30 days of the alleged violation and request the terms of this Mediation Agreement be specifically implemented. Alternatively, s/he may request that the EEO complaint be reinstated for further processing from the point processing ceased. Thereafter, the Aggrieved Person/Complainant may appeal to the Equal Employment Opportunity Commission pursuant to 29 Code of Federal Regulations, Section 1614.504 if s/he believes that the Agency has either not fully implemented this Mediation Agreement or improperly failed to reinstate the complaint. The Equal Employment Opportunity Commission states that allegations of subsequent acts of discrimination shall be processed as separate complaints under §1614.106 or § 1614.204. If the Aggrieved Person/Complainant believes that s/he has experienced reprisal since signing the Mediation Agreement, s/he should bring the matter to the attention of an EEO Counselor immediately.

e. The parties enter into this Mediation Agreement freely and voluntarily with no unwarranted duress or undue influence from any person or source.

The agreement shall become effective the date of the last signature to the agreement or within seven days after the Aggrieved Person's/Complainant's signature, whichever is later.

Name
Aggrieved Person/Complainant

Date

Name
Management Official

Date

Mediation Process Assessment – Participant/Representative

Mediation Process Assessment – Mediator/Neutral

CO-MEDIATOR EVALUATION

CO-MEDIATOR EVALUATION