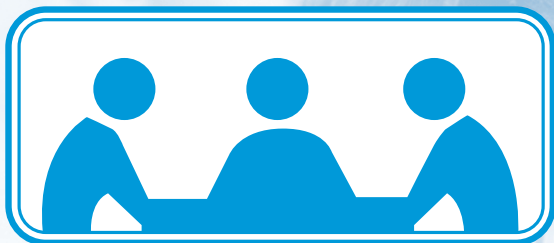


DEPARTMENT OF COMMERCE
ALTERNATIVE DISPUTE RESOLUTION

EEO
MEDIATION
GUIDE



PREFACE

The Equal Employment Opportunity Commission (EEOC) requires that all agencies establish or make available an Alternative Dispute Resolution (ADR) program for all employees. The ADR program must be available during both the pre-complaint (informal complaint) stage and the formal complaint stage. EEOC encourages agencies to use ADR as a valuable tool in resolving Equal Employment Opportunity (EEO) disputes at all stages of the EEO process.

The Department of Commerce concurs with the EEOC on this requirement and has long supported ADR, through mediation, as an option for employees in resolving EEO disputes. Department employees have the option, when appropriate, of electing mediation within their respective Bureau EEO programs.

This Guide presents an overview of the Department-wide mediation process. It was thoughtfully written with several Commerce audiences in mind: 1) EEO staff and Counselors whose role is to provide information on the mediation process to individuals seeking advice; 2) employees considering mediation in resolving a dispute; and 3) management officials who wish to learn more about mediation and their responsibilities in its process.

Employees and managers are encouraged to refer to the Guide as needed, as a supplement to consulting with their respective Bureau EEO Officer or ADR Coordinator. Employees represented by a union are advised to consult with their union representatives when considering mediation.

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The Department has chosen mediation as the primary ADR method in resolving EEO disputes because it empowers the parties themselves to reach an acceptable resolution of the conflict.

WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

Alternative Dispute Resolution, commonly referred to as ADR, is a term which covers many alternatives to traditional methods for resolving conflicts or disputes. ADR has been used as a tool in resolving workplace disputes arising from poor communication, personality conflicts, or alleged discrimination. At the Department of Commerce, ADR is offered as an alternative method for resolving workplace disputes instead of the traditional equal employment opportunity (EEO) counseling or formal complaint process.

There is a spectrum of dispute resolution techniques, covering such processes as fact-finding, early neutral evaluation, negotiation, mediation, settlement conferences, arbitration, and adjudication. All ADR processes aim to achieve the following desirable results:

- to motivate parties to focus their attention on the issues;
- to give parties the opportunity to present their perspectives on the situation;
- to provide parties the opportunity, often for the first time, to hear a clear explanation of each other's view point; and
- to provide parties with a window of opportunity to identify common interests and points of agreement, and to fashion mutually acceptable settlement options to resolve disputed issues.

Dispute resolution techniques differ in their formality and placement of decision-making power. If the process is adjudication or arbitration, the decision-making power lies with a third-party neutral. When the process is mediation, the decision-making power will reside at all times with the parties in conflict. The Department has chosen mediation as its primary ADR method for EEO disputes because it empowers the parties themselves to reach an acceptable resolution of the conflict, through the intervention of a third party. However, the Department's ADR program also conducts settlement conferences, and has piloted other techniques, such as fact-finding and early neutral evaluation.

WHAT IS MEDIATION?

Mediation is familiar to most people as a means of resolving labor-management and international disputes, but it also has been used to settle contract, interpersonal, human resource, and EEO conflicts. Mediation

“The courts of this country should not be the place where resolution of disputes begins. They should be the place where disputes end after alternative methods of resolving disputes have been considered and tried.”

Justice Sandra Day O’Conner

involves the intervention of a third person, or mediator, into a dispute to assist the parties in negotiating jointly acceptable resolution of issues in conflict. The mediator meets with the parties at a neutral location where the parties can discuss the dispute and explore a variety of solutions. Each party is encouraged to be open and candid about his/her point of view. The mediator, as a neutral third party, can view the dispute objectively and assist the parties in considering alternatives and options that they might not have considered. The mediator is neutral in that he or she does not stand to personally benefit from the terms of the settlement, and is impartial in that he or she does not have a preconceived bias about how the conflict should be resolved.

The mediation session is private and confidential. Matters unique to the mediation discussion have been held by Federal courts to

be privileged and inadmissible in any adversarial administrative or court proceeding with the exception of certain issues such as fraud, waste and abuse, or criminal activity. If a settlement was not resolved during a mediation session, and the dispute was litigated in any administrative or judicial proceeding, neither the mediator nor his/her notes can be subpoenaed by either party.

WHAT ARE DEPARTMENTAL REASONS FOR USING ADR AND MEDIATION?

In 1997, the General Accounting Office (GAO) completed its study of private sector companies’ and Federal agencies’ experiences using ADR techniques, including mediation. Organizations studied included Brown & Root, Inc., Hughes Electronics Corporation, the Polaroid Corporation, Rockwell International Corporation, TRW Inc., the Departments of Agriculture, Air Force, and State, the Postal Service, the Walter Reed Army Medical Center, and the Seattle Federal Executive Board’s Interagency ADR Consortium — a program which provides for the sharing of ADR resources among Federal agencies in the Seattle area. Mediation was the most prevalent method used for resolving workplace disputes. These organizations used ADR to avoid more formal dispute resolution processes — lawsuits and, especially in the Federal sector, formal administrative redress procedures. One reason for the use of ADR was that traditional dispute resolution processes had become costly in both time and money.

The organizations studied in the GAO report regarded ADR, especially mediation, as useful in resolving workplace disputes, thereby avoiding more formal dispute resolution processes. A case was considered resolved if it was either settled or voluntarily withdrawn by the employee. Managers said they generally believed that by avoiding litigation, mediation saved their organizations time and money. Perhaps the best indicator of the organizations’ belief in ADR was that all of them continued to use some form of ADR.

The use of ADR in the Federal sector was spurred in the early 1990s by a dramatic increase in the number of discrimination complaints, along with the costs, time, and frustration involved in attempting to resolve them. Federal managers and employee representatives have long criticized the Federal administrative redress system — especially as it affects workplace disputes involving claims of discrimination — as being adversarial, inefficient, time consuming, and costly.

Another factor in the widening adoption of ADR practices has been a recognition that traditional methods of dispute resolution do not always get at the underlying issues between disputants. Traditional methods of dispute resolution — lawsuits in the private sector, and traditional EEO complaints in the Federal sector — are predominately position-based. Simply stated, each

disputant stakes out a position, such as a complaint of discrimination or a defense against a complaint, and hopes to win the case. But interest-based dispute resolution, which is the basis for mediation, focuses on both determining the disputants' underlying interests and working to resolve their conflict at a more basic level, perhaps even bringing about a change in the work environment in which their conflict developed.

Effective November 9, 1999, the Equal Employment Opportunity Commission (EEOC) required all agencies to establish or make available an ADR program for both the pre-complaint (EEOC reference for informal complaint) and formal complaint stages. The EEOC has noted the advantages of techniques that emphasize an understanding of disputants' underlying interests over processes that focus on the validity of their positions (e.g., a complaint of discrimination or a defense against a complaint).

WHAT ARE TYPICAL ORGANIZATIONAL EXPERIENCES WITH MEDIATION?

Early Use of Mediation Enhanced the Potential for Resolving the Dispute

As time drags on without a resolution, people tend to “dig in their heels” and fight for their position rather than work to achieve mutual agreement. Accordingly, most advise that mediation should be attempted as soon after the dispute arises as practicable. The following comments were typical of expressing the relationship between the timing of mediation attempts and the success of the mediation in resolving the dispute:

- “The parties should mediate as soon as possible. Do not wait to see if a formal complaint will be filed.”
- “Both parties agree face-to-face discussion is very effective and it should have happened in the beginning.”
- “Should have attempted mediation sooner — both sides became more determined to win with each passing day.”
- “This case had progressed too far before it came to mediation (in time and substance). The parties had become so polarized in their positions and distrust had grown to the extent that mediation was not a viable method.”

ADR Procedures Help Overcome Disputes Arising from Poor Communication

Often, one or both of the parties need a flexible process and skillful neutral to bring out what's bothering him/her. Other times, people just need to take time out of their busy schedules to sit down and talk with one another away from the distractions and stresses of the workplace. As the following indicates, poor communication skills are often the root of many disputes:

- “Mediation opened lines of communication between employee and supervisor.”
- “Good case for mediation. Supervisor explained selection criteria which was all the non-selectee needed.”
- “Both parties felt process enabled them to discuss concerns and both would consider this route again.”
- “Issue could have been resolved outside of the EEO process.”
- “Most conflict was the result of miscommunication or lack of communication.”



Mediation keeps the solutions with the people who best know the problem and allows the disputants to resolve the problem themselves, rather than having other offices or a judge decide it for them.

Not All Cases Result in Successful Settlements

Even the strongest advocates for mediation acknowledge that mediation will not be able to resolve all disputes:

- “Settlement reached but didn't get to the heart of the problem — personality conflict. They're back in EEO.”
- “Parties did not come to the table with a “good faith” effort to negotiate. Urge that parties be briefed on the nature of negotiations and the need to be willing to adjust positions.”
- “Mediation does not work if the dialogue with management is not there.”

Even if disputants do not resolve the dispute, mediation frequently will “bring out” the real issues and enhance communications between the parties, fostering an improved working relationship.



between the parties. Through the skilled assistance of the mediator, disputants are encouraged to listen, keep confidences, be empathetic, suspend preconceived judgements, respect each other’s values, and focus on resolving the underlying conflict.

WHEN IS MEDIATION APPROPRIATE?

A case is usually appropriate for mediation when relationships are strained but must continue. Poor communication is often apparent and a skilled neutral third party is needed to facilitate communication. The intervention of a third party is likely to change the dynamics of the interaction of the disputants. And, the parties are often interested in retaining control of the outcome.

Mediation may be appropriate when:

- Parties are having difficulties resolving the dispute because of lack of conflict resolution skills or because of resistance to confronting, or

- “Not all individuals are willing to resolve an issue even though the opportunity is given to them. Sometimes people are not rational in their own beliefs about the merits of their perspective.”

WHAT ARE THE GOALS OF MEDIATION?

The goals of mediation are for the disputing parties to:

1. share feelings and reduce hostilities;
2. clear up misunderstandings;
3. determine underlying interests and concerns;
4. find areas of agreement; and
5. incorporate those areas into solutions devised by the parties themselves.

The advantage of mediation over more traditional complaint procedures is that it provides an environment for creative problem-solving

being confronted by, the other party. The mediator can help by clarifying productive steps for problem solving and by providing a non-threatening environment for discussion.

- There are strong psychological or relationship barriers to negotiating a resolution. Mediators can play an intermediary and conciliatory role between the parties. Mediators are trained to handle emotional barriers to settlement, problems of misperception, or poor communication.
- Parties would be otherwise unwilling to meet face-to-face to discuss the dispute.
- The preservation of a working relationship is important. Many conflicts develop in the context of an ongoing relationship. A mutual agreement to a dispute, in which the parties maintain control of the outcome and “own” the decision, is always preferable to a decision imposed by a third party. The mediation process frequently repairs or builds new working relationships that are critical to the success of ongoing work.

In order for the mediation process to function effectively, the parties must communicate openly and honestly.



WHEN IS MEDIATION INAPPROPRIATE?

While mediation is an effective technique in many situations, the Administrative Dispute Resolution Act and the EEOC recognize that there are instances in which mediation may not be appropriate or feasible. Examples of when mediation would be inappropriate are in cases involving applicants for employment, former employees, alleged violence, egregious harassment, adverse actions, class actions, when authoritative resolution of a matter is required in precedent-setting cases, when the matter in dispute has significant government policy implications, or when it is important to produce a full public record of the proceedings.

During the pre-complaint stage, the EEO Counselor will, in most instances, make the determination regarding the inappropriateness of a dispute for mediation, based upon the above criteria. When ADR is appropriate, mediation will be offered as an option to electing EEO counseling. Should

mediation be determined to be inappropriate in a particular case, the dispute will be processed through the traditional EEO counseling process.

The EEO Counselor will refer cases in question to the Bureau EEO Officer who will make the determination regarding the inappropriateness of certain cases. The Department EEO ADR Manager will make such determinations for cases presented during the formal complaint stage.

WHAT ARE SOME CONCERNS EXPRESSED ABOUT MEDIATION?

People often have concerns about the mediation process. Listed below are some of the most frequently raised questions and some responses.

Doesn't a Participant Lose Control and Have His/Her Rights Weakened by Using Mediation?

On the contrary, mediation keeps decision making authority in the hands of the key parties. In mediation, the parties evaluate whether settlement options developed through negotiations meet their needs, and can reject them if they are unacceptable. Agreement is voluntary and authority is preserved.

Doesn't Mediation Just Result in a Compromise?

Occasionally settlements arrived at through mediation are compromises, but often they are more creative and customized agreements which meet the specific needs of the involved parties. Mediation helps parties to “expand their thinking”, to consider broader alternatives meaningful to each party, to exchange interests not known before, to become aware of issues valued by each other, and to develop “win/win” solutions.

How Can a Party Be Assured That a Mediator Will Remain Impartial and Not Take Sides?

Professional mediators are trained not to take sides. Standard practice and the [Code of Ethics for Mediators](#) guide mediators to ensure impartial behavior. Should either party become dissatisfied with the mediator's behavior, or believe the mediator is acting in a partial manner, they are free to end the session and to report the incident to the Department EEO ADR Manager. Moreover, all participants in a mediation session will be given a Mediation

Evaluation Form which solicits their feedback on the quality, integrity, and value of the mediation experience.

HOW IS MEDIATION ELECTED?

Participation in mediation is voluntary for both the employee and management. Once the determination has been made at the pre-complaint stage *that the dispute is appropriate for mediation*, the EEO Counselor will explain mediation to the employee as an alternative to pursuing EEO counseling or, later on, to pursuing a formal complaint. EEOC regulations require the employee to seek pre-complaint resolution through the mediation process *or* through the EEO counseling process. The EEO Counselor will provide the employee with the [Department of Commerce EEO Mediation Guide](#) and a [Pre-Complaint Election Form](#). The employee must return the signed Election Form to the EEO Counselor *within 5 work days*, indicating his/her decision to elect mediation or to elect EEO counseling.

If the employee elects mediation, the EEO Counselor will notify the Bureau EEO Officer or Bureau ADR Coordinator, as appropriate. Should management agree to participate in mediation, the Bureau EEO Officer or Bureau ADR Coordinator will arrange for a mediator and the mediation session. Should management not agree to participate in mediation, the EEO Counselor will be notified to advise the employee accordingly and to proceed with counseling.

If an employee files a formal complaint and it is accepted for investigation, the employee will be informed through issuance of a Notice of Acceptance for Investigation of the possibility to elect mediation, per the criteria established in **WHEN IS MEDIATION INAPPROPRIATE?** *Should the complaint be appropriate for mediation, the employee must contact the Department EEO ADR Manager in order to elect mediation.* Should the employee elect mediation and

Why Negotiations Fail

- 1. Parties not mediating with “good faith” intent to work together to resolve the dispute.*
- 2. Parties not hearing what is said.*
- 3. Parties not willing to separate the person from the problem.*
- 4. Failure to have the right management representative present.*
- 5. Parties remaining fixed in their positions.*

management agree to participate in mediation, the Department EEO ADR Manager will make arrangements for a mediator and the mediation session. Should management not agree to participate in mediation, the Department EEO ADR Manager will advise the employee accordingly and the complaint will be returned to the stage in the traditional EEO formal complaint process where it originated for further processing.

WHO PARTICIPATES IN MEDIATION?

The employee raising the dispute, a management official with authority to resolve the dispute, who has been **appointed by the Agency**, and the mediator are the key parties in a mediation. Sometimes the manager involved in the case is an active participant in the mediation. The management official will be responsible for engaging in creative problem solving at the lowest level in the organization. Both parties are entitled to bring with them representatives of their choosing to assist them in the process.



Must a Management Official Participate in Mediation if Elected by the Employee?

Participation by the parties in the mediation process is entirely voluntary. However, supervisors and managers are expected to attempt to resolve conflicts at the lowest levels in the organization and at the earliest stages, where appropriate.

WHAT HAPPENS IN A MEDIATION SESSION?

Mediation sessions usually begin with the introduction of the mediator to the two parties. The mediator will provide procedural ground rules, such as making no interruptions when the other party is speaking. He/she will explain the mediation process including clarification of the issue of session confidentiality, securing agreement on time allocation and securing a commitment from the parties to seek resolution in good faith. The mediator will then explain the role of the mediator — to be an impartial facilitator, not an advocate or judge of either party, and to assist the parties in arriving at their own solutions.

The mediator will end the opening statement by informing the disputants that any settlement agreement developed during the session must be reviewed by the Department's Office of General Counsel (OGC), the servicing Human Resources Manager, and the Bureau EEO Officer, before the parties sign. After it is signed by the parties, concurrence signatures must be obtained from the servicing Human Resources Manager, the Department's OGC, and the Bureau EEO Officer before the settlement agreement is enforceable and binding¹.

After the opening statement from the mediator, the mediator will ask the person initiating the mediation session — usually the aggrieved employee — to explain in his/her own words the nature of the complaint and what type of remedy he/she is seeking. The mediator will then ask the respondent, or management official, to make an opening statement to explain in his/her own words his/her perspective of the complaint.

The mediator will proceed to facilitate the session so that clarifying questions can be asked and potential solutions can be discussed. Everyone is encouraged throughout the process to be thinking of ways in which the dispute might be settled to the satisfaction of each party.

Following the joint discussions, the mediator will caucus as necessary. A caucus is a private meeting during which the mediator talks with each party separately about the dispute. Information revealed in the caucus that is confidential will not be shared in the other caucus or when the parties reconvene in a joint session unless the party providing the confidential information permits the mediator to share it.

Following the caucuses, the mediator will reconvene the joint session and determine if there is any area of agreement between the parties on any issue. If not, the parties will continue to negotiate and caucus with the mediator, if necessary, until it is clear that a settlement is or is not going to emerge at this session. Sometimes there is a need to reconvene the mediation on another day, or to consult with another person at a later date before an agreement can be considered. In such instances, the terms of that decision must be made jointly by the parties and ***be put in writing and signed before the conclusion of the mediation session. A copy of the decision necessitating additional time must be given to the EEO staff or ADR Coordinator who arranged the mediation.***

If a settlement is reached, the parties will draft the terms of the settlement agreement that are acceptable to the parties. It is suggested that management confer with the

¹Certain settlement agreements must be approved by the Department's Director for Human Resources Management, as opposed to the servicing Human Resources Manager.

servicing Human Resources office to discuss appropriate language relating to personnel actions or benefits before drafting the terms of the agreement. The agreement will then be reviewed by the Department's OGC, the servicing Human Resources Manager, and the Bureau EEO Officer.



Once the settlement agreement is cleared by the concurrences, the parties will sign the settlement agreement. The agreement will then be submitted to the Department's OGC, the servicing Human Resources Manager, and the Bureau EEO Officer for execution. After all signatures are obtained, the agreement can be implemented. The Bureau EEO Officer will submit a copy of the fully executed agreement to the Department EEO ADR Manager.

HOW WILL MEDIATORS BE SELECTED?

The Department may obtain its mediators from an interagency pool of volunteers who serve as mediators on a collateral duty basis or from other appropriate sources. These mediators receive special mediator skills training. Although EEO Counselors with mediation training may also be mediators, they cannot serve in both capacities on the same case.

During the pre-complaint stage, the Bureau EEO Officer or Bureau ADR Coordinator will secure the services of a trained mediator as soon as possible. The Bureau EEO Officer or Bureau ADR Coordinator will then provide the employee and the designated agency official with the name and background information of the mediator. During the formal complaint stage, the Department EEO ADR Manager will secure the services of the mediator.

Either party may ask that another mediator be obtained if there is a compelling reason — such as a conflict of interest based on personal relationship with the mediator — which would compromise the integrity and impartiality of the process. Either party must notify the Bureau EEO Officer, Bureau ADR Coordinator, or Department EEO ADR Manager, as appropriate, of such a conflict within three (3) working days of receipt of the mediator's name and biographical information. Upon receipt of such notification, the Bureau EEO Officer, Bureau ADR Coordinator, or Department EEO ADR Manager will review the facts and make a determination as to whether another mediator should be obtained.

HOW CAN A PARTY PREPARE FOR MEDIATION?

The most important factor in the success of a mediation session is the intention of the parties to mediate in good faith. This means that each party is willing to listen to the other side, to keep an open mind, and to negotiate without holding to a fixed position. Both parties should make available at the mediation session any appropriate background information related to the dispute. And, both parties should be willing to reevaluate their positions based upon facts presented during the mediation.

The aggrieved person must give adequate thought to his/her opening statement. The opening statement should clearly outline, in the most logical way possible, the events or circumstances which led to this dispute. It may be helpful to write the statement in advance. The facts should be stated as perceived, and should include any interests and desired outcomes for resolving the dispute. He/she should avoid including information that is not relevant to the issues being mediated.

The party representing management must have authority to resolve the dispute. Prior to the mediation, he/she should contact the relevant servicing Human Resources office and the Department's OGC to discuss any personnel-related or legal issues, respectively, that might come up during the mediation. He/she should clearly understand the parameters of his/her authority. Should the proposed resolution exceed that authority, the management representative must be able to contact (during the mediation session) a senior level official to discuss and secure approval for the settlement terms.

Listening to clarify helps you verify the meaning intended by the other person speaking. If there is the least doubt in your mind, you need to ask questions for clarification, such as:

“I’m not sure what you mean by . . .”

“Could you please clarify for me . . .”

“Please explain to me what you mean by . . .”

As a general rule in seeking clarification, it is better never to ask ‘why’ questions. ‘Why’ questions are often threatening and raise defenses because they confront the other person’s judgment and motives.

Mediation can result in a settlement that both parties can accept and support, promotes better communications between them, and encourages a respectful and cooperative relationship.

HOW DOES MEDIATION END?

The process ends when a determination is made that a settlement has, or has not, been reached. A signed settlement can only be implemented when it is concurred in and executed by the Department's OGC, the servicing Human Resources Manager, and the Bureau EEO Officer. If either party believes that a solution cannot be reached and it is useless to continue the mediation, the dispute will return to the stage in the traditional EEO complaint process where it originated for further processing. If returned during the pre-complaint stage, the EEO Counselor will conduct a final interview and advise the employee of the right to file a formal complaint. If returned during the formal complaint stage, the Department EEO ADR Manager will advise the complainant of the next steps in the process.

ARE SETTLEMENT AGREEMENTS BINDING?

Yes, once all the necessary written concurrences are obtained, a settlement agreement is binding on both parties.

WHAT CAN YOU DO IF YOU BELIEVE THE DEPARTMENT IS NOT ADHERING TO THE TERMS OF THE SETTLEMENT AGREEMENT?

If an employee believes that the Department is not carrying out the terms of the settlement, the employee must notify the Bureau EEO Officer or Director, Office of Civil Rights in writing within 30 days of the date he/she first became aware of the alleged breach. The employee may request that the complaint be reinstated at the point processing ceased or that the Department be ordered to comply with the terms of the settlement. If no breach is found, the employee will be notified of his/her right to appeal that decision to the EEOC.

HOW DOES PARTICIPATION IN MEDIATION AFFECT AN EMPLOYEE'S RIGHTS?

Persons participating in mediation do not waive any of their rights by coming to mediation. Employees' rights to pursue formal complaint processing, including administrative and court action, are not affected if they decide to mediate the issue. No person participating in a mediation is to be penalized in any way because of such participation or by not reaching an agreement, as to do so would be retaliatory and illegal under the EEO laws and regulations.

Complainants unwilling to continue in mediation or who are unable to reach settlement through the mediation process will continue through the EEO complaint process in a timely fashion. If unresolved issues remain at the end of the mediation, the mediator will notify the Bureau EEO Officer or Bureau ADR Coordinator (if the mediation is held during the pre-complaint stage), or Department EEO ADR Manager (if the mediation is held after a formal complaint is filed), that a settlement agreement was not reached. The Bureau EEO Officer or Department EEO ADR Manager will contact the employee to advise on the next steps in the process. If employees or complainants believe their rights were violated during any mediation or settlement discussions through actions such as threats, coercion, or intimidation, etc., they should contact the Department EEO ADR Manager.

FOR MORE INFORMATION:

Contact your Bureau’s EEO Officer or the Department’s EEO ADR Manager, Roslyn Hoover, at (202) 482-8122.

Call the Department’s Office of Civil Rights at (202) 482-5691, 482-0625, or 482-4993 (Voice/TDD/TTY).

See the OCR Web Page at <http://www.doc.gov/ocr>.

See EEOC regulations at Code of Federal Regulations, Title 29, Part 1614.203. See EEOC regulations at Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110).



A copy of this OCR publication is available on the OCR page of the Department’s web site at:

<http://www.doc.gov/ocr>

Alternate Formats: OCR publications can be made available in other formats upon request by any of the above methods.

The information contained in this publication is intended as a general overview and does not carry the force of legal opinion.

Appendix A

TIME FRAMES IN THE COMPLAINT PROCESS

The EEOC issues regulations that govern how complaints are processed. These regulations impose time limits on each step of the complaint process. The following table shows some important time frames in the complaint process and how they are affected by electing EEO counseling or mediation.

Where in Process	With EEO Counseling	With Mediation
PRE-COMPLAINT (Informal Stage)	Counseling must be completed within 30 days of contact with the EEO Office.	Pre-Complaint period may be extended, but cannot exceed 90 days from date of contact with the EEO Office.
COMPLAINT (Formal Stage) Investigation	Investigation must be completed within 180 days of the filing date.	Investigation may be extended up 90 days (270 days total). Investigation will continue during mediation.
COMPLAINT (Formal Stage) Adjudication	Times vary depending on election of hearing or final agency decision.	All time limits on adjudication can be extended up to 90 days for mediation.

In all cases, extension of regulatory time frames must be agreed to by the complainant or his or her representative in writing. Extensions may be requested or granted for reasons other than electing mediation, and the time frame for completing investigations may be further extended if formal complaints are consolidated or amended.

Appendix B

MEMORANDUM FOR (Employee)

FROM: (EEO Counselor)

SUBJECT: Pre-Complaint Election Form

On (date), you contacted the Equal Employment Opportunity office regarding an allegation of discrimination. Specifically you alleged that (issue/s and basis/es for complaint.) EEO-MD-110 Chapter 2, III (1) regulations require that I advise you about the EEO complaint process under 29 C.F.R. Part 1614.105, including the ADR/mediation program and the availability of mediation to you for resolving this case. Since your case is appropriate for mediation, the referenced EEO-MD-110 requires you to exercise an election option and decide whether to seek pre-complaint resolution through the ADR process or through the traditional EEO counseling process. You have been advised that you must seek resolution of these matters by electing EEO counseling or electing mediation. ***This Pre-Complaint Election Form must be returned to me, indicating your decision to elect EEO counseling or to elect mediation, within five work days from the date of this memorandum.***

If you elect to pursue EEO counseling, you are advised that you still have the option to elect mediation at a later time, provided the date of election permits sufficient time to arrange and conduct a mediation session within the time limits imposed by EEOC regulations.

If you elect to pursue mediation of your concerns, you are advised that:

- mediation is voluntary and will last no longer than forty-five (45) calendar days;
- all discussions in mediation are confidential;
- statements made in settlement negotiations may not be used as evidence should you elect to file a formal complaint;
- requests for accommodation to facilitate the mediation session (e.g. auxiliary aids, interpreters, etc.) should be conveyed to the mediator at initial contact; and
- you are entitled to a representative of your choice throughout the mediation process.

You will retain the right to file a formal complaint on those issues of discrimination raised with me, the EEO Counselor, and not resolved during EEO counseling or mediation. If EEO counseling or mediation is unsuccessful in resolving any of your concerns, you will be issued a Notice of Right to File (NRTF) at the termination of the counseling or mediation. Once you receive the NRTF, you will have 15 calendar days to file a formal complaint of discrimination on any unresolved issue(s).

ELECTION:

I elect EEO counseling. _____

I elect mediation. _____

(Employee's signature and date)

Appendix C

MEMORANDUM FOR (Complainant)

FROM: Department EEO ADR Manager
SUBJECT: Formal Complaint Mediation Election Form

On (date), you submitted to the Office of Civil Rights, Department of Commerce, a Complaint of Employment Discrimination. Specifically, you alleged that (issue/s and basis/es for complaint.)

On (date), the Office of Civil Rights issued you a Notice of Acceptance for Investigation, which cites the accepted claim for investigation, and informs you of your rights and responsibilities, including the conditions under which you would be eligible to elect Alternative Dispute Resolution (ADR), through mediation. The determination is made that your case is appropriate for mediation.

If you elect mediation of your complaint, please be advised that:

- All discussions in mediation are confidential;
- Statements made in settlement negotiations may not be used as evidence;
- Requests for accommodation to facilitate the mediation session (e.g. auxiliary aids, interpreters, etc.) should be conveyed to me as soon as possible;
- You are entitled to a representative of your choice throughout the mediation process; and
- Even if you elect mediation, OCR will proceed with investigation of your complaint, to ensure that a complete, impartial record is compiled within the time frame dictated by 29 C.F. R., Part 1614.018.

ELECTION:

I Elect Mediation. _____
 (Employee's signature and date)

Appendix D

DEPARTMENT OF COMMERCE

ALTERNATE DISPUTE RESOLUTION PROGRAM

AGREEMENT TO MEDIATE

I agree to enter into this mediation in good faith. I will sincerely attempt to resolve this dispute, agree to cooperate with the mediator assigned to this case, and give serious consideration to all suggestions made regarding development of a realistic solution to the problem(s).

I understand that the mediator assigned to this case will not be serving as an advocate, attorney, or judge. His/her sole function is to act as a neutral third party facilitator. Any agreements or decisions resulting from this mediation session are entered into voluntarily and by mutual acceptance of the parties.

I understand that any settlement reached by both parties is subject to the review and clearance of the Office of Human Resources Management and the Office of General Counsel before it is made final.

I agree that mediation sessions are confidential settlement negotiations. All offers, promises, conduct, and statements, whether written or oral, made in the course of the proceedings are inadmissible in any later hearing, litigation, or arbitration of this dispute. However, matters that are admissible in a court of law or other administrative process continue to be admissible, even though brought up in a mediation process.

I also understand that I may not subpoena or attempt to require the mediator for this case to testify or produce records or notes of a work product in any future proceedings. No recordings or stenographic records will be made of the mediation session.

 Mediation Client Date

 Mediation Client Date

 Mediator Date



U.S. DEPARTMENT OF COMMERCE
Office of Civil Rights

May 2002