

**OFFICE OF EQUAL RIGHTS
ALTERNATIVE DISPUTE RESOLUTION PROGRAM**

I. INTRODUCTION

Alternative Dispute Resolution (ADR) is a generic term used to describe a variety of techniques, methods or processes designed to resolve conflict at the earliest opportunity and the lowest level possible.¹

In November 1990, the U.S. Congress passed the Administrative Dispute Resolution Act (ADRA), which authorizes and encourages each Federal agency to develop a policy for implementing alternative means of dispute resolution in its administrative programs. Since that time, the President, Congress, the U.S. Department of Justice and the courts have emphasized the value and importance of ADR. On May 8, 1995, FEMA published an Agency ADR policy. Under the revised regulations of the Equal Employment Opportunity Commission (EEOC), which became effective on November 9, 1999, all Federal agencies are required to have an EEO ADR program in place by January 1, 2000.

By enacting the ADRA, the Congress asserted that alternative procedures may be faster, less contentious and more economical in resolving disputes. However, the Statute at 5 U.S.C. §582(b) indicates that ADR is not appropriate when:

- 1) A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative proceeding.
- 2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the Agency.
- 3) Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions.
- 4) The matter significantly affects persons or organizations who are not parties to the proceeding.

¹ See Glossary for types and definitions of techniques utilized in ADR to resolve disputes.

- 5) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record.
- 6) The Agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Agency's fulfilling that requirement.

However, within the limitations set forth in the statute, the Office of Equal Rights (OER) plans to intensively explore whether and where the use of ADR techniques will, in fact, result in fairer, faster, less contentious or more economical resolutions of disputes. Because a formal dispute resolution process for OER has never been established and there is limited agency familiarity with the process, a pilot program will be initiated beginning January 1, 2000.

II. PURPOSE AND FOCUS

The primary purpose of this Equal Employment Opportunity (EEO) ADR program is to provide an alternative procedure for resolving allegations of discrimination addressed through the EEO process. It is designed to be efficient, expeditious and cost-effective while retaining the legal and administrative due process rights of the parties involved. It will integrate a 30-day² ADR process into the Agency's federal EEO complaint process. However, it is not a substitute for the EEO complaint process.

Some characteristics of the EEO ADR program are that it is voluntary for the complainant; can be terminated at any time within the prescribed time frames without loss of rights; can shift the process from conflict to problem solving; disputants are responsible for finding the solution; employs the use of neutral, objective individuals; and its intent is to produce a solution acceptable to the parties involved.

The EEO ADR program focuses on dispute resolution in the informal and formal stages of the EEO process and is intended to:

- A. Reduce the average processing time of complaints;
- B. Prevent the escalation of disputes into multiple complaints of discrimination;

² According to EEOC regulations, if ADR is offered and the Complainant elects to participate, the pre-complaint counseling period is extended to 90 days. All timeframes set forth in this EEO ADR Program will be adhered to as closely as possible. However, there may be occasions or extenuating circumstances where Agency requirements/resources or the need to meet Complainant's requirements may cause the established time frames to lapse or exceed what has been set forth. ADR will, however, be completed within 90 days of Complainant's initial contact with OER, an EEO Counselor or an Equal Rights Officer. If Complainant believes he/she has been subjected to undue delay, he/she have a right to request that the processing of his/her complaint continue.

- C. Increase the total number of complaints/disputes resolved at the informal stage;
- D. Enhance the overall morale and cooperation of employees, supervisors and managers;
- E. Increase the confidence of employees and managers in OER's EEO process;
- F. Increase active participation in problem-solving by all involved parties, thereby potentially reducing the number of future disputes;
- G. Ensure better utilization of staff and resources; and
- H. Reduce the costs associated with the processing of complaints.

Overall, the EEO ADR program is intended to preserve the integrity of ongoing work relationships and to empower employees and managers with the opportunity to resolve their disputes rather than placing control with an outside decision-maker. Accordingly, those closest to the substance of the problem can design and implement their own settlement.

III. PROGRAM DESCRIPTION

A 30-day EEO ADR program will be integrated into FEMA's federal EEO complaint process. OER has primary responsibility for development and implementation of the program. The EEO ADR program is a neutral, objective process and aggrieved individuals have the right to representation throughout the complaint process including ADR. The aggrieved party, however, must provide the name of his/her representative to OER when a formal complaint has been filed or if there is a desire to include a representative during the ADR process. The aggrieved party has a responsibility to cooperate in the ADR process once he/she has elected to participate as they have in other phases of the EEO process. However, the aggrieved party has the right to withdraw from ADR proceedings at any time during the established time frames without loss of rights. FEMA, as well, has the right to terminate ADR at any time during the process when it is no longer practical to continue because of the lack of agreement on issue(s) after a reasonable period of time.

Managers have a duty to cooperate in the EEO ADR program once the Agency has determined that a matter is appropriate for ADR. The Agency will encourage the parties, particularly management, to continue attempting to resolve disputes throughout the complaint process, whether through ADR or any other means of informal settlement. However, no one can force a resolution on the parties, not agency management, EEO officials or Neutrals.

ADR can be confidential in many circumstances. Agreements created by the parties during the process will be enforced. FEMA will make accessible an individual with settlement authority during the ADR process and no responsible management official directly involved in the issues at hand will serve as the person with settlement authority. No documentation or record of deliberations during the ADR proceeding will be maintained. While the purpose of ADR is to allow the parties to fashion their own resolution to a dispute, both parties are provided the opportunity to be represented by any person of his/her choosing throughout the proceeding.

Nothing said or done during attempts to resolve the complaint through ADR can be made the subject of an EEO complaint. Likewise, an Agency decision not to engage in ADR, or not to make ADR available for a particular case, or an Agency failure to provide a Neutral cannot be made the subject of an EEO complaint.

IV. SCOPE

The EEO ADR program will enhance the current EEO complaint process by introducing a forum which provides participation of managers, supervisors and employees in resolving employment matters through ADR at the earliest stage of the complaint process. ADR can occur at any time in the EEO process (e.g., pre-complaint counseling; after filing a formal complaint; investigation; after a hearing or final agency decision has been requested; or after an appeal by Complainant). Complainants will be required to initiate EEO counseling prior to being considered for ADR. The issues to be considered for ADR will be determined on a case-by-case basis taking into consideration such factors as the nature of the case; the relationship of the parties; the size and complexity of the case; and the relief sought by the charging party.

The decision to offer ADR will, as stated previously, be determined on a case-by-case basis. However, FEMA will not use ADR:

- 1) Where statutes or regulations preclude the use of such techniques;
- 2) Where the dispute is not suitable for ADR based on consideration of the factors set forth in 5 USC §582(b);
- 3) Where the responsible FEMA organization, in consultation with Office of General Counsel (OGC)/Office of Inspector General, believes a dispute involves a willful or criminal violation of law;
- 4) Where, for any reason, the responsible FEMA organization, in consultation with OGC, believes it is necessary or preferable to proceed with traditional methods in light of the facts of the case; and

5) Where class complaints³ are involved.

Although there are several ADR procedures available, those that will most commonly be used by FEMA will be mediation, facilitation, fact-finding, conciliation and negotiation.

V. ROLE OF EEO ADR PROGRAM ADMINISTRATORS

The EEO ADR program function involves several individuals with expertise in ADR techniques; the EEO complaint process; and Agency authority to resolve disputes. Their skills and coordination are key to a successful program. These individuals are as follows:

Program Manager: FEMA's EEO Complaints Manager will serve as the EEO ADR Program Manager with overall responsibility for the development, implementation, and evaluation of the program. The Program Manager will provide oversight of the activities of the Program Specialist and will coordinate with the OER's Program Specialist and FEMA's ADR Specialist in obtaining Neutrals. The EEO ADR Program Manager will confer with FEMA's ADR Specialist after the initial intake session and will ensure that appropriate assistance is provided to allow individuals with disabilities to effectively participate in all ADR activities. The EEO ADR Program Manager will coordinate with OHRM and OGC, as necessary, for guidance and advice on appropriateness of settlement agreements. The EEO ADR Program Manager will monitor customer satisfaction; evaluate the program on a continuous basis (prior to and after the pilot is completed); and propose necessary revisions to the Program.

Program Specialist: FEMA's Senior EEO Specialist will serve as Program Specialist and will perform the initial screening of complaints; coordinate with the Program Manager for ADR suitability; contact FEMA's ADR Specialist for initial intake sessions; ensure that ADR professionals and management designees are assigned and that ADR proceedings are scheduled; monitor ADR proceedings for adherence to time schedules; coordinate with Agency officials on settlement agreements; maintain a tracking system for complaints utilizing ADR; prepare and maintain ADR files; prepare letter/packages for complainants; and arrange payment of travel and settlement costs.

FEMA's ADR Specialist: FEMA's ADR Specialist will conduct an initial ADR intake session with Complainants. The initial intake session will consist of the FEMA ADR Specialist consulting with the Complainant and discussing various ADR options. The Complainant and the FEMA ADR Specialist will work together to come up with

³ A class is defined as a group of employees, former employees or applicants who are alleged to have been adversely affected by an agency personnel policy or practice which discriminates against the group on the basis of their common race, color, religion, sex, national origin, age or disability. A class complaint is a written complaint of discrimination filed on behalf of the class by the agent of the class, alleging that the class is so numerous that a consolidated complaint by the members of the class is impractical; that there are questions of fact common to the class; that the claims of the agent of the class are typical of the claims of the class; and that if the agent of the class is represented, the representative will fairly and adequately protect the interests of the class.

solutions and techniques to move the issues to resolution. If the Complainant and the ADR Specialist decide that a Neutral is advisable, the ADR Specialist shall work with the Complainant and the Management Designee in the dispute to decide on a mutually agreeable process. At this point, OER in consultation with the ADR Specialist, will assign a Neutral within five calendar days after the initial intake session. The FEMA ADR Specialist will have oversight for the acquisition, retention, and evaluation of Neutrals.

The FEMA ADR Specialist will also assist OER in making full and effective use of the various ADR processes utilized and will keep OER apprised of relevant ADR developments in the public and private sectors. The ADR Specialist will evaluate the Neutral's role and performance.

The Program Manager, Program Specialist and the FEMA ADR Specialist will also provide briefings and training to managers and employees on the EEO ADR Program and will generate media advertising the Program.

Management Designee: Management Designee is a senior management official in the chain of command of the management official involved in the dispute who is appointed to participate on management's behalf during the ADR proceeding. The Management Designee is delegated authority from the Director or appropriate official to attend ADR proceedings and has the authority, after consultation with the Program Specialist and appropriate management officials, to resolve the dispute by entering into a settlement agreement with the Complainant.

EEO Counselor: The EEO Counselor is a Permanent Full-Time Employee with a collateral duty to advise Complainants about the EEO complaint process according to 29 C.F.R. 1614.105. This process includes notifying Complainants of their rights, conducting an inquiry, identifying issues, basis(es) and relief requested and attempting resolution. EEO Counselors have the responsibility to advise Complainants (Full-Time Employees) that where the Agency agrees to offer ADR, Complainants may choose between ADR and counseling activities.

Equal Rights Officer (ERO): The ERO is a Disaster Assistance Employee who serves in disaster operations with responsibilities involving civil rights, technical assistance and EEO counseling. They have the same responsibility as the EEO Counselor in regards to the EEO process and advising Complainants (Stafford Act Employees) about ADR .

Representative: The Representative will serve as an advisor and will cooperate with the EEO Counselor and Neutral in developing and presenting information relevant to the allegations, recommendations and solutions.

VI. ROLE OF THE NEUTRAL

The Neutral is responsible for ensuring that ADR proceedings are conducted consistent with EEO law, including time frames. The Neutral ensures that proceedings are fair and consistent with the EEOC's core principles of ADR; representatives participating in ADR

proceedings have the necessary authority; and, a person with delegated authority to approve a settlement agreement is accessible.

Although the Agency will utilize various ADR techniques (i.e., mediation, facilitation, fact-finding, conciliation, and negotiation), the Neutral is responsible for accomplishing the following basic objectives during an ADR proceeding. These objectives will be achieved jointly and/or separately with the parties, depending upon the method being utilized:

- (1) Explain his/her role in the process including the purpose of the proceeding;
- (2) Obtain consensus/agreement by both parties for participation in the process;
- (3) Encourage the parties to vent and diffuse feelings;
- (4) Clear up misunderstandings;
- (5) Determine underlying interests/concerns and facts in dispute;
- (6) Improve the flow of information;
- (7) Conduct joint and/or private sessions;
- (8) Find areas of agreement; and
- (9) Incorporate the areas of agreement into a solution devised by and acceptable to all parties concerned.

The Neutral is also responsible for the preparation of the written settlement agreement and obtaining the signatures of the appropriate Management Designee and aggrieved person.

The Neutral shall ensure confidentiality, including destroying all written notes taken during the ADR proceeding or in preparation for the proceeding. The Neutral shall also ensure neutrality, including having no conflict of interest with respect to the proceeding (e.g., material or financial interest or outcome, personal friend or co-worker of a party, supervisory official over a party) unless such interest is fully disclosed in writing to all parties and all parties agree that the Neutral may serve.

VII. INCORPORATING ADR IN THE EEO PROCESS

The regulations governing discrimination complaint processing within the Federal sector are found at Title 29, Code of Federal Regulations, Part 1614 (29 C.F.R. 1614). They require that the investigation of a complaint of discrimination be completed within 180 days (extensions of up to 90 days are allowable under certain conditions) of the filing of a complaint. The Complainant has a right to a decision with or without a hearing after receipt of the Report of Investigation. This phase of the process could take from 60-240 additional days, depending on the decision made by the Complainant and the Agency. In reality, the processing of a federal EEO complaint could average more than 300 days.

These regulations encourage the use of ADR techniques in order to promote the early resolution of complaints and provide incentives to agencies that incorporate such techniques into their complaint processing systems. When an agency offers ADR, and an employee elects to participate in it, the counseling period is 90 days instead of 30 days. If ADR is unsuccessful, the Complainant may resume processing his/her complaint under EEOC's regulations.

During the past several years, FEMA has had a moderate EEO complaint-filing rate, considering the number of employees (including Permanent Full-Time and Temporary-Type Employees) in the workforce and the number of EEO counselings conducted. However, even these moderate filings have resulted in significant costs associated with human resources; investigations; payment of compensatory damages; and backpay/monetary relief as indicated below.

	FY '95	FY '96	FY '97	FY '98	FY '99
# Employees	10,549	10,059	8,907	10,500	9,260
# Counseled	53	98	84	103	95
# Complaints Filed	33	21	24	31	32
# Investigations	21	11	10	22	15
Cost of Investigations	\$64,669	\$41,312	\$40,537	\$83,172	\$55,962
Compensatory Damages	\$ -0-	\$67,000	\$ -0-	\$ -0-	\$ -0-
Backpay/Monetary Relief	\$11,000	\$89,980	\$2,500	\$16,000	\$47,289

On the other hand, the Agency has been successful in utilizing informal resolution techniques to resolve work environment and employment disputes. Based upon available statistics, in FY '97, '98 and '99, there were 66, 77, and 32 issues, respectively, that were resolved prior to or during the informal EEO counseling process by a cadre of Agency collateral duty EEO Counselors and Equal Rights Officers.

According to the EEOC regulations, EEO Counselors and ERO will retain the right to attempt informal resolution. The Office of Equal Rights (OER) wants to provide and recognizes the value of formalizing its dispute resolution process and has developed the following EEO ADR program. This program follows the core principles established by the EEOC for ADR in addition to incorporating the values of the ADRA.

The procedures to be followed in the EEO complaint process and in utilizing ADR in an attempt to resolve an EEO complaint are as follows:

A. Informal Complaint Process

- 1) According to 29 C.F.R. 1614.105(a)(1), an employee or applicant for employment must contact an EEO Counselor within 45 calendar days⁴ from the date the alleged decision, event, act, incident or personnel action occurred (or most recent occurrence if a pattern of discrimination is alleged), or within 45 calendar days after they became aware or should have been aware of the alleged offense. The EEO Counselor, pursuant to 29 C.F.R. 1614.105(b)(1), will apprise the Complainant of his/her rights, conduct an inquiry and attempt to resolve the dispute informally.
- 2) Under the EEO counseling process, the Notice of Final Interview and Right to File (NRTF) should be presented to the Complainant by the 30th day of the process; however, an extension may be granted as provided under 29 C.F.R. 1614.105(e), of up to 60 additional days.
- 3) If the informal attempt to resolve the dispute is successful, the terms of the agreement will be reduced to writing and signed by the appropriate parties.

⁴ Direct contact with OER, an EEO Counselor or an ERO within the prescribed timeframe is acceptable and will be recognized as an official request for counseling.

- 4) If informal resolution is not apparent or fails prior to the 30th day of counseling, the EEO Counselor will discuss the information with OER for review prior to OER presenting the ADR option to the Complainant.
- 5) If the Complainant is offered ADR and declines, the processing of the complaint will continue pursuant to 29 C.F.R. 1614.105(d).
- 6) If the Complainant is offered and elects ADR, the EEO Counselor will terminate counseling but *will not* issue the NRTF. OER will provide Complainant with an ADR Consent Form. (The Agreement form will explain that the signed Agreement should be submitted to OER within five calendar days of receipt)⁵. The 90-day pre-complaint processing period will be determined from the date of initial contact with OER or an EEO Counselor.
- 7) An initial ADR intake session will be conducted with Complainant by FEMA's ADR Specialist within five calendar days of the request. After the intake session, if further utilization of ADR services is required, OER in consultation with the ADR Specialist will assign a Neutral no later than five calendar days after the initial intake session.
- 8) The dispute resolution process will *commence* no later than 30 calendar days from the date of the initial counseling interview and *conclude* within 20 calendar days from the date the Neutral Party is assigned.
- 9) If ADR is successful and an agreement is reached, the terms of the agreement will be reduced to writing⁶ by the Neutral and the resolution will be signed by the Complainant and/or representative; Management Designee; and the Director, OER. By signing the agreement, Complainant agrees to withdraw their informal complaint.
- 10) Consultation/concurrence of the Office of Human Resources Management and the Office of General Counsel will be made, if necessary, prior to the signing of the agreement.

⁵ Complainants will be required to respond within five calendar days of receipt of the Consent Form. They may mail, hand-deliver or fax a response. If written response is not postmarked, hand-delivered, or faxed within the stipulated five-day period, the complaint will continue to be processed in accordance with the EEOC regulations.

⁶ Whenever an agreement is reached, the results are put in writing. If the Complainant is receiving consideration from the Agency to withdraw the complaint, then a settlement agreement is necessary and it is executed and signed as indicated. Otherwise, the employee only needs to submit a notice of withdrawal.

- 11) If no agreement is reached, OER will notify the EEO Counselor and the Counselor will issue the NRTF and close the informal EEO Counseling process. The Counseling Report will only state that attempts at informal resolution and/or ADR failed. The EEO Counselor will submit a report to OER within 15 calendar days.
- 12) The Neutral is authorized to request documentation and information pertinent to the issues prior to the ADR proceeding, if necessary. However, this information will be subject to the review and concurrence of OER for release.
- 13) If ADR does not resolve all of the issues raised, the unresolved issues will be documented and included as part of the EEO Counseling Report.
- 14) If either party to a resolution subsequently alleges breach of the Agreement, OER will make appropriate inquiries and will determine whether reopening of the EEO complaint is appropriate or if an administrative resolution of the alleged breach is feasible. According to 29 C.F.R. 1614.504(b), if the complainant is not satisfied with the agency's attempt to resolve the matter, the complainant may appeal to the EEOC for a determination as to whether the Agency has complied with the terms of the settlement agreement. The complainant may file an appeal 35 days after serving the Agency with the allegations of noncompliance, but must file an appeal within 30 days of receiving the Agency's determination.

B. Formal Complaint Process

ADR will be considered for Complainants after the filing a formal complaint; after acceptance and/or investigation; after a request for hearing or Final Agency Decision (FAD); and after an appeal has been filed. An initial ADR intake session may be conducted after filing a formal complaint; notification by the investigator that the Complainant is interested in ADR; or after a request for a FAD. The timetable for assigning a Neutral, if required, and completing the ADR process will be identical to the time periods established under the Informal Complaint Process. If an agreement is reached, it will be documented and the Complainant agrees to withdraw their formal complaint. The same review and concurrence procedures will apply, if appropriate.

The ADR process may vary from standard operating procedures (e.g., initial intake session; assignment of Neutral) if Complainant requests a hearing; after a final decision by an Administrative Judge (AJ) and/or final action by the Agency; or after an appeal. After these actions have been initiated, the complaint will be in the litigation phase. As such, FEMA's OGC and the EEOC will have jurisdiction over the matter, and will

implement utilization of ADR as deemed appropriate, in liaison with OER and FEMA's ADR Specialist. EEOC currently conducts pre-hearing settlement conferences prior to hearing a case. These settlement conferences may differ slightly from traditional ADR proceedings in that AJs may have much stronger authoritative roles than mediators since they provide the parties with specific substantive and legal information about what the disposition of the case might be if it were to go to court or hearing. EEOC AJs also entertain ADR in the pre- and post-hearing phases. If no settlement is reached, the process continues pursuant to EEOC regulations.

VII. PROGRAM COSTS

Neutrals will be obtained through contract or other Agency resources. In accordance with Director James L. Witt's memorandum of December 14, 1998, Funding for EEO Complaint Processing, the costs associated with conducting ADR proceedings, including travel will be paid for by the organization out of which the complaint arises. ADR proceedings may be conducted by the Program Manager, Program Specialist, and FEMA's ADR Specialist or other trained personnel.

VIII. RECORDKEEPING

Confidentiality can be maintained in many circumstances throughout the ADR process and records of the process will be stored in separate files from those of a formal complaint. No information obtained during the ADR proceedings will be available for use in formal complaint proceedings, except for information obtained in official complaint files; the written agreement, if any; a statement that ADR was attempted and failed; and a chronological record of the actions by OER in an attempt to utilize ADR in the EEO process. In no event will Neutrals serve as witnesses in subsequent administrative or court actions involving their assigned complaint. Prior to the beginning of any ADR proceeding, Complainant will be required to sign a statement agreeing not to call a Neutral as a witness.

IX. ACCOMMODATION BASED UPON THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) of July 26, 1990, contain certain standards that are made applicable to the Federal Government and incorporated into the Rehabilitation Act of 1973. These regulations prohibit discrimination against qualified individuals with physical or mental disabilities, as well as requiring federal agencies to take positive steps in the hiring, placement and advancement of those persons including granting them reasonable accommodation, where appropriate. In regards to administering the EEO ADR program, managers, complainants and neutrals will be reasonably accommodated, as necessary, including making facilities readily accessible and usable and using large print, braille, audiotape and electronic file on computer disk.

Accommodations for individuals with disabilities, however, are not mandatory if the Agency demonstrates that in providing such accommodations, an undue financial or administrative burden will be created or that the accommodation will alter the fundamental nature of the program or activity. As stated previously, FEMA will determine on a case-by-case basis whether it is appropriate to offer ADR.

X. PROGRAM TRAINING

FEMA will train, or ensure that training in EEO ADR is administered to, all employees, managers, supervisors and administrators of the EEO and ADR processes. In order to encourage the successful operation of ADR throughout the Agency, managers, and supervisors shall be trained in:

- 1) The ADR Act and its amendments, with emphasis on the federal government's interest in encouraging mutual resolution of disputes and the benefits associated with utilizing ADR;
- 2) The EEOC's regulations and Policy Guidance with respect to ADR;
- 3) The operations of the ADR methods that the Agency employs;
- 4) How settlement agreements are drafted, including the notice provision pursuant to 29 C.F.R. 1614.504 where the aggrieved party believes the Agency failed to comply with the terms of the settlement agreement.

Employees will receive similar training in EEO ADR including information on their rights and responsibilities in the process. EEO Counselors and EROs will receive training on ADR and their responsibilities to advise Complainants about the EEO counseling process and the EEO ADR program. The Agency will ensure that any person who serves as a Neutral in the EEO ADR program has the professional training in the various forms of alternative dispute resolution techniques that the Agency will utilize.

XI. PROGRAM IMPLEMENTATION

This program will become effective January 1, 2000, and will be piloted within the Agency. Start-up activities will be devoted to informing the Labor Management Partnership Council and advising managers and employees of the availability of the program; development and printing of project-related materials for advertising the program; initiating intake and ADR proceedings; and program evaluation. Other activities will include actual ADR proceedings and data collection activities for purposes of evaluating the effectiveness of the Program. Following is a month-by-month plan for implementation of the pilot program:

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|----------------------|--|
| January 2000 | <ul style="list-style-type: none"> - Begin Briefing/Training FEMA organizations on availability, contents and principles of EEO ADR Program - Begin utilization of ADR for complaints which meet criteria. |
| February 2000 | <ul style="list-style-type: none"> - Provide status report of EEO ADR Program to Labor Management Partnership Council |
| March 2000 & Ongoing | <ul style="list-style-type: none"> - Printing/Publication of EEO ADR Program. - Memo to All Employees informing them of Program requesting their cooperation/comments - Continue Briefing/Training FEMA organizations. - Ongoing operation of Program including data collection for evaluation purposes. - Prepare Brochure advertising Program |
| October 2000 | <ul style="list-style-type: none"> - Issue an analysis of the Program. Report ADR activity to EEOC. |

XII. PROGRAM EVALUATION

The Program Specialist will conduct an evaluation of the Program designed to assess the following items, among others:

- (a) A description of the client population. Who files formal EEO complaints? Who decides to cooperate in ADR proceedings? Description will be in terms of employment status (PFT, DAE, CORE, etc.).
- (b) A description of the types of ADR utilized, the number of times utilized and success rates.
- (c) A description of the strengths and weaknesses of the ADR process from both the Agency and the Complainant's perspective, in terms of criteria for case selection and effectiveness of mediators and management representatives.

(d) A description of the overall efficiency and effectiveness of ADR as an alternative method of formal EEO complaint processing based on:

- user participation/satisfaction
- employee/management awareness of program concepts
- rates of compliance with settlement agreements
- rates of settlement attempts/successes
- nature of agreements
- efficiency issues (speed, costs, reduction in complaint inventory)
- improvements in post-complaint climate

MODEL LETTERS AND AGREEMENTS

OFFICE OF EQUAL RIGHTS

Complaint Acknowledgement/ADR Notification Letter

Mr. John Doe
123 Main Street
Anytown, USA 00000-0000

Re: Complaint of Discrimination
Agency Case No. 00-000

Dear Mr. Doe:

This letter is to advise you of your eligibility to participate in a new program, entitled the Alternative Dispute Resolution Program, currently being piloted by the Office of Equal Rights (OER). The Equal Employment Opportunity (EEO) Alternative Dispute Resolution (ADR) Program provides for the integration of a 30-day alternative dispute resolution component into the Agency's federal EEO complaint process.

The EEO ADR Program is being offered as a voluntary alternative processing method to eligible complainants during the processing of their discriminatory claims. If ADR is successful, and you have not filed a formal complaint, the processing of your complaint will cease at the point settlement occurred. If you have filed a formal complaint, and ADR is successful, you will be required to withdraw your formal complaint. If ADR is unsuccessful, in either case, OER will resume processing your complaint in accordance the Equal Employment Opportunity Commission regulations.

You can be assured that confidentiality will be maintained throughout the ADR process to the greatest extent possible. No information obtained during the ADR process, or nothing said or done during attempts to resolve the complaint through ADR can be made the subject of an EEO complaint. The ADR proceeding may incorporate such techniques as mediation, fact-finding, negotiation, facilitation, and conciliation, or a combination of these methods. Prior to the beginning of the ADR proceeding, the Neutral will explain in more detail the technique that will be utilized and its purpose. A general description of what occurs during an ADR proceeding and the ground rules to be followed during such a proceeding, is enclosed with this letter.

If you would like to participate in this voluntary program, please check the appropriate box on the enclosed **Consent Form**, sign and date the form, and return it to this office within five days of receipt. If you have access to a fax machine, you may fax your response to FSN 651-4320 or (202) 646-4320. If you elect not to participate in this program, please advise this office and your complaint will continue to be processed in accordance with governing federal regulations.

If you have any questions about this new program, please contact Ms. Carolyn G. Davis, EEO ADR Program Manager, at (202) 646-4200.

Sincerely,

Pauline C. Campbell
Director
Office of Equal Rights

Enclosures

ADR Consent Form
ADR Fact Sheet
Complainant's Rights

OFFICE OF EQUAL RIGHTS

ALTERNATIVE DISPUTE RESOLUTION CONSENT FORM

Dear Complainant:

Your written consent is required for participation in the voluntary Equal Employment Opportunity (EEO) Alternative Dispute Resolution (ADR) Program. The EEO ADR Program is limited to a 30 calendar day time frame; therefore, you are required to return this consent form to the OER within five calendar days of receipt, if you wish to participate in this program. You may mail, hand-deliver or fax your response. If your written response is not postmarked, hand-delivered or faxed within the stipulated five-day period, your complaint will continue to be processed in accordance with the regulations at the point which processing ceased.

[] Yes, I want to participate in the Alternative Dispute Resolution Program.

I hereby consent to participate in the voluntary alternative dispute resolution efforts to be provided by OER's Alternative Dispute Resolution Program. I have read the ADR Fact Sheet, and signed and enclosed the **Agreement to Participate in ADR. I understand that by participating in this program, I am not waiving any rights for further processing of my complaint under 29 C.F.R. 1614; and that I agree to extend pre-complaint processing to 90 days.**

[] No, I do not want to participate in the Alternative Dispute Resolution Program.

I decline the opportunity to participate in OER's Alternative Dispute Resolution Program and hereby request that my complaint be processed in accordance with 29 C.F.R. 1614.

Complainant's Signature

Date

**OFFICE OF EQUAL RIGHTS
ALTERNATIVE DISPUTE RESOLUTION PROGRAM**

AGREEMENT TO PARTICIPATE IN ADR

This is an agreement by the parties to submit to Alternative Dispute Resolution (ADR) issues arising out of an informal or formal complaint of discrimination pending in the Federal Emergency Management Agency's Office of Equal Rights. Both parties understand that ADR is a voluntary process which may be terminated at any time within the designated 30 calendar day period.

Both parties indicate their awareness that ADR proceedings can be confidential in many circumstances and confidentiality will be maintained to the greatest extent possible. Each party agrees, by signing this Agreement, not to subpoena any Neutral to provide testimony in a subsequent court action that may arise from issues addressed in this complaint or any documents submitted to the Neutral. In no event, will any Neutral voluntarily testify on behalf of either party or submit any type of report to a court in connection with this complaint. It is also understood that nothing said or done during attempts to resolve the complaint through ADR can be made the subject of an Equal Employment Opportunity (EEO) complaint.

The parties agree to make a good faith effort to communicate with each other with the aid of the Neutral and to make full disclosure of all relevant information. Failure to make full disclosure may invalidate any subsequent agreement.

The parties understand that the Neutral is not acting as an advocate or attorney for either side. Both parties may be represented by counsel, if desired, and may allow his/her counsel to review the agreement prior to signing it; however, he/she is not required to do so.

It is understood that Complainant has the right to withdraw from ADR proceedings at any time during the established time frames without loss of rights. It is agreed that the Neutral and/or the Agency has the discretion to terminate the ADR proceeding at any time when it is no longer practical to continue because of the lack of agreement on issue(s) after a reasonable period of time.

Complainant's Signature

Date

Manager's Signature

Date

Witness

Date

EEO ALTERNATIVE DISPUTE RESOLUTION (ADR) FACT SHEET

1. Selection of Neutrals

Neutrals will be obtained through contract or other Agency resources. The Program Manager, Program Specialist, FEMA ADR Specialist or other trained personnel may conduct ADR proceedings.

2. Recordkeeping

Confidentiality will be maintained to the greatest extent possible throughout the ADR process and records of the process will be stored in separate files from those of a formal complaint. No information obtained during the ADR proceedings will be available for use in formal complaint proceedings, except for information obtained in official complaint files; the written agreement, if any; a statement that ADR was attempted and failed; and a chronological record of the actions by OER in an attempt to utilize ADR in the EEO process. In no event will Neutrals voluntarily serve as witnesses in subsequent administrative or court actions involving their assigned complaint. Prior to the beginning of any ADR proceeding, Complainant will be required to sign a statement agreeing not to call a Neutral as a future witness.

3. ADR Processing Time Table – 30 Days (Formal/Informal Complaints)

If informal resolution is not apparent or fails prior to the 30th day of counseling, the EEO Counselor will discuss the information with OER for review and consideration based on eligibility criteria prior to offering ADR. If complaint is in the formal phase, ADR will be considered and instituted by OER in consultation with the FEMA ADR Specialist, Office of General Counsel, and/or the Equal Employment Opportunity Commission.

A certified letter and packet of information will go out to Complainant informing him/her of availability of ADR and requesting a response to OER within 5 days of receipt.⁷

The FEMA ADR Specialist will conduct an initial intake session (may not occur during formal process) within 5 days of receipt of election to participate in ADR.

⁷ The timeframes set forth in this EEO ADR Program will be adhered to as closely as possible. However, there may be occasions or extenuating circumstances where Agency requirements/resources or the need to meet Complainant's requirements may cause the established time frames to lapse or exceed what has been set forth. ADR will, however, be completed within 90 days as established by EEOC regulations. If Complainant believes he/she has been subjected to undue delay, he/she has a right to request that the processing of his/her complaint continue.

The FEMA ADR Specialist will work with the Project Specialist to assign a Neutral within five days of completion of the intake session. The ADR proceeding will be scheduled to occur within 15 days after receipt of Complainant's election form.

If ADR is successful, an agreement of resolution will be drawn up and signed by all parties. Complainant will be requested to withdraw the complaint. If ADR is not successful, OER will resume processing the complaint in accordance with EEOC regulations.

4. Coverage

Complainants with claims meeting the criteria for consideration under the EEO ADR program will be offered an option to participate. The ADR timetable will be initiated on all complaints in which ADR has been offered and elected as an alternative to formal complaint processing.

5. Criteria for ADR Eligibility

The decision to offer ADR will be determined on a case-by-case basis. However, FEMA will not offer ADR where:

- 1) Statutes or regulations preclude the use of such techniques;
- 2) The dispute is not suitable for ADR based on consideration of the factors set forth in 5 USC §582(b);
- 3) The responsible FEMA organization, in consultation with the Office of General Counsel/Office of Inspector General, believes a dispute involves a willful or criminal violation of law;
- 4) For any reason, the responsible FEMA organization, in consultation with OGC, believes it is necessary or preferable to proceed with traditional procedures in light of the facts of the case; and
- 5) Class complaints⁸ are involved.

⁸ A class is defined as a group of employees, former employees or applicants who are alleged to have been adversely affected by an agency personnel policy or practice which discriminates against the group on the basis of their common race, color, religion, sex, national origin, age or disability. A class complaint is a written complaint of discrimination filed on behalf of the class by the agent of the class, alleging that the class is so numerous that a consolidated complaint by the members of the class is impractical; that there are questions of fact common to the class; that the claims of the agent of the class are typical of the claims of the class; and that if the agent of the class is represented, the representative will fairly and adequately protect the interests of the class.

Although there are several ADR procedures, those that will most commonly be used by FEMA will be mediation, facilitation, and fact-finding, conciliation, and negotiation.

6. Accommodation Based Upon The American With Disabilities Act

The American with Disabilities Act (ADA) of July 26, 1990, contained certain standards that were made applicable to Federal government and incorporated into the Rehabilitation Act of 1973. These regulations prohibit discrimination against qualified individuals with physical or mental disabilities, as well as requiring federal agencies to take positive steps in the hiring, placement and advancement of those persons including granting them reasonable accommodation, where appropriate. In regards to administering the EEO ADR program, managers, complainants, and neutrals will be reasonably accommodated, as necessary, including making facilities readily accessible and usable; large print; braille; audiotape; and electronic file on computer disk.

Accommodations for individuals with disabilities, however, are not mandatory if the Agency demonstrates that in providing such accommodations, an undue financial or administrative burden will be created, or that the accommodation will alter the fundamental nature of the program or activity. As stated previously, FEMA will determine on a case-by-case basis whether it is appropriate to offer ADR.

**OFFICE OF EQUAL RIGHTS
ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM**

ADR Proceedings Ground Rules

- 1) The Neutral is responsible for ensuring that ADR proceedings are conducted consistent with Equal Employment Opportunity law, including time frames. The Neutral ensures that proceedings are fair and consistent with the Equal Employment Opportunity Commission's core principles of ADR; representatives participating in ADR proceedings have the necessary authority; and a person with delegated authority to approve a settlement agreement is accessible to the agency's representative.
- 2) The Neutral is authorized to request documentation and information pertinent to the issues prior to the ADR proceeding, if necessary. However, this information will be subject to the review and concurrence of the Office of Equal Rights (OER) prior to release.
- 3) The Neutral is responsible for accomplishing the following during an ADR proceeding:
 - (a) The Neutral will explain his/her role in the process including the purpose of the proceeding;
 - (b) Obtain consensus/agreement by both parties for participation in the process;
 - (c) Encourage the parties to vent and diffuse feelings;
 - (d) Clear up misunderstandings;
 - (e) Determine underlying interests/concerns and facts in dispute;
 - (f) Improve the flow of information;
 - (g) Conduct joint and/or private sessions;
 - (h) Find areas of agreement; and
 - (i) Incorporate the areas of agreement into a solution devised by and acceptable to all parties concerned.

- 4) If ADR is successful, the terms of the agreement will be reduced to writing by the Neutral Party and the resolution will be signed by the Complainant and/or representative; Management Designee; and the Director, OER. By signing the agreement, Complainant agrees to withdraw the complaint.
- 5) OER will seek consultation/concurrence of the Office of Human Resources Management and the Office of General Counsel, if necessary, prior to the signing of the agreement.
- 6) If ADR does not resolve all of the issues raised, the unresolved issues will be documented and included as part of the EEO Counseling Report.
- 7) If either party to a resolution subsequently alleges breach of the Agreement, OER will make appropriate inquiries and will determine whether reopening of the EEO complaint is appropriate or if an administrative resolution of the alleged breach is feasible.
- 8) The aggrieved party has a responsibility to cooperate in the ADR process once he/she has elected to participate as they have in other phases of the EEO process. The aggrieved party has the right to withdraw from ADR proceedings at any time during the established time frames without loss of rights. The Federal Emergency Management Agency, as well, has the right to terminate ADR at any time during the process when it is no longer practical to continue because of the lack of agreement on issue(s) after a reasonable period of time.
- 9) The ADR proceeding will conclude when: (a) a settlement agreement is reached; (b) the Neutral concludes and so informs the parties that further efforts to reach a settlement are not practical; or (c) one of the disputing parties or the Neutral withdraws from the process by written notice.
- 10) If a disputing party terminates the proceeding without submitting written notice of withdrawal, the Neutral will have authority to document the party's withdrawal from the process.
- 11) Neutrals will generally adhere to the following model for conducting an ADR proceeding:
 - I. Introduction of self
 - A. Explain role of Neutral
 - B. Explain type and purpose of ADR proceeding
 - C. Respond to any preliminary questions

II. Conduct Joint Session with Disputing Parties

A. Gather information from parties

- i. General background information
- ii. Explanation of the issues(s) in dispute
- iii. Position of the parties

B. Generate Options for resolution of dispute

III. Conduct Private Sessions with each Party (if necessary)

A. Additional information gathering

- i. Clarification of issues
- ii. Determine true interests: what the parties need

B. Generate Options for resolution of dispute

IV. Conduct Joint Session with Disputing Parties

V. Move Disputing Parties toward Agreement (Conduct Subsequent Private Sessions, if necessary)

A. Narrow field of options for parties

B. Reality Testing

IV. Draft Terms of Settlement Agreement

**OFFICE OF EQUAL RIGHTS
ALTERNATIVE DISPUTE RESOLUTION PROGRAM**

Complainant (or Counselee)

v.

**Director
Federal Emergency
Management Agency**

Agency Case No.

SETTLEMENT AGREEMENT

In accordance with the terms set forth herein, the parties to this action agree to resolve the complaint of discrimination filed by _____ (hereinafter, the Complainant) against the Federal Emergency Management Agency (hereinafter, the Agency) and any other allegations and grievances, which may or could have been filed by the Complainant against the Agency through the date of this Settlement Agreement.

The parties recognize that nothing contained in this agreement constitutes an admission that anyone has violated Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; Section 501 of the Rehabilitation Act of 1973, or any other federal or state statute or regulation.

By executing this Settlement Agreement, the parties mutually agree to the following terms, and further agree that the following terms shall fully resolve the complaint of discrimination filed against the Agency which is the subject of this Settlement Agreement, no other promises, conditions or obligations are made or imposed on the parties.

1. The Agency agrees to the following:

(Set out the terms of the agreement)

2. The Complainant agrees to the following

(Set out the terms of the agreement)

3. The parties further agree that should the Agency fail to honor its obligations as set forth in this Settlement Agreement for any reasons not attributed to the acts or conduct by the Complainant, the provisions outlined in 29 C.F.R. 1614.504 shall govern.
4. The parties agree that this Agreement may not be used as evidence in any subsequent proceeding except for any procedure in which either party alleges a breach of the Agreement and/or compliance or enforcement purposes.
5. The parties understand and agree that the terms of the Agreement shall only be disclosed to and discussed with those third parties or other persons who, by their duties and responsibilities are necessary for the implementation of the terms of this Agreement.
6. Complainant (or Counselee) agrees to the withdrawal of his/her Equal Employment Opportunity Complaint (or Counseling) filed (mm/dd/yy).
7. The parties have read and acknowledge that they fully understand and voluntarily agree to the terms of this Settlement Agreement. This Agreement was entered into voluntarily without coercion. This document contains the complete agreement between the parties, and there are no other terms except those specified herein. This Agreement will be considered accepted and final when signed and dated by the parties.

FOR THE FEDERAL EMERGENCY MANAGEMENT AGENCY:

Management Designee

Date

Director
Office of Equal Rights

Date

FOR THE COMPLAINANT (OR COUNSELEE):

Complainant (or Counselee)

Date

EVALUATION FORMS

**OFFICE OF EQUAL RIGHTS
ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM**

Neutral Evaluation Form

Date _____

Mediator _____ Observer _____

Case Name _____ Agency No. _____

Basis(es) of Complaint (or Counseling) _____

Issues _____

Please use the following scale to indicate:

Mediator's Level of Participation:	None	Low	Medium	High
Observer's Level of Participation:	None	Low	Medium	High

Please use the scale below to indicate assessment of ADR Skills:
(N – No comment; 1-Poor; 2-Fair; 3-Good; 4-Excellent)

ADR Skills:

- | | | | | | |
|--|---|---|---|---|---|
| 1) Inquired into the facts of the case impartially without reaching premature judgments. | N | 1 | 2 | 3 | 4 |
| 2) Analyzed and understood the issues involved in the case. | N | 1 | 2 | 3 | 4 |
| 3) Helped parties to generate realistic options. | N | 1 | 2 | 3 | 4 |
| 4) Organized the case and summarized the situation for the parties | N | 1 | 2 | 3 | 4 |
| 5) Resolved impasses; helped parties move toward closure on an agreement | N | 1 | 2 | 3 | 4 |
| 6) Gained trust of the parties
(List techniques used to gain trust) | N | 1 | 2 | 3 | 4 |

- | | | | | | |
|---|---|---|---|---|---|
| 7) Was able to handle emotional parties and issues without losing control of the process. | N | 1 | 2 | 3 | 4 |
| 8) Overall effectiveness of manner (i.e, calm, relaxed, purposeful, sensitive, flexible). | N | 1 | 2 | 3 | 4 |

Technical Skills

- | | |
|---|-----------------|
| 1) Did the Neutral request relevant documents and/or review them with the parties? | Yes_____No_____ |
| 2) Did the Neutral understand the appropriate remedy(ies) according to 29 C.F.R. 1614.501 and 1614.505? | Yes_____No_____ |
| 3) Was the Neutral able to explain factors that deviated from Equal Employment Opportunity guidelines? | Yes_____No_____ |
| 4. How well was the Neutral able to help parties generate creative ways to resolve the issues? | Yes_____No_____ |

Overall comments and recommendations: (Use space below for additional comments.)	N	1	2	3	4
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**FEDERAL EMERGENCY MANAGEMENT
OFFICE OF EQUAL RIGHTS
ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM
500 C STREET, S.W., ROOM 407
WASHINGTON, DC 20472
Attention: Carolyn G. Davis**

Agency No. _____
Or
Counselor's Name _____

**COMPLAINANT (OR COUNSELEE) EVALUATION
OF EEO ADR PROGRAM**

Your answers to the following questions will help us to improve this program. Please be assured that all responses given are kept confidential.

PLEASE DO NOT SIGN THIS FORM.

-
1. The ADR proceeding(s) were:
- | | |
|--|--|
| <input type="checkbox"/> Very Satisfactory | <input type="checkbox"/> Satisfactory |
| <input type="checkbox"/> Unsatisfactory | <input type="checkbox"/> Very Unsatisfactory |

Please provide your comments.

2. The Neutral(s) (**check one**):
- seemed to treat both parties the same.
 - seemed to favor one party over the other.
3. The Neutral(s) (**check one**):
- came up with a resolution and encouraged us to accept it.
 - helped us think of different ways we could settle the issues.
 - expected us to come up with solutions ourselves.
4. Did you reach an agreement?
- Yes
 - No, because: _____

Complainant (or Counselee) Evaluation Form

- 5. If you reached an agreement, do you consider it to be:
 Very fair Fair Unfair Very Unfair

- 6. Did the ADR proceeding change your opinion of the other person?
 I feel more positive towards the other
 There is no change in my opinion of the other
 I feel more negative towards the other

- 7. To try and resolve this dispute, did you talk with anyone before contacting the Office of Equal Rights?
 No
 Yes, I talked to:
 Co-worker
 Friend
 Supervisor
 Union Representative
 Employee Relations Specialist
 Personnel Management Specialist

 Other Agency Official _____

 Other Government Agency _____

 Other _____

- 9. If you ever have a similar dispute again would you:
 Talk to the party in dispute first
 Talk to another person or agency
 If so, who would you talk to:
 Co-worker
 Friend
 Supervisor
 Union Representative
 Employee Relations Specialist
 Personnel Management Specialist

 Other Agency Official _____

 Other Government Agency _____

 Other _____

Please give us any additional comments you have in regards to the ADR proceeding. Use the back of this sheet, if necessary.

**FEDERAL EMERGENCY MANAGEMENT AGENCY
OFFICE OF EQUAL RIGHTS
ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM
500 C STREET, S.W., ROOM 407
WASHINGTON, DC 20472
Attention: Carolyn G. Davis**

Agency No. _____
Or
Neutral's Name _____

**MANAGER EVALUATION OF
EEO ADR PROGRAM**

Your answers to the following questions will help us to improve this program. Please be assured that all responses given are kept confidential.

PLEASE DO NOT SIGN THIS FORM.

-
1. The ADR proceeding(s) were:
- | | |
|--|--|
| <input type="checkbox"/> Very Satisfactory | <input type="checkbox"/> Satisfactory |
| <input type="checkbox"/> Unsatisfactory | <input type="checkbox"/> Very Unsatisfactory |

Please provide your comments.

-
-
-
2. The mediator(s) (**check one**):
- seemed to treat both parties the same
 - seemed to favor one party over the other
3. The mediator(s) (**check one**):
- came up with a resolution and encouraged us to accept it.
 - helped us think of different ways we could settle the issues.
 - expected us to come up with solutions ourselves.

4. Did you reach an agreement?

Yes

No, because: _____

5. If you reached an agreement, do you consider it to be:

Very fair

Fair

Unfair

Very Unfair

6. Did the ADR proceeding change your relationship with the other person?

I feel more positive towards the Complainant (or Counselee)

There is no change in my relationship with the Complainant (or Counselee)

I feel more negative towards the Complainant (or Counselee)

7. Please give us any additional comments you have on the EEO ADR program.

Use the back of this sheet, if necessary.

GLOSSARY

Types of ADR

Arbitration: Arbitration is closely akin to adjudication in that a neutral third party decides the submitted issues after reviewing evidence and hearing argument from the parties. It may be binding on the parties either through agreement or operation of law, or it may be non-binding in that the decision is only advisory. Arbitration may be voluntary, where the parties agree to resolve the issues by means of arbitration, or it may be mandatory, where the process is the exclusive means provided. Under the ADRA it must always be voluntary.

Combination of Techniques: Often techniques may be combined to provide advantageous aspects of more than one method. For example, if during mediation, the mediator finds that the parties are able to speak directly to each other in a productive way, the mediator may utilize the facilitator role and follow-up with the mediator role later. In some cases, fact finding may precede a facilitation or mediation session. FEMA is not limited to using only one method or technique in administering the EEO ADR program.

Conciliation: Conciliation is a process in which a third party, called a conciliator, restores damaged relationships between disputing parties by bringing them together, clarifying perceptions, and pointing out misperceptions. Successful conciliation reduces inflammatory rhetoric and tension, opens channels of communication and facilitates continued discussions. Frequently, conciliation is used to restore the parties to a pre-dispute status quo, after which other ADR techniques may be applied. Conciliation is also used when parties are unwilling, unable or unprepared begin serious resolutions discussions.

Early Neutral Evaluation: Early Neutral Evaluation uses a neutral third party to provide an objective evaluation, sometimes in writing, of the strengths and weaknesses of a case. Under this method, the parties will usually make informal presentations to the neutral party to highlight their respective cases or positions.

Facilitation: Facilitation involves the use of techniques to improve the flow of information in a meeting 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.

Fact Finding: Fact finding is the use of an impartial expert (or group) selected by the parties, by the agency or by an individual with the authority to determine what the bottom-line issues are in a dispute. Fact finding which occurs during ADR processing is generally treated as confidential versus fact finding that occurs during the investigation of a complaint.

Mediation: Mediation is the intervention in a dispute or negotiation by a neutral third party. The objective of this intervention is to assist the parties in voluntarily reaching an acceptable resolution of the issues in dispute. Mediators have no decision-making authority.

A mediator primarily makes procedural suggestions regarding how parties can reach agreement. Occasionally, a mediator may suggest some substantive options as a means of encouraging the parties to expand the range of possible resolutions under consideration. A mediator often works with the parties individually, in caucuses, to explore acceptable resolution options or to develop proposals that might move the parties closer to resolution.

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

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

Negotiation: Negotiation is simply communication among people or parties in an effort to reach an agreement. It is used so routinely that it is frequently overlooked as a specific means of resolving disputes. In the administrative context, it means procedures for settling matters that would otherwise be resolved by more formal means.

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

Typically, the panel is made up of employees and managers who volunteer for this duty and who are trained in listening, questioning and problem-solving skills as well as the specific policies and guidelines of the panel. A peer review panel may be a standing group of individuals who are available to address whatever disputes employees might

bring to the panel at any given time. Other panels may be formed on an ad hoc basis through a selection process initiated by the employee, e.g., blind selection of a certain number of names from a pool of qualified employees and managers.

Settlement Conferences: Settlement Conferences may be conducted by a settlement judge (for example an Equal Employment Opportunity Commission (EEOC) Administrative Judge) or referee and attended by representatives for the opposing parties and/or the parties themselves in order to reach a mutually acceptable settlement of the disputed matter. Agencies are not precluded from having their own settlement conferences without an Administrative Judge (AJ) provided the parties agree. Attendance is mandatory at a settlement conference ordered by an AJ. The failure of any party to comply with an order of an AJ may result in sanctions.

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

NOTES