

Appendix I. Departments and Agencies that contributed to the report.

Cabinet-Level Departments (15)

Department of Agriculture	USDA
Department of Commerce	DOC
Department of Defense	DoD
Department of Education	ED
Department of Energy	DOE
Department of Health and Human Services	HHS
Department of Homeland Security	DHS
Department of Housing and Urban Development	HUD
Department of Interior	DOI
Department of Justice	DOJ
Department of Labor	DOL
Department of State	DOS
Department of Transportation	DOT
Department of Treasury	DOTR
Department of Veteran's Affairs	VA

Independent Agencies, Boards, And Commissions (32)

Administrative Conference of the United States	ACUS
Board of Governors of the Federal Reserve	FRB
Broadcasting Board of Governors	BBG
Commodities Futures Trading Commission	CFTC
Consumer Financial Protection Bureau	CFPB
Consumer Product Safety Commission	CPSC
Equal Employment Opportunity Commission	EEOC
Environmental Protection Agency	EPA
Federal Communications Commission	FCC
Federal Deposit Insurance Corporation	FDIC
Federal Election Commission	FEC
Federal Energy Regulatory Commission	FERC
Federal Executive Boards LA, Kansas City and Houston	FEB
Federal Housing and Finance Agency	FHFA
Federal Labor Relations Authority	FLRA
Federal Maritime Commission	FMC
Federal Mediation and Conciliation Service	FMCS
Federal Trade Commission	FTC
National Aeronautics and Space Administration	NASA
National Archives and Records Administration	NARA
National Labor Relations Board	NLRB
National Mediation Board	NMB
National Transportation Safety Board	NTSB
Nuclear Regulatory Commission	NRC
Office of the Director of National Intelligence	ODNI
Office of Personnel Management	OPM
Office of Special Counsel	OSC

Appendix I. Departments and Agencies that contributed to the report.

Securities and Exchange Commission	SEC
Small Business Administration	SBA
U.S. Agency for International Development	USAID
Udall Foundation	Udall
U.S. International Trade Commission	USITC

Additional Agency and Sub-Agency References Within The Report:

Armed Services Board of Contract Appeals	ASBCA
Army Corps of Engineers	Corps
Civilian Board of Contract Appeals	CBCA
Defense Intelligence Agency	DIA
Defense Logistics Agency	DLA
Federal Aviation Administration	FAA
Federal Emergency Management Agency	FEMA
National Oceanic and Atmospheric Administration	NOAA
Office of Management and Budget	OMB
Surface Transportation Board	STB
U.S. Patent and Trademark Office	USPTO

Appendix II. Department and Agency Reports

Cabinet-level Departments

Department of Commerce
Department of Defense
Department of Education
Department of Health and Human Services
Department of Homeland Security
Department of Justice
Department of Labor
Department of Treasury
Department of Veterans Affairs

Independent Agencies

Consumer Financial Protection Bureau
Environmental Protection Agency
Federal Deposit Insurance Corporation
Federal Executive Boards
Federal Energy Regulatory Commission
Federal Labor Relations Authority
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Reserve Board
National Aeronautics and Space Administration
Nuclear Regulatory Commission
Office of Special Counsel
Office of Personnel Management
Small Business Administration

2016 REPORT ON ADR IN THE FEDERAL GOVERNMENT

U.S. Department of Commerce (DOC)

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ADR Policy

Does your Department or Agency have a formal written ADR policy? Yes.

Has the written ADR policy been amended or modified during the past ten fiscal years (FY06-FY15)? No, not for the Department. See, however, Attachment 2 regarding the National Oceanic and Atmospheric Administration (NOAA). Also, the U.S. Patent and Trademark Office (USPTO) expanded its ADR policies and programs in the past year, and has launched an Ombudsman Program for workplace issues. A report on this new program will be forwarded in the near future when it is completed.

Please review <http://www.adr.gov/fai.html> to assess whether a “Policy” link is present for your Department or Agency. If a link is either incorrect or not present on the site, provide us with a link to any electronic copies of your agency’s current ADR policy. If the policy is not available via a link on the internet, please send an electronic copy of the policy with your responses.

We do not have a link on the adr.gov website. A link to our EEO Mediation Guide is here: <http://www.osec.doc.gov/ocr/publications/mediationguide.pdf>. See also the links provided in the Attachments to this report.

ADR Programs

The Department of Commerce uses ADR in two general areas: workplace/employment disputes (including EEO matters), and government contract disputes.

The Department of Commerce uses mediation as a technique to resolve all types of employment disputes. See the Attachments 1 and 2 for a more thorough description of the EEO ADR program implemented by the Department's Headquarters Office of Civil Rights and the NOAA’s

Office of Civil Rights. Each bureau within the Department makes mediation available at the EEO informal or pre-complaint stage for cases where mediation is appropriate; the Headquarters office makes mediation available at the formal complaint stage. If the matter is resolved through ADR, or the parties withdraw the initial complaint, the case is considered an ADR success.

The Department uses ADR in government contract disputes on an “as needed” basis. Contracting officers use ADR procedures at any time that the contracting officer has authority to resolve an issue in controversy, as authorized by FAR Part 32.214. In contract and general litigation matters, the Department often uses ADR in proceedings at the Government Accountability Office, the Civilian Board of Contract Appeals, and the U.S. Court of Federal Claims.

Department or Agency ADR use beyond the ADR Programs discussed above

Does your Department or Agency apply ADR processes or techniques to facilitate resolutions of conflicts or disputes independent of the ADR programs discussed above? Not as a matter of routine. Other Department bureaus and programs have not seen the need to use ADR on anything more than an *ad hoc* basis. USPTO has made significant changes, however, and we will be providing a separate report on that bureau.

ADR Training

Does your Department or Agency offer ADR awareness/promotion trainings or ADR skills (techniques) training to agency employees, federal employees, or to the public? No, other than making employees aware of ADR when they are involved in workplace disputes. See the Attachments for more information.

Interagency ADR Working Group

How has your involvement with the Interagency ADR Working Group benefitted your ADR programs? The Department values the information, analysis, and perspectives that we are exposed to in our regular interactions with the ADR Working Group. We appreciate the ADR Working Group providing access to webinars that help in keeping up with both skills and current information involving tools and techniques. On several occasions, our contacts with members of the ADR Working Group have been used to obtain valuable advice on how to resolve an issue, and we have been able to leverage our contacts to obtain mediation services to resolve non-traditional, organizational conflicts. In particular, our Civil Rights Office professionals request the following guidance: (1) possible development of procedures to permit agencies to obtain the service of neutrals on an expedited basis, which may be a helpful option to agencies; and (2) information on whether there are any tools that could be developed for recordkeeping, which would be helpful at the staff level. With very limited staffs, it is difficult to devote the time needed to create a plan to ascertain the true benefits of ADR. Any advice would be appreciated.

Submitted by: Brian D. DiGiacomo (BDD), June 24, 2016.

ATTACHMENT 1

DOC Headquarters
Office of Civil Rights

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ADR Programs

List each distinct ADR program at your Department or Agency and for each ADR program:

The Secretary of Commerce encourages the use of ADR to address workplace discrimination concerns and recently reiterated it in her May 4th EEO policy statement. The Department's Headquarters Office of Civil Rights, through the ADR Program Manager, develops program policy and operational guidance overseeing each bureau's EEO ADR initiative. Each bureau makes mediation available at the EEO informal or pre-complaint stage for cases where mediation is appropriate; the Headquarters office makes mediation available at the formal complaint stage. Neutrals to facilitate mediations are primarily obtained from the Sharing Neutrals Program, department of Health and Human Services. Consistent with Equal Employment Opportunity Commission (EEOC) emphasis, the current focus on EEO ADR efforts is on the offer rate. This recognizes that to improve the ADR election rates, employees and agency officials must be made aware of this alternative throughout the EEO process. The goal is that 100% of all cases appropriate for ADR in the pre-complaint process and all cases in the formal complaint process are offered ADR as an alternative. In addition, the resolution rates are tracked. If the matter is resolved through ADR, or the parties withdraw the initial complaint, the case is considered an ADR success.

Does the program maintain a website that is accessible by the public? If yes, provide the URL for the site. Yes, please visit, <http://www.osec.doc.gov/ocr/AlternativeDisputeResolution.html> for information on the EEO ADR Program.

To the extent possible, please describe any trends that you (or your colleagues) have observed in the program over the past ten fiscal years (FY06-FY15):

One of the most significant trends that we have observed since FY 2006, is the satisfaction rate with the ADR process. We solicit feedback from mediation participants (including employees, agency officials and legal representatives, where used) via surveys. Satisfaction with the process consistently averages between 80 and 90%. However, it is interesting to note that the satisfaction rate (as well as the willingness to recommend ADR/mediation to others which is also measured) is not dependent on the outcome of the mediation session, i.e., resolution did not have to be achieved for the parties to be satisfied with the process. Participants have consistently commented in the surveys that the mediation process gave them a framework for constructive dialogue and set parameters for effective conflict resolution/management in future interactions. The importance of this trend is that prior participants in ADR in effect become invaluable marketing tool for colleagues, leading to a greater willingness to consider and utilize ADR as a viable alternative to the traditional EEO process.

Describe steps your Department or Agency has taken to build program capacity in this ADR program during the past ten fiscal years (FY06-FY15). Please discuss whether the steps have been successful, and if not, please discuss the barriers to success.

The most significant initiative to our EEO ADR Program is to ensure that ADR/mediation as discussed with every client (Counselees and Agency officials) in the pre-complaint process. The EEO Officer, ADR Manager and EEO Specialists actively engage clients in discussing the benefits of early resolution. In addition, 100% of cases accepted for formal EEO investigation are given the option to elect ADR. The added emphasis on increasing the offer rate has correspondingly improved upon our election rates.

Are there any plans to expand this program in the future?

We are constantly evaluating our ADR efforts to determine any initiatives that can be undertaken to improve any identified challenges.

Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

- Workplace
- Contracts and Procurement
- Administrative Enforcement and Regulatory Process
- Litigation
- Environmental

ATTACHMENT 2

National Oceanic and Atmospheric Administration Office of Civil Rights

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ADR Policy

Does your Department or Agency have a formal written ADR policy? Yes, NOAA Administrative Order 202-715, *NOAA Alternate Dispute Resolution Program*

Has the written ADR policy been amended or modified during the past ten fiscal years (FY06-FY15)? If so, please describe how.

Yes, revised February 2010. The policy has been revised to clarify the role of bargaining units, update references and organizational nomenclature, and reflect the program's status as a permanent program rather than a pilot.

Does the program maintain a website that is accessible by the public? If yes, provide the URL for the site. Yes, please visit, http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_202/202-715.pdf

ADR Program

List each distinct ADR program at your Department or Agency and for each ADR program:

NOAA uses several internal-facing ADR techniques to resolve both Workplace and EEO related disputes. NOAA offers the following types of ADR:

1. EEO Mediation at the informal or pre-complaint stage;
2. Workplace Mediation; and
3. Facilitated Problem Solving (Directed and Non-Directed).

NOAA makes mediation available at the EEO informal or pre-complaint stage for cases where mediation is appropriate. Workplace mediation is offered as an option to resolving workplace issues other than EEO related issues. Facilitated Problem Solving is offered to resolve issues with individuals, work groups, and project teams. Parties are asked to work on an action plan to improve the work environment. NOAA uses two sources to obtain certified neutrals. Federal Mediation and Conciliation Service (FMCS) and the Federal Executive Board (FEB) supplies both mediators and skilled facilitators when requested.

NOAA has averaged thirty cases per fiscal year over the last five years. Subject matter ranges from workplace issues, such as communication or hostile work environment, to complex informal EEO issues. The ADR Program has realized a benefit in the fact that parties chose Facilitated Problem Solving in an effort to resolve workplace issues at the early stages of disputes. Resolving issues in a facilitated discussion fosters a workplace environment that empowers employees to recognize and carry out the mission of NOAA.

One noticeable trend is an increase in employees and managers choosing Facilitated Problem Solving sessions over traditional mediation as a way of dealing with workplace issues. Facilitated Problem Solving sessions have proven to be helpful in resolving communication issues and strengthening teams. A telling example of the worth of Facilitated Problem Solving to NOAA occurred within the last year, when two executive-level individuals, who had come to an impasse on resolving several issues within their organization, contacted the ADR Program Manager for assistance. One of the executives felt the only way to solve the issues was to retire. After some lengthy consultations, a Facilitated Problem Solving Session was scheduled and held at an off-site location. The off-site location allowed complete confidentiality and both parties felt secure and successfully worked out the issues. Using a skilled and certified mediator was another factor that contributed to the successful resolution. The ADR cost was funded by the line office that requested the service. Without the option of a confidential facilitation the parties felt they would not have been able to resolve the issues. ADR created the safe environment that the parties needed to openly face the obstruction in the working relationship. Several benefits were realized from this resolution. Most importantly, NOAA was able to retain the wealth of knowledge the two executives had gained over many years of service.

The following URL is for the NOAA ADR website that is accessible by the public:

<http://www.wfm.noaa.gov/adr/>

The ADR Program at NOAA does not have specific funding at this time. The Line or Staff Office requesting ADR funds the associated costs, including mediators/facilitators, and travel and per diem, if needed. This is no change from previous years. NOAA currently has one full time FTE devoted to the program. The total FTE was reduced from two to one several years ago. This has negatively impacted the program, resulting in lower participation rates and the inability to make improvements to the ADR Program. One FTE is not sufficient to conduct intake, determine the appropriate ADR technique for the issues presented, answer inquiries from

employees and managers about the program on a daily basis, consult with employees and managers on the benefits of ADR, identify and schedule mediators/facilitators, and conduct training and briefings. Delays occur in scheduling mediation and/or facilitated problem solving due to the increased workload. Unfortunately, due to severe budgetary constraints, there are currently no plans to expand the ADR program.

Despite budgetary constraints, NOAA's ADR Program has taken several actions to build the program capacity. NOAA offers webinars to promote awareness. The ADR Program Manager conducts Program Briefings upon request. The following actions help in promoting the ADR Program so that all employees are aware that the program is available.

- Brochure (printed and online)
- ADR website
- NOAA broadcast email messages
- Quarterly Webinars for supervisors and employees
- Program Briefings
- New Employee Orientations

The Workplace section of the Interagency ADR Working Group most closely relates to the work of this ADR program

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November 28, 2016

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USPTO Launching a new Office of the Ombudsman (pilot)

On May 13, 2016, Russell Slifer, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the USPTO, sent an email to all USPTO employees announcing the launch of the Office of the Ombudsman (pilot). Previously, Director Michelle Lee and Deputy Director Russell Slifer announced the establishment of the new Office of the Ombudsman during a USPTO Town Hall meeting and on the USPTO Director's blog.

USPTO leadership determined that the Agency will be able to reap significant benefits by extending the alternative dispute resolution options available to the USPTO community including: increased understanding of existing processes for resolving disputes; advocating alternative dispute resolution; identifying systemic problems and proposing strategies for improvement; assisting in the development of pro-active practices to improve the morale and productivity of the USPTO workforce; and providing leadership coaching services.

The Office of the Ombudsman has at the center of its perspective a concern with fairness in the administration of policies, the enactment of practices and the conduct of relationship among members of the organization. The new Office serves as a complementary resource to current USPTO resources, such as the Office of Human Resources (OHR), Office of Equal Employment Opportunity and Diversity (OEEOD), Employee Assistance Program (EAP), and Department of Commerce (DOC) Office of Inspector General (OIG).

The purpose of the Ombudsman's Office is to provide an **independent, confidential, neutral/impartial**, and **informal** resource for the USPTO that will:

- enable employees to raise and resolve issues of concern in a safe, informal, confidential environment to the extent allowed by law;
- facilitate recognition, prevention, and resolution of workplace disputes without resorting to formal means of dispute resolution;
- provide anonymity, to the extent allowed by law, to eligible employees and managers wishing to address a workplace issue;

- provide Agency leadership with a high-level aggregate data and trends or systematic concerns and issues;
- direct employees to the appropriate resources for addressing questions or concerns;
- facilitate review of the Agency's processes or procedures that may adversely affect the Agency's mission, workplace, or employee morale.

Independent: The Ombudsman's Office is independent in structure, function, and appearance to the highest degree possible within the organization.

The Office of the Ombudsman is a separate office, outside of the USPTO business lines, reporting directly to the Office of the Under Secretary. The Ombudsman will meet regularly with senior leadership to serve as an early warning system, highlight systemic challenges, and make recommendations for systemic change. The Ombudsman staff hold no other positions within the organization that will compromise independence.

Confidentiality: As designated neutrals, each Ombudsman has the responsibility to maintain confidentiality. The Ombudsman generally does not disclose confidential communications unless given permission to do so. This includes not revealing: the identity of individuals who visit the Ombudsman, the identity of contacts made by the Ombudsman in resolving an issue, specific details and circumstances of matters handled by the Office of the Ombudsman, and any material related to specific cases.

Under ordinary circumstances, this confidentiality will not be broken, but the Ombudsman will make all best efforts to ensure that allegations of misconduct are reported in a timely manner to the appropriate authorities by the employee. In rare circumstances, an Ombudsman will have to notify the appropriate authorities where, in the Ombudsman's determination:

- *There is an imminent risk of physical harm; or*
- *There is mismanagement, waste of funds, abuse of authority, or a violation of law or regulation that must be reported to the Department's Office of Inspector General. In such cases, the Ombudsman will report the allegation(s) and any supporting information to the OIG Hotline, but without identifying the individual who provided the information.*

Neutral/Impartiality: The Ombudsman, as a designated neutral, remains unaligned and impartial. The Ombudsman does not engage in any situation which could create a conflict of interest.

The Ombudsman will remain neutral in any matter within the Ombudsman's purview and shall avoid taking sides in any dispute, conflict, or disagreement. The Ombudsman strives for impartiality and does not advocate for any particular individual, or groups of individuals. Rather, the Ombudsman examines all sides of an issue and advocates for a fair process, which may include making recommendations on how an individual matter or systemic issue should be addressed.

Informal: The Ombudsman, as an informal resource, does not conduct any formal adjudicative, administrative procedure or investigation related to concerns brought to his/her attention.

The Ombudsman is an informal channel to address individual and workplace concerns, and does not replace any formal channels. Use of the Ombudsman services are voluntary and recommendations made by the Ombudsman need not be implemented. Services are by informal means such as listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and engaging the parties in a third-party intervention.

The Office of the Ombudsman is not authorized to accept complaints of discrimination or harassment and raising such an issue with the Ombudsman's Office does not provide the Agency notice of an allegation or intent to file an EEO complaint.

Staffing the Office of the Ombudsman (pilot)

From May 2016 through November 2016, the Office of the Ombudsman was staffed with one full-time and one part-time conflict resolution practitioner, and one administrative support personnel. We are currently staffed with one full-time conflict resolution practitioner and one administrative support personnel. The USPTO Ombudsman staff adhere to all applicable laws and standards, to include the IOA Code of Ethics and Standards of Practice to the extent possible, and endeavor to be worthy of the trust placed in the Ombudsman Office.

The Ombudsman's Office has a range of options to assist with an inquiry such as discussing options and resources, referrals/consultations, facilitated discussions, shuttle diplomacy, group/team meetings, and mediation.

The Ombudsman serves as the designated non-EEO Alternative Dispute Resolution (ADR) practitioner for USPTO and participates in the Sharing Neutrals Program. The Sharing Neutrals Program is an interagency mediation program that provides free mediators to participating Federal agencies and operates through a pool of trained and experienced collateral duty mediators. Thus, the Ombudsman may use external third party neutrals as needed or upon request by the individual.

Response to the new Office of the Ombudsman (pilot)

- All three Union Presidents (Patent Office Professional Association (POPA), National Treasury Employee's Unions (NTEU), Chapters 243 and 245) have collaborated with USPTO leadership to allow their bargaining unit members have access to the Office of the Ombudsman.
- The Ombudsman's Office has provided on-going awareness training for specific interest groups and business units. To date, over 1200 employees, including union officials, supervisors, and senior executives have received awareness briefings on the Office of the Ombudsman (pilot).

Impact of the new Office of the Ombudsman (pilot)

The Office of the Ombudsman continues to receive an overwhelmingly positive response from our employees, union officials, managers, and senior executives. From the date of our Office launch, May 16, 2016 through September 30, 2016, the Ombuds office has responded to at least 136 visitors that prompted an additional 143 Ombuds communication with other employees and supervisors. From the 279 Ombuds communications a combined total of over 1000** issues/concerns were shared by visitors. The office's rapid growth attributes to referrals and nearly 35 awareness presentations (> 1,200 individuals) given by the Ombuds' staff.

We capture data using the International Ombudsman Association Uniform Reporting Categories. Five categories represent nearly 86 percent of all issues discussed: Evaluative Relationships (405, 40%), Mission, Strategy, and Organizational Concerns (165, 16%), Career Progression and Development (117, 12%), Peer and Colleague Relationships (92, 9%), and Values, Ethics, & Standards (89, 9%). Regarding evaluative relationships, the top sub-categories include supervisory effectiveness, communication, respectful treatment, and feedback.

Many of the visitors described the respective personal impacts of their issues to include increased anxiety, lowered morale, defensiveness, and/or reduced productivity. Others expressed that the issues raised had a widespread impact across the organization, including distrust, reduced collaboration, damaged credibility, spilt alliances and/or passive/aggressive behavior.

Additional impacts:

Employees have access to an independent, neutral, informal, and confidential resource to explore the full range of possible resolution options. It is anticipated that such options will improve employee relations by helping resolve conflicts before they enter any formal process, thereby reducing USPTO's potential liability in awards and damages resulting from formal claims.

Early resolution efforts will help focus the corporate culture on the values of ethics, integrity, diverse opinions, disagreements, concerns, safe reporting channels, engagement, proactive conflict resolution, accountability, and transparency.

The Office of the Ombudsman will help the USPTO maintain its high standards of excellence and reinforce a culture of ethics, integrity, and professional responsibility. Additionally, the new Office of the Ombudsman will increase the Agency's ability to enhance employee engagement, foster strong relationships, and improve collaboration, which is consistent with objectives outlined in the USPTO Strategic Plan.

Status of the Office of the Ombudsman: In July 2016, the USPTO submitted a reprogramming package. The request was sent to Department of Commerce, Office of Management and Budget, and Congress for review and approval. In November 2016, Congress approved our reprogramming request. Thus, we intend to move forward with full implementation and staff the new office accordingly.

2016 REPORT ON ADR IN THE DEPARTMENT OF DEFENSE

Consolidated Response of the Department of Defense Service Branches, Defense Agencies and DoD Field Activities (collectively known as “the Department of Defense Components”)

for

The 2016 ADR Report on ADR in the Federal Government

Point of Contact for Department of Defense (DoD) ADR Program functions:

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The Department of Defense (DoD) General Counsel, Ms. Jennifer M. O’Connor, is the designated Dispute Resolution Specialist for the Department of Defense. By implementing DoD Issuance, the Deputy General Counsel (Legal Counsel) (DGC (LC)) manages the ADR program, and holds policy and oversight responsibilities for the DoD ADR program as a whole. The Acting DGC(LC) is Paul Lekas.

The DGC(LC) responsibilities are executed through the assistance, on a day-to-day basis, of the Associate Director, Defense Legal Services Agency (DLSA), Defense Office of Hearings and Appeals, Center for Alternative Dispute Resolution (DOHA CADR). On behalf of the DGC(LC), the Associate Director of DOHA CADR acts for the DGC(LC), and as the DoD ADR Liaison, to facilitate communication and sharing of expertise with and between ADR programs in the Department of the Air Force (Air Force), the Department of the Army (Army), the Department of the Navy (DON), the National Guard Bureau (NGB), 17 Defense Agencies, 10 DoD Field Activities, and other entities in the DoD (collectively known as “the DoD Components”).

ADR programs within the DoD are decentralized. The Components vary greatly in the size and complexity of their programs, with the largest and most active ADR programs predominately, although not exclusively, found in the Service Branches (Air Force, Army, DON and NGB). The Components are responsible for managing their own programs and defining their own priorities, given their unique missions. Some have designated a Dispute Resolution Specialist for their ADR program, and others place their programs under an ADR Program Lead. (See Attachment 1)

ADR Policy:

Since 1996, the DoD has operated under an implementing DoD Issuance, setting forth official policy and a framework for encouraging the expanded use of ADR throughout the DoD. The controlling DoD Directive recently was updated and is now published as DoD Instruction 5145.05, Alternative Dispute Resolution (ADR) and Conflict Management (May 26, 2016). The DoD Instruction 5145.05 (May 26, 2016) is available at: <http://www.dtic.mil/whs/directives/corres/pdf/514505p.pdf>.

The Service Branches, and a number of other Components, have published their own ADR policies, some of which have been revised during the past decade. (See Attachment 2)

ADR Programs within the DoD:

General Description of the DoD ADR Program As noted above, the DoD Components are each responsible for managing their own programs and defining their own priorities, given their unique missions. The DoD Office of General Counsel (OGC) and Deputy General Counsel (Legal Counsel), together with DOHA CADR, provide critical support for efficient development of programs and modifications to continually meet changing DoD and Component environments and evolving mission priorities. The Components' ADR Program leaders communicate with each other and with the OGC and DOHA CADR through a DoD ADR Coordinating Committee. This Committee is facilitated by the Associate Director of DOHA, CADR (a/k/a the DoD ADR Liaison) and confers regularly to address common issues and to share and leverage experience and information.

Internal-facing and External-facing The vast majority of ADR programs across DoD are internal-facing. The geographic scope and employee population of some DoD internally facing ADR Programs is, however, substantial. The Service Branches and the DoD Education Activity (DoDEA), for instance, each provide ADR to an employee population that is located around the world. The National Guard Bureau (NGB) is a unique joint bureau, with Army and Air National Guard units located across the 50 states, U.S. territories, the District of Columbia and the Readiness Center (Arlington Hall Station-Headquarters).¹ NGB's internal-facing ADR program addresses early resolution

¹ The Guard units serve in widely diverse security situations such as regional areas of armed conflict, domestic unrest, disaster relief and peacekeeping situations. (See <http://www.nationalguard.mil>).

at the pre-complaint and formal stages of Equal Employment Opportunity (EEO) (civilian); Equal Opportunity (EO) (military) complaints; and non-EEO/EO workplace disputes and covers these issues for its 54 far flung locations. The Defense Finance and Accounting Service (DFAS) is another example of a consolidated, internal-facing ADR program in which, although it is administered via three (3) Dispute Resolution Offices (DRO) located at the Agency's primary sites (Indianapolis, Columbus and Cleveland), the DROs provide ADR services to multiple Defense Military Pay Offices (DMPO) throughout the country, and to satellites in other U.S. locations as well as DFAS Japan, and DFAS Europe.

A number of DoD Components have ADR programs that address not only internal-facing functions, but external-facing functions as well. As an example, the Conflict Resolution Division of the Secretary of the Air Force General Counsel's Office (SAF/GCR) promotes and coordinates the use of mediation and facilitation with the Air Force Personnel (AF/A1) community for its internal-facing, workplace ADR program. However, it also coordinates the use of mediation and early neutral evaluation in external-facing contract disputes with the Air Force acquisition and acquisition law communities. It additionally coordinates the use of ADR in the Installations and Energy and Environment Division of the Air Force General Counsel's Office for their external-facing environmental and real property disputes.

Similarly, at Army, the main ADR program is internal-facing, and focuses on Army workplace disputes, as well as training Army civilian and military personnel in negotiation, mediation, and conflict management skills, and ADR awareness. However, Army also deals with government contract (acquisition) disputes, and its larger ADR presence also includes two important external-facing programs, those conducted by the Army Materiel Command (AMC) and the U.S. Army Corps of Engineers (the Corps).

The Dept. of the Navy (DON) follows a similar pattern, with its use of mediation and facilitation being an internal-facing workplace ADR program. All DON EEO and workplace ADR is jointly managed by the DON OGC ADR Program Office and the Office of Civilian Human Resources (OCHR). In 2014, mediation convening services consolidated into a centralized "OCHR ADR Center of Excellence" located in Philadelphia, PA. However, DON's environmental and procurement ADR processes are external-facing and are managed by DON OGC.

Various other DoD Components also have both internal-facing and external-facing ADR functions, as dictated by their specific missions. For instance, the Defense Contract Management Agency (DCMA) is the DoD Component that works directly with defense suppliers to ensure that DoD, federal and allied government supplies and services are delivered on time, at projected costs, and to all performance requirements. As DCMA's

ADR program is mission driven, it has an internal-facing workplace dispute ADR program, but additionally employs external-facing ADR for DCMA contracting disputes.

Another example of the manner in which DoD ADR programs are tailored to a Component's unique missions is the program at DoDEA. The DoDEA Center for Early Dispute Resolution (CEDR) has an internal-facing program that provides neutral, confidential services to assist DoDEA and its employees in constructively addressing and managing conflicts and disputes that are not covered by any available legal remedies, and to provide mediation for non-EEO matters that have entered the legal arena. DoDEA CEDR additionally provides external-facing services using both facilitation and mediation to improve communication and resolve issues relating to provision of special education to DoD dependents, and on occasion CEDR also addresses disputes with DoDEA contractors.

A third example of the mixed internal- and external- facing applications of ADR, driven by the unique mission of a DoD Component, can be seen at the Washington Headquarters Service (WHS). WHS provides its internal population with ADR resources and also services a number of other federal agencies. However, this decade, WHS and the Defense Freedom of Information and Policy Office (DFOIPO) also provided applied conflict resolution and conflict communications training (internal training) that facilitated effective handling of Freedom of Information Act (FOIA) interactions with the public (an external-facing benefit).

Subject Matters Addressed Across DoD, ADR is currently being used in disputes arising in the EEO arena, for disputes (grievances) filed by members of collective bargaining units, for administrative grievances over personnel decisions, and in a variety of other workplace disputes. Within the DoD Components, workplace mediation programs typically constitute the most fully developed use of ADR. Currently, the Components all report at least some ADR activity in the workplace dispute area. (*See Attachment 3, which, for simplicity's sake, groups all EEO and non-EEO workplace disputes into a single category*)

As noted in the above examples of externally facing programs, DoD ADR is additionally being used in contract, acquisition or procurement disputes and claims, and for environmental issues. (*See Attachment 3*)

DoDEA's dispute resolution program, CEDR, includes ADR and conflict management techniques tailored to an important aspect of DoDEA's unique educational mission within DoD – provision of special education and related services under the Individuals with Disabilities Education Act (IDEA), as applied to the DoD school system. Under the IDEA, individualized educational programs (IEPs) must be developed through a collaborative process that involves parents and school personnel reaching agreement on

an appropriate education plan for the particular child. At times, however, parents and school personnel differ as to what services should be included in the IEP for a particular child and what constitutes appropriate educational treatment. In this sensitive context, emotions at times run high, making collaboration and agreement difficult.

While such disagreements can later be mediated or proceed to a due process hearing, DoDEA CEDR has recognized that a facilitator who has no stake in the conflict, and who comes in during the IEP process, is often able to assist the parties in communicating more effectively. This gives each the opportunity to speak and encourages listening and greater understanding. DoDEA CEDR conceptualized and created an IEP facilitation program, following best practices in the special education dispute resolution field and with the support and collaboration of DoDEA's Special Education function. As a result of this process, the participants in DoDEA IEP development now have an opportunity to engage with each other through facilitated IEP meetings. The DoDEA experience has been that, despite differing perspectives, the parents and school personnel have almost always been able to come together and reach agreement on an IEP, allowing the child's educational program to progress, avoiding both educational delay and litigation, and preserving the parent-teacher relationships going forward.

ADR Processes/Techniques Used

i. ADR Processes/Techniques Used in Resolving Workplace Disputes

Throughout the decade, the DoD Components have continued to use multiple ADR methods (mediation, conciliation, facilitation, early neutral evaluation, settlement judge) to resolve workplace disputes, choosing the process that best fits the particular dispute and parties' needs. (See Attachment 4)

Mediation of workplace disputes has continued to dominate as the type of ADR process/technique – subject matter pairing that is used across the Department. DoD Components each report their use of ADR in relation to informal and formal EEO complaint stages, using the Equal Employment Opportunity Commission (EEOC) 's Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (EEOC Form 462).

Over the past decade, however, the DoD Components have increasingly recognized the need for an ADR option when a workplace dispute is not being pursued as an EEO complaint. Likewise, the DoD Components recognize the value of intervention at ever earlier stages, applying ADR techniques before conflict becomes an entrenched dispute. Thus, mediation in the DoD is now followed more closely by the use of facilitation and related conflict management techniques. A third and similar development is the recognition, by a number of DoD Components, that however valuable ADR has proven to be for resolving

interpersonal conflict outside adjudicative and administrative forums, the resolution of some workplace conflict requires a means to work with a larger segment of the workplace population. DoD Components have therefore found increasing value in group facilitations, “sensing” sessions, and various hybrid methods combining the fundamental communication skills of a mediator with facilitation, conciliation and other techniques.

These trends are given voice in the new DoD Instruction 5145.05, which is addressed to both Alternative Dispute Resolution (ADR) and Conflict Management.

The DON ADR program has incorporated this approach into the very core of its traditional mediation delivery. During the year, conveners of mediations are provided an intensive two-day training course where they focus on exploring ways to resolve disputes, apply early dispute resolution, and use conciliatory and facilitative techniques in the intake and convening process to resolve party concerns, potentially avoiding the need for mediation.

Along these lines, recognizing that some conflicts are the predictable result of common communication challenges, other Components include coaching and other preventive training in their ADR programs, often tailored towards issues unique to their Component’s mission. The Defense Intelligence Agency (DIA) provides a robust example of an ADR program built upon the premise that conflict within organizations is inevitable, but that it also provides an opportunity for individual and organizational growth. DIA offers a broad array of services from a staff that includes trained facilitators and mediators, while they also expand focus onto growing conflict competence in the workforce. The Program offers mediations (colleagues and supervisor/employee), facilitated conversations, organization assessments, education and training workshops, and conflict coaching. The overarching themes/issues that are encountered are in all likelihood representative of many workplaces: communication (95%), delineation of roles and responsibilities (50%), and personality conflict (35%).

Organizational facilitations are also a frequently requested service at the DIA ADR program. They are submitted by management and voluntary for participants. During organizational facilitations, team members are interviewed and asked targeted questions and once the interviews are complete, the DIA ADR Program assesses the data gathered and provides the requesting manager a report (personal identifiers removed) and recommendations for change/improvement. If a conflict or issue is out of the ADR Branch’s jurisdiction, the employee is referred to a

more relevant office, such as the Office of the Inspector General, or the Equal Opportunity and Diversity Office.

DoDEA's early dispute resolution program, CEDR, also operates in part upon the assumption that a conflict avoided is the optimal alternative conflict resolution. Since its program began, DoDEA CEDR has seen an increasing number of requests from the field for preventive training, as well as for early resolution services. Preventive training has grown to include services such as Communication and Conflict Management employee skills training, both in person and as 15-hour webinars; training on conflict and dispute resolution as part of interventions addressing high conflict situations in schools and offices; Conflict Coaching to help employees better understand conflict and consider constructive options in addressing it; and Communication and Conflict Management training for educators involved in the provision of Special Education to DoD dependents.

Both National Security Agency (NSA) and WHS ADR programs, supported by senior leadership, have developed into programs broadly centered in capacities to address conflict not only at the level of disputes (mediation), but at earlier stages. Both Components, like DIA, deliver not only individual conflict coaching but organizational interventions as well. With increased awareness and leadership support, managers and supervisors reach out to the ADR program more frequently to schedule group facilitation sessions and training for their employees, as a part of their commitment to provide an inclusive and respectful work environment. These Component ADR programs provide multiple services that include not only more "traditional" neutral assisted dispute resolution, but also an increased set of more proactive conflict management techniques such as group facilitation, organizational climate assessments, EEO impact analyses of employment actions, and training in conflict management skills. These programs have seen an increased demand for such techniques, which are deployed to address workplace conflict before disputes become entrenched.

One particularly notable trend in the ADR program at WHS is an increased demand for "sensing sessions." Sensing sessions are meetings attended voluntarily by employees, facilitated through the ADR Program. The request is usually in response to employees voicing their concerns about some aspect of the work environment. The issues discussed are related to work and include, but are not limited to, employee morale, leadership cohesion, job satisfaction, and the overall EEO health of the organization. A neutral trained facilitator guides the discussion and ensures that the participants have a respectful and productive exchange of ideas. The participants' comments are written down by a co-

facilitator, transcribed, and forwarded to management in an Executive Summary. The goal of the sensing session is to provide employees with a safe platform to communicate freely, and provide management with honest feedback in a manner that protects the anonymity of the employees.

ii. ADR Processes/Techniques Used in Resolving Contracting, Acquisition and Procurement disputes In contracting disputes, the ADR techniques used are largely dictated by the type of dispute and the forum. Army reports, for instance, that protests filed with the Government Accountability Office (GAO) principally use negotiation assistance and outcome prediction, whereas disputes pending Contracting Officer decisions and appeals to the Armed Services Board of Contract Appeals (ASBCA) use what can be described as evaluative mediation, often employing uniquely tailored processes and ADR technique.² The Army Materiel Command (AMC) has its own agency – level bid protest program, which affords an alternative to GAO or to another external forum for prospective bidders and offerors whose direct financial interests would be affected by the award or non-award of a contract. A detailed description can be found at its website.³ The Air Force similarly makes use of ASBCA processes, and the DON reports using not only mediation and arbitration with ASBCA neutrals, but also facilitated partnering to resolve procurement disputes.

iii. ADR Processes/Techniques Used in Resolving Environmental disputes On September 7, 2012, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a revised policy memorandum on environmental collaboration and conflict resolution (ECCR).⁴ The memorandum requires annual reporting on

² The ASBCA is the forum in which DoD and its contractors adjudicate the majority of all DoD contract disputes. Its judges are available to serve as highly skilled neutrals, affording the parties a sophisticated, often hybrid form of ADR for resolution of disputes before adjudication. The timing and specific characteristics of the mediation are negotiated and tailored in any given dispute by the parties, as set forth in an agreement entered into prior to the initiation of the neutral-assisted process itself. Mediation of contract disputes, in the DoD experience, may occur somewhat later in the dispute than occurs in other subject matters, after the facts have been more fully developed and explored.

³ Collaborative process techniques include, as an example, collaborative process design; collaborative modelling tools developed through CPCX's Shared Vision Planning Program; engaging different stakeholders during parts of the planning and decision-making process; conflict assessment and resolution techniques; and collaborative evaluation of results and tradeoffs. See <http://www.amc.army.mil/amc/commandcounsel.html>.

⁴ The term 'ECCR' includes third-party neutral assistance in environmental collaboration and environmental conflict resolution.

progress made each year in implementing policy direction to increase the effective use and institutional capacity for ECCR, which is coordinated by DOHA Associate Director CADR (DoD Liaison). Within the DoD, the Air Force, the Army Legal Services Agency Environmental Law Division, the Army Corps of Engineers, and the DON are annual reporters, and those results need not be repeated in detail.

At Air Force, Policy Directive 51-12 specifically references the use of ADR in environmental disputes, and the Air Force continues to report a number of techniques used in ECCR, including participation in numerous partnering and collaborative groups. The Army and the NGB also report use of various ECCR techniques. Likewise, DON uses facilitated partnering to resolve environmental disputes, and has demonstrated a long standing capacity for ECCR in the area of installation restoration. For instance as reported in a recent annual ECCR filing, the DON currently participates in 41 facilitated partnering teams that oversee the restoration efforts at 788 active and 1,155 total environmental restoration sites. Within these teams, representatives from the DON, EPA, state governments, local officials, and sometimes various other groups use collaborative methods to craft creative and cost effective restoration processes designed to address as many interests as possible. The third-party partnering team facilitators are sponsored by DON.

Additional examples of the use of environmental collaboration and conflict resolution (ECCR) techniques in the DoD are provided by the Army Corps of Engineers, which employs these techniques to address disparate interests of multiple stakeholders affected by planning and decision-making in support of its missions (including, *e.g.*, projects to maintain and improve the nation's navigable waterways). The Corps' Collaboration and Public Participation Center of Expertise uses collaborative tools to ensure that the interests of the public are addressed in Corps decision making, and that such tools are used proactively to prevent and minimize conflicts, in addition to their application once conflict emerges. Further detail is available at the Corps' main web page.⁵

Sources of neutrals

(See Attachment 5 for a consolidated summary)

⁵ The Corps' collaborative process techniques include collaborative process design (engaging stakeholders during different parts of the planning and decision-making process, conflict assessment and resolution techniques, collaborative modeling tools and numerous other specifics). See <http://www.iwr.usace.army.mil/About/TechnicalCenters/CPCXConflictResolutionPublicParticipation.aspx>.

i. **Sources of Neutrals in Workplace Disputes** The Service Branches and some of the other DoD Components manage a large part of their need for neutrals in EEO and workplace dispute resolution by drawing upon personnel trained and serving as collateral duty neutrals. The Air Force, for instance, uses its own developed collateral duty mediators. The Army also trains its own personnel as non-conflicted collateral duty mediators, although it also uses other DoD or federal agency mediators who are co-located with the activity processing the complaint. The DON also trains internal personnel as collateral duty mediators and its centralized “OCHR ADR Center of Excellence” administers all DON workplace mediation scheduling and mediator assignment around the world and tracks mediator certification and recertification. As a result of its intensive training efforts, the DON ADR Program has a cadre of skilled, dedicated mediators and conveners, and with the exception of 2013, when furloughs reduced mediator availability, they have been able to address the steady rise in the number of mediations conducted each year.

Similarly, in the Defense Logistic Agency (DLA) ’s RESOLVE program (“Reach Equitable Solutions Voluntarily and Easily”) for EEO and workplace disputes, agency employees are trained to serve as collateral duty neutrals. A number of other DoD Components also utilize in-house neutrals.

The next most frequent sources of neutrals for DoD Component workplace ADR are: (a) the Investigations and Resolutions Directorate (IRD) of the DoD Civilian Personnel Advisory Service⁶ and (b) the DoD Roster of Neutrals, which is maintained by the DOHA Center for ADR (CADR) and is made up of DoD employees serving as collateral duty neutrals. The WHS also offers neutral services to the multiple DoD entities it services,⁷ with conflict management offerings that include sensing sessions and climate surveys.

The Components will also occasionally reach out to other agencies for collateral duty neutrals. At times, some DoD Components seek neutrals from the federal interagency Sharing Neutrals program, maintained by Health and Human Services (HHS). DoD Components also obtain workplace dispute neutrals from adjudicative organizations, such as the EEOC and, in non-EEO civilian personnel disputes such as grievances and appeals, the Federal Mediation and Conciliation Service serves as an additional source of mediators. With the rise of telephone

⁶ IRD offers mediation in EEO cases, at both informal and formal states of the complaint.

⁷ As stated on its website, WHS customers include the DoD, and various government offices, installations, and field activities at the Pentagon, Mark Center, and DoD-leased facilities in the National Capital Region and beyond. (*See also* Attachment 5, fn 2)

and video-teleconferencing, the need for privately contracted neutrals due to remote locations of the parties has been reduced.

ii. Sources of Neutrals in Contract, Acquisition and Procurement

Disputes Subject to individual ADR program capabilities, neutrals for these disputes are most frequently drawn from judges of the ASBCA and U.S. Court of Federal Claims (COFC) and from among the hearing officers at the GAO. Some Components have collateral duty mediators with sufficient subject matter expertise to address these disputes.

iii. Source of Neutrals in Disputes Involving Environmental, Special Education, and Other Specialized Subject Matters

The DoD ADR Programs of the Components procure qualified neutrals for specific disputes on a case-by-case basis. These may be contracted mediators when specialized expertise required for mediation services exceeds in house capacity. DON, for example, uses professional contract facilitators for large construction projects and environmental restoration efforts. The U.S. Institute for Environmental Conflict Resolution maintains a National Roster of ECR Professionals available to the DoD community.

Public Access DoD ADR websites:

The DoD ADR Program, under the OGC, does not maintain a website. The DOHA Center for ADR website can be found at <http://www.dod.mil/dodgc/doha/adr/>.

(See Attachment 2 for a list of the individual websites maintained by the Service Branches and other DoD Components for their ADR Programs)

Trends in ADR Within the DoD Over the Past Ten Fiscal Years (FY06-FY15):

Trends in Funding Over the past decade, there has been no universally applicable trend in funding for the Components' ADR programs, apart from the fact that the Department of Defense experienced the effects of sequestration and changing budgeting priorities during that time period. Generally speaking, the DoD Components have been able to minimize the impact on ADR programs, structuring functional programs for the future through new synergies and approaches.

Trends in Number of Full Time Employees Devoted to DoD ADR Again, such trends are difficult to identify DoD-wide because staffing of ADR Programs varies by

Component. While some Components have full time employees dedicated to their ADR and Conflict Management mission, others rely on employees for whom the ADR function is but one of multiple duties.

Trends in ADR Usage Generally speaking, the use of ADR has become widely accepted and institutionalized across the DoD, and DoD-wide ADR usage (all subject matters and techniques) has been holding essentially steady throughout the decade.

In some Components, the ADR programs that now exist were established during this past decade. DCMA, DFAS, DMA and Missile Defense Agency (MDA), for instance, with the support of leadership each built their current programs during this period. DFAS ADR developed out of the recommendation of a Lean Six Sigma Black Belt Study commissioned by the Agency Director in 2010-2011, which then resulted in the creation of an implementation planning team. The implementation has been fully in place since 2013 when the final DRO was opened, and ADR usage has increased accordingly. Underlying trends in subject matters and in the use of ADR techniques at earlier stages of conflict and for institutional as well as interpersonal conflict are reported above and evident in the success stories that follow below. In another response to unique agency circumstances, following a 2011 consolidation of its locations the Defense Media Activity (DMA) developed a new, formal ADR program in 2014 under an ADR Program Manager. Since that time, the ADR program has flourished and become a reliable tool for the DMA workforce to resolve EEO complaints and workforce disputes. MDA found a way forward to develop its own program following relocation as a part of the Base Realignment and Closure, after previously having relied upon WHS for services.

The DoD tracks numerical variations in individual Component ADR usage during the decade and recognizes that variations are typically driven by factors unique to the reporting Component. For example, in some Components, *e.g.*, Defense Health Agency (DHA), in addition to EEO and non-bargaining unit ADR, the right to elect ADR is written into a Collective Bargaining Agreement, and covered employees actively request ADR. In other instances, *e.g.*, Defense Contract Audit Agency (DCAA) and the Air Force (specifically the Air Force Materiel Command, which possesses approximately 75% of the Air Force civilian command population and about 75% of the Air Force workplace ADR program), ongoing union and management negotiations and collective bargaining has impacted ADR usage for affected disputes.

Trends in Tangible and/or Intangible Benefits Realized by Use of ADR The DoD

Components continue to confirm those observed advantages of ADR in the context of workplace disputes that have been recognized in prior decades. A fairly comprehensive statement of these advantages has been reported by the DLA, whose ADR program acts to ensure “ADR is a part of DLA's culture and is the first thing mentioned when conflict exists.” DLA reports, “The various dispute resolution processes have: reduced the

amount of time spent on disputes, allowing the agency to accomplish its designated functions; reduced the negative feelings generated by disputes, allowing parties to work better together in furtherance of the agency mission; and reduced the money spent on disputes, preserving necessary resources for the Agency's primary mission which is to support the warfighter.” DoD Components continue to recognize that significant intangible costs can be avoided or reduced when conflicts are resolved through ADR and proactive conflict management, *i.e.* reducing the impacts of loss of productivity, diversion of resources from mission accomplishment, and problems in morale. Many believe that these are the most important benefits of using ADR and conflict management practices in the workplace setting.

Not surprisingly, the benefits of intentional early conflict management approaches in various DoD Components parallel those reported by DIA, NSA and others, where benefits are seen not only in cost avoidance (over more formal litigation processes), but in a workforce of employees who manage conflict better. As reported by DIA, organizational facilitations have been shown to prevent conflict and encourage best practices, help improve efficiency and effectiveness and develop new ideas. DIA has observed that these processes offer a proactive way of measuring the health and well-being of an organization, and addressing change, with the Agency mission better served as a result.

The DoD Components also have identified tangible fiscal benefits from the use of ADR over the past decade. For example the DCMA EEO ADR program reported an estimated savings of \$2.4Million in FY 2014 and \$1.6Million in FY 2015 through the use of ADR. These savings reflected the estimated litigation costs, as well as estimated savings from the remedies initially sought by the complainants. The DLA ADR program has reported, from several hundred ADR events each fiscal year, over 91,000 days saved from more formal litigation each fiscal year and an estimated savings each year exceeding \$3.1 million dollars by using ADR in all areas: contract, labor, EEO, litigation and workplace disputes. Air Force has similarly calculated tangible, fiscal benefits realized by utilizing ADR within the agency, estimating that over the past ten fiscal years, the acquisition and workplace ADR saved the Air Force over \$1 Billion.⁸

⁸ Cost avoidance in acquisition ADR was calculated by adding the difference between aggregate contractor claims and the amount the Air Force pays as a result of resolving contract controversies and disputes through ADR. Cost avoidance in workplace ADR is calculated with projections from the Management Advisory Service project conducted by the Air Force Personnel Operating Agency, which determined the estimated cost of workplace disputes not resolved by ADR.

Trends in ADR Processes Used The DoD Components' trends towards institutionally accepted use of mediation in EEO and other disputes, and an expanded number of options and techniques, are reported above and are further evident in the success stories that follow below. Over the past decade, DoD support for effective use of ADR has expanded in accordance with the field of ADR as a whole. Lessons learned from more formal ADR processes indicate that disputes often occur as a result of poor or mis-communication. An emphasis on increasing individuals' capacity to effectively manage conflict at an early stage is an outgrowth of this experience. As DoD examines how to accomplish its military mission, troop support and civilian support objectives in a changing climate, leadership has recognized that DoD ADR and conflict management practices can and should retain more traditional ADR processes (such as mediation and neutral-assisted settlement conferences) while further developing and applying conflict management techniques beyond such practices, in order to enable the DoD Components to function ever more effectively and efficiently. This view of ADR expands the opportunity to tailor available procedures and techniques to the specifics of the situation at hand, and has been codified in the current DoD Instruction on ADR and Conflict Management (DoDI 5145.05 (May 26, 2016)). These expanded options enable ADR techniques to be applied as they best suit individualized disputes and the needs of the parties involved therein.

The DoD's use of Ombuds (a/k/a Ombudsman functions) is one of the functions that bears mention in any discussion of developing trends in DoD application of Alternative Dispute Resolution techniques. However, given the independence of Ombuds offices within the DoD Components' organizational structures, Ombuds activity is discussed later in this Survey response.

Building Program Capacity

Over the past ten fiscal years (FY06-FY15), three core actions have expanded ADR availability and usage within the DoD: (1) providing targeted awareness training and skill building to current and new personnel as the workforce changes and grows; (2) integrating conflict management across the Component so that there are multiple points of access and a broader array of dispute resolution techniques suited to diverse conflicts; and (3) increasing the sophistication of delivery systems.

Awareness Briefings and Skills Training Over the past decade, most of the DoD Components have engaged in significant training initiatives. The Air Force ADR Program provided soft-skills conflict management training to approximately 35,000 employees, for instance, in FY2007-2008. This training proved critical in dispute resolution processes as it provided managers and union stewards with the skills needed to resolve many disputes in their earliest stages by way of interest-based

bargaining. The Air Force also created the Air Force Negotiation Center in 2006 through a partnership between the Air Force General Counsel's office and Air University. Initially created to provide negotiations training and ADR awareness to senior military officers, the Center has grown dramatically in both assigned personnel and budget during the reporting period and Air Force General Counsel has continued to partner with the Center throughout the reporting period to make Airmen better problem-solvers in an ever more diverse global operating environment.⁹ The Center has become the lead agent for ADR education and training and directly supports the Air Force Chief of Staff's Guidance to improve Total Force conflict resolution skills, including the design and implementation of basic mediation courses to ensure installation ADR Program Managers have the required roster of neutrals to perform local mediations.

The Army ADR Program, over this past decade, has similarly been one of developing and deploying mediation training to build the ranks of Army collateral-duty mediators; establishing a long-term collaboration with the Army Civilian Human Resources Agency to train all Army civilian personnel officers and labor-management relations specialists in both mediation and collaborative problem-solving skills; and collaborating with both DOHA CADR and other DoD components to provide quality mediation services and training opportunities to Army and other DoD audiences. As of 2016, the Army has delivered approximately 40 different basic mediation courses to Army and other DoD and federal agency training audiences at various locations, some of which is geared towards developing mediators, with other targets being ADR awareness and application of interest based communication and problem solving skills across the Army personnel.

The DON OGC ADR Program Office has developed a program that provides conflict management training to DON managers and supervisors at DON locations around the world, and advanced skills training for DON ADR professionals throughout the year.

Recognition of the value of ADR awareness training is by no means exclusive to the Service Branches. DIA's ADR Branch has gradually built its capacity, culminating in steps taken to enhance marketing to increase awareness and education through biannual workshops for managers and employees as well as workshops upon request throughout the DIA enterprise. The ADR Branch has also added quarterly brown bag sessions, information tables, and produced professional grade information sheets on popular ADR topics, and during Conflict Management Month (October 2015) hosted DIA's first ADR Symposium that included a panel discussion with partnering offices (Office of Inspector

⁹ In Fiscal Year 2015 alone, the Center developed and delivered curriculum to more than 30 Air University programs and courses, reaching more than 35,000 Airmen.

General, Office of General Council, Employee Management Relations Branch, Office of the Ombudsman, and Equal Opportunity and Diversity Office). Commensurate with its proactive focus, the Symposium also offered two Conflict Competency workshops. DLA reports a significantly increased workload associated with its steps to increase awareness and educate employees on ADR services.

A different and equally intentional approach has been taken by the DLA. Like other Components, DLA has sought to build program capacity over the last 10 fiscal years by ADR awareness training for the workforce at each primary level field activity and the DLA Headquarters Component. However, the agency also established, within the DLA Disposition Services, an active ADR Working Group that meets semi-annually to discuss ways to enhance ADR Program visibility. The ADR Working Group is chaired by the ADR Specialist from the Office of Counsel and is comprised of representatives from J7 Contracting, DLA Logistics Information Services (DLIS), Equal Employment Opportunity Office, and the American Federation of Government Employees (AFGE). This diversified group of professionals engages positive steps to promote ADR awareness, so that issues are resolved before ever becoming major problems.

Integrating Conflict Management with Dispute Resolution Aspirationally, an institutional ADR program should be sufficiently linked and cooperative with other offices in the agency (e.g., EEO and Diversity (EEOD) Office, Employee/Human Relations, Employee Assistance Program, Chaplain's Office, Legal Services, Office of Inspector General), that an employee initially seeking help through one such office is also offered the option to interact with the ADR or Conflict Management Program Office, and any Ombuds office. The ADR (and Ombuds) functions do not replace the formal assistance available through these other points of entry, but support and expand them.

During the past ten fiscal years, the Air Force ADR Program established and developed an Integrated Conflict Management System (ICMS) tailored to its own structure and mission needs, in which negotiation also figures prominently as an additional problem solving skill based upon expectations of top leadership. This system leverages the crosscutting applications of dispute resolution, conflict management, and negotiation skills in order to more effectively prevent and resolve Air Force disputes. The ICMS promotes conflict management skills and also maintains a robust capability to effectively and efficiently resolve those disputes that cannot be prevented.

The DIA provides a different example of an organizational structure for integrating ADR with other points of entry for employee assistance inquiries, as touched upon above. Its program specifically provides that, if the initial inquiry is made with the

ADR program, but the conflict or issue is out of the ADR Branch jurisdiction, the employee is referred to a more relevant office, such as the EEOD, HR, etc. The function of the Ombuds office may also come into play. Other Components increasingly are involving the multiple functions of their organizations in ADR training and awareness in order to ensure a more seamless opportunity for ADR to be identified as a problem solving option both at early stages of conflict and when disputes have become more entrenched. Defense information Systems Agency (DISA) leadership also has supported a move beyond mediation in EEO disputes, over the past ten years, training facilitators and approving the addition of a dedicated employee to develop a systematic, measurable, proactive “way-ahead” for the ADR program that will include a plan for ADR program education/outreach and training.

The NSA also reports such a system, in which ADR and conflict management are integrated in a single program and also coordinated by open communication with other aspects of employee services. Traditional EEO mediations are handled primarily by IRD mediators, but the ADR program staff have become trained in conflict management techniques, coaching, and other proactive very early dispute resolution techniques. In addition, the program provides managers and supervisors with concentrated conflict competency training, and addresses group facilitations. The NSA Ombuds function serves as a “front door” for assuring access to ADR at NSA.

Increased Sophistication of Delivery Systems Over the preceding decade, the three Service Branches have also maximized their ability to deliver effective and timely ADR services through application of new tracking technologies. Between FY 2007 and FY 2009, the Air Force created its own data reporting system to capture workplace dispute resolution accomplished at its bases located around the world. This data reporting system provides installation ADR program managers with the opportunity to capture workplace dispute data real-time and calculates program metrics at the installation, Major Command, and HQ Air Force levels. The new data reporting system replaced a static system in FY 2010 and has been a critical component of program management and determining return on investment ever since. The system tracks workplace disputes filed and resolutions, and offers a host of dispute types, to include discrimination complaints, administrative and negotiated grievances, unfair labor practice allegations, merit system protection board cases, and peer-to-peer disputes.

Army also used its own tracking system, which facilitates annual assessment of its program. DON addressed its decision to expand capacity by revamping its program and standing up the ADR Center of Excellence (COE) in 2014 through the OCHR. The OCHR administers all DON workplace mediations. The DON OGC continually improves and manages ADRTTracker, a web-based comprehensive case management and

data collection system that helps conveners schedule, communicate and monitor the status of all workplace ADR events. The DON ADRTracker system also facilitates the training and recertification process for DON's Certified Mediator Program and improves other ADR data collection at all levels in the DON process.

The use of technology has also increased the reach of DoD ADR training initiatives. For instance, the Air Force reports that extensive use of real-time computer-based trainings has made it possible to keep collateral-duty mediators and program managers refreshed on mediation techniques, informed on program management, and available to perform local mediations. As mentioned elsewhere in this survey, Air Force has also developed a monthly ADR webinar program that has provided "non-resident students" access to ADR and negotiations curricula. The DON ADR Program continues improving and increasing the use of advanced communication technology such as video teleconferencing training sessions available to multiple DON locations, the web-based computer conferencing system Defense Connect Online, and DON ADR training DVDs to expand the availability of ADR training resources to the DON ADR community.

The Future of ADR Within the Department of Defense, and the Role of the Interagency ADR Working Group:

The ongoing mission of the DoD ADR Coordinating Committee and the DoD Liaison is to ensure continued exchange of resources and expertise in order to build up the individual Components' ADR programs as best suited to their individual needs and missions.

The Interagency ADR Working Group provides valuable support to this ongoing mission as it plays out in Workplace, Contracts and Procurement, Litigation and Environmental uses of ADR. Over the past ten fiscal years, a number of IADRWG Steering Committee publications since 2006 have proven to be of benefit to the DoD Services Branches and other Components. The Confidentiality Guidance for ADR Program Managers and the Guide for Federal Employee Mediators, containing the model standards of conduct for mediation practice, have been very useful to ADR practice DoD-wide. The Air Force, Army and DON specifically cite it as informing their training programs. Also cited as especially helpful to informing the Air Force ADR training programs is the Working Group's Guide for Federal Employee Mediators, which is a supplement to and annotation of the Model Standards of Conduct for mediators. Likewise, the Electronic Guide to Federal Procurement Alternative Dispute Resolution (ADR), now in its Second Edition, has proven a valued resource providing detailed, substantive information on the use of ADR for resolving contracting, or acquisition and procurement, disputes.

ADR Success Stories at the Department of Defense

The DoD and other Federal Agencies were requested to provide ADR success stories from the past **ten calendar years** - illustrations that include the types of issues the DoD ADR program resolves, the inherent benefits of ADR (even when the disputed issues are not fully resolved), the ADR methods, and key lessons learned.

ADR programs across the DoD Components report multiple success stories, such that it has been difficult to select from among them. A number of these success stories are embedded in the responses to the above Survey questions. (See Attachment 6 for several additional success stories that are illustrative of subject matter applications, innovative process approaches, how the ADR process was critical to resolution and beneficial outcomes. Key lessons learned from each experience are highlighted)

ADR Use Beyond the ADR Programs Discussed Above:

Over the past decade, the DoD has developed an increasingly robust set of Ombuds programs which, by design, apply ADR processes and techniques but generally are structured in the organization to do so independently of the Component ADR Programs. A number of DoD Components report these as ADR activity, however, recognizing that Ombuds offices apply multiple ADR techniques towards the resolution of workplace and other disputes. Generally speaking, these programs report a steady increase in the number of employees (or other users) reaching out to the Ombuds office each year since the office was established. The cornerstones of confidentiality, the value of a sounding board, information resources; shuttle diplomacy and other fundamentals of Ombuds practice are reported to be responsible for this trend. During the decade, Defense Commissary Agency (DeCA), Defense Human Resources Activity (DHRA) and NSA were counted among the Components that added an Ombuds function for addressing workplace issues and conflicts, with highly successful results.

In 2015, DIA established its Office of the Ombudsman, which is aligned under the DIA Chief of Staff and staffed with three full-time employees (one Agency Ombudsman, one Deputy Ombudsman, and one Staff Director/Associate Ombudsman). This office is charged with providing the DIA workforce with a safe place to voice any issues of concern. It does not replace any office that otherwise offers formal assistance to the workforce (such as Office of the Inspector General, Equal Opportunity and Diversity Office, Employee Management Relations Branch, Employee Assistance Program, or Chaplain's Office). Rather, the Office of the Ombudsman offers an additional service to render assistance quickly and informally, with a keen focus on systemic issues that negatively impact mission accomplishment and/or team members' well-being.

At the National Geospatial-Intelligence Agency (NGA), workplace ADR offers mediation for EEO dispute resolution, and additionally an Ombudsman provides a key function as an independent, informal (categorically not part of investigative or oversight functions), neutral, and confidential forum to hear and address individual and systemic concerns about the agency's mission, policies, and practices. At NGA, there also is established an Analytic Ombudsman, whose responsibility it is to address concerns about adherence to analytic standards, and also (as throughout much of the DoD) a Task-Delivery Order Ombudsman who - while recognizing that the contracting officer has the primary responsibility for procurement integrity - provides a neutral, informal, confidential and independent sounding board for, *e.g.*, employees, managers, and customers who seek assistance in resolving issues related to procurement concerns.¹⁰

The Pentagon Force Protection Agency (PFPA) is provides a good example of the function an Ombuds office serves within a DoD Component. Typically, the PFPA Ombudsman uses a variety of conflict resolution techniques including coaching, neutral fact finding, conciliation, and shuttle diplomacy to help resolve workplace disputes. The Ombudsman is also available to intervene as a mediator to assist disputing parties to reach win-win solutions to their conflicts. When appropriate, the Ombudsman makes referrals to other offices and programs (*e.g.*, employee assistance programs) to further assist PFPA staff members with their concerns. At PFPA, the Office of the Ombudsman is an informal first step to resolving workplace disputes before they escalate into formal, adversarial, and sometimes hostile complaints and grievances. Additionally, the PFPA Ombudsman serves as an early warning channel by alerting top management to systemic problems and offering recommendations for change within the Agency. As with other Ombuds offices, confidentiality is a cornerstone of their process. The PFPA Ombudsman's office provides a safe haven for PFPA staff members to confidentially discuss work related issues without fear of retaliation or reprisal. The Ombudsman listens to staff members' concerns and helps them to identify and evaluate a range of options for resolving issues.

The DoD Office of the Inspector General (OIG) Office of the Ombudsman has long provided a robust example of an internal-facing resource for informal conflict resolution. Along with the OIG Equal Employment Opportunity Office (also providing internal-facing conflict resolution) this Ombuds office addresses a variety of disputes, the subject matter of which could include performance ratings, performance progress, access to training and developmental opportunities, fairness and equal opportunity in assigning meaningful work projects to team members, personality conflicts between co-workers, issues of trust between employees, fairness and equal opportunity in promotion process, opportunities to influence strategic direction of organization, and a legion of other

¹⁰ The statutory and regulatory scope of this latter Ombuds function throughout the DoD is beyond the scope of this Survey.

concerns. The processes used by the neutrals at the OIG Office of the Ombuds (and the OIG Equal Employment Opportunity Office), include brainstorming, facilitated discussions, role-playing, mediation, team building, action-planning, shuttle diplomacy administration of multi-rater assessments, organization climate assessments, and referrals to policy and program experts.

Within the WHS organizational structure, an Office of the Ombudsman similarly provides informal dispute resolution services to all Deputy Chief Management Officer (DCMO) and WHS employees. Consultation with the Ombudsman is entirely voluntary and may not be compelled by anyone for any reason. The Ombudsman Office receives questions and concerns about individual situations or broader systemic issues and, to the extent permitted by law, keeps them confidential. The Ombudsman listens, makes informal inquiries or otherwise reviews matters received, offers resolution options, and informally reconciles disputes independently and impartially. The response of the Ombudsman is tailored to the dynamics of the situation and the nature of the concerns. The Ombudsman assists individuals in reaching resolutions that are consistent with the stated ideals, objectives and policies. Services offered by the Ombudsman Office supplement, but do not replace, other more formal processes available to employees. The Ombudsman acts as a catalyst for institutional change through reporting of trends and identifying opportunities to enhance policies and procedures.

Other Components also have Ombuds programs that are notable because they serve unique functions. Of particular note is the Army "Medical Assistance Group" (MAG), established in March 2007, consisting of the Ombudsman Program for Wounded Soldiers and their families, and the Wounded Soldier and Family Hotline, to address medical issues and concerns of wounded Soldiers and their families, in a confidential, positive environment. In April 2007, the Army augmented the program with liaisons at 18 sites having a significant Warrior in Transition (WT) population. Since then, the program has grown to 49 Ombudsmen at 26 medical treatment facilities in the U.S. and overseas. In addition to counseling Wounded Soldiers and their families, Army Ombuds serve as liaisons with military medical authorities on issues relating to medical care and treatment, rehabilitation, and post-treatment transition. Since its inception, the MAG has helped over 62,000 Soldiers and family members and provided Army medical leaders visibility concerning medically related issues and trends.

Training in ADR Awareness and ADR Skills and Techniques at the DoD:

The Service Branches, and some of the other Components, have conducted and continue to conduct ADR awareness and to provide periodic skills training for their personnel.

ADR Awareness Training Some examples of ADR awareness training are provided above, in response to the question addressed to steps taken to build programs over the past decade. Successful ADR awareness training at DoD begins with ensuring the support of DoD leadership. Awareness training for leadership is a regular effort at DFAS, where ADR Specialists regularly brief their site directors and the ADR Director annually briefs the DFAS Strategic Council and the DFAS Enterprise Business Council on the state of the program.

For Supervisory and Management personnel, readily available written brochures and face-to-face awareness and skills training seem the preferred engagement across many Components. DFAS, for example, offers a 60 minute module, presented by an ADR Specialist, to supervisors during the New Supervisors Training Program. The module provides an ADR primer, discussion of the advantages of ADR over formal processes, and an explanation of what ADR looks like at DFAS. At DHRA, ADR awareness training is presented to supervisors during the mandatory Supervisor/Leadership training. DIA ensures that its personnel have ready access to professional – grade tri-fold information brochures, and information sheets widely distributed in the organization, and its officers also have access to information through informational briefings delivered throughout the enterprise. WHS is among the Components that deliver awareness training as a part of an EEO and Diversity training module to scheduled training of new supervisors, supplemented later by brown bag luncheons on various ADR topics.

A number of Components provide some ADR awareness briefing for all new employees. DFAS, for instance, offers multi-faceted training through its multiple Dispute Resolution Offices, beginning with a brief (15-20 minute) awareness training module presented by an ADR Specialist as a part of the New Employee Orientation Program. The 60 minute module offered to supervisors is later available to employees. These modules are repeated in various formats during periodic site visits and in monthly video teleconference trainings for the Defense Military Pay Offices. ADR topics are also presented during periodic forum meetings (Supervisors, Labor-management), union steward “lunch and learn” sessions and other informal meetings. DHRA informs its new employees about ADR during the on-boarding process in a series of briefings/presentations when they first arrive at DHRA. The ADR awareness and promotion is also presented by DHRA during the EEO and No Fear trainings mandatory for all employees.

Various DoD Components offer regularly scheduled awareness and ADR skills training for employees by taking advantage of communications technology to efficiently distribute this education. For example, Defense Security Service (DSS) offers a self-guided, online ADR tutorial for DSS employees. The tutorial explains the agency’s ADR program, the benefits of using ADR, how the mediation process works, and how employees can prepare for a mediation session. The Pentagon Force Protection Agency

provides ADR awareness/promotion trainings and skills training to agency employees through the iCompass training website.

Components that do not provide ADR awareness or skills training on a regular basis, nonetheless look for opportunities to provide periodic training. For example, recent a week-long seminar for the DCMA Office of General Counsel personnel featured speakers that included the DoD ADR Liaison speaking on the benefits both workplace and contracting ADR and addressing myths about the effectiveness of ADR in both contexts. The seminar also featured a judge from the ASBCA who also increased audience awareness by discussing ADR techniques at the ASBCA. Defense Threat Reduction Agency (DTRA) uses facilitated/sponsored ADR trainings to encourage the use of ADR, as well as “Brown Bag” sessions specifically targeted to eliminating common misconceptions regarding ADR.

The Service Branches similarly brief and train their civilian and military personnel including supervisory personnel, as discussed in some detail above. As noted on the Army ADR website, training ranges from two hour “ADR Awareness” and “Introduction to ADR” courses to week long “Advanced Mediation” and “Negotiation and Appropriate Dispute Resolution” courses. As a further example, Air Force has developed ADR awareness trainings providing information about the Air Force ADR Program and the benefits of ADR. This program was created with commanders and supervisors in mind, but has been delivered worldwide to its major commands (MAJCOM)¹¹ audiences and at Air Force Equal Opportunity Worldwide Conferences.

ADR Skills Training The Air Force ADR Program, in collaboration with the Eaker Center for Professional Development (ECPD) at Maxwell Air Force Base, Alabama, created a 32-hour basic mediation training course that is primarily given to Air Force employees who have volunteered to serve as collateral-duty mediators. This course is typically offered twice each fiscal year and can train a maximum of 33 students per class. The Air Force Advanced Mediation Course, a 40-hour course also created in collaboration with ECPD, is conducted every other fiscal year for experienced collateral-duty mediators. This course provides advanced mediation training to up to 15 students. Air Force ADR Program also provides refresher training for its mediators, to meet the Air Force ADR instruction requirement that mediators receive at least eight hours of refresher

¹¹ As of January 2008, the ten major commands and the stations of their headquarters are: Air Combat Command, Langley AFB, Virginia; Air Education and Training Command, Randolph AFB, Texas; Air Force Global Strike Command, Barksdale Air Force Base, Louisiana; Air Force Materiel Command, Wright-Patterson AFB, Ohio; Air Force Reserve Command, Robins AFB, Georgia; Air Force Space Command, Peterson AFB, Colorado; Air Force Special Operations Command, Hurlburt Field, Florida; Air Mobility Command, Scott AFB, Illinois; Pacific Air Forces, Hickam AFB, Hawaii; and United States Air Forces in Europe, Ramstein AB, Germany. (See <http://www.afhra.af.mil/organizationalrecords/majorcommands.asp> .)

mediation training each year. Some of this training is provided at ADR and EO worldwide conferences.

Since 2008, the Army ADR Program has been deploying a week-long basic mediation course. The developed course curriculum provides 36-40 hours of classroom instruction and evaluated mock mediations using role-play techniques over a 4 and ½ day period and criteria for determining whether a mediation student receives a certificate of course completion. As in other respected mediation training courses, following the basic skills course, the student is then expected to co-mediate in at least two active mediation situations as a final phase of basic mediator skill development. As noted above, as of 2016, the Army has delivered approximately 40 different courses to Army and other DoD and federal agency training audiences at various locations. In addition to the basic mediation training, Army ADR provides the following courses to its personnel: Mediation Refresher (4 or 8 hours for current mediators). Interest-Based Negotiations (1-2 days for all audiences). Conflict Coaching (3-4 days for supervisors/managers/dispute resolution specialists—subject to availability). Collaborative Problem Solving (2 days for all audiences).

DON ADR professionals are provided the opportunity to attend a three day workplace ADR training seminar with three concurrent ADR training sessions. This seminar offers a wide variety of ADR training classes, including: skills courses for conveners; labor and employee relations ADR training; Americans with Disabilities Act/Rehabilitation Act (ADA/RA) for mediators training, advanced mediator skills training, ADR-related EEO law and procedure training, settlement agreement training, and federal mediator ethics training. These annual seminars rotate each year to different geographical locations, providing DON ADR professionals around the world access to a wide array of skills-based training classes. Local DON managers and supervisors at these different seminar locations are also provided an opportunity to attend a completely separate day-and-a-half conflict-management training session with course content, including conflict management and EEO for supervisors training, designed to help them provide effective leadership. In addition to this yearly training event, the DON also provides conflict management training to DON managers and supervisors at other DON locations around the world, and advanced skills training for DON ADR professionals throughout the year. Some of the courses offered to DON ADR professionals include “Breaking Through Impasse”, “Generating Options”, “Reflective Practice”, and “Critical Skills for Critical Moments in Mediation.

Both Army and DON further coordinate their ADR efforts with their Human Resources functions to ensure solid development of mediation and conflict resolution skills for relevant personnel. The Army ADR Program delivers training world-wide in conjunction with the Army Civilian Human Resources Agency at Aberdeen Proving Ground. The

DON OGC ADR Program Office coordinates with OCHR to manage the DON's Workplace ADR Program.

Of additional note are the collaborative training opportunities provided by the Service Branches. For instance, since 2008, a 36 hour Negotiation and Appropriate Dispute Resolution Course has been presented with the support of the Army ADR Program, Army OGC's office and students from the Army legal career field. The course was originally created by the Air Force ADR Program in collaboration with the Air Force Judge Advocate General's School, as a Negotiation and Appropriate Dispute Resolution Course which provides negotiation training and ADR awareness to the legal career field. In 2016, it celebrated its highest audience – 66 legal practitioners from the Air Force, Army and the Defense Finance and Accounting Service.

DECA's unique mission within DoD is to operate a worldwide chain of commissaries providing groceries to military personnel, retirees and their families. Accordingly, it is a DeCA leadership expectation that its employees will engage in positive, intentional interactions with patrons, staff and visitors, and aims to sustain a capable, diverse and engaged civilian workforce.¹² Thus, in furtherance of the DeCA mission and leadership expectations, during the past decade the DeCA ADR program formed a one day Conflict Management Course that is taught to supervisors and managers and that includes Personal Assessment (Thomas-Kilmann Conflict Handling Modes¹³ and True Colors¹⁴), Communication Skills, and Conflict and Conflict Management Strategies. This training initiative, together with the Ombuds function discussed above, is assisting DeCA to advance its mission by resolving conflicts at earlier and informal stages, thereby avoiding the loss of productivity, decline in working relationships, and heightened exposure to liability entailed with prolonged conflict and litigation.

DoD-wide Training Resources Upon request from a Component, the Defense Equal Opportunity Management Institute (DEOMI), established by Department of Defense Directive 1322.11, continues to provide basic mediation and other training relevant to resolution of disputes in the DoD workplace. For a number of years, WHS (initially on its own, then in co-sponsorship with DCPAS - IRD) has presented an annual ADR Symposium providing ADR awareness training to DoD supervisory and management personnel, and ADR skills update training to DoD ADR personnel. The Air Force Negotiation Center (AFNC) graciously makes webinar training in ADR as well as

¹² See https://www.commissaries.com/about_us.cfm .

¹³ Thomas Kilmann Conflict Mode Instrument and products copyright © 2009-2016 by Kilmann Diagnostics and Copyright © 1991–2016 by Organizational Design Consultants.

¹⁴ See www.truecolorsintl.com .

negotiation skills available to ADR professionals beyond Air Force, and the Army and DON ADR Programs likewise offer open slots for skills training to other Components, when available. Other resources are periodically accessed; for instance the Defense Human Resources Activity has obtained training through Human Resources University.¹⁵ DOHA, CADR provides awareness briefings, and supports skills training efforts with instructional presentations and observer feedback, upon request. The DoD Roster of Neutrals regularly distributes continuing education opportunities to Roster neutrals.

DoD Components also provide periodic training to their own personnel, through various methods and modules. As noted above, such training has made a significant contribution to the development of ADR Programs across the DoD.

Final Comments – Goals Set by the Interagency Working Group for the Use of ADR in the Executive Branch of the Federal Government:

The April 2007 Report for the President on the Use and Results of ADR in the Executive Branch of the Federal Government, contained the following statement: “ADR in the next decade needs to grow into a system of pro-active conflict management as opposed to a one-shot reaction to a presenting dispute.” As should be evident from the above responses, the DoD has demonstrated remarkable success in advancing that goal, while preserving access to mediation and other more classical dispute resolution processes, and sustaining ADR programs that meet the specific needs of individual Service Branches, Defense Agencies and DoD Field Activities. Going forward, the integration of ADR and proactive Conflict Management into the manner in which federal agencies do business on a daily basis will not, however, be a static concept. A valuable resource that could be provided by the Interagency ADR Working Group would be the support of such development, including but not limited to the sharing of best practices, practical applications, and “train-the-trainer” teaching modules to facilitate further progress towards continued development of these valuable resources within the federal agencies.

¹⁵ HRU is the product of the collaboration between Federal agencies across government through the Chief Human Capital Officers (CHCO) Council. The CHCO Council founded HRU in 2011 and now serves in an advisory role. The U.S. Office of Personnel Management (OPM) manages the day to day activities of HRU.

2016 REPORT ON ADR IN THE DEPARTMENT OF DEFENSE

Consolidated Response of the Department of Defense

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ATTACHMENT 2 - Component Written Policies & Websites

COMPONENT	ADR POLICY	POLICY on ADR.GOV?	ADR PROGRAM WEBSITE
Dept. of the Air Force	Air Force Policy Directive 51-12 (re-certified in 2010, currently under revision) http://www.adr.af.mil/shared/media/document/AFD-070209-040.pdf	Yes	http://www.af.adr.mil
Dept. of the Army	Army general ADR policy contained in 2007 policy memorandum signed by the Secretary of the Army http://ogc.hqda.pentagon.mil/ADR/Documents/SECARMY_ADR_Policy.pdf Additional ADR policies relating to government contract disputes (revised in 2015 as part of AFARS); EEO complaint activity (2004); and administrative grievances (2015 supp. to DoD Instruction 1400.25, Vol. 771, Enclosure 3)	Yes	http://ogc.hqda.pentagon.mil/PracticeGroups/ADR.aspx
Dept. of the Navy	DON policy, Secretary of the Navy Instruction (SECNAVINST) 5800.13A (revised 2005) http://www.secnav.navy.mil/ADR/Documents/SIGNED580013A.pdf	Link via program	http://www.secnav.navy.mil/adr/Pages/ADR.aspx
National Guard Bureau (NGB)	NGB ADR policy was amended and modified 2011 and current as of 2013. Link to the ADR policy is http://www.ngbpdc.ngb.army.mil/publications.htm	No	http://www.nationalguard.mil/Leadership/JointStaff/J1/OfficeofEqualOpportunity/AlternateDisputeResolution.aspx
Defense Commissary Agency (DeCA)	DeCA formal written ADR policy - not amended or modified during the past ten fiscal years.	No	http://www.commissaries.com/inside_deca/publications/DirectivesDeCAD%2080-13-Oct2001.pdf
Defense Contract Audit Agency (DCAA)	DCAA regulation modified but subject to negotiations with union 2016.	No	N/A

ATTACHMENT 2 - Component Written Policies & Websites

COMPONENT	ADR POLICY	POLICY on ADR.GOV?	ADR PROGRAM WEBSITE
Defense Contract Management Agency (DCMA)	DCMA Policy promulgated December 2013 http://www.dcmamil/policy/902/DCMA-INST-902.pdf Updated 2015 http://www.dcmamil/policy/005/DCMA-INST-005.pdf	No	NA
Defense Finance and Accounting Service (DFAS)	DFA Instruction 5145.5-I (2013) coincident with the stand up of the program (revised 2015)	No	N/A; instruction accessible to employees via agency e-portal only
Defense Health Agency (DHA)	N/A	No	N/A
Defense Human Resources Activity (DHRA)	DHRA ADR policy in place since 2010 ADR for EEO cases validated in EEO Handbook 2014	No	ADR policies made accessible on to the DHRA workforce but not to the general public
Defense Information Activity (DIA)	DIA ADR policy revised 2014	No	N/A; the Office of the Ombudsman and ADR Branch maintain websites that are accessible to the DIA workforce, but not to the general public
Defense Information Systems Agency (DISA)	DISA ADR policy updated in 2014 2014 and is currently being revised	No	http://disa.mil/about/policy-publication-information/~media/files/disa/about/publication/instruction/di1005014.pdf
Defense Logistics Agency (DLA)	DLA ADR policy is at DLA Instruction 5308 (2006), last modified in 2010 and currently being updated.	No	DLA maintains a publicly accessible website; however it is currently under construction and is expected to be functional within the next 90 days [http://www.dscc.dla.mil/offices/legal/adr]

ATTACHMENT 2 - Component Written Policies & Websites

COMPONENT	ADR POLICY	POLICY on ADR.GOV?	ADR PROGRAM WEBSITE
Defense Media Activity (DMA)	DMA ADR operating instructions modified in 2011 and 2015 to reflect administrative changes in the procedure	No	N/A
Department of Defense Education Activity (DoDEA)	DoDEA's ADR policy (not specified) was established in 2011 and has not been amended since. http://www.dodea.edu/Offices/Regulations/upload/Alternative-Dispute-Resolution.pdf	Yes	http://www.dodea.edu/Offices/CEDR/index.cfm
Defense Security Cooperation Agency (DSCA)	DSCA follows WHS's ADR Policy, cited below.	No	http://www.whs.mil/equal-Employment-opportunity-and-Diversity/alternative-dispute-Resolution
Defense Security Service (DSS)	DSS ADR policy updated February 27, 2014 to reflect current law and DoD regulations – replacing the 2012 Memorandum of Director currently at http://www.dss.mil/documents/eoo/adr.pdf	No	https://www.dss.mil/eoo/adr.html
Defense Threat Reduction Agency (DTRA)	DTRA has an ADR policy (not specified)	No	N/A
Missile Defense Agency (MDA)	MDA's ADR Instruction was originally published in 2011 and is presently undergoing revision (all MDA policies undergo review and revision if necessary every five years)	No	N/A; MDA website is accessible to the MDA workforce but not to the general public
National Geospatial-Intelligence Agency (NGA)	NGA's published policy is that of its Ombudsman function https://www.nga.mil/About/Pages/Ombudsman.aspx	Yes	Same as policy website

ATTACHMENT 2 - Component Written Policies & Websites

National Security Agency (NSA)	NSA's Dispute Resolution and Grievance Office and its Ombuds Services do not report a published ADR policy	No	NA
Office of the Inspector General (OIG)	DoD/OIG ADR policy was issued 2016	No	N/A
Pentagon Force Protection Agency (PFPA)	N/A	No	http://www.pfpa.mil/ombuds.html
Washington Headquarters Services (WHS)	WHS ADR policy is published at AI Number 106 (2014); recent modifications not published. Policy link at http://www.dtic.mil/whs/directives/corres/pdf/a106p.pdf	No	http://www.whs.mil/equal-employment-opportunity-and-diversity/alternative-dispute-resolution

Attachment 3 - Component ADR Programs - Subject Matters Reported 2014-2016

	Workplace (EEO; CBA, nonCBA, L&M; Other Workplace)	Contract Acquisition and Procurement	Environmental	Other
Service Branches reporting in 2016 Survey				
Dept. of the AIR FORCE	X	X	X	
Dept. of the ARMY	X	X	X	
Dept. of the NAVY	X	X	X	
NGB	X		X	
Defense Agencies and Field Activities reporting in 2016 Survey				
DeCA (Defense Commissary Agency)	X	X		
DCAA	X			
DCMA	X	X		
DFAS	X			
DHA	X	X		
DHRA	X	X		
DIA	X			Other Issues of concern reported to Ombud
DISA	X	X		FRAUD, WASTE & ABUSE
DLA	X	X	X	
DMA	X			
DoDEA	X	X		SPECIAL EDUCATION
DSCA	X			
DSS	X			
DTRA	X			
MDA	X			
NGA	X			
NSA	X			
OIG	X			
PFPA	X	X		
WHS	X			

Attachment 4 - Component ADR Programs - ADR Techniques Reported 2014-2016

Service Branches reporting in 2016 Survey	Arbitration ¹		Sttlement Confc/ Sttlemt Judge		Early Neutral Evaluation/ Evaluatv Med		Mediation		Conflict Conciliation/ Facilitation		Climate Assessmt/ Sensing Sessions/ Coaching		Partnering		Ombuds		Other	
Dept. of the AIR FORCE		X			X			X	X				X			X		PEER REVIEW OUTCOME PREDICTION SUMMARY TRIAL, WITH BINDING DECISION
Dept. of the ARMY	X	X			X			X	X				X			X		REVIEW PANEL FACTFINDING NEGOTIATION ASSISTANCE, WITH OUTCOME PREDICTION SUMMARY TRIAL, BINDING DEC
Dept. of the NAVY	X				X			X	X				X			X		
NGB					X			X	X			X						REVIEW PANEL OTHER
Defense Agencies and Field Activities reporting in 2016 Survey																		
DeCA (Defense Commissary Agency)	X	X						X	X							X		DISCUSSION TACTICS SUMMARY TRIAL, BINDING DEC
DCAA		X						X										
DCMA								X								X		
DFAS								X	X							X		
DHA (f/k/a Tricare)								X										
DHRA	X	X						X								X		FACT FINDING

¹ The vast majority are Nonbinding

Attachment 4 - Component ADR Programs - ADR Techniques Reported 2014-2016

	Arbitration	Settlement Conf/ Judge	Early Neutral Evaluation/ Med	Mediation	Conflict Conciliation/ Facilitation	Climate Assessmt/ Sensing Sessions/ Coaching	Partnering	Ombuds	Other
DIA				X	X			X	
DISA					X				
DLA				X	X				NEUTRAL ADVISORY OPINIONS
DLSA									
DMA		X		X	X				
DoDEA	X			X	X	X		X	
DSS				X					
DTRA				X					
MDA	X			X	X			X	
NGA				X	X	X		X	
NSA				X	X	X		X	PEER REVIEW
OIG				X	X	X		X	
PfPA				X			X		
WHS				X	X				

Attachment 5 - Component ADR Programs – Sources of Neutrals

(Sources, including for Ombuds, identified in Component Survey Responses and by DoD Roster of Neutrals)

Service Branches reporting in 2016 Survey	Component (Self sourced)	DoD Roster of Neutrals (DOHA CADR)	DCPAS/ IRD	Federal Roster Shared Neutrals	ASBCA GAO Ct. Fed Claims	OTHER ^{1 2}
Dept of the AIR FORCE	X	X			X	
Dept. of the ARMY	X	X	X		X	CO-LOCATED FED NEUTRALS FED MEDIA & CONCILA SVC PRIVATE SOURCES AS NECESS
Dept. of the NAVY	X	X			X	PROFESSIONAL CONTRACTED NEUTRALS
NGB	X	X	X			
Defense Agencies and Field Activities reporting in 2016 Survey						
DeCA (Defense Commissary Agency)	X					
DCAA		X				
DCMA		X	X		X	OTHER AGENCIES
DFAS						
DHA (f/k/a Tricare)		X	X			
DHRA	X		X			
DIA	X	X	X			OTHER AGENCIES
DISA		X				[IN HOUSE TRAINED FACILITATORS]
DLA	X	X				
DMA		X	X			FEDERAL EXECUTIVE BD
DoDEA	X	X				CONTRACTED NEUTRALS – SPECIAL EDUCA. EXPERTISE
DSS		X				MEDIATORS FROM COURTS, ADMIN AND OTHER AGENCIES
DTRA		X	X			
MDA	X	X				
NGA	X	X				
NSA	X					
OIG	X	X				
PFFA	X					OTHER AGENCY (WHS)
WHS	X	X				

¹ Excluding adjudicative organizations, e.g. EEOC, MSPB, various COURTS

² WHS reports that it services, including provision of ADR on request, the following organizations: CIFA (2002-2008); DARPA; DLSA; DPAA; DSCA; DTSA; OEA; OSD; PFFA; DHA (f/k/a TMA); TRMC; USCAAF; and WHS

ATTACHMENT 6 - DoD ADR Program - Additional Success Stories

The most important lesson learned DoD-wide during this decade is that the selection of the ADR process/technique that best suits the dispute is paramount. Mediation continues to be a highly valued process for pre-complaint and formal stage EEO disputes, and is most often facilitative in style, in which the mediator remains absolutely neutral and, by working with the parties to identify the interests behind their respective incoming positions, builds trust and an open environment for the parties to analyze options and find their own, mutually agreeable, resolution. Accordingly, the bulk of Component training efforts are devoted to developing these mediation skills. However, as discussed in the body of the DoD's Consolidated Response, the DoD ADR and Conflict Management program is not static, and over the decade the Components have been applying new techniques and acknowledging that some disputes are suited to creative ADR approaches. A number of success stories are cited throughout the body of the DoD's Consolidated Response. The following comprise some additional examples of the dynamic application of dispute resolution and effective conflict management within the DoD.

Success Stories in Workplace Dispute Resolution

Defense Security Service (DSS) In 2009, DSS addressed a multi-party dispute involving workplace issues within a single office. The parties voluntarily agreed to ADR and DSS obtained the services of a neutral provided at no charge from a roster outside DSS. The introduction of a thirty-party neutral to facilitate discussions led to a better understanding by management staff and employees of their respective issues and concerns. While not all issues were resolved immediately, many issues were resolved with the help of the neutral, which resulted in several employees deciding not to pursue formal complaints. Lessons learned: The process mediated by an ADR neutral can lead to improved communication and resolution of workplace disputes even when not all issues are resolved immediately.

Department of Defense Education Activity (DoDEA) DoDEA's Center for Early Dispute Resolution (CEDR) provides the following example. A professional with responsibility for a key program agreed to a "listening session" to discuss difficulties she had in working with and understanding the direction she received from her supervisor. After considering and discussing options with the CEDR representative (a Conflict Management specialist), she decided to participate in a facilitated conversation with her supervisor. The result was an increased level of understanding of the intentions behind each of their communications and an improved willingness to develop a positive working relationship. The employee later told the ADR specialist that the process and improvements in her work situation afterwards resulted in her remaining at her employment when she would otherwise have sought a position elsewhere. She was able to return her focus to her work and to help attract new talent to work on her program. Lessons learned: A program that provides innovative blends of ADR and Conflict Management techniques affords opportunities for resolution of workplace conflict not necessarily available through mediation or other more formal ADR processes.

Washington Headquarters Services (WHS) The WHS use of "sensing sessions," a relatively new conflict management technique usually deployed in response to employees voicing their concerns about some aspect of the work environment, is discussed in the body of the DoD's Consolidated Response. However, WHS also has observed that creative problem solving during traditional

ATTACHMENT 6 – DoD ADR Program – Additional Success Stories

mediation can incorporate such conflict management techniques. The WHS ADR program acknowledges that, during some individual mediation sessions, a WHS neutral may be made aware that broader work environment issues are an issue for the individual employee. Rather than to ignore group dynamics influencing the individual parties' respective issues and underlying interests, the WHS neutral will explore whether there exists the potential for engaging the employee's entire unit in honest communication, without disclosing the merits or resolution of the dispute at hand. WHS has observed that, when an agreement to schedule a sensing session becomes an agreed term of the mediation settlement agreement, the employee can be afforded an opportunity to see his or her concerns heard and addressed, and the larger workplace also reaps the benefit.

Success Stories in Ombuds Application of Dispute Resolution Techniques

(Agency name withheld to protect and preserve confidential identity of the employee) A remarkable Ombuds success story was reported by one DoD Component in which an employee had initially come to the Ombudsman seeking a reassignment/transfer. The employee complained that he was being "bullied" by the two senior leaders in his directorate. The treatment by his current supervisors was "so bad" that it was seriously affecting the employee's mental health and he stated that he needed to move to a new work environment as soon as possible. While working with the Ombudsman to resolve his dispute, the employee accepted a referral to an Employee Assistance Program (EAP) to help him cope with the stress he was experiencing in his work area. The Ombudsman, through shuttle diplomacy (the employee did not want face-to-face mediation) discovered that the employee's supervisors were not interested in resolving the employee's concerns and stated that the only reason he was complaining was because management was finally holding him accountable for his poor workplace performance. The parties to the dispute had reached an impasse and the case seemed to be heading toward the Agency's EEO program for processing.

Before this case was referred to the EEO program, however, the Ombudsman received a visit from another supervisor in the employee's work environment and the EAP counselor working with the employee. Both the supervisor and the EAP counselor (who was given permission to talk to the Ombudsman by the employee) expressed their concerns about the employee's deteriorating mental health (situational depression) and were concerned that he was becoming suicidal. A decision was made (with the employee's permission) to take his concerns all the way up to the Agency's senior leadership. The Director of the Agency agreed to temporarily transfer the employee to a new work area with the possibility of making it a permanent reassignment. Within a few months of his reassignment the employee's mental health dramatically improved. The employee flourished in his new work environment and was permanently reassigned to his new position. He became a productive and valued staff member who focused on his job and the Agency's mission without being distracted by problems in the work environment.

ATTACHMENT 6 – DoD ADR Program – Additional Success Stories

Success Stories in Contract, Acquisition and Procurement Dispute Resolution

Defense Logistics Agency (DLA) DLA reports an instance in which the Government asserted an affirmative claim against one of its Hazardous Waste disposal contractors. The contractor had been paid over \$150,000 for disposing of numerous containers of Hazardous Waste, but subsequently the Government discovered that the containers had been ordered under the incorrect contract line item number (CLIN), resulting in the contractor being overpaid by \$115,000.00. The contractor denied that the containers were improperly identified and asserted that it was entitled to all of the money it had been paid. Negotiations were at a standstill, with the Contractor offering to pay back no more than \$25,000 and with the Government asserting that it was willing to accept no less than \$90,000.00. Before issuing a Final Decision, the Government suggested mediating the dispute. The Contractor was open to this suggestion, but expressed the desire to have an "authoritative" person mediate the dispute-somebody's views they could accept.

The ADR Specialist and Chief Trial Attorney made an exploratory call to the General Counsel for the Armed Services Board of Contract Appeals (ASBCA) to explore the possibility of having an ASBCA judge act as the mediator, even though no Final Decision had been issued and there was no pending ASBCA Appeal. Ultimately, the Board agreed to have one of its judges mediate the dispute. Prior to the Mediation, the parties were required to submit succinct summaries of the claim and their respective positions, together with a jointly agreed upon set of exhibits for use in the mediation. The Mediation opened with each side being given up to 90 minutes to present their positions. From there, a series of caucuses were held, with the judge expressing his opinion on many of the points made by the parties. The one day mediation ultimately resulted in some compromise, but the settlement obligated the contractor to repay substantially more than had been offered. Lessons learned: The use of ADR in complex disputes can incorporate limited pre-briefing and documentary evidence, as well as an evaluative neutral, upon agreement of the parties, and lead to agreed resolution even when unassisted negotiations have reached a dead end.

The Dept. of the Air Force (Air Force) Federal government procurement contracts may be protested by bidders or other interested parties. The Air Force was facing a bid protest concerning the sole-source award of a \$10 billion contract to United Launch Services for space launch services under the Evolved Expendable Launch Vehicle (EELV) program. The Air Force, the Department of Justice, and Space Exploration Technologies Corp. (Space-X) entered into a mediated settlement agreement to settle the bid protest, and SpaceX dismissed its claims relating to the EELV block buy contract pending in the United States Court of Federal Claims. Not only did the mediation result in withdrawal of the bid protest, but Space-X received the assurance that it would be fairly considered for upcoming EELV launches it was certified as eligible to provide. The resulting path forward improves the competitive landscape and achieves mission assurance for national security space launches. Under the agreement, the Air Force is working collaboratively with SpaceX to complete the certification process in an efficient and expedient manner. The Air Force also has expanded the number of competitive opportunities for launch services under the EELV program while honoring existing contractual obligations. Going forward, the Air Force is

ATTACHMENT 6 – DoD ADR Program – Additional Success Stories

conducting competitions consistent with the emergence of multiple certified providers as per the settlement. Lessons learned: ADR is uniquely suited to result in resolutions benefitting both parties to a dispute, moving contractual obligations forward by agreement while preserving future collaborative relationships.

Department of the Army and Defense Contract Audit Agency (DCAA) A particularly instructive application of ADR involved the Army Logistics Modernization Program (LMP), a 10-year acquisition program to acquire and deploy a new enterprise-wide logistics system for all Army supply-chain transactions. For various reasons, the contract for this program resulted in disputed claims against the Army that eventually totaled \$2.4 Billion. The use of ADR in this case was remarkable, in part, because the case involved the largest amount in controversy in the history of the Armed Services Board of Contract Appeals (ASBCA). The use of ADR was additionally instructive because it employed a process specially tailored by the parties for the particular dispute, and it enabled the parties to efficiently reach a creative resolution of claims and related concerns that could not have been accomplished through litigation.

The ADR history began when the contractor's claims were denied in 2006. Appeals were filed with the ASBCA in 2007, where they languished on the litigation docket for over three years with no trial date set. Meanwhile, the contract was due to expire at the end of 2011, with significant work remaining and no alternative means of transferring the completed system to the Army to maintain in-house or to contract it out to another vendor. The case presented a number of factors beyond the parties' control, that could impact settlement and that needed to be accounted for if resolution was to be successful. In October 2010, the Secretary of the Army directed that ADR be offered to the contractor to resolve all issues and potential issues relating to the dispute. Within a month, the contractor agreed to ADR and co-neutrals were identified from among ASBCA judges with extensive ADR experience. The parties worked out a comprehensive ADR plan, setting forth the agreed process to be followed (a non-binding evaluative mediation procedure, backed up by a mini-trial procedure if mediation was unsuccessful) and a rigorous timeline for following it. DCAA, whose primary function includes the issuance of audit reports and financial advisory services, engaged with Army in the ADR process, providing assistance for mediation preparation and alternative dispute resolution negotiations to the Director, Acquisition Alternative Dispute Resolution (ADR) Program, Department of the Army, and the Office of the General Counsel.

In September 2011, just 10 months after first agreeing to use ADR, the parties were able to settle all issues and move the program forward to a beneficial conclusion, including the terms of a five-year sole-source contract, valued at almost \$1 Billion, including transfer of all intellectual property rights to the Government. This resolution avoided further delay and expense of continuing litigation, including the running of additional interest, which at one point was \$80,000 per day. Of equal significance, the use of ADR afforded a resolution that could not have been achieved through litigation alone, i.e., extending the contract itself to ensure satisfactory completion of all work before the system was turned over to full Army control.

ATTACHMENT 6 – DoD ADR Program – Additional Success Stories

The Army identifies 7 key lessons learned: 1) ADR is a flexible process that can be scheduled early or, in complex cases, after facts have developed sufficiently to enable meaningful negotiations; 2) The ADR process can be tailored to meet the specific needs of the dispute— such that negotiating the ADR Agreement itself is elevated in importance, as it establishes the roadmap for the whole process; 3) Particularly in complex disputes, the merits will matter, and the agreed ADR process must allow sufficient decision-quality information to inform the parties’ negotiating stances; 4) Likewise, successful use of ADR must anticipate and include all known issues that can affect durability of outcome; 5) Particularly in complex contracting cases, it is critical to involve the right people as part of your team (e.g., chief negotiator, contracting officer, program managers, technical experts, legal support, financial management); 6) The neutral (or co-neutrals) should have sufficient process expertise, subject matter knowledge and gravitas to ensure full trust by the parties; 7) Potential solutions should be approached with a creative and open mind in light of the parties’ critical interests – none should be assumed beyond discussion or automatically off the table, because even in complex cases, ADR solutions are flexible, allowing solutions that litigation can’t provide.

Dept. of the Air Force Air Force has estimated that, over the past ten years, acquisition and workplace ADR has saved the Air Force over \$1 Billion. One such success story, involved a large government contract dispute that was resolved through mediation with the assistance of an ASBCA judge acting as a third-party neutral. At stake was a \$147 million claim for the negotiated price to close the Lockheed Martin F-22 production line. The mediation ultimately resulted in a settlement agreement that afforded the Air Force \$40 million savings (plus \$5 million in interest) over the potential judgment. Of equal importance were the “intangible” benefits afforded by resolution through mediation. These included: 1) maintenance of the business-partner relationship with Lockheed Martin, 2) quicker resolution of the dispute rather than waiting for a decision, and 3) preservation of the subcontractor industrial base.

Success Stories in Environmental Dispute Resolution

The Department of the Navy The DON reports an important environmental ADR success story addressed to the contamination of a formerly DON-owned site by a series of Government-Owned, Contractor Operated (GOCO) facility operators. These operators manufactured propellants, rocket motors, and missile components. DON sought reimbursement for a portion of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) cleanup costs, including future costs for ongoing cleanup. The facility itself had been transferred to the local city, but a complex CERCLA cleanup effort continued.

A meeting attended by DON, Department of Justice (DOJ), and counsel representing successors of two of the former operating contractors was held in October 2010. At this meeting the parties agreed to mediate several complex issues, some with scant legal precedent. Using a number of resources, including Udall Foundation - U.S. Institute for Environmental Conflict Resolution (UIECR) Roster of Neutrals, the parties jointly selected a private mediator, and a two-day mediation took place in March 2011. DOJ was responsible for administrating and funding the mediation.

ATTACHMENT 6 – DoD ADR Program – Additional Success Stories

The parties recognized that fifty years of documents and complex issues (including the aforementioned scant legal precedent) created the potential for costly discovery and high-risk litigation. Prior to mediation, the parties had tried repeatedly to settle this case, but were still very far apart. As a result, their expectations going into the mediation were fairly modest; they hoped the mediator could get them “within shouting distance” on some of the most problematic issues.

The actual result of mediation was much more significant. Through the expert assistance of the mediator the parties were able to settle the case, avoiding years of costly discovery and an uncertain outcome. Lessons learned: The case provides a clear example that in the right circumstances and with a skilled mediator, even parties to complex disputes can arrive at a mutually advantageous outcome, and ADR can provide such a result even when just prior to mediation the facts and the parties seemed too far apart to reach resolution.

U.S. Army Corps of Engineers (USACE or the Corps) Any discussion of DoD success stories would be incomplete without reporting examples of the successes of that the Corps sees in its environmental collaboration and environmental conflict resolution efforts. Rather than to select from among numerous specific examples reported over the decade in its Environmental Collaboration and Conflict Resolution (ECCR) Policy Report to OMB-CEQ, the following general benefits identified by the field (not attributed to a specific project) are excerpted from the Corps’ FY2015 ECCR reporting:

- Insights into the decision making process which enable the agency to plan for providing the required information, and involving the right people in the collaboration process.
- Coordination of resources, opened lines of communication assisting initiatives.
- More resilient ecosystem restoration projects.
- Clearing of policy hurdles and meeting planning process requirements.
- Increased trust and enhanced relationships with stakeholders, including a common understanding of USACE and stakeholder authorities, policies, roles and responsibilities.
- Increased community resilience by contributing to proactive planning for reduction of the risk of environmental conflicts and socio-economic consequences.
- Increased awareness of information and resources from various agencies that can assist with collaboration and project implementation, resulting in a reduction in duplication of effort and the ability to combine scarce resources.
- A shift in culture, so that project teams now routinely engage the local sponsor and key stakeholder organizations from the onset of a planning study in a partnership to best manage our water resources.

ADR at the Department of Education (ED)

ADR Dispute Resolution Specialist Contact Information

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ADR Policy

ED first published its ADR policy statement on November 24, 1993 in the *Federal Register* (58 Fed. Reg. 62486-7).

It states --

"It is, and has been, the policy of the Department to support fully the goals and objectives of the ADR Act, as set forth in section 2 of the ADR Act, and to seek to attain those goals and objectives wherever feasible through the Department's dispute resolution procedures ... The Department is committed to striking a proper balance between the formal adjudication of cases where necessary and their resolution through alternative means of dispute resolution where practicable and in the public interest."

ED's ADR policy applies to informal and formal dispute resolution, in the administration of grant programs, enforcement proceedings, contract administration, and other actions of the Department, and the workplace. (Attachment A)

In addition to this ADR policy statement, on September 7, 2011, the Secretary of Education issued ED's first workplace ADR policy statement to encourage each employee to learn more about the ADR process and to use it to help resolve workplace disputes. The workplace ADR policy was last updated on April 29, 2016. (Attachment B)

Distinct ADR Programs at ED

ED has decentralized ADR programs that are coordinated through OGC. ED engages in a range of ADR activities to help resolve disputes, whether a dispute arises between ED and a grantee; a student loan borrower and a lender, guarantee agency, or loan collection agency; or an ED employee and his or her manager. The use of ADR is an integral part of our administrative appeals process and the resolution of civil rights complaints. We also

engage in collaborative rulemaking under certain federal statutes, *e.g.*, in elementary and secondary education and postsecondary education, and disseminate information about ADR activities funded by ED. For example, the Office of Special Education Programs supports CADRE, the National Center on Dispute Resolution in Special Education. CADRE encourages the use of mediation and other collaborative strategies to resolve disagreements about special education and early intervention programs. Beginning with strategies proven to prevent conflict, CADRE promotes a continuum of dispute resolution practices (see CADRE continuum <http://www.directionservice.org/cadre/continuumnava.cfm>) and works to increase the nation's capacity to effectively resolve special education disputes, reducing the use of expensive adversarial processes. CADRE supports state and local educational agencies and early intervention systems, parent centers, families and educators to improve programs and results for children with disabilities. (<http://directionservice.org/cadre/>)

ED has two offices with full-time staff dedicated to carrying out workplace and other ADR activities: the OM, ADR Center and the FSA Ombudsman Group.

The **OM, ADR Center** provides all ED employees and external applicants with a venue to informally resolve a wide-range of work-related matters that include employment disputes, disagreements, or complaints. Work-related disputes can also include Administrative Grievances, Negotiated Grievances, and EEO complaints. The ADR Center also offers employees additional services to help address, prevent, and manage conflict, including conflict coaching, facilitation, training, mediation, and team building.

The email address for the OM, ADR Center is ADRCenter@ed.gov

The Federal Student Aid (FSA) Ombudsman Group, established by the 1998 amendments to the Higher Education Act (HEA), uses informal dispute resolution processes to address complaints about the Title IV financial aid programs. The Ombudsman employs a collaborative approach in working with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in the student aid programs. Ombudsman Group staff conduct fact-finding, review student loan data and records, and facilitate contacts between borrowers and their loan servicers to promote mutually agreeable resolution of issues.

The website for the FSA Ombudsman Group is: <https://studentaid.ed.gov/sa/repay-loans/disputes/prepare/contact-ombudsman>

Trends at ED in Workplace ADR

ED has continued to have a dedicated ADR Center over the years, although it has changed the name of the Center, and has adapted its design and location to best serve the needs of the organization. Throughout these changes ED has retained full-time mediators in its ADR Center because of the steady requests for these services, as well as requests for facilitation and coaching.

In the workplace context, we have seen an increase in the settlement of cases involving performance-based issues through the use of ADR. We have found that it has helped to counsel

employees moving forward to establish objective and measurable metrics for performance ratings, which has helped to prevent future employment ratings issues.

ED has continually evaluated how best to use its ADR Center resources to serve the needs of the organization. For example, the ADR Center has not only addressed workplace issues but it has supported programmatic work of ED and performed mediation services for the Office of Administrative Law Judges in many appeals under the General Education Provisions Act, thus avoiding the need to hire outside mediators for these cases.

Use of ADR beyond ED's dedicated ADR Programs

In addition to the ADR Center and the FSA Office of the Ombudsman, ED utilizes ADR in the resolution of informal grievances, informal and formal EEO complaints; the audit process with the Cooperative Audit Resolution Oversight Initiative (CAROI); and in the promulgation of regulations through negotiated rulemaking.

The **OM, Office of Equal Employment Opportunity Services (OEEOS)** offers employees the option of using ADR, primarily mediation, to help resolve applicable issues during both the informal and formal stages of the EEO process. OEEOS refers the cases to the ADR Center for resolution with the parties through mediation.

The website for OEEOS is <https://connected.ed.gov/om/Pages/Equal-Employment-Opportunity-Services.aspx>

The **Cooperative Audit Resolution Oversight Initiative (CAROI)** is a collaborative tool to improve education programs and student performance at state and local levels through better use of audits, monitoring, and technical assistance. CAROI was developed at ED in the mid 1990's and updated in 2010 by the Association of Government Accountants (AGA) Intergovernmental Partnership workgroup Co-Chaired by an ED official to respond to the oversight challenges presented by the Recovery Act.

CAROI plays a pivotal role in preventing and resolving audit findings and oversight issues. CAROI differs from traditional resolution processes. It focuses on improving communication and on developing a sense of trust among government officials, rather than depending on an impersonal letter-writing process. It helps identify the underlying cause of findings and empowers the people who know programs best to chart a course for program improvement. CAROI relies on the perspectives of government officials from many disciplines, including program officials, financial managers, legal staff, auditors, and other officials who are knowledgeable about a specific program. These officials develop a written agreement that serves as a blueprint for the resolution of compliance issues, and for addressing the underlying causes of the compliance problems. In the CAROI process, the independent auditor will most often be asked to provide advice to management for the audit resolution process.

CAROI is now a requirement for Federal agencies under 2 CFR 200.513 ("Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", otherwise known as the Uniform Guidance, published in December 2013 and generally effective as of December 2014). "Cooperative audit resolution" is defined at 2 CFR 200.25 as "the use of audit follow-up techniques to promote prompt corrective action by improving communication,

fostering collaboration, promoting trust, and developing an understanding between the federal agency and the non-federal entity.”

In April 2016, AGA through the Intergovernmental Partnership published another resource titled, “*Successfully Implementing Cooperative Audit Resolution: A Playbook for Improving Programs and Reducing Improper Payments*”

(https://www.agacgfm.org/AGA/Intergovernmental/images/CAR_OI_Playbook.pdf). The new

Playbook outlines a proactive approach to implementing some of the broad policy reforms contained in the Uniform Guidance. It illustrates how key provisions in the Uniform Guidance can be leveraged to create a continuous feedback loop for program improvement, strengthening internal controls and mitigating improper payments. While CAROI is not required of pass-through entities (grant recipients), according to the 2016 guide/playbook – grantees are encouraged to use it with their subrecipients (and subrecipients may request that it be used).

The Playbook also works in conjunction with the original AGA CAROI Guide published in 2010 (*Guide to Improving Performance and Accountability Through Cooperative Audit Resolution and Oversight*, published by the Association of Government Accountants in 2010

(<https://www.agacgfm.org/getattachment/Intergovernmental/Free-Online-Products-for-Financial-Managers/CAROI052010.pdf.aspx>)

ED has also engaged in **negotiated rulemaking** in the development of regulations under the Higher Education Act and Title I of the Elementary and Secondary Education Act (ESEA). Most recently, ED engaged in negotiated rulemaking to develop regulations on State assessment systems and the supplement not supplant requirement under Title I, Part A of the ESEA, to implement amendments to the ESEA enacted as part of the Every Student Succeeds Act (ESSA). ED established a broad negotiated rulemaking committee comprised of representatives of State administrators and State boards of education; local administrators and local boards of education; tribal leaders; teachers, principals, other school leaders, including charter school leaders; paraprofessionals; the civil rights community, including representatives of students with disabilities, English learners, and other historically underserved students; the business community; and ED. Meeting three times over a month, the committee operated by consensus. During the meetings, the committee reviewed and discussed drafts of proposed regulations on the two topics. At the final meeting, the committee reached consensus on proposed regulations governing State assessment systems, and ED issued the consensus language as a notice of proposed rulemaking (NPRM). Although the committee did not reach consensus on language regarding the supplement not supplant requirement, ED took the input it received from negotiated rulemaking, as well as subsequent stakeholder input, as guidance in making revisions and issued an NPRM on that issue as well. The input from the negotiating committee was extremely helpful in ED’s ability to craft proposed regulations, both for State assessment systems and supplement not supplant, that reflected the viewpoints of a wide range of stakeholders. The resulting proposed regulations, even those for which the committee did not reach consensus, represent a collaborative effort that should ultimately better serve the interests of Title I constituents.

ADR Training

In the workplace area, ED offers classes including Crucial Conversations and strength development inventory (SDI) training. The SDI is a powerful and effective tool for understanding the motives and values that drive behaviors. The SDI builds on individuals' interest in better understanding themselves and others, and that understanding allows them to lead with clarity and empathy, build stronger teams, and more effectively navigate conflict. Although not an ADR course *per se*, ED considers it to be valuable in enhancing dispute resolution skills.

Involvement with Interagency ADR Working Group

ED's participation on the Interagency ADR Working Group has allowed ED to learn about the work of other agencies to advance ADR. The work of the Sections on Workplace and Administrative Enforcement and Regulatory Process, in particular, relate to the ADR programs at ED. The Workplace Section has provided very informative workshops and seminars over the years, and ED has found materials produced by the ADR Working Group to be helpful, *e.g.*, guidelines on confidentiality. The ADR Working Group has also been a useful forum for learning from other agencies, and sharing ideas and information across agencies, *e.g.*, ED staff made a presentation on CAROI, and for promoting cross-agency ADR efforts, *e.g.*, the Sharing Neutrals Program. ED vigorously supports the Sharing Neutrals Program; one of our ADR Center mediators is on the roster of the program and one of our newer mediators has recently mediated six employment dispute matters at other federal agencies.

Additional Contacts

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Federal Register

Friday
November 26, 1993

Part IV

Department of Education

Administrative Dispute Resolution In
Connection With Agency Actions:
Administrative Dispute Resolution Act;
Final Policy Statement; Notice

DEPARTMENT OF EDUCATION**Administrative Dispute Resolution in Connection With Agency Actions: Administrative Dispute Resolution Act; Final Policy Statement****AGENCY:** Department of Education.**ACTION:** Final policy statement.

SUMMARY: The Department of Education (ED) issues a policy statement under section 3(a) of the Administrative Dispute Resolution Act. The statement discusses the policy of the Department with respect to the use of alternative means of dispute resolution with regard to its administrative proceedings and certain other agency actions under Department programs.

EFFECTIVE DATE: This notice takes effect November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Theodore Sky, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4091, FOB-6, Washington, DC 20202. Telephone (202) 401-2603. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Public Law 101-552, the Administrative Dispute Resolution Act (ADR Act) amends chapter 5 of Title 5 of the United States Code, to authorize the use of alternative means of dispute resolution in lieu of adjudication to resolve issues in controversy. These means include settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials and arbitration. Certain legal obstacles to the use of alternative means of dispute resolution are removed. The ADR Act, for example, repeals a longstanding prohibition on arbitration where arbitration can be used consistently with the public interest. Administrative Law Judges are given authority to require attendance at prehearing conferences of parties authorized to negotiate the resolution of issues in controversy. Other provisions are made to ensure that administrative dispute resolution is carried out in a fair, efficient, and effective manner.

The Report of the National Performance Review, "Creating a Government that Works Better and Costs Less," observes that it is often cheaper to resolve disputes through alternative dispute resolution and recommends that agencies "expand their use of alternative dispute resolution techniques."

In enacting the ADR Act, Congress found, among other things, that "administrative proceedings have become increasingly formal, costly, and lengthy"; that "alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;" that "such alternative means can lead to more creative, efficient, and sensible outcomes;" and that "the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public." (ADR Act, Section 2, 5 U.S.C. 571 note). The ADR Act is intended to bring about these advantages for federal agencies through the expanded use of alternative means of dispute resolution.

The Department's efforts to make greater use of alternative means of dispute resolution pre-date the ADR Act. For example, the procedures of the Office of Administrative Law Judges (OALJ), which is vested with authority in the Department to consider a wide range of disputes arising under ED programs, make explicit provision for the mediation of cases. See 20 U.S.C. 1234(h) and 34 CFR 81.13 (1992). Mediation is one of the alternative means of dispute resolution recognized in the ADR Act.

A substantial number of cases under the General Education Provisions Act closed by the OALJ since its inception have been closed by settlement. In a number of these cases, mediation contributed to the resolution. In others, settlement negotiations without mediation played the key role. It is estimated that the Department is resolving approximately 75 percent of its OALJ cases short of full adjudication. The Department has thus been consistently successful in resolving adjudicatory matters through techniques identified in the ADR Act before as well as after the enactment of that legislation.

The Department has supported legislation to facilitate the use of alternative means of dispute resolution. In 1988 the Department proposed, and Congress enacted, legislation that permits the Department to compromise cases before the OALJ where the difference between the original claim and the settlement amount is less than \$200,000. 20 U.S.C. 1234a(j). In these cases, this measure encourages greater use of alternative means of dispute resolution by simplifying the approval procedures connected with it.

The ADR Act specifically requires each agency to appoint an administrative dispute resolution specialist to assist in implementation of the ADR Act and to adopt a policy regarding the use of alternative means of dispute resolution (Sections 3 (a) and (b)). The Department already has accomplished the first step. This document marks the achievement of the second step. It applies to administrative dispute resolution with respect to formal and informal administrative adjudication, enforcement proceedings, contract administration, and other actions of the Department. To the extent relevant, in developing this policy statement, the Department has examined the matters specified in section (a)(2) of the Act.

On November 27, 1992, the Secretary published in the *Federal Register* a notice of proposed policy statement under the ADR Act. (57 FR 56424).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed policy statement, two parties submitted letters of comment. An analysis of the comments and of the changes in the policy statement since publication of the notice follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: One commenter commended the Department for its dedication to the use of the ADR and recognized the integrity of the Department's enforcement and regulatory responsibilities. The commenter encouraged the Department to consider the use of ADR on a small, measured scale or pilot basis in some of the more controversial issues, such as early complaints resolution. The commenter also encouraged the Department to consider using ADR in employee-related disputes, such as EEO matters and grievances, as well as procurement and contracts.

Discussion: The Secretary agrees with the commenter that ADR should be used in attempting to resolve controversial issues involving the administration of grant programs, as well as in resolving employee-related disputes and procurement. The Department is studying the increased use of ADR techniques in grievance proceedings. To the extent practicable and appropriate, the Department will seek to obtain early resolution in grant-related audit cases after an appeal has been filed but before administrative proceedings have begun.

Changes: The policy statement has been revised to acknowledge the

potential use of ADR in employee-related disputes and procurement matters.

Comment: One commenter urged that the policy statement provide greater emphasis on arbitration, rather than mediation, and that the Department design a process for deciding before a dispute arises which methods of dispute resolution will be used. The commenter also expressed concern regarding the application of sufficient resources to implement the policy.

Discussion: Mediation, rather than arbitration, has been the means of alternative dispute resolution used most frequently in the Department's audit appeal procedures. As indicated above, mediation is the ADR method particularly authorized by Congress in part E of the General Education Provisions Act relating to enforcement of grant requirements in education programs. For this reason, particular focus was placed on that method. However, the Department will consider the use of other methods if appropriate. The selection of the appropriate method for dispute resolution when a dispute arises generally will be made by the responsible Department employee. At this stage in the administration of the ADR Act, the development of a fixed schedule of ADR methods to be applied to particular types of disputes is neither appropriate nor useful. The Department will, however, continue to evaluate this suggestion as it gains experience in administering the policy statement.

Changes: None.

Policy of the Department

It is, and has been, the policy of the Department to support fully the goals and objectives of the ADR Act, as set forth in section 2 of the ADR Act, and to seek to attain those goals and objectives wherever feasible through the Department's dispute resolution procedures. The Department's implementation of the ADR Act will be carried out in a manner consistent with E.O. 12778, Civil Justice Reform.

The Department is fully committed to implementing the ADR Act through steps already taken, steps listed below, and other actions to be pursued in accordance with the principles and goals set out in this policy statement. At the same time, the Department recognizes that some or all of the alternative dispute resolution techniques may be inappropriate where formal adjudication is necessary to achieve accountability or to protect the

fiscal interests of the United States from illegal or wasteful practices or expenditures.

For example, the Department believes that use of alternative dispute resolution techniques may not be successful, and may serve to delay rather than expedite resolution of disputes, where the issue in controversy pertains to the initial or continued eligibility of an entity to participate in a program administered by the Department, such as those arising under the Higher Education Act of 1965, as amended, or title VI of the Civil Rights Act of 1964. The degree to which an institution has already been provided with an opportunity to propose informal resolution of a claim or a finding of violation is another factor that can affect the availability of alternative means of dispute resolution techniques during an administrative hearing. However, in these areas, the Department will consider the use of alternative means of dispute resolution where practicable and consistent with the above-described considerations.

The Department is committed to striking a proper balance between the formal adjudication of cases where necessary and their resolution through alternative means of dispute resolution where practicable and in the public interest.

This policy is consistent with and in furtherance of the recommendation of the Report of the National Performance Review quoted above.

Further Steps To Be Taken

In furtherance of the policies of the ADR Act, the Department plans to take the following additional steps:

(1) Each departmental office will be asked to assign an ADR liaison officer to consider administrative dispute resolution issues within that office and to encourage the expanded use of all appropriate alternative means of dispute resolution in resolving disputes arising in administrative proceedings involving that office. These ADR liaison officers will serve as points of contact for matters pertaining to alternative means of dispute resolution within the Department and will collectively study procedural issues pertaining to alternative dispute resolution that affect the Department generally, including the proper stage of a dispute at which to invoke alternative means of dispute resolution and the appropriate distribution of mediation costs among the parties to a dispute. The Department will provide the liaison officers with

appropriate training regarding administrative dispute resolution and the ADR Act.

(2) The Department will continue to design and implement procedures to ensure that all parties are aware of existing opportunities for alternative means of dispute resolution for cases before the OALJ. It will be the practice of the Department's Office of the General Counsel to suggest mediation in appropriate cases where mediation holds promise for early resolution without undue delay or impairment of the public interest.

(3) The Department will work to continue to extend the availability of mediation to other administrative proceedings and functions not presently governed by Part E of the General Education Provisions Act or part 81 of title 34 of the Code of Federal Regulations.

(4) The Department will seek to continue and expand the use of all appropriate alternative means of dispute resolution in employee-related disputes and procurement matters, as well as in connection with audit resolution processes. Appropriate staff training in those areas will be pursued.

(5) The Department will conduct a study of its standard contract and other terms to determine if they need amendment to comply with the ADR Act.

(6) The Department will develop and maintain a system for keeping statistics related to alternative dispute resolution in its administrative proceedings.

(7) The Department will continue to coordinate with the Administrative Conference of the United States on alternative means of dispute resolution matters and to avail itself of training provided by the Conference.

(8) The Department will continue to determine what other agency actions will lend themselves to implementation of the ADR Act and to study how it may encourage the appropriate use of alternative dispute resolution techniques by educational agencies, institutions, and organizations that it serves to the end of achieving resolution of education related disputes without the need for unnecessary litigation.

Authority: Pub. L. 101-552, Section 3 (1990).

Dated: October 22, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93-28930 Filed 11-24-93; 8:45 am]

BILLING CODE 4000-01-P



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

April 29, 2016

MEMORANDUM TO ALL DEPARTMENT EMPLOYEES

SUBJECT: Policy Statement on Alternative Dispute Resolution

The U.S. Department of Education (ED) is committed to maintaining a positive work environment that promotes productivity and individual growth by working to resolve workplace-related issues at the lowest possible level. The Office of Management, Alternative Dispute Resolution (ADR) Center provides a forum to informally resolve employment disputes before the disputes advance to a formal complaint stage. The ADR process is used to resolve a wide range of workplace disputes, including Equal Employment Opportunity and grievance-related matters, in a cooperative, cost-effective, and timely manner. All employees are strongly encouraged to cooperate and engage in the ADR process.

The use of ADR methods encourages participants to cooperate and engage in open and honest dialogue, focus on common interests, and use creative problem-solving methods to arrive at their own resolutions. Most importantly, use of ADR methods can help to foster a collaborative organizational culture in which all employees are treated with dignity and respect in support of reaching their full potential and maximizing their contributions to ED's mission.

I encourage each of you to learn more about the alternative dispute resolution process. ED offers an online course, "Leading Beyond Conflict: Prevention and Solutions," in the Talent Management System, which is available to all employees to learn about the ADR process. I encourage each of you to take the training and use the ADR process to help resolve workplace disputes that may arise.

For additional information on the alternative dispute resolution process, please contact the ADR Center by telephone at (202) 245-7520, by e-mail at ADR_center@ed.gov or visit their Web site at <https://connected.ed.gov/om/Pages/Alternative-Dispute-Resolution-Center.aspx>.

/s/

John B. King, Jr.

DHHS 2016 REPORT ON ADR IN THE FEDERAL GOVERNMENT
6/30/2016

ADR Dispute Resolution Specialist Contact Information

Provide your name, title(s) and contact information:

Name: Neil H. Kaufman
Title(s): Director, ADR Division
Department/Agency: Department of Health and Human Services
Email Address: Neil.Kaufman@hhs.gov
Phone number: 202 565-0118
Mailing Address:

ADR Policy

Does your Department or Agency have a formal written ADR policy? Yes No (check one). Has the written ADR policy been amended or modified during the past ten fiscal years (FY06-FY15)? If so, please describe how. No

Please review <http://www.adr.gov/fai.html> to assess whether a “Policy” link is present for your Department or Agency. If a link is either incorrect or not present on the site, provide us with a link to any electronic copies of your agency’s current ADR policy. If the policy is not available via a link on the internet, please send an electronic copy of the policy with your responses. Fed Regist. 1992 Oct 27;57(208):48616-9. (Electronic copy attached to cover letter.)

ADR Programs

1. List each distinct ADR program at your Department or Agency and for each ADR program:
Provide a description of the program (in 300 words or fewer). Please note:
 - i. *Whether the program is internal-facing or external-facing;*
 - ii. *The subject-matter of the disputes covered by the program;*
 - iii. *The types of ADR processes/techniques used by the program; and*
 - iv. *The source of neutrals.*

Departmental Appeals Board (DAB), Alternative Dispute Resolution (ADR) Division.

The ADR Division (Division) is part of the DAB, a division of the Office of the Secretary, Department of Health and Human Services. The mission of the DAB is to provide dispute resolution services in a wide variety of cases involving component agencies of DHHS. The DAB encourages the use of mediation and other forms of ADR. The Chair of the DAB is the Department’s Dispute Resolution Specialist (under the Alternative Dispute Resolution Act (ADR Act)). The ADR Division provides ADR services in DAB cases and assists the Chair in carrying out her responsibilities under the ADR Act. The ADR Division does both external and internal

mediations. ADR services include mediation, facilitation, large group conflict intervention, conflict management coaching, training, policy development and guidance, program design, and negotiated rulemaking. Additionally, the Division coordinates the Interagency Federal Sharing Neutrals Program, a collaboration of over 40 federal agencies that provides collateral duty mediators for federal sector EEO and workplace disputes.

2. Does the program maintain a website that is accessible by the public? If yes, provide the URL for the site.

Yes, at www.hhs.gov/dab and follow the links to the ADR Division.

3. *To the extent possible, please describe any trends that you (or your colleagues) have observed in the program over the past ten fiscal years (FY06-FY15) and, to the extent possible, please discuss your views about the meaning of any trends regarding the following issues:*
 - i. *The amount of funding for the program, and if it has changed, whether there has been any impact on the program, and the nature of that impact.*
 - ii. *The number of full time employees (FTE's) devoted to the program, and, if the number has changed, whether there has been any impact, and the nature of that impact;*
 - iii. *ADR usage (number of cases or disputes, subject-matter, early or late);*
 - iv. *Tangible and/or intangible benefits realized by using ADR; and*
 - v. *Types of ADR processes/ techniques used.*

Over the past ten years, mediation has become established as the ADR technique of choice. EEO and workplace mediations have increased and program mediations have decreased slightly. Conflict coaching has emerged as a new intervention technique; requests are infrequent, but increasing as parties learn more about it. Requests for Sharing Neutrals (SN) mediators have increased and leveled off at about 300 requests per year. The average size of our "Mediation Skills" and "Conflict Management in the Workplace" courses have decreased by about 30% per class, but demand is strong for our new "Negotiation" and "Conflict Coaching" classes.

The Division does not have its own dedicated budget, but has approximately three full-time FTE (a Director and two ADR attorneys) and one law-school intern. This staffing level has remained relatively constant over the last ten years. As the DAB's training and travel budgets have been slashed, however, ADR has had to compensate by using free training over the internet and by using video teleconferencing or phone mediation instead of in person mediations which would require travel.

Over the last ten years, the ADR Division consistently logged about 80 cases per year and closes an equal number. We estimate that about 60% of cases involve EEO and workplace issues and about 40% involve program related issues (e.g., sanctions against health care providers and nursing homes, grants disputes with states and universities). The settlement rate in cases that go to mediation is consistently between 50% and 60%. Evaluations indicate overwhelming satisfaction with mediation, even when cases do not settle. Using internal and SN mediators saves the Department about \$1,500 per day of mediation. When EEO cases settle at the informal stage HHS also saves the cost of an investigation (about \$10,000). The indirect cost savings associated with resources otherwise devoted to adjudication and with improved party relationships have not been quantified.

4. Describe steps your Department or Agency has taken to build program capacity in this ADR program during the past ten fiscal years (FY06-FY15). Please discuss whether the steps have been successful, and if not, please discuss the barriers to success.

Our program has taken steps to build program capacity by using free mediators from the Sharing Neutrals program, training agency employees to become Sharing Neutrals mediators, and by training agency employees to handle conflict more effectively for themselves.

5. Are there any plans to expand this program in the future?

Funding constraint make program expansion unlikely.

6. Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

Workplace

Contracts and Procurement

Administrative Enforcement and Regulatory Process

Litigation

Environmental

7. Please discuss one or more success stories from the past **ten calendar years** that illustrate the types of issues your ADR program resolves and/or the inherent benefits of ADR even when the disputed issues are not fully resolved. Consider the following, but limit the description to 300 words, if possible.

- The subject-matter or type of dispute;
- The type of ADR process utilized;
- How the ADR was funded;
- How the ADR process was critical in resolving the conflict;
- Whether any innovative approaches to ADR were utilized
- Key beneficial outcomes because of ADR use;
- Key lessons learned

For the past few years the ADR has used video-teleconferencing (VTC) technology to mediate EEO cases and other workplace disputes for the Indian Health Service (IHS). IHS performs its mission through area offices located throughout the U.S., often on Indian Reservations in remote locations like Aberdeen, South Dakota or Bimijji, Minnesota. Travel to these locations is costly in both travel time and dollars. DAB developed a pilot program with IHS to mediate cases in these locations by VTC instead of in-person. The pilot has been an enormous success and is now a well-established IHS program. While everyone involved was initially skeptical that VTC mediation would not be as effective as in-person conferences, party satisfaction has been strong. Additionally, the Department has saved considerable employee travel time and travel dollars.

Department or Agency ADR use beyond the ADR Programs discussed above

Does your Department or Agency apply ADR processes or techniques to facilitate resolutions of conflicts or disputes independent of the ADR programs discussed above? If so, please describe the type of ADR processes or techniques utilized, how they are utilized, the reasons why the processes or techniques are beneficial, and how (if at all) the processes or techniques have improved the Department or Agency's ability to carry out its mission.

Agencies of HHS use negotiated rulemaking, and DAB provides training and guidance to them upon request. DAB neutrals also have served as conveners and facilitators for the process.

ADR Training

Does your Department or Agency offer ADR awareness/promotion trainings or ADR skills (techniques) training to agency employees, federal employees, or to the public? If so, please provide information about each of the different types of trainings your Department or Agency offers.

Yes. We provide the following courses: 1) Conflict Management in the Workplace – 1-day training in communication and interest-based problem solving skills to avoid and resolve workplace conflict; 2) Basic Mediation Skills – 3-day training in process of, and skills for, conducting a mediation conference; 3) Advanced Mediation Skills – 2.5-day training in the theory and practice of transformative mediation techniques and how to integrate them with basic mediation practice; 4) Negotiation and Dealing with Difficult People – 1-day skills training in basic negotiation concepts, with emphasis on negotiating with difficult people and applying a practical principled technique for effective outcomes.

Interagency ADR Working Group

How has your involvement with the Interagency ADR Working Group benefitted your ADR programs? Information and resources

Given the trends you have reported above, how can the Interagency ADR Working Group better facilitate, encourage, and provide coordination for the 1) development of ADR programs; 2) training of agency personnel; 3) the development of procedures to permit agencies to obtain the services of neutrals on an expedited basis; or 4) recordkeeping to ascertain the benefits of ADR?

Sponsor a study of the benefits of ADR across federal agencies.

Additional Contacts

Please provide the names and contact information for no more than four people who can provide follow-up information to help clarify any questions that the drafters of this report may have.

NOTE: these names will not be released in the Report to the President:

Neil H. Kaufman, Director, Alternative Dispute Resolution Division, Departmental Appeals Board, Office of the Secretary, U.S. Department of Health & Human Services, 330 Independence Avenue, SW Room G-644, Mail Stop 6127, Washington, DC 20201

Direct: 202.565.0118 | Main: 202.565.0200 | Fax: 202.565.0223 / Blackberry: 202.459.7181
Email: Neil.Kaufman@hhs.gov Website: www.hhs.gov/dab

Provide us with any additional comments, thoughts, or insights that you believe would further promote the use of ADR in the federal government in the space below:

A. HHS Equal Employment Opportunity Compliance and Operations Division (EEOCO)

The HHS Equal Employment Opportunity Compliance and Operations Division (EEOCO) handles internal and external (HHS non-federal applicants) employment discrimination complaints. EEOCO is a neutral entity and works diligently to reduce workplace conflict and encourages resolution at the earliest possible stage. In that regard, we offer Alternative Dispute Resolution (ADR) in both the informal and formal stages of the complaint process. Our goal is to facilitate the parties involved in engaging in meaningful discussions which can lead to early resolution. EEOCO handles all types of discrimination disputes including sex (male, female, LGBT, sexual

orientation, gender identity, pregnancy), color, Equal Pay Act, disability, religion, genetics, age, race, and national origin. To reduce cost to the Agency, we arrange for ADR through HHS' Departmental Appeals Board (DAB) and OPM's Federal Executive Board (FEB). When neither of these resources are available, we use contract mediators through Crossroads Mediations. If a resolution is not reached, then the customer will have the opportunity to go through the formal stage of the complaint process.

B. The Provider Reimbursement Review Board (PRRB) at HHS/CMS

The Provider Reimbursement Review Board (PRRB) at HHS/CMS adjudicates reimbursement disputes (primarily with respect to the Medicare cost report) between Medicare institutional providers and Medicare Administrative Contractors. Since 1998, the PRRB has provided parties the opportunity to participate in a voluntary mediation program. The program is a flexible process designed to facilitate voluntary resolution. Mediation sessions are conducted by neutral staff attorneys and accountants who support the PRRB members. Sessions are confidential, and staffers do not report to the PRRB members regarding the communications that occurred at mediation. Mediators help the parties articulate their positions and understand those of their opponent but they neither render a decision nor dictate a settlement. A large majority of cases that are mediated resolve and, thus, do not proceed to a full hearing before the PRRB. The program has become fairly inactive in recent years as the issues under appeal before the Board have largely transformed from factual and documentation disputes towards more legal interpretation issues (which are not typically mediated). Nevertheless, the program remains fully available to the parties upon request. More information can be obtained by accessing Rule 43 of the Provider Reimbursement Review Board instructions (<https://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions.html>).

C. Centers for Medicare & Medicaid Services

The Centers for Medicare & Medicaid Services, CMS, is part of the Department of Health and Human Services (HHS). CMS manages the Medicare and Medicaid programs along with the Children's Health Insurance Program and the Health Insurance Marketplace. The mission of CMS is to strengthen and modernize the nation's health care system while providing quality care at lower costs. The agency provides programmatic oversight of federal medical care quality and develops and implements policies for recipients of such services. EEO ADR is an internal-facing program at the Centers for Medicare & Medicaid Services (CMS). CMS contracts with Federal Mediation and Conciliation Service for mediators and occasionally uses the HHS Sharing Neutrals Program. CMS ADR Policy is incorporated into the CMS EEO Policy.

The agency uses ADR in the EEO complaint process pursuant to Title 29 Code of Federal Regulations (C.F.R.) Part 1614. ADR, primarily facilitation, is used in workplace conflicts associated with the EEO complaint process. The agency has determined that facilitation has reduced the number of formal EEO complaints lodged and improved communication and the general quality of life in the workplace.

Over the last ten years, Counselees and managers have become more knowledgeable about and interested in EEO ADR. The number of counselees who have expressed interest in EEO ADR has

increased from approximately 50% to 75%. Most managers are interested and willing to participate in EEO ADR now, whereas even a few years ago, managers were reluctant to participate. CMS has one dedicated ADR Coordinator and pulls additional resources as needed. The amount of funding allocated to EEO ADR has also increased over the past ten years to accommodate the increased interest. In 2014, CMS modified its ADR technique to incorporate facilitation in addition to mediation. This resulted in the trend of improved communication and trust-building rather than an emphasis on settlement for tangible terms. The agency has determined that facilitation has reduced the number of formal EEO complaints lodged and improved communication and the general quality of life in the workplace. For example, in Fiscal Year 2015, 45% of the EEO cases for which ADR was conducted resulted in resolution of the complaint. For those matters, the EEO ADR program also resulted in improved communication, identification of corrective actions, and a reduction in the incidence of future disputes.

In recent years, CMS has, in addition to using the HHS Sharing Neutrals Program, contracted with Federal Mediation and Conciliation Service to ensure the availability of mediators nationwide. CMS has also developed a process for assessing whether cases are appropriate for ADR in order to maximize resources. Moreover, CMS has conducted regular training for all staff and managers concerning ADR techniques in order to demystify the process. Finally, CMS has incorporated the use of facilitation in addition to mediation as an EEO ADR technique in order to address cases where communication challenges are at the heart of the dispute. All of these changes have resulted in positive perceptions and improved resolution options for cases that go through EEO ADR. For more information please visit: <https://www.cms.gov/About-CMS/Agency-Information/OEOCRInfo/index.html>.

D. Office of Medicare Hearings and Appeals (OMHA)

Settlement Conference Facilitation (SCF) is an external-facing pilot designed to bring Medicare providers/suppliers and the Centers for Medicare & Medicaid Services (CMS) together to discuss the potential of a mutually agreeable resolution for claims appealed to the Administrative Law Judge (ALJ) hearing level of the Medicare claim appeals process. If an agreement is reached, a provider/supplier receives payment from CMS for billed claims subject to the settlement agreement. Additionally, the provider/supplier agrees to withdraw its appealed claims from the Office of Medicare Hearings and Appeals (OMHA) docket.

Facilitators use mediation principles to assist the appellant and CMS in working toward a mutually agreeable resolution. The facilitators are neutrals from OMHA. OMHA is a staff division of the Office of the Secretary of the Department of Health and Human Services (HHS). OMHA is functionally and organizationally separate from CMS and the Departmental Appeals Board.

SCF began in June 2014. Since its inception, OMHA has utilized existing staff resources to run the program. The 18 FTEs who work within SCF are not devoted solely to SCF and must work on other assignments related to OMHA's mission of quality Medicare claims adjudication.

To date, SCF has produced 20 settlement agreements which have removed 8,068 appeals from OMHA's docket. The number of appeals removed represents on an average year, the dispositional output of more than 8 Administrative Law Judge teams.

OMHA neutrals utilize facilitative problem-solving and interest-based problem solving approaches in settlement conferences. They do not issue findings of fact or analyze aspects of the law. They do assist parties in identifying the strengths or weaknesses of their positions in order to facilitate an agreement where parties "meet in the middle" to resolve pending appeals.

In response to its growing workload of medicare claims appeals, OMHA began SCF in June 2014, and in less than two full fiscal years, it has expanded twice to open the program to more providers/suppliers. In October 2015, OMHA expanded SCF to incorporate more pending Medicare Part B requests for hearing filed at OMHA. Additionally, in February 2016, OMHA expanded SCF to include certain Medicare Part A requests for hearing.

In order to process the increase in demand for settlement conferences as a result of these expansions, OMHA designated an additional 10 senior attorneys as SCF facilitators in October 2015. The 10 new facilitators received mediation training at the HHS Departmental Appeals Board. SCF specific training was also provided to these new facilitators at OMHA's Headquarters in Arlington, Virginia.

In May 2016, OMHA successfully facilitated the resolution of over 3,600 appeals in a single settlement conference. The parties to the conference were CMS and a large Medicare supplier.

By utilizing interest-based mediation techniques, OMHA was able to move both parties closer to an agreement at key points of the settlement conference. Without an agreement, each of these appeals would require adjudication from individual Administrative Law Judges. The appeals resolved through this settlement conference represent the dispositional output of nearly 4 Administrative Law Judge teams working solely on these appeals for an entire year.

Due to the strength of OMHA's SCF program and its facilitators, the annual work of at least 20 individuals (i.e., 4 Administrative Law Judge teams) was completed in one day. We will continue to monitor the SCF program in hopes of further success stories for larger numbers of appeals. For more information, please visit OMHA's website:

http://www.hhs.gov/omha/OMHA%20Settlement%20Conference%20Facilitation/settlement_conference_facilitation.html

E. Office of the Ombudsman/Center for Cooperative Resolution:

The Office of the Ombudsman is the NIH's preeminent resource for managing conflict, fostering organizational collaboration and effective communication, and providing organization-wide systemic feedback. The Office of the Ombudsman is internal-facing and serves all NIH employees. It leads

NIH's efforts to facilitate the effective resolution and prevention of highly complex and often high-level workplace issues and conflicts. NIH uses ADR processes (negotiation, facilitated conversations, referrals to the Ombudsman, and peer panel reviews) in certain scientific disputes (e.g., authorship and Board of Scientific Counselors reviews) that occur in the Intramural Research Program. In EEO complaints in which the Aggrieved Party elects ADR, the Office of the Ombudsman serves as the mediator. The areas of the Office of the Ombudsman's work include intellectual property, authorship, scientific research integrity, supervisory-employee, and employee-employee relationship issues. The Office of the Ombudsman offers services to approximately 23,000 individuals located on the main campus, off-site buildings, and locations in other states. Staff who access the Office of the Ombudsman's services are in a wide range of occupations and grade levels including senior leadership, scientific and clinical research, administrative and support, interns, fellows, and other training contingencies, and a large wage and contract workforce. The Office of the Ombudsman provides consultations, policy and resource information, referrals, coaching, mediation/facilitated conversations, group processes, customized training, and provides systemic feedback to agency leadership. Services are provided by full-time ombudsmen employed by NIH. The Office follows the Standards of Practice of the International Ombudsman Association.

NIH supports the Office of the Ombudsman in building program capacity by providing financial, structural, and organizational support. The Office of the Ombudsman is able to assure confidentiality, to work independently from other components of the agency, and to assure that NIH acts in an impartial manner. Agency leadership views the Office of the Ombudsman as a credible and constructive resource for all employees. The agency is making a commitment to expand an alternative grievance program called the Peer Resolution Process throughout the agency in FY 2016 and 2017. This program uses a two-stage resolution process consisting of a mediation between employee and supervisor (Stage 1) and a Peer Panel of 3 employees and 2 supervisors who determine whether the supervisory action was proper (Stage 2). The program was launched through the Office of the Ombudsman, and we anticipate the agency will support a total of 2 new FTEs and associated budget in FY 2017 and beyond.

Some of the trends observed over this period of time include the following: a) Increasing awareness of the Office of the Ombudsman and utilization of our services by all employees, and particularly by senior management; b) Increasing receptivity to strategies to engage in and resolve conflict, including coaching, holding their own conversations, and seeking facilitated conversations; c) Proactive use of the Ombudsman by seeking guidance on conflicts at an early stage; and d) Greater demand for customized training and various forms of group process work. (These trends are supported by case and anecdotal data from 2009-2015.) Program funding has increased; FTEs have increased from 6 to 8, and ADR usage (number of cases) has increased by approximately 25%. Research would need to confirm the benefits of using ADR, yet appear to include increased productivity, better relationships, increased collaboration, greater conflict resolution capacity, and higher rates of employee retention. Types of ADR processes include inquiry, coaching, facilitated conversations (mediation), shuttle negotiations, peer panels, group facilitation and other group processes. The Office of the Ombudsman offers customized trainings to NIH employees upon request. The NIH Training Center offers a range of conflict management and communications skills trainings to employees on an ongoing basis. The Office of Equity, Diversity and Inclusion offers ADR training as a component of its EEO training for supervisors and employees.

Success Stories: *Scientific Collaboration, Discrimination and Identity.*

In this matter, an ombudsman worked with a fellow on layered concerns involving cultural diversity, status, race, gender and identity. She was deeply troubled about her lab situation, and described situations in which she perceived she was treated less favorably than other fellows, and described how she was told to forego opportunities for meaningful projects. Although a United States citizen, her family emigrated shortly before she was born, and she considered herself African. Her situation deteriorated so that she stopped coming to the lab entirely, and instead worked from another location within NIH. Her fellowship was now coming to an end, and she consulted with the ombudsman about how to finish a collaboration she led which included her PI, an investigator from another US research institution, and an investigator in Africa. In these discussions, she explored with the ombudsman her work, struggles to be recognized by her PI, disengagement from the lab, and its impact on her situation. She later saw her avoidance as tied to a pattern in her family, how it hurt her standing, and how she might choose to respond in the future. She was not interested in talking with her PI, yet was motivated to consider how she might finish out the collaboration successfully. After she explored possibilities with the ombudsman, she talked with the PI in the US research institution to seek support to continue the collaboration. She then contacted the PI in Africa and negotiated her ongoing role with him. Finally, she asked her PI to continue with NIH as a special volunteer and work from the lab of the other US collaborator. This arrangement was approved, the project completed, a paper published, and the fellow later secured a position as a scientist with a local research institution. Before she left NIH, this fellow was very interested in voicing her experience in the lab to an NIH senior leader. The ombudsman contacted a senior scientist involved in promoting scientific workforce diversity, and they were able to meet. The fellow and leader separately described this as a constructive and impactful experience.

The type of ADR used here was coaching, which was critical in resolving the conflict. The ability for the visitor to speak with an NIH senior leader to convey her experiences allowed her to tell her story to someone who could acknowledge her experience, potentially to help the organization learn from it, and to put it behind her.

For more information, please visit: www.ombudsman.nih.gov

F. Food Drug Administration (FDA) at HHS

Regarding FDA's ADR Programs, the focal point of the agency's dispute resolution efforts are the FDA ombudsman programs. FDA's robust external ombudsman programs are at both the level of the Commissioner's Office and also at designated ombudsmen within specific FDA product centers (drugs, devices, biologics, tobacco, and veterinary medicine). Companies and individuals can turn to the Ombudsman programs for dispute resolution, mediation, breaking up "log jams" with the agency, guidance and assistance in solving problems with the agency or with FDA-regulated products, and general regulatory questions and concerns. Among the types of cases we handle include disputes/complaints from the regulated industry regarding agency product center actions, disputes/complaints from the regulated industry regarding actions of FDA field offices, complaints from small businesses, including those referred to us by the U.S. Small Business Administration, and requests for information and assistance from the regulated industry regarding agency policy and regulations and on how to work with the agency. FDA also responds to certain

complaints received from consumers about FDA regulated products or actions by FDA product centers or field offices. Disputes and complaints are addressed via methods that include consultation, dispute resolution and mediation. Typical actions include determining relevant issues and obtaining complete and accurate information about a case, reviewing and acting on cases in a timely manner, initiating meetings with affected parties, recommending more transparent reasons for agency actions/decisions when warranted, and recommending alternative courses of action.

Success Stories: Helping a Food Importer Avert Economic Disaster

A very recent example of a success story involved our office being able to come to the aid of a small business which we believed helped it to stay in business. The case involved a large food shipment being imported into the United States which was detained by FDA. The company was facing having to shut down if their shipment was not quickly released. Counsel for the food importer contacted our office for assistance because they believed the importer's shipment was being unlawfully detained by FDA and should be released immediately. This was a complicated case as it involved the importer, their counsel, one FDA Field Office, and two different FDA product centers.

FDA used informal mediation and dispute resolution methods to respond to this case. FDA worked diligently with counsel for the firm to identify the scope of the problem and to determine how FDA could help their client. FDA then went through a step-by-step process with each of the FDA offices involved to address the issues of what was FDA's regulatory purview in this case and how the different parts of FDA were following up. Several meetings were initiated with appropriate FDA officials to ensure that the company's concerns were being addressed. With each success in moving the case toward resolution, FDA faced new challenges as new parties had to be brought into the agency to address new issues that this review was raising. In the end, FDA's efforts in this case were successful and the shipment was released.

Investigation of FDA's Handling of a Case Involving a Question of the Safety of Pet Food and the Death of a Beloved Dog

In late September a few years ago, the FDA Office of the Ombudsman took on a case referred by the Immediate Office of the FDA Commissioner. The issue involved a couple from a state in the Northeast who were very unhappy with FDA's investigation into the death of their 10-year old dog, which they believed was sickened and died from contaminated pet food they had feed to them. The complainants believed that FDA was protecting the manufacturer of the pet food and was covering up the matter. These were very serious allegations that required immediate action by the FDA.

Because the complainants were so upset with how FDA handled this case, officials from the FDA made the extraordinary decision to travel from FDA Headquarters in the Washington, DC area to their state in the Northeast to meet with them in their home and to speak with them personally

about what they thought had been mishandled in FDA's investigation into their pet's death. FDA officials met with the couple and spent over two hours with them. Afterwards, the FDA did a comprehensive review of all the agency actions in the case, including the actions of an FDA District Office, an FDA Regional Laboratory, and the FDA Center for Veterinary Medicine.

Over the next two weeks FDA reviewed the case culminating in a 2 1/2 page report to the complainants. The report candidly identified errors made by the agency in the handling of this case but concluded that the errors did not affect or change the outcome of the agency's handling and disposition of the original consumer complaint that was filed about the pet's death. The complainants, while still unhappy about the errors made by FDA, did respect the process used by FDA officials in the investigation and the impartial approach taken by the office in both the investigation and the report.

The Office of the Ombudsman was able to thoroughly review this matter and provide the complainants with some closure on how FDA handled this case and the mistakes that were made. As important was the fact that senior FDA officials who received the report on this case were quick to acknowledge that mistakes were made and that they would take the necessary steps to correct the problems identified in the report. FDA's website can be found here: <http://www.fda.gov/AboutFDA/CentersOffices/OC/OfficeofScientificandMedicalPrograms/ucm197508.htm>. Separate from FDA's Ombudsman programs is a group that is internal and handles work place issues. The FDA manager in charge of that program is Albert Conerly. He can be reached at (301) 795-5085 or at albert.conerly@fda.hhs.gov.

U.S. Customs & Border Protection (CBP) 2016 Report on Alternative Dispute Resolution

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U.S. Customs and Border Protection's (CBP) Office of Trade Relations (OTR) Director serves as the Regulatory Fairness Representative (Trade Ombudsman) for the agency under the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. The Trade Ombudsman serves as the liaison between the international trade community and senior CBP Executives to promote compliance with SBREFA. The program is monitored by the Small Business Administration (SBA) National Ombudsman and its activities are evaluated for inclusion in an annual report to Congress. The OTR Regulatory Fairness Program consists of two areas: Outreach and Dispute Resolution.

Outreach

The program provides outreach to the small business international trade community through roundtables, webinars, the CBP website and its partnership with the SBA. It places emphasis on pre-emptive measures that educates small businesses on the requirements for importing and exporting. Thus enabling the agency to learn about concerns of the small business community, while at the same time improving the trade's knowledge of CBP policies.

Dispute Resolution

In response to the establishment of a policy to provide for the reduction or waiver of civil penalties, CBP published in the Federal Register Notice, guidelines regarding violations of 19 U.S.C. 1592 by small entities. The notice provides information on the circumstances and procedures for a small business to follow in order to have a civil penalty waived and provide means to comment on the activities conducted by CBP personnel. OTR reviews and responds to comments filed by small businesses with the SBA National Ombudsman.

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Federal Emergency Management Agency (FEMA) 2016 Report on Alternative Dispute Resolution

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ADR Policy

The Department of Justice (DOJ) policy on the use of ADR, and case identification criteria for ADR can be viewed at <https://www.fema.gov/alternative-dispute-resolution-office-policy-publications>.

Has the written ADR policy been amended or modified during the past ten fiscal years (FY06-FY15)? If so, please describe how. Our internal **guidance now includes provision for a Reservist Ombudsman.**

ADR Programs

The ADR Office provides a wide range of dispute resolution processes and tools which help to engage, prevent, and manage conflicts. The ADR Office regularly provides facilitated conversations, conflict coaching, customized trainings, mediation and conciliation, public and large group engagement, team-building, dispute management systems design, and the analysis of conflict patterns and systemic issues. The ADR Office consists of nationwide ADR advisors who are deployed to disasters upon request and who serve FEMA personnel in disaster situations. The ADR Office promotes dialogue, engages in key trainings, facilitates difficult conversations, and otherwise prevents and resolves conflicts and disputes at the lowest possible level. The ADR Office also works with the FEMA Union, Labor and Employee Relations, Human Capital, and other components within FEMA to promote communication among FEMA employees and consistency among policies. The FEMA Reservist Ombuds office sits within the ADR Division and identifies systemic patterns and issues within the Agency that impact reservists (a group of intermittent employees that are on call and deployed to disasters on an as-needed basis).

Several trends are listed below:

- **Staffing. The ADR office has grown significantly in terms of staffing. The impact of this increased personnel has been increased capacity to serve even more employees**

within disasters as well as continued capacity to serve FEMA employees at headquarters and in the regional offices.

- **Regular uptick in ADR requests as the Office continues to expand the menu of services it provides. Recent trends have been away from mediations and towards more informal processes such as conflict coaching and “listening and advising” sessions.**
- **A push towards more systemic and organizational ADR, in the form of team-building, management workshops, “climate assessments,” facilitation of working groups, appreciative inquiry dialogue facilitation, public engagement, and dispute management systems design.**
- **Over the years the ADR Office’s “Conflict Resolution Month” activities have generated a great deal of support from management and we regularly showcase taped testimonials from key players within the Agency.**

Steps to build program capacity

The Agency has supported the growth of the ADR team within FEMA to support FEMA Employees in disasters and at regional offices. The Agency has also supported the robust staffing of headquarters personnel to manage the day-to-day operations and facilitate dispute resolution processes at headquarters.

Plans to expand the program

We continually analyze whether additional resources are needed at any particular time. As the Agency continues to evolve, so too will the ADR Office.

Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

- Workplace
- Contracts and Procurement
- Administrative Enforcement and Regulatory Process
- Litigation
- Environmental

Please provide additional comments below regarding how your program has benefitted from the work of the above section(s):

Many of our ADR Advisors regularly attend the IADRWG Workplace Conflict Management Section’s lunchtime programs.

Success stories from the past ten calendar years

Though we are involved in a full range of projects and programs, here are two examples of projects:

1. One ADR Advisor in the field helped facilitate discussions between FEMA, state partners, and a Native American tribe over the destruction of property as a result of a disaster. The parties were coming together to negotiate the rebuilding of the destroyed infrastructure, which was an important site for the Native American tribe. The ADR Advisor facilitated a number of public engagement dialogues and was able to ultimately build consensus to complete the project. He earned an award from Administrator Fugate for his hard work and commitment.

2. Two of our ADR Attorneys spearheaded a “climate assessment” for a major headquarters office. The advisors engaged in informal, one-on-one, listening sessions with approximately 50% of the staff in this particular office and used the information to brief staff and management on major pressure points, to build morale, engagement, respect, and good communication. The information was used by the client to develop working groups, which the ADR advisors facilitated for several months. Ultimately ADR also developed a customized-training, and also worked with leadership and the working groups to develop long-term changes that could potentially reduce conflict and improve engagement within the work unit.

Department or Agency ADR use beyond the ADR Programs discussed above

FEMA also uses ADR in the EEO context.

ADR Training

FEMA provides a wide range of ADR awareness/promotion trainings, including during new employee orientation. The FEMA ADR Office develops dozens of customized, skills trainings. The ADR Office also regularly puts on an annual series of programs around Conflict Resolution Month, as well as ad hoc open houses, partner meetings, and similar awareness events throughout the year.

Interagency ADR Working Group

Members of the ADR Office are very engaged in the work of the IADRWG. Cindy Mazur has and continues to be Chair of the Workplace Section. Matilda Brodnax was formerly chair of the IADRWG Steering Committee. Vikram Kapoor is currently Vice-Chair of the Steering Committee. Involvement with the work of the Steering Committee has allowed FEMA’s ADR Office to remain abreast of cutting edge topics in the field and also creates opportunity for

additional discussion and dialogue among ADR practitioners in the federal government. In this way, members of the ADR Office are very proactive in networking and sharing resources with ADR practitioners in the federal government.

Given the trends you have reported above, how can the Interagency ADR Working Group better facilitate, encourage, and provide coordination for the 1) development of ADR programs; 2) training of agency personnel; 3) the development of procedures to permit agencies to obtain the services of neutrals on an expedited basis; or 4) recordkeeping to ascertain the benefits of ADR?

It would be helpful if the IADRWG convened as a group and delegated authority to the Steering Committee of the IADRWG. At the moment there is great confusion about mandate and what authority the Steering Committee has with respect to reporting and other matters.

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United States Secret Service (USSS) 2016 Report on Alternative Dispute Resolution

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Alternative Dispute Resolution Policy

Does your Department or Agency have a formal written ADR policy? Yes No.

Has the written ADR policy been amended or modified during the past ten fiscal years (FY06-FY15)? If so, please describe how. **(No)**

ADR Programs

The U.S. Secret Service (USSS) Ombudsman Program serves as the agency's ADR program and was developed and initiated on October 15, 1987. The USSS Ombudsman Program is an internal organizational program and consists of two full-time Ombudsman, as well as, ten collateral duty Ombuds (20% of their time to Ombuds issues). The Ombudsman practices according to International Ombudsman Association standards and manages internal workplace issues. Ombudsman Program's mission is to assist in seeking fair, equitable solutions to work-related concerns through an informal confidential process, as well as, provide unfiltered feedback to management by reporting trends and systemic issues.

The Ombudsman Program is open to all employees regarding workplace issues including interpersonal conflicts, workplace disputes, safety issues, bureaucratic red tape and harassment. The work includes conflict coaching, facilitation, and mediation, and its needs are continually being reevaluated. The USSS Ombuds are members of the International Ombudsman Association and regularly participates in the Coalition of Federal Ombudsman and values that participation.

The USSS Ombudsman Program also provides mediation services for the agency's EEO program when an aggrieved individual elects to participate in the ADR process. The ADR process serves as a mechanism that employees and managers may use as an alternative to the EEO process in the hopes of effecting an early and mutually agreed to resolution of EEO concerns. This program includes the Equal Employment Opportunity Commission's (EEOC) regulations at 29 C.F.R. 1614.102(b)(2), which requires agencies to make available an ADR program during both the pre-complaint process and formal complaint process.

Trends in ADR

For the last ten years, funding for the Ombudsman Program has been included in the Office of Human Resource's overall budget. However, on July 24, 2016, the Ombudsman Program was realigned under the new Office of Equity and Employee Support Services (EES) which is part of the Director's Office. Under this new structure the Ombudsman Program will maintain its own budget.

The USSS Ombudsman Program has used mediation and coaching to reduce the number of administrative grievances and to resolve employee conflicts. The office uses some form of ADR, typically coaching, in approximately 50% of its 1450 cases in the last 10 year period.

Utilizing the Ombudsman Program to resolve workplace conflicts is usually faster and less costly than traditional methods of adjudication. Individuals have an opportunity to tell their side of the story and interact with another to resolve their issues. The process allows for the restoration of relationships. Besides significant cost savings by working with complaints and settling disputes, the Ombudsman Program has assisted the USSS by identifying new issues that were in their infancy. Some of the intangible benefits include respect for diversity, and an increase in employee engagement and morale.

Steps to build program capacity

Since 1987, the USSS Ombudsman Program has always maintained two full-time Ombudsman. The collateral duty staff has remained steady between ten and twelve employees. This staff level has proven sufficient for supporting the needs of the agency.

Plans to expand in the future

Future plans include placing greater emphasis on training with respect to mediation and coaching for the Ombudsman staff. Plans also include placing greater emphasis on utilizing ADR in the EEO Process.

Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

- Workplace
- Contracts and Procurement
- Administrative Enforcement and Regulatory Process
- Litigation
- Environmental

Please provide additional comments below regarding how your program has benefitted from the work of the above section(s):

The USSS Ombudsman Program is active in the International Ombudsman Association and the Coalition of Federal Ombudsman, and will begin to regularly participate in the Interagency ADR Working Group Workplace Conflict Management Section's lunchtime programs.

Success stories from the past 10 years

Due to the relatively small size of this agency, providing too much specificity regarding our success stories could violate the confidentiality of those whom we have assisted. However, it is noted that the Ombudsman Programs has been successful in addressing and resolving numerous workplace conflicts. The program has been beneficial in working within the organizational structure to help restore working relationships between peers, coworkers, and between employees and their supervisors. The Ombudsman Program has been successful in addressing conflicts at the lowest level, an example of which is the following: An employee who was making a life altering employment decision chose, for the first time, to visit the Ombudsman Office to review their options. With some informal coaching with respect to communicating with their supervisor and completing a review of options, the visitor had a better grasp of their situation and was more confident in making an employment decision. A month later the visitor informed the Ombudsman that due to the coaching and option review, their employment situation was better and moral was positive.

ADR Training

The Ombudsman provides ADR awareness training during all New Employee Orientation and First Line Supervisor trainings.

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Transportation Security Administration (TSA) 2016 Report on Alternative Dispute Resolution

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ADR Policy

Does your Department or Agency have a formal written ADR policy? Yes No (check one).

Has the written ADR policy been amended or modified during the past ten fiscal years (FY06-FY15)? If so, please describe how. N/A

ADR Programs

There are three distinct ADR programs within TSA.

1. The Ombudsman

The Ombudsman practices to IOA standards and serves internal and external constituents. The Division is comprised of a Director and several Ombuds Specialists. The work includes conflict coaching, facilitations, and reporting to management on trends and systemic issues.

The Ombudsman has noticed enormous benefit from the increased use of coaching to resolve employee conflicts. Complaint resolution statistics have improved as a result of the office's ability to support employees with coaching at the lowest level. The office uses some

form of ADR, typically conflict coaching, in approximately 50% of its 1500 cases. There are currently 7FTEs – the director plus 6 staff.

There is an increased emphasis on coaching training for Ombudsman staff.

The Ombuds is active in the Coalition of Federal Ombuds.

2. The National Resolution Center

The National Resolution Center provides non-EEO ADR services throughout TSA by drawing on a dozen in-house TSA mediators as well as a contractor.

The National Resolution Center's nationwide geographic footprint supports cost-efficient and effective responses to ADR requests at the Agency's headquarters and across its US field locations. Since 2013, the NRC has provided an average of 450 mediations per year to address employee grievances regarding workplace disputes and disciplinary actions. The resolution rate for mediation averages 60-65%, and unresolved disputes continue through the agency's grievance process for final resolution.

The NRC employs one full-time ADR Lead and utilizes its 7 Regional Resolution Specialists on a collateral duty basis to provide mediation, facilitation, and other ADR processes. The NRC tracks and reports on ADR requests, processes and outcomes. During FY2016, the NRC has received approximately 50 requests for ADR services, to include conflict coaching, facilitated interest based conversations (two parties and a facilitator), and customized neutral assistance (e.g., small and large group facilitation, conflict climate assessments, interviews, and other diagnostic and targeted ADR support strategies). Many of these are still open and active, so additional data is not available at this time.

There are plans to expand the non-EEO ADR program to include more coaching.

3. The EEO Management Branch

The EEO Management Branch is responsible for the provision of EEO-related ADR services. Mediations can be conducted by TSA employees, DHS Shared Neutrals, or by ADR contractors.

Funding for the TSA CRDI ADR Program is included in the TSA CRDI overall budget for Civil Rights, Diversity and Inclusion for TSA. CRDI ADR Program has one FTE devoted to the ADR Program as the ADR Coordinator. This position was established within the last year and the impact has been invaluable as the ADR Coordinator has established a more effective and efficient process for ADR requests. TSA CRDI provides Civil Rights, Diversity and Inclusion oversight and assistance to approximately 65,000 employees, plus applicants. ADR is offered in the throughout the EEO complaint process. Resolving allegations of discrimination and work place conflict is always better if resolved at the lowest level possible. TSA CRDI currently uses mediation and facilitation as the primary methods of ADR and is considering implementation of other types of ADR as well.

TSA's Civil Rights, Diversity and Inclusion Division (CRDI) created an ADR Coordinator position in August 2015 to coordinate and oversee the ADR Program. This has been successful because we have a dedicated person to oversee the ADR Program.

There are plans to expand the types of ADR used in EEO-related cases.

Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

- Workplace
- Contracts and Procurement
- Administrative Enforcement and Regulatory Process
- Litigation
- Environmental

Please provide additional comments below regarding how your program has benefitted from the work of the above section(s):

<p>Several of TSA's ADR practitioners regularly participate in the IADRWG Workplace Conflict Management Section's lunchtime programs.</p>
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ADR Trends

Nothing specific to report at this time, though each of the TSA programs have been very successful in addressing conflicts and disputes at the lowest level.

ADR Training

Yes, TSA provides a wide range of ADR awareness/promotion trainings, including during new employee orientation.

Interagency ADR Working Group

Involvement with the work of the Steering Committee has allowed ADR practitioners at TSA to remain abreast of cutting edge topics in the field and also creates opportunity for additional discussion and dialogue among ADR practitioners in the federal government.

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UNITED STATES DEPARTMENT OF JUSTICE
2016 REPORT ON ADR IN THE FEDERAL GOVERNMENT

ADR Dispute Resolution Specialist

Joanna Jacobs
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ADR Policies/Policy

The Department of Justice (DOJ) policy on the use of ADR, and case identification criteria for ADR can be viewed at [61 Fed. Reg. 36895 \(Jul. 15, 1996\)](#).

ADR Programs and Use of ADR at the Department of Justice

1. Office of Dispute Resolution

The Office of Dispute Resolution (ODR) develops policy and promotes the effective use of ADR throughout the Department. ODR monitors and evaluates the use of ADR throughout the Department; represents the Department leadership with foreign governments as well as the private sector in ADR matters; and facilitates the effective use of ADR in litigation and agency administrative disputes. ODR also represents the Attorney General in leadership of federal ADR through the Interagency ADR Working Group, an organization which was created by the President and convened by the Attorney General to promote the use of ADR throughout the federal government.

Public-facing websites www.justice.gov/olp/alternative-dispute-resolution and www.ADR.gov

2. Civil Rights Division - Americans with Disabilities Act Mediation Program

The innovative Americans with Disabilities Act (ADA) Mediation Program is a voluntary program that allows people with disabilities and disability rights organizations to resolve ADA complaints using ADR before beginning litigation. Cases involve architectural barriers, communication impediments and implementation of other ADA compliance issues.

Public-facing websites www.ada.gov/mediate.htm

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3. Community Relations Service

The Community Relations Service (CRS) is the Department of Justice’s “Peacemaker” for community conflicts and tensions arising from differences of race, color, national origin, gender, gender identity, sexual orientation, religion and disability. CRS works with state and local governments, private and public organizations, and community groups and leaders to assist communities in developing local mechanisms and community capacity to prevent and resolve racial and ethnic tensions and civil disorders, and build communities' capacity to resolve future similar conflicts. CRS services are confidential and provided free of charge to communities – large and small, rural, urban and suburban – across all 50 states and U.S. territories.

Public website www.justice.gov/crs

Contact Information

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4. DOJ Mediator Corps

The DOJ Mediator Corps (Corps), which was created in 2009, is a workplace ADR program that serves all of the DOJ components. The Corps has a roster of more than 130 collateral-duty mediators who offer facilitative mediation at all phases of the EEO process, for FBI-specific Whistleblower Retaliation claims, and for non-EEO workplace disputes on a case-by-case-basis.

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5. Internal Workplace Ombudsman Offices

The Department of Justice has four internal workplace ombudsman program offices that provide ADR services to employees and management. The ombuds offices are located within:

- The Federal Bureau of Investigation – Ombudsman Program
- Bureau of Alcohol Tobacco and Firearms – Office of the Ombudsman
- Bureau of Prisons – Ombudsman Program (established in 1998)
- U.S. Marshals Service – Office of the Ombudsman (established in December 2015).

These internal ombuds offices are part of an integrated conflict management system that complements formal ADR processes. The ombuds offices provide assistance for the full range of

potential disputes among agency employees and managers, including issues related to compensation and benefits, career progression and development, performance and performance ratings, peer and colleague relationships, legal and compliance issues, organizational culture, and any other issues that may arise between and among employees and managers.

Ombudsman Contact Information

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2016 Report on ADR in the Federal Government

U.S. Department of Labor (DOL)

DOL has supports three separate ADR programs: The Office of Administrative Law Judges, the OSHA Whistleblower ADR Program, and the DOL EEO ADR Program.

1. Office of Administrative Law Judges

The Office of Administrative Law Judges (OALJ) has two court-sponsored types of ADR. First, it has the regulatory Settlement Judge program as described at 29 C.F.R. § 18.13. Second, OALJ offers mediation services through an agency neutral. These ADR programs are external-facing and they cover a broad range of labor and employment laws which are within the jurisdiction of the U.S. Department of Labor. The office uses ADR most frequently in whistleblower cases, Wage and Hour Division enforcement actions, Longshore Harbor Workers' compensation cases, and Defense Base Act compensation cases.

The Settlement Judge Program incorporates a number of techniques and procedures to supplement techniques traditionally used by administrative law judges, such as facilitating settlement during a prehearing conference. Parties are informed in prehearing orders of the availability of settlement judge and mediation services. ALJs frequently suggest OALJ's ADR services during prehearing conferences, and OALJ's mediator does active outreach on cases which appear amenable to a negotiated resolution. OALJ's ADR services are offered free-of-charge to litigants. Depending on the case, OALJ uses both facilitative and evaluative techniques, and hybrids of those techniques.

The Department's Administrative Law Judges, appointed pursuant to 5 U.S.C. § 3105, serve as the settlement judges. OALJ also has a mediator who has been certified as a mediator by the National Judicial College, and who serves as a neutral pursuant to 5 U.S.C. § 573.

ADR Policy

OALJ published its Settlement Judge rule in the Federal Register and in the Code of Federal Regulations. *See* 29 C.F.R. § 18.13.

The Office of Administrative Law Judges (OALJ) Settlement Judge was originally promulgated in 1993. *See* 58 Fed. Reg. 38498 (1993). In 2015, OALJ issued revised Rules of Practice and Procedure that updated its Settlement Judge regulation. *See* 29 C.F.R. § 18.13; 80 Fed. Reg. 28767 (May 19, 2015).

These programs are described in detail at www.oalj.dol.gov/SETTLEMENT_JUDGE.HTM.

1. **Public website:** www.oalj.dol.gov/SETTLEMENT_JUDGE.htm.

2. Trends and benefits in the program over the past ten fiscal years (FY06-FY15):

OALJ’s jurisdiction has expanded in the past 10 years, especially in regard to whistleblower cases, thereby creating an increased number of cases that are candidates for ADR. Also, OALJ caseload has generally increased over the past 10 years, which also creates an increased number of cases that are candidates for ADR.

OALJ does not have a distinct budget line item for ADR. Rather, helping to facilitate settlements is an inherent part of an ALJ’s duties. The same is true of OALJ’s mediator, who is a Senior Attorney at OALJ. Thus, the number of FTEs devoted to ADR can only be estimated. Based on the volume of Settlement Judge and mediator appointments, we estimate an equivalent of approximately 4 FTE. OALJ added the mediation services option in FY2015, and is accordingly devoting more employee time to ADR. This time, however, is offset by earlier resolution of disputes.

OALJ’s roster of ALJs was reduced over the past decade, which together with the increase in jurisdiction and number of cases docketed provided a challenge for the provision of all court services, including ADR. Recently, however, OALJ has been able to hire additional ALJs, which has improved OALJ’s ability to provide ADR services. Thus, for example, in 2015, OALJ was able to provide ADR training for all interested judges, and to start offering the services of a mediator.

The chart below shows the total number of closed cases by case area that had a Settlement Judge Assignment; for the period from October 1, 2005 through June 7, 2016:

<u>Case Area</u>	<u>Total Cases</u>
Black Lung	1
Defense Base Act	295
Longshore	1219
Immigration	74
Traditional (Mostly Wage And Hour Division Enforcement Actions)	78
Whistleblower	288
All Cases	1955

Through June 16, 2016 in FY2016, the OALJ mediator has been appointed in 37 cases. Of those, three involved H-1B immigration enforcement actions, one H-2A immigration enforcement action, one Service Contract Act case, one Davis-Bacon Act case, and the remainder whistleblower cases. These statistics only include those cases in which an ALJ or mediator were formally appointed. ALJs often assist parties in reaching settlement in traditional legal settings, such as prehearing conference calls.

OALJ employs ADR at all stages of adjudication. OALJ's mediator reviews cases as they are docketed, and will contact parties if the case appears to be amenable to settlement. Many settlement judge and mediator appointments, however, occur after the parties have engaged in discovery and have a better idea of the case's litigation stance. OALJ has occasionally provided settlement judges or the mediator for cases that have been appealed to the DOL Administrative Review Board or Benefits Review Board.

When leading to a settlement, ADR provides concrete benefits both to the parties and the government in the form of reduced litigation costs, such as attorney's fees; travel costs; transcription services; court-room rental; judge, law clerk and judicial support staff time.

Intangible benefits include an amicable resolution of the dispute; showing that the government can assist in resolution of the matter without the need for an ALJ's formal Decision and Order and the possibility of further appeals; freeing of time of both government and non-government participants to work on other pending cases.

3. Steps to build ADR program capacity in this ADR program:

OALJ is committed to supporting ADR training and continuing education for judges and staff. For example, in May 2015, OALJ sent a group of judges and the OALJ mediator to the National Judicial College (NJC) for in-depth and immersive mediation coursework. In May 2016, OALJ sent a second group of judges and senior attorneys to the NJC for mediation coursework. In August 2016 two judges and OALJ's mediator will be attending Advanced Mediation courses at the National Judicial College. Also in 2016, OALJ is conducting two internal Brown Bag sessions on settlement judges and mediation to share best practices for judges and staff engaged as neutrals or who assist in OALJ's ADR program.

The OALJ mediator joined the office in 2015 as an alternative to the more formal settlement judge process. The mediator now reviews newly docketed cases to determine early whether they are amenable to a negotiated resolution. In many cases, the mediator will initiate contact with the parties to explain the settlement judge and mediation services available free of charge. Feedback from the parties has been generally positive; they are often pleasantly surprised that a government official is showing a personal interest in their case and offering to assist in mediating a resolution.

Barriers include some hesitation to use court sponsored mediation as compared to traditional, non-government ADR sources, such as private mediators. Lack of knowledge about the OALJ ADR program by both private and government litigants.

4. **Plans to expand this program in the future:**

OALJ is offering ADR training to its interested Senior Attorneys. Those Senior Attorneys have subject matter expertise that may be useful in mediations. The Senior Attorney for Longshore, for example, has begun this training in FY2016, and has assisted in mediations to begin learning about mediation techniques and procedures.

OALJ is currently overhauling its website, and plans to increase the visibility of its ADR programs on its agency Home Page.

5. The OALJ ADR program covers a broad span of employment issues that relate to the work of each of the IADRWG's sections: Workplace, Contracts and Procurement, Administrative Enforcement and Regulatory Process, Litigation, and Environmental.

6. **Success stories:**

Because of confidentiality requirements, OALJ must decline to discuss any particular ADR success story. In general, however, it is possible to report that OALJ has had great success in resolving through its ADR program some particularly difficult litigation in the whistleblower and immigration case areas. ADR has enabled resolution of some cases where the parties were able to agree to novel remedies that an ALJ could not have ordered in a decision following a hearing. Flexibility and persistence have proved beneficial. It is clear that merely because an ADR process did not work early in the hearing process does not mean it will not work on a second or even third attempt later. Although ADR does not always work, and there are certainly significant costs involved in offering court-sponsored ADR, resolving cases through a negotiated settlement clearly saves both the parties and government money and time.

Department or Agency ADR use beyond the ADR Programs discussed above

Parties to cases adjudicated by OALJ are free to use ADR processes other than OALJ's court-sponsored settlement judge and mediation services. For example, in ERISA cases, the Employee Benefits Security Administration prefers to use its own well-established ADR process. And parties who are familiar and comfortable with private mediation services often choose to use those services over OALJ's court-sponsored services.

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2. The OSHA Whistleblower ADR Program

OSHA is a regionally based organization with its Whistleblower Protection Programs run by the ten regions. OSHA published an Instruction in August 2015 to establish the policies and procedures that apply to the “early resolution” process, which is part of a regional alternative dispute resolution (ADR) program. Regional Administrators have the option to adopt and implement the process as resources permit. Currently, four of the ten regions have dedicated ADR coordinators who act as neutral and confidential intermediaries during the early resolution process.

The OSHA Whistleblower Protection Program is externally-faced to resolve complaints of retaliation filed by members of the public against their employers. OSHA enforces the whistleblower provisions of 22 statutes protecting employees who report safety and health concerns as well as perceived violations of various airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, motor vehicle safety, health care reform, nuclear, pipeline, public transportation agency, railroad, maritime and securities laws.

OSHA’s ADR program utilizes a conciliation process in which the parties to a whistleblower complaint agree to attempt to resolve the complaint with the assistance of a neutral, confidential OSHA representative. The early resolution process can be launched either before the case has been assigned for an investigation, or at any point while an investigation is ongoing. The focus of early resolution is to achieve quick and voluntary resolution of the complaint instead of an investigation to determine the validity of the charge and potential statutory violations. Should

the parties elect to pursue early resolution but fail to enter into a settlement agreement within a reasonable time-frame, the case will be transferred to an OSHA Whistleblower Investigator to start or resume the investigation.

ADR Policy

OSHA Instruction CPL 02-03-006 “Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Program” became effective on 8/18/15 and has not been amended.

OSHA Whistleblower Protection Program ADR Program:

http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-03-006.pdf

7. Program websites:

The OSHA Whistleblower Protection Program website is at www.whistleblowers.gov.

OSHA Whistleblower Protection Program ADR Program:

http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-03-006.pdf

8. Trends observed over the past ten fiscal years (FY06-FY15):

The ADR program is new for Fiscal Year 2016 and currently has 4 full time employees. Thus far, the Agency has attempted to resolve 142 cases. There have been 76 settlements, which is equivalent to the number of cases that 2 investigators routinely complete in a year. OSHA uses a conciliation process where an independent third party, the OSHA neutral, helps people identify the disputed issues, develop options, consider alternatives, and try to reach an agreement. The neutral has professional expertise in the subject matter in dispute and will generally provide advice about the issues and options for resolution. The neutral may also give the parties an objective perspective on the strengths and weaknesses of their positions, but may not offer judgment on the merits of the complaint.

9. Steps to build ADR program capacity in this ADR program:

From October 1, 2012 through September 30, 2013, OSHA piloted an Alternative Dispute Resolution program in the Chicago and San Francisco regions. The pilot program offered the parties two new avenues for exploring resolution of their disputes through a voluntary settlement agreement: (1) the “early resolution” process offered parties the opportunity to negotiate a settlement with the assistance of a neutral, non-decision-making OSHA whistleblower expert, and (2) the “mediation” process offered parties the opportunity to participate in a one-day, in-person mediation session with a professional third-party mediator. The “early resolution” process proved to be a very effective and viable alternative to the investigative process and an invaluable asset to OSHA’s Whistleblower Protection Programs. The early resolution process demonstrated that dedicating staff to the coordination and facilitation of settlement negotiations

provides valuable relief to OSHA’s whistleblower investigative staff, and provides a highly-desired service to the program participants. The program was launched nationally on August 18, 2015. Each of the OSHA ten regions is eligible to have a dedicated FTE as an ADR neutral – the Regional ADR coordinator (RADRC).

10. Plans to expand this ADR program in the future:

Not at this time, other than recommending that all OSHA regions consider implementing this ADR program.

11. The OSHA ADR Program falls within the work of the Interagency ADR Working Group’s Workplace section.

12. Success story:

OSHA helped resolve a high profile workplace dispute in FY16 through ADR. The ADR Coordinator used an evaluative ADR approach by discussing potential liabilities for each party in an effort to narrow their positions. The ADR process was critical in resolving the conflict because it allowed the parties the option of settling their claim at the “11th hour,” right before OSHA took enforcement action. As a result of OSHA’s ADR efforts, all of the employees received their jobs back. The ADR program was funded by OSHA.

ADR Training

OSHA worked with the Federal Mediation and Conciliation Service to develop a basic training course for its neutrals. It is only for OSHA staff.

ADR Contact Information

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Additional Comments

Both statistically and anecdotally, OSHA's "early resolution" pilot proved to be an overwhelmingly successful process that provided great value to whistleblower parties and the Agency alike.

- **Great interest from the parties:** Hundreds of parties requested to participate in the early resolution process (289 total requests were received during FY13), and parties consistently expressed appreciation for the early resolution process.
- **High success rate:** Sixty-two per cent (62%) of the 87 cases that attempted early resolution resolved their cases via a settlement agreement. The 54 settlements achieved via the early resolution process put four (4) complainants back to work through reinstatement, and awarded approximately \$4.85 million in remedies.
- **Settlements were reached quickly:** Region 9's ADR Coordinator spent an average of 69 days on the 18 cases that settled through the early resolution process.
- **Regional ADR Coordinators (RADRCs) were as productive as investigators:** The RADRCs settled more cases in FY13 through the early resolution process than full-time whistleblower investigators completed through the investigative process.
- **Adding ADR helped increase the region's overall settlement rate:** In FY13, both Region 5 and Region 9 doubled the cases that were settled in FY12 prior to implementation of the ADR process.
- **Positive feedback from the parties:** Even amongst the parties that did not reach a settlement as a result of the early resolution process, the RADRCs reported that the parties consistently expressed appreciation for the availability of the early resolution process. Particularly, the parties cited appreciation for separation of the ADR process from the investigative process as well as the opportunity to use an OSHA facilitator who had subject-matter expertise in whistleblower law and the investigative process. Parties also were attracted to the potential cost savings of resolving the dispute quickly and efficiently.

○
After reviewing the results from the pilot, the Agency decided to expand the availability of ADR to more whistleblower parties by launching the program nationally. OSHA is confident that the ADR process will be a valuable asset to both the whistleblower program and its customers for years to come.

3. The DOL EEO ADR Program

The DOL EEO ADR program is an internal-facing ADR program that provides ADR to resolve EEO complaints made by DOL employees and applicants for DOL employment. The program offers mediation and facilitation, which are provided by Federal Sharing Neutrals and the U.S. Postal Service National EEO Investigative Services Office (Contractor).

ADR Policy

The Department's EEO ADR policy has been revised to: 1) offer mediation and facilitation as methods of ADR for DOL EEO complaints – as opposed to just mediation (the only method previously available), 2) have designated agency settlement officials represent the Agency in ADR proceedings and sign off on settlement agreements – as opposed to responsible management officials (who served this role in the past); and 3) use non-DOL mediators from the Federal Sharing Neutrals program and contractors to mediate DOL cases – as opposed to using in-house DOL mediators (who were used previously).

ADR Programs

1. Trends observed over the past ten fiscal years (FY06-FY15):

The only major change in funding for the DOL EEO ADR program over the specified time period is the availability of designated DOL funds (which varies from year-to-year) to pay for, among other services, contract mediators for conflict EEO ADR cases and other special cases and travel cost for staff (which is rare). DOL uses internal DOL collateral-duty staff, teleconferencing and internal DOL facilities/space for ADR processing – which helps to keep program costs low.

The EEO ADR program currently has three (3) FTEs who handle the management/coordination of the EEO ADR program. A fourth FTE was recently vacated with the loss of an employee who accepted a position in another agency the Department. The duties of this employee are currently being performed by designated CRC staff until a replacement decision is made. The immediate impact of this staffing change is that staff who have taken on the duties of the staff member who left sometimes have to work extended hours to accomplish their regular job duties plus the added duties of the staff member who left. These staff members are allowed to earn compensatory time when required to work extended hours.

The number of individuals requesting EEO ADR fluctuates from year to year with more than 100 individuals per year requesting EEO ADR over the past five (5) fiscal year reporting periods (with a high of 153 ADR requests in FY 2013). All of our agency's ADR requests involve EEO discrimination allegations. Most of DOL EEO ADR cases are requested and processed early in the administrative EEO process – the first 30 to 90 days (during the EEO pre-complaint stage).

The program has observed a reduction in the number of formal EEO complaints filed in some reporting periods (reducing the amount of agency resources required to process formal complaints). The program also provides aggrieved individuals with an additional option to attempt resolution of issues early in the EEO process.

2. **Steps to build ADR program capacity in this ADR program:**

Our agency has developed and/or strengthened working relationships with internal DOL and external partners (e.g., DOL Agency EEO Offices, Federal Sharing Neutrals and the U.S. Postal Service's National EEO Investigative Services Office (NEEOISO)) to maximize use of available resources (given our agency's budget constraints). Each DOL agency has a designated EEO office which the CRC has partnered with to provide facilitation of DOL EEO ADR cases. We also work with the Federal Sharing Neutrals Program to provide the agency a resource for qualified mediators for the DOL's EEO mediation cases at no cost to the agency, and the Memorandum of Understanding that we have had with the U.S. Postal Service's NEEOISO for the past several years gives us access to ADR and EEO counseling services for conflict and other special cases at a competitive rate. These steps have proved successful in many ways, including cost savings and an increase in our ADR success rate which was approximately 43% in FY2015 (up from most previous years' rates of around 25% or less).

3. The work of the EEO ADR Program is closely related to the work of the Interagency ADR Working Group's workplace section.

4. **Success story:**

- The subject-matter or type of dispute: Allegation of Disability Discrimination
- The type of ADR process utilized: Facilitation
- How the ADR was funded: In-house (no costs)
- How the ADR process was critical in resolving the conflict; The use of facilitation allowed the parties to exchange and be creative with resolution options over an extended period time with the guidance of a neutral party to keep the resolution exchanges between parties on track. Prior to ADR, the parties limited their options to ineffective accommodations that had been previously provided.
- Whether any innovative approaches to ADR were utilized: thinking outside the box on possible remedies (not just remedies requested by aggrieved individual).
- Key beneficial outcomes because of ADR use; The aggrieved individual received an effective accommodation, and the matter was resolved without a formal EEO complaint being filed.
- Key lessons learned: Facilitation is more effective than mediation in some cases due to the additional time to try to resolve and be creative in coming up with mutually acceptable remedies.

ADR Training

The Civil Rights Center and/or Agency EEO Offices provide ADR awareness training to DOL Agency Managers, Supervisors, Settlement Officials and non-management employees as part of required DOL training. This training includes information on how and when ADR is offered to DOL employees who have EEO disputes, the parties involved in the ADR process, the components of the ADR program, and the benefits of ADR in attempting resolution of matters of dispute.

ADR Dispute Resolution Specialist Contact Information

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DEPARTMENT OF THE TREASURY
2016 REPORT ON ADR IN THE FEDERAL GOVERNMENT

EEO ADR Dispute Resolution Specialist Contact Information

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ADR Policy

1. Does your Department or Agency have a formal written ADR policy? **X Yes** ___No (check one). **Note: Treasury’s ADR policy pertains to the use of ADR in the EEO complaint process.**

2. Has the written ADR policy been amended or modified during the past ten fiscal years (FY06-FY15)? If so, please describe how.

Each Treasury bureau maintains and updates its internal ADR policy.

3. Please review <http://www.adr.gov/fai.html> to assess whether a “Policy” link is present for your Department or Agency. If a link is either incorrect or not present on the site, provide us with a link to any electronic copies of your agency’s current ADR policy. If the policy is not available via a link on the internet, please send an electronic copy of the policy with your responses.

Treasury’s public URL to its Dispute Prevention and Resolution page:
https://www.treasury.gov/about/organizational-structure/offices/Mgt/Pages/dispute_prevention.aspx

ADR Programs

Treasury Shared Neutrals Program

The Treasury Shared Neutrals (TSN) program assists in resolving workplace disputes (EEO and non-EEO matters) through education and training as well as alternative dispute resolution services—including mediation, facilitation, and coaching. The TSN program is designed to empower Treasury employees to improve their working environment by responding appropriately to conflict and resolving disputes at the earliest stages possible. The TSN program retains a pool of certified mediators who provide assistance to federal organizations upon request. TSN mediators are trained in the art of mediation and serve

on a collateral-duty basis. TSN mediators must obtain certification and maintain their skills through mediating and annual training requirements. As a Department of the Treasury program, the Office of Civil Rights and Diversity has policy oversight for the TSN program.

1. Does the program maintain a website that is accessible by the public? If yes, provide the URL for the site. **No**

2. To the extent possible, please describe any trends that you (or your colleagues) have observed in the program over the past ten fiscal years (FY06-FY15) and, to the extent possible, please discuss your views about the meaning of any trends regarding the following issues:
 - i. The amount of funding for the program, and if it has changed, whether there has been any impact on the program, and the nature of that impact;
Our program is minimally funded.

 - ii. The number of full time employees (FTE's) devoted to the program, and, if the number has changed, whether there has been any impact, and the nature of that impact;

Since the inception of the TSN program, the Department has always maintained one TSN Administrator, who receives ADR requests and coordinates the logistics with all parties. The TSN Administrator role moves every two years to a different bureau. Every two years, the TSN Program requires its cadre members to re-certify their credentials and, at that time, the TSN Administrator make an assessment as to whether he/she needs to identify additional staff interested in becoming a neutral in order to replace neutrals who have retired or left Treasury.

iii. ADR usage (number of cases or disputes, subject-matter, early or late);
For FY 2015, ADR was offered to 95% of the 721 completed counselings and 56% (406) of those offered participated in ADR. The TSN completed a total of 252 mediations in which they successfully resolved 133 (53%) disputes. In addition, the Department closed 312 formal complaints of which 12% of complainants participated in ADR.

iv. Tangible and/or intangible benefits realized by using ADR;
There is greater awareness within the workforce about how conflict can affect morale and more on-line training offerings regarding how to address conflict. The Department's bureau EEO Offices have at least one person who is responsible for supporting and promoting ADR programs. The Department has seen a 4.8% decrease in the number of formal EEO complaints filed in FY 2015 (394) when compared to FY 2011 (414), which we attribute to the use of ADR in the informal EEO process.

v. Types of ADR processes/ techniques used.

Mediation is the EEO ADR technique most used in the Department.

3. Describe steps your Department or Agency has taken to build program capacity in this ADR program during the past ten fiscal years (FY06-FY15). Please discuss whether the steps have been successful, and if not, please discuss the barriers to success.

Over the last ten years, the Department put in place the following activities to promote dispute resolution:

- **Chartered the Treasury Shared Neutrals (TSN) Program.**
- **The Department hosts biennial TSN Steering Committee meetings. Committee members are representatives from each bureau's ADR/EEO program office and provide suggestions as to how to strengthen the program as well as the cadre.**
- **The Department hosts a Dispute Prevention activity in the month of June each year for employees and managers. The TSN Steering Committee determines the activity, which varies each year (calendar, flyer, checklist, video, training, or keynote speaker).**
- **The Department provides 8 hours of refresher mediator training each year for our TSN cadre.**
- **The Department established a benchmark regarding informal and formal ADR participation in the EEO administrative process. Our measure is 45% of employees seeking counseling and 25% of complainants will participate in ADR. We collect ADR participations rates by bureau and Department wide on a quarterly basis and share our statistics through a quarterly internal EEO newsletter.**
- **We developed and distributed various marketing handouts on the TSN Program, employee and manager participation in ADR and on how the mediation process works. These items were distributed to all the bureau EEO offices and are currently available on our internet site.**
- **The Department issued policy guidance to its bureaus requiring managers to participate in ADR in the EEO administrative process if the matter is suitable for ADR (per the bureau ADR Policy) and if the employee elects to participate in ADR.**

4. Are there any plans to expand this program in the future? **No**
5. Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

Workplace

Contracts and Procurement

Administrative Enforcement and Regulatory Process

Litigation

Environmental

How your program has benefitted from the work of the above section(s):

Treasury has not been involved with the ADR Working Group. However, now that we are aware of the group, the Department would be pleased to participate. Please contact Clarissa Lara, at Clarissa.lara@treasury.gov

6. Please discuss one or more success stories from the past **ten calendar years** that illustrate the types of issues your ADR program resolves and/or the inherent benefits of ADR even when the disputed issues are not fully resolved.

Treasury provides multiple opportunities to participate in EEO ADR throughout the informal and formal process. For example, in one case involving multiple alleged incidents of harassment based on disability, the Aggrieved elected to mediate during the informal process but it ended with no resolution. However, the mediation was successful in opening lines of communication and began to repair relationships among the parties who participated in the mediation. The same employee went on to file a complaint and once again, elected to mediate due to the lines of communication opening during the first mediation. In an effort to bring something different into the mix for the second mediation, the Department identified a different and higher level senior manager to participate in this second mediation. The mediation was conducted, and again, it ended with no resolution. However, the mediation was successful in engaging the attention of this senior manager involved in the session, who actively pursued bringing changes to the work environment. Based on the good faith effort made by the senior manager after the second mediation had concluded, the CP decided to drop some of the remedies he/she was seeking and went on to settle the case during the investigation stage.

ADR Training

The Department hosts a Dispute Prevention activity/training in the month of June each year for employees and managers. The Department provides 8 hours of refresher mediator training each year for our TSN cadre members.

Additional Contacts

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Department of the Treasury’s Office of the Comptroller of the Currency ADR Programs

The OCC Ombudsman and Appeals Process was established in 1993. The Regulatory Improvement Act of 1994 required all agencies to establish an appeals process. See attachment (entitled Appeals Process Handout November 2015). There are two distinct external ADR program offices within the Comptroller of the Currency, each with its own management and dedicated staff:

An external-facing dispute resolution program is available to national banks, federal savings associations and federal branches and agencies (collectively, banks). Multiple levels of dispute resolution are available to banks seeking a review of supervisory decisions and actions. An appeal is informal if submitted in writing to the bank’s local supervisory office. The bank may appeal several types of supervisory decisions, including examination ratings, adequacy of loan loss reserves, and loan classifications. If the bank is dissatisfied with the decision, it may file a formal appeal with the Deputy Comptroller for the local supervisory office or directly with the Ombudsman. In addition, the Ombudsman is available for informal discussion or to act as a liaison between the OCC and any affected person or bank to resolve disputes resulting from the OCC’s regulatory activities. The OCC Ombudsman operates independently from the bank supervision process and reports directly to the Comptroller of the currency.

An external-facing dispute resolution program is also available to consumers of banks. The appeals process for consumers is a two-tiered structure. The manager of the Customer Assistance Group reviews and processes tier-one appeals. If the consumer wishes a further appeal, a tier-two appeal is submitted to the Ombudsman’s office. The OCC’s two-tier appeals process ensures the same principles of fair and expeditious review to both national banks and federal savings associations—and their customers.

1. Does the program maintain a website that is accessible by the public? If yes, provide the URL for the site.

Dispute Resolution: <http://www.occ.gov/topics/dispute-resolution/index-dispute-resolution.html>

Bank Appeals Summaries: <http://www.occ.gov/topics/dispute-resolution/bank-appeals/summaries/index-summaries.html>

Bank Appeals Brochure: <http://www.occ.gov/topics/dispute-resolution/bank-appeals/bank-appeals-process-brochure.pdf>

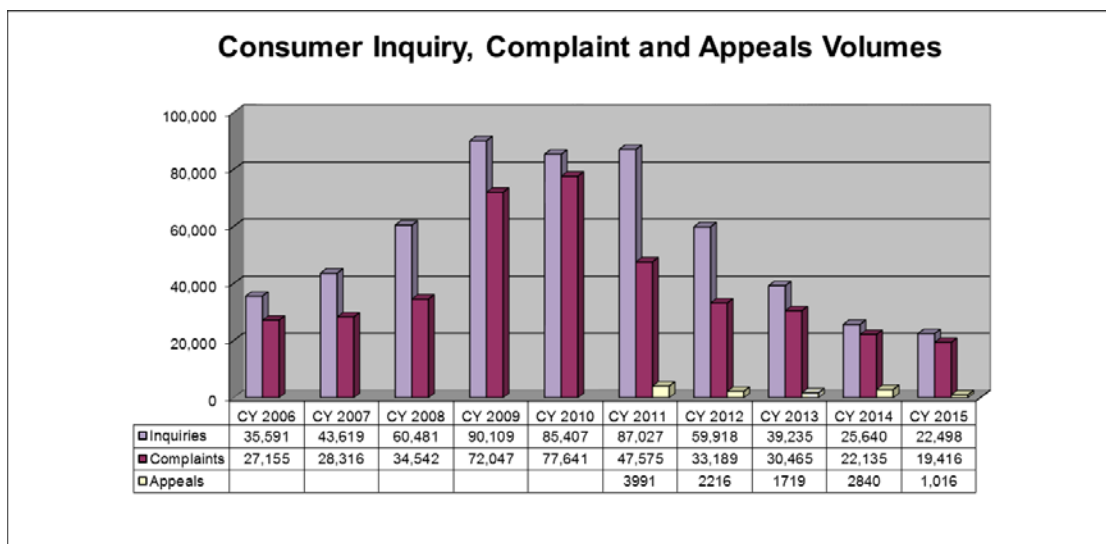
Consumer Website: [http:// helpwithmybank.gov/](http://helpwithmybank.gov/)

2. To the extent possible, please describe any trends that you (or your colleagues) have observed in the program over the past ten fiscal years (FY06-FY15) .

The consumer and bank appeals programs offer several benefits, including an independent and fair review of disputes, a transparent appeals process, multiple dispute resolution channels, and a no cost alternative providing an opportunity to voice complaints without litigation expenses. Funding for the bank appeals program has incrementally increased over the years due to increases in internal costs and volume of appeals. Funding for consumer complaints has changed incrementally with internal costs and volume of complaints. Over the ten year period, the FTE’s increased from two to the current four for the bank appeals program. Over the ten year period, the FTE’s have fluctuated with the volume of consumer complaints for the consumer complaint program. The changes in funding and the FTE’s have not negatively impacted the quality of the programs.

The dispute resolution process is available to banks throughout the supervisory cycle, ranging from informal discussions in the field during the examination cycle to an appeal submitted to a local supervisory office or district to a more formal appeal submission to the Ombudsman. The existence of a formal bank appeals process does not change the core policy of the OCC concerning dispute resolution, which is to resolve disputed issues in an informal, amicable manner. Over the past ten years, the Ombudsman resolved one hundred thirty-four disputes submitted as informal or formal appeals. In addition, from April 2013 to December 2015, the local field office or the deputy comptroller resolved one hundred disputes. Common issues appealed are examination ratings, matters requiring attention, violations of laws or regulations, and loan classifications.

Below is the volume of complaints, inquiries (phone calls), and appeals that the OCC has received over the past ten years. The complaints have gone from a high of 90,000 to 22,000 after the creation of the Consumer Finance Protection Bureau in 2011.



3. Describe steps your Department or Agency has taken to build program capacity in this ADR program during the past ten fiscal years (FY06-FY15). Please discuss whether the steps have been successful, and if not, please discuss the barriers to success.

The OCC revised the bank appeals bulletin and the brochure to help banks understand the process and to include federal savings associations. We continue to maintain the dispute resolution website to provide information to consumers and bankers. These efforts have been successful in raising awareness of the consumer and bank appeals programs.

The OCC updated its consumer complaint process in 2009 to allow submission of electronic complaints. We continued to take consumer phone calls directing consumers to our website when they had questions (FAQ) and instructing them how to file a written complaint. We deployed an on-line complaint form in 2009, and currently receive about 80% of our complaints digitally. An on-line appraisal complaint form was deployed in 2013, in conjunction with the other federal regulatory agencies.

4. Are there any plans to expand this program in the future?

We continue to enhance the overall quality of the consumer and bank appeals programs.

5. Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

Workplace

Contracts and Procurement

Administrative Enforcement and Regulatory Process

Litigation

Environmental

Please provide additional comments below regarding how your program has benefitted from the work of the above section(s):

The Customer Assistance Group (CAG) provides consumers a no cost avenue to resolve complaints against National Banks and Federal Savings Associations that they have been unable to resolve directly with the financial institution.

The Bank Appeals group provides financial institutions a no cost avenue to resolve disagreements with any agency supervisory decision or action. In addition, lessons learned from reviews of bank appeals have led to changes in OCC policies and procedures.

Department or Agency ADR use beyond the ADR Programs discussed above

Does your Department or Agency apply ADR processes or techniques to facilitate resolutions of conflicts or disputes independent of the ADR programs discussed above? If so, please describe the type of ADR processes or techniques utilized, how they are utilized, the reasons why the processes or techniques are beneficial, and how (if at all) the processes or techniques have improved the Department or Agency's ability to carry out its mission.

The OCC actively participates in the International Financial Ombudsman (INFO) Network, an international group whose members specialize in external dispute resolution for banking, investments, insurance, credit, financial advice and pensions. The INFO Network was set up in 2007, with the OCC taking a leadership role. The group has over 25 countries represented and their overall aim is for the Member Schemes/offices to work together to develop expertise in dispute resolution, by exchanging idea and information.

<http://www.networkfso.org/>

The OCC also actively participates in quarterly interagency meetings with the Ombudsmen from domestic interagency financial regulatory agencies to share best practices.

7. Please discuss one or more success stories from the past **ten calendar years** that illustrate the types of issues your ADR program resolves and/or the inherent benefits of ADR even when the disputed issues are not fully resolved.

The dispute resolution programs for consumer complaints and appeals as well as bank appeals have added value by successfully resolving thousands of consumer disputes and hundreds of bank disputes at no cost to the consumer and bank.

ADR Training

The OCC, via its role in the INFO Network, assisted the World Bank in completing a white paper on “Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman.” The report outlines the fundamentals for the creation of an independent and effective ombudsman.

The OCC publish bank appeal summaries since 1994 to raise public awareness.
<http://www.occ.gov/topics/dispute-resolution/bank-appeals/summaries/index-summaries.html>

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Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau **ADR Program**

TTB's ECPR Program is an internal-facing, workplace dispute ADR program. It provides an informal, confidential process to resolve work related disputes. It cannot be used as a substitute for exclusive formal processes such as EEO complaints, disciplinary proceedings, criminal investigations or collective bargaining. Given the small size of TTB's workforce, this program was assigned under the purview of TTB's EEO Director to serve as the Neutral. The Neutral has the authority to receive and inquire into workplace conflicts concerning issues in controversy that are brought to his or her attention by any employee, supervisor, or manager; or to initiate independent inquiries as appropriate. As a designated independent neutral, the EEO Director assists the parties to reach a mutually agreed upon resolution to their conflict. When necessary, a mediator from the Treasury Shared Neutrals Program may be used when the Neutral fails to reach a resolution through the informal process.

1. Does the program maintain a website that is accessible by the public? If yes, provide the URL for the site.

No.

2. To the extent possible, please describe any trends that you (or your colleagues) have observed in the program over the past ten fiscal years (FY06-FY15) and, to the extent possible, please discuss your views about the meaning of any trends regarding the following issues:

There have not been any noticeable trends in the ADR program. TTB continues to offer ADR when and as appropriate. The Bureau uses mediation as the preferred ADR method in formal ADR sessions with certified mediators assigned by the TSN. In informal ECPR

Program processes, the EEO Director serves as a neutral party in meetings when requested; holds informal and formal discussions with employees, managers, supervisors, and senior leaders; provides guidance and recommendations to all parties involved in workplace disputes.

TTB's EEO Office remains a one-person office since it was created in 2005. The EEO Director oversees the ADR program at TTB and collaborates with the Department on Treasury-wide ADR efforts. TTB incurs ADR-related costs to the extent that it covers the mediators' transportation, travel, and mediation-related expenses, which has not created any negative impact for the Bureau.

3. Describe steps your Department or Agency has taken to build program capacity in this ADR program during the past ten fiscal years (FY06-FY15). Please discuss whether the steps have been successful, and if not, please discuss the barriers to success.

The Early CPR program was created to provide employees with an additional avenue to raise employment concerns if they do not wish to go through the EEO complaint process or Human Resources grievance process. This program assists employees in seeking fair, equitable solutions to work-related concerns through an informal confidential process to attempt resolution at the lowest possible stage. At the time this program was being developed, ADR was limited to mediation resulting from the filing of an EEO complaint. However, since that time, TTB, in alignment with Treasury, now offers mediation for non-EEO issues as well.

In 2014, the TTB Administrator designated the EEO Director to also serve as an internal Bureau Ombudsman, functioning as an impartial, neutral, and confidential channel with responsibility for informal conflict avoidance and resolution. The Ombudsman is not an advocate for the staff or management; and provides an impartial environment for staff or managers to discuss resolutions of issues. The Ombudsman also identifies emerging policy issues and recurring problems; initiates and identifies opportunities to enhance procedures and policies; and/or recommends the-establishment of new methods to ensure equity in workplace processes, policies and actions.

4. Are there any plans to expand this program in the future?

Given that TTB's EEO Office is a one-person office, and TTB is an organization comprised of approximately 500 employees, at the present time TTB does not see a need to further expand this program beyond the "Neutral" and "Ombudsman".

Additionally, since TTB's ADR program, which was originally developed to resolve employment disputes raised primarily during the informal stage of the EEO complaint process, now offers ADR for non-EEO issues, employees have an additional avenue to participate in non-EEO mediation.

5. Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

Workplace

Contracts and Procurement

Administrative Enforcement and Regulatory Process

Litigation

Environmental

How your program has benefitted from the work of the above section(s):

Certified mediators provided by the TSN program helps employees and managers/supervisors participating in ADR feel assured that the mediators are trained to appropriately guide both parties toward resolution and to help them stay on track, focusing on the issues and concerns at hand, and not the individuals.

7. Please discuss one or more success stories from the past **ten calendar years**:

In FY 2015, TTB had 13 Intakes, which potentially could have resulted in EEO complaints being filed. However, through using the Early CPR program, the employees, managers and supervisors, Human Resources Director, and EEO Director worked collaboratively, with legal guidance from Counsel, to resolve employees' concerns, which resulted in 0 EEO complaints filed.

ADR (including mediation, discussions, meetings) was critical in resolving employees' concerns in that it gave them an opportunity to address their workplace issues without feeling as though their only option was to file an EEO complaint or a grievance when they did not wish to do so. As the individuals were providing detailed information regarding their concerns and being guided by the Neutral, they began to recognize and acknowledge that their issues did not arise from discrimination such as race, age, gender, etc. but rather from lack of communication between them and their supervisors. The Neutral provided opportunities and a safe environment for employees to share concerns with their supervisors, and provided managers/supervisors with the same opportunities to address those concerns and to present their side of the situation.

In instances where employees' concerns were resolved internally without a TSN mediator, no monetary cost was incurred for the resolution process. In cases where mediation was conducted by a TSN mediator, there was no charge for the mediation session itself, and TTB only had to pay for transportation, travel-related expenses, as appropriate. One major lesson learned is that employees often file an EEO complaint or

a formal grievance because they believe that is the only avenue they have to address their concerns. Often times they do not believe they have been discriminated against (e.g., race, gender, age, etc.) but they feel trapped and believe that the only way they can be heard, and/or the only way their issues can be resolved is if they file an EEO complaint or grievance.

Additional Contacts

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Department of Veterans Affairs

2016 ADR Report From Federal Government Agencies

ADR Dispute Resolution Specialist Contact Information

Dispute Resolution Specialist for VA

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ADR Policy

The Department of Veterans Affairs (VA) ADR Program has directives with associated handbooks and policies. These documents are updated and revised on a recurring basis. The current dates for VA ADR documents are: ADR Directive 5978 02/07/2013, Handbook 5978.1 ADR Program Central Office 04/19/2010, Handbook 5978.2 ADR Neutrals Certification Program 10/19/2010.

The most recent ADR Directive was revised February, 2013. The policy is for the use and promotion of ADR, particularly mediation, and responsibilities among staff office heads and other key officials for ADR programs in their organizations.

The revised directive includes the following changes:

- Designated the Assistant Secretary for Human Resources and Administration as the Dispute Resolution Specialist (DRS) under the Administrative Dispute Resolution Act;
- Designated the Deputy Assistant Secretary for Resolution Management as the Deputy DRS for Workplace ADR;
- Designated the Director, Office of Asset Enterprise Management to manage the Department's Environmental Conflict Resolution (ECR) Program;
- Designated the Deputy Assistant Secretary for Acquisition and Logistics (DAS OA&L) as the Deputy DRS for Procurement ADR;
- Established the VA ADR Council;

- Established ADR data tracking requirements;
- Allowed the Office of Resolution Management (ORM) to offer ADR in every EEO complaint as a matter of practice and on behalf of the Secretary;
- Established a Notice of Refusal to Offer ADR option. This allows the VA organization where the EEO complaint arose to submit a Notice of Refusal to Offer ADR if the allegations are not appropriate for ADR. Allegations not appropriate for ADR are those pertaining to waste, fraud, abuse, patient abuse, criminal activity or an investigation actively being conducted in a forum other than EEO where the subject of the allegations is the individual who filed the EEO complaint.

ADR Website

<http://www.va.gov/adr/>

ADR Programs

Within VA there are three distinct ADR programs:

The **Workplace ADR Program** is overseen by the Office of Resolution Management (ORM). This program addresses conflict management, workplace disputes, EEO complaints, grievances and appeals. The Workplace ADR Program employs mediation, facilitation and conflict coaching for individuals and groups. The program offers training on how to manage conflict and prevent disputes and complaints and conducts assessments of the climate of organizations and work units in order to improve working relationships and increase engagement and productivity. ORM employs full time mediators and ADR specialists. In addition, VA has collateral duty neutrals certified through the VA Neutrals Certification Program. We also use contract mediators.

The second distinct program is the **Procurement ADR Program**. This program provides a core of neutral third parties (Neutrals) for use in Alternative Means of Dispute Resolution (ADR). This program assists VA contracting officers in using ADR procedures to resolve bid protest issues, issues in controversy and contract claims before the matter has been protested or appealed to the Civilian Board of Contract Appeals (CBCA) or the Court of Federal Claims. The CBCA considers disputes between contracting officers and Federal contractors in connection with VA construction, supply, service contracts and leases. As part of that process, CBCA offers various ADR options to parties appearing before it. Under the program, the CBCA appoints an administrative judge or hearing examiner to be used as a neutral to aid in resolving matters. The administrative judges and hearing examiner are trained neutrals and are available to assist in ADR proceedings at the request of the contracting activity.

The third program is the **VA Environmental ADR Program** which is used to address conflicts that arise in the context of environmental, public lands or natural resources issues.

All VA ADR programs include both internal-facing and external-facing elements. ADR services and information are available to VA personnel through the VA Intranet. Information is also available to the public through the Internet address below.

Trends observed in the program over the past ten fiscal years (FY06-FY15):

In January 2007, ORM received delegated authority to manage VA’s ADR Program.

ORM and ADR Funding

FY 2007 – FY 2015

(DOLLARS IN THOUSANDS (\$000))

Fiscal Year	ORM Actuals	ADR Actuals	ADR % of ORM’s Budget
2007	26,284	1,343	5.11%
2008	27,561	1,748	6.34%
2009	30,912	1,705	5.52%
2010	34,643	1,728	4.99%
2011	34,046	3,973	11.67%
2012	38,768	3,231	8.33%
2013	41,646	3,927	9.43%
2014	40,269	2,943	7.31%
2015	41,171	2,279	5.53%
Totals	340,731	22,877	

VA has a complement of twenty-five full time employees devoted to the program. The impact of the increase in staff has allowed greater opportunities to resolve workplace and EEO matters within the organization as well as market the program more effectively.

ADR usage (number of cases or disputes, subject-matter, early or late)

Fiscal Year	Informal EEO Complaints	Informal ADR Participation Rate	Informal ADR Resolution Rate	Top 3 Basis
FY 2006	762	20%	69%	Reprisal; Disability; Sex
FY 2007	1008	27%	46%	Race; Sex; Reprisal
FY 2008	1755	44%	32%	Race; Sex; Reprisal
FY 2009	2113	49%	49%	Race; Reprisal; Sex
FY 2010	2234	51%	48%	Race; Disability; Reprisal
FY 2011	2395	54%	47%	Race; Disability; Reprisal
FY 2012	2580	58%	47%	Race; Disability; Reprisal
FY 2013	2440	58%	50%	Race; Reprisal; Disability
FY 2014	2508	55%	49%	Race; Reprisal; Disability
FY 2015	2966	59%	52%	Race; Disability; Reprisal

The Department of Veterans Affairs (VA) uses cost avoidance as one metric for evaluation of ADR services. An estimate of \$17,000.00 is used for EEO cases; \$30,000.00 is the projected cost avoidance for non-EEO case resolution. Based on these metrics, the VA identifies 11,567 Non-

EEO, 972 Formal EEO and 19,049 Informal EEO cases for the period FY08 – FY16. Based on the resolution numbers for the total cases (31,588), 19,363 cases were resolved (53% overall resolution rate). These resolutions equate to a cost avoidance of \$480,075,000.00 for the VA over this period.

VA ORM uses the following ADR techniques: Mediation (Facilitative and Evaluative), Facilitation (Individual and Group), Conflict Coaching, Settlement Conferencing and Conflict Assessments.

The ADR program was reassigned to ORM in FY07. The program began with a cadre of five full time employees. In FY10, VA expanded its ADR Program to provide full-time ADR specialists assigned to strategic areas throughout the United States to provide ADR program development, oversight, outreach, training, conflict assessments, mediation, facilitation and conflict coaching for individuals and groups. Field ADR specialists review program metrics and collaborate with VA Administrations, staff offices and labor unions to ensure that ADR services are provided efficiently and effectively Department-wide. In FY13, full-time mediators were added to the ADR program to provide additional support for timely scheduling of EEO related ADR mediations.

In April 20, 2007, the Secretary of Veterans Affairs approved the establishment of the Secretary's Annual ADR Excellence Award to acknowledge employees, managers and organizations within the Department who have excelled in promoting and making significant contributions to the Department's ADR Program. Awards are given in seven categories to honor both individuals and groups who have made exemplary contributions toward VA's ADR goals.

In 2009, Secretary Eric Shinseki introduced a series of initiatives stating that “To serve Veterans in the 21st Century requires a bold investment today for a transformed VA tomorrow.” This investment included the following ORM initiatives to improve the Department’s ability to manage conflict and resolve workplace disputes and EEO complaints:

- Conflict management and mediation training for senior leaders, management, and labor
- Full-time ADR field support

These initiatives have continued under the leadership of Secretary Robert McDonald with the core values Integrity, Commitment, Advocacy, Respect, and Excellence (ICARE).

An electronic case management and reporting system was implemented in FY08 which provides VA senior leaders with a tool to monitor key indicators of the work environment which includes real-time EEO and ADR data that can be used to address workplace concerns proactively. The dashboard information is accessible by VA personnel involved with the ADR programs at the facility level. A scorecard can be generated for key indicators real-time. This allows ORM to reach out to local facilities and offer assistance with metrics falling below minimum standards.

In addition to resolving workplace disputes and EEO complaints, the Agency encourages the use of ADR to resolve administrative and negotiated grievances, merit systems appeals, prohibited personnel practices and whistleblower complaints. Many of these efforts are done in collaboration with the Office of Special Counsel, Freedom of Information Act disputes, bid protests, contract claims and other procurement disputes before or during appeals to the United States Civilian Board of Contract Appeals. The agency also utilizes ADR, when appropriate, to address environmental disputes involving VA facilities.

VA has developed a wide range of training programs. A sample of the training offered are *ADR Awareness, Basic Mediation Skills, Advanced Mediation Skills, Conflict Competence, Communication Breakdown, Conflict Coaching, Generations M.E.E.T. for Respect in the Workplace and Crucial Conversations*. This training has been presented to all levels of the organization.

These gradual, but effective, steps to expand the program have resulted in an ADR program that services over 350,000 VA employees and is recognized and relied upon by each administration and staff office within VA.

In FY16/17 ORM plans to expand the ADR program by training ORM personnel to provide VA-wide Conflict Management Training. For the past several years, this training was conducted through a contract. All instructors will attend the ORM Instructor Development Course (IDC). The goal of this initiative is to deploy well-trained instructors to meet the needs for ADR training at the local facility level in a timely and efficient manner. By using ORM instructors we, hope to increase the training opportunities and reduce the fiscal footprint of this initiative.

Additional benefits achieved through the ADR Programs:

VA has had several successes over the past 10 years. The VA Office of Resolution Management (ORM) ADR program has improved delivery of services with the inclusion of contract Non-VA ADR services which include conflict management processes and training. ORM has received over 36 thousand cases from FY09 through FY16 with an overall resolution rate of approximately 53%. The cost avoidance for resolving over 19 thousand cases is slightly more than \$480 million over this period.

Early intervention has been identified as a significant factor in resolution rates. The approach used by ORM to decrease the time period from initial contact to ADR includes training of VA employees to serve as collateral duty mediators, use of contracted ADR service providers and adding FTE to serve as full time ORM mediators. Each VA ORM region has assigned full time mediators to cover their respective geographic area.

ORM has also gone through reorganization. One example is the development of the Centralized ADR (CADR) section. CADR is the central point for receiving ADR requests for EEO cases. Every EEO case is assigned to an ORM mediator or ADR Specialist. The assigned ORM personnel are expected to contact the VA facility EEO point of contact and work with the facility to ensure ADR is scheduled timely. ORM

developed standard operating procedures on pre-mediation to support timely and high quality ADR services.

ORM also has provided training and support for using virtual technology for providing ADR services. Video conferencing and telephonic conferences are offered to expedite scheduling of ADR sessions.

ADR Success Stories:

The VA ADR program is recognized and used frequently throughout the organization. Many of our ADR specialists and mediators are contacted directly because of their exemplary professionalism and effectiveness in ADR. Mediators have been asked to conduct facilitations and conflict coaching in addition to their regular mediation duties. Recently two of the mediators were asked to participate in a Mediator Rally. The idea behind the Mediator Rally was to increase enthusiasm, sharpen mediation skills and create a stronger Mediator community in the region. The mediators received outstanding feedback from their participation in this regional event.

Another example of how the ADR program is a recognized success is through the requests CADR receives for training. In June, 2016, a request from senior officials was received for ORM to develop a specialized Senior Executive Service Conflict Management Training curriculum. ORM plans to deliver this training by August, 2016.

Finally, the VA ADR program is helping our Veterans—the heart of what VA does. One of our Veterans reported difficulty entering a Regional Office building. Through mediation the Regional Office management team and the Veteran was able to arrive at a reasonable agreement that has benefitted the subject Veteran and others as well.

Department or Agency ADR use beyond the ADR Programs Discussed Above

Veterans Benefits Administration (VBA) has used ADR to resolve Title VI complaints (priority schools) and an external complaint filed by a Veteran against a VBA Regional Office. The two Title VI complaints were referred to VA by the U.S. Department of Education. In both instances, mediation was used. One case was resolved in a settlement agreement, the second was not resolved.

The VA endorses and supports VA Neutrals to participate in the Federal Executive Board Shared Neutral's Program. VA Neutrals provide the FEB with resources to support the ADR needs of other Federal Agencies. The FEB is used to assist VA with ADR services as well.

ADR Training

Conflict Management Training/Basic Mediation Training

As described above, the VA developed and implemented a Conflict Management Training in 2010. The Conflict Management and Alternative Dispute Resolution (CMT) training has continued through FY16. As an example, in FY16 twenty-two 3-day and four 1-day CMT courses were provided by a contractor to VA employees from all levels of the organization.

ADR Awareness Training

The VA ORM provides VA facilities and offices with ADR awareness training. The trainings are tailored to the specific needs of the requesting organization and audience. Topics typically presented during this training relate to EEO complaint and workplace dispute conflict management. ORM also has trainers certified to administer the Conflict Dynamics Profile (CDP). The CDP is an assessment instrument which helps individuals identify how they deal with conflict behaviors in the workplace. It also provides a powerful way to improve self-awareness of what triggers conflict in individuals as well as how they respond to conflict.

Interagency ADR Working Group

VA ORM actively participates with the Interagency ADR Working Group (IADRWG). VA has membership on the IADRWG Steering Committee. VA ORM has recognized the value of engaging in IADRWG scheduled meetings. The presentations provided are an excellent resource for ideas and information to assist VA ORM with advancing the VA ADR program. As one example, Federal Mediation and Conciliation Service (FMCS) shared their workplace bullying training during an IADRWG meeting. VA ORM contacted FMCS to provide this webinar during a VA ORM scheduled call with ADR practitioners. Additionally, VA ORM has developed professional relationships with other Federal ADR Programs to collaborate with other Federal Agencies and promote ADR best practices within the organization.

Additional Contacts

Please provide the names and contact information for no more than four people who can provide follow-up information to help clarify any questions that the drafters of this report may have. NOTE: these names will not be released in the Report to the President:

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ADR Dispute Resolution Specialist Contact Information

Provide your name, title(s) and contact information:

Name: M. Stacey Bach

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Department/Agency: Consumer Financial Protection Bureau

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Name: Wendy Kamenshine

Title(s): Ombudsman, CFPB Ombudsman's Office

Department/Agency: Consumer Financial Protection Bureau

Email Address: Wendy.Kamenshine@cfpb.gov

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ADR Policy

Does your Department or Agency have a formal written ADR policy? Yes No (check one).

Has the written ADR policy been amended or modified during the past ten fiscal years (FY06-FY15)? If so, please describe how.

CFPB is a new federal agency that opened in July 2011. In June 2013, CFPB issued its first ADR policy. The Equal Employment Opportunity Commission (EEOC) issued a revised Management Directive 110 in August 2015, which contains parameters for model ADR programs. CFPB is reviewing its current policy to assess whether any updates are necessary.

The CFPB's ADR policy does not encompass the Ombudsman's Office, rather, that office has a separate office Charter, available at:

http://files.consumerfinance.gov/f/2011/12/CFPB_Ombudsman_Charter_12-7-11.pdf

ADR Programs

List each distinct ADR program at your Department or Agency and for each ADR program:

CFPB currently has two dispute resolution programs: (A) a program for resolving workplace-related disputes; and (B) an externally facing Ombudsman pursuant to Section 1013(a)(5) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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The Dodd-Frank Act, Section 1035, also establishes a Private Education Loan Ombudsman to work collaboratively with borrowers, schools, lenders, guaranty agencies, loan servicers, and other participants in private education student loan programs in order to informally assist consumers with private education loans.

Employment-related Dispute Resolution

1. Provide a description of the program (in 300 words or fewer).

CFPB has a robust policy encouraging ADR for employment-related disputes. The program is administered by the Offices of Civil Rights and Human Capital, and the core principles of the program are voluntariness, neutrality, confidentiality, enforceability, and flexibility. The Office of Human Capital (OHC) is responsible for approving and coordinating non-EEO requests for ADR made under the Administrative Grievance Policy, under CFPB's Collective Bargaining Agreement with the National employees Treasury Union (NTEU), or those made on an ad hoc basis to address workplace disputes. The Office of Civil Rights (OCR) manages all aspects of EEO-related disputes filed by employees, former employees, and applicants for employment and offers ADR at the informal, formal, and hearing stages of EEO cases. OHC and OCR typically offer mediation services, and they use the GSA Schedule to obtain neutral mediators on a case-by-case contract basis.

2. Does the program maintain a website that is accessible by the public?

No. The program does not maintain a website that is accessible by the public, but it does maintain an intranet site that is accessible by all employees and OCR provides information about ADR options to applicants and former employees as needed.

3. To the extent possible, please describe any trends that you (or your colleagues) have observed in the program over the past ten fiscal years (FY06-FY15) and, to the extent possible, please discuss your views about the meaning of any trends regarding the following issues:

- i. The amount of funding for the program, and if it has changed, whether there has been any impact on the program, and the nature of that impact;

CFPB does not yet have a ten-year perspective on its employment-related ADR Program. The program was created in FY13, and the Agency has committed to providing ample funding to ensure its success and will fund any budgetary

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overages, if necessary. For example, for FY16, OHC budgeted \$10,000 and OCR budgeted approximately \$177,000 for EEO programmatic services, including offering ADR services to participants at various stages of the EEO complaint process.

- ii. The number of full time employees (FTE's) devoted to the program, and, if the number has changed, whether there has been any impact, and the nature of that impact;

OHC Employee Relations Specialists approve and coordinate the logistics of requests for ADR under the Administrative Grievance Policy, under the Collective Bargaining Agreement with NTEU, and on an ad-hoc basis as a collateral duty. One Human Resources Specialist has the collateral duty of serving as the Contracting Officer's Representative (COR) to ensure the contractor is paid. OCR currently has various personnel working to implement the ADR program and received approval in FY16 to hire a full-time employee to serve as a Dispute Prevention and Resolution Manager. The Agency intends to leverage this FTE to drive positive enhancements to the employment-related ADR program.

- iii. ADR usage (number of cases or disputes, subject-matter, early or late);

FY13 – 1 (OHC) and 7 (OCR)

FY14 – 3 (OHC) and 20 (OCR)

FY15 – 1 (OHC) and 12 (OCR)

FY16 to date – 2 and 2 pending (OHC) and 9 (OCR)

- iv. Tangible and/or intangible benefits realized by using ADR; and

At this juncture in CFPB's ADR Program development, it is difficult to quantify the long-term tangible benefits or assess the intangible benefits of ADR, but the Agency believes dispute resolution services have aided in furthering employee engagement, increasing productivity, and have saved time and resources from being expended on more formal dispute resolution avenues. Several pending EEO cases have been resolved to the mutual satisfaction of the parties through ADR.

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- v. Types of ADR processes/ techniques used.

OCR and OHC typically offer mediation or facilitated discussions to resolve workplace disputes and are working toward additional ADR offerings in the future.

4. Describe steps your Department or Agency has taken to build program capacity in this ADR program during the past ten fiscal years (FY06-FY15). Please discuss whether the steps have been successful, and if not, please discuss the barriers to success.

The Agency has authorized ample funding for OCR and OHC to use contract ADR professionals to resolve workplace disputes. In FY16, the Agency approved OCR to hire an FTE focused on dispute prevention and resolution. Once onboarded, this employee will assess options for expanding the program.

5. Are there any plans to expand this program in the future?

Yes. In FY16, the Agency approved OCR to hire an FTE focused on dispute prevention and resolution. Once onboarded, this employee will assess options for expanding the program.

6. Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

Workplace

Contracts and Procurement

Administrative Enforcement and Regulatory Process

Litigation

Environmental

Please provide additional comments below regarding how your program has benefitted from the work of the above section(s):

CFPB is looking forward to move active participation in this program in the future as it continues to expand its ADR program.

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7. Please discuss one or more success stories from the past **ten calendar years** that illustrate the types of issues your ADR program resolves and/or the inherent benefits of ADR even when the disputed issues are not fully resolved. Consider the following, but limit the description to 300 words, if possible.
- The subject-matter or type of dispute;
 - The type of ADR process utilized;
 - How the ADR was funded;
 - How the ADR process was critical in resolving the conflict;
 - Whether any innovative approaches to ADR were utilized
 - Key beneficial outcomes because of ADR use;
 - Key lessons learned

In an EEO matter that resolved in March 2016, the filer stated in a post-mediation survey that it was a “great mediation session.” Leading up to the mediation the filer noted “the entire OCR team made me feel very welcomed, comfortable, and was able to provide me with timely answers to all my questions. Each member made me feel like I was their number one client when I walked through the door or sent an email.” The filer also stated “it was very helpful to bring in my own representative to help explain my case without emotion I would have had if I was on my own.” This feedback reiterates the importance of customer service, preparing parties for what to expect during ADR, and taking steps to ensure a comfort level during the ADR session exists for each party, which, in turns, cultivates an atmosphere where resolution is possible.

In May 2016, OCR offered mediation to parties that are in formal EEO litigation and who had not been able to reach resolution through direct conversations. OCR paid for the mediation session and asked the mediator to offer the parties an evaluation of the facts and legal parameters, which was an approach accepted by the parties. Although not all matters were resolved during the mediation session, the parties were able to come to agreement on a list of parameters that will allow the employee to continue to contribute productively to CFPB’s mission and to de-escalate some of the workplace tensions that had been ongoing. OCR learned that a tailored approach to each dispute is necessary to further the goals of the ADR program and that success can occur even when the matter is not closed.

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B. Externally Facing Ombudsman, CFPB Ombudsman's Office

1. Provide a description of the program (in 300 words or fewer).

The CFPB Ombudsman's Office provides an independent, impartial, and confidential resource to informally assist consumers, financial entities and others in resolving process issues with the CFPB. In carrying out its work, the Ombudsman's Office advocates for a fair process and utilizes a toolbox of resources to assist in resolving individual and systemic issues. The Ombudsman may seek to resolve an issue by providing feedback and making recommendations to the CFPB. To assist, we also can: facilitate discussions, brainstorm and evaluate options and resources, share independent analyses, offer an impartial perspective, ensure confidentiality of someone's identity, and engage in shuttle diplomacy, among other options.

2. Does the program maintain a website that is accessible by the public? If yes, provide the URL for the site.

Yes. The CFPB Ombudsman's Office webpage may be accessed via the following URL:

<http://www.consumerfinance.gov/cfpb-ombudsman/>

3. To the extent possible, please describe any trends that you (or your colleagues) have observed in the program over the past ten fiscal years (FY06-FY15) and, to the extent possible, please discuss your views about the meaning of any trends regarding the following issues:

The CFPB Ombudsman's Office opened in December 2011, one month ahead of the statutory requirement. In the federal ombudsman field, particularly in the financial regulatory space, it appears that stakeholders welcome the opportunity to utilize informal avenues to efficiently and effectively resolve process issues that they may encounter as they engage with the CFPB and/or other federal agencies.

- i. The amount of funding for the program, and if it has changed, whether there has been any impact on the program, and the nature of that impact;

As an independent office of the CFPB, the Ombudsman's Office requests its budget according to its mission needs. The office has received full funding from the CFPB, sufficient to carry out office program activities.

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- ii. The number of full time employees (FTE's) devoted to the program, and, if the number has changed, whether there has been any impact, and the nature of that impact;

The Ombudsman's Office currently has five (5) FTE positions, including a newly added Deputy position to be filled in FY2016. The office started with one (1) FTE – the Ombudsman - and has grown over time, adding one (1) Assistant Ombudsman position and two (2) Associate Ombudsman positions. The FTE positions are supplemented by term detailee positions to include, over time, an Acting Outreach Specialist and an Acting Associate Ombudsman who join the office temporarily from other agencies. The Ombudsman's Office has leveraged the number of available FTE staff and detailees to best execute its mission needs and responsibilities.

- iii. ADR usage (number of cases or disputes, subject-matter, early or late);

In FY2015, the CFPB Ombudsman's Office received 1,166 individual inquiries. As the office is informal in nature, many of these inquiries were early-stage, yet complex, matters. In addition, in FY2015 and over time, the office has reviewed several broader systemic topics, also complex matters, pertaining to CFPB process issues as consumers, financial entities, and others engage with the agency.

- iv. Tangible and/or intangible benefits realized by using ADR; and

The benefits realized by use of the Ombudsman's Office may include: the ability to resolve process issues before they evolve into resource intensive formal matters, serving as an early warning mechanism for the agency to address issues as soon as possible, facilitating discussion with and across the agency, assisting the people who contact the agency in understanding the options they may have, and the ability to study process issues impacting all stakeholders and suggesting solutions that are helpful to everyone .

- v. Types of ADR processes/ techniques used.

In resolving process issues, the CFPB Ombudsman's Office utilizes a wide-range of techniques, such as: problem solving, shuttle diplomacy, facilitation, hearing issues in confidence, providing an impartial perspective, serving as an independent advisor and providing an early warning mechanism.

4. Describe steps your Department or Agency has taken to build program capacity in this ADR program during the past ten fiscal years (FY06-FY15). Please discuss whether the steps have been successful, and if not, please discuss the barriers to success.

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The CFPB has been highly supportive of the Ombudsman's Office program and mission. Moreover, the CFPB has authorized funding appropriate to support the Ombudsman's ability to execute its mission and expand the number of Ombudsman program FTEs.

5. Are there any plans to expand this program in the future?

Yes. It is anticipated that the Ombudsman's Office will onboard a Deputy position in FY2016, further bolstering office capacity.

a. Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

Workplace

Contracts and Procurement

Administrative Enforcement and Regulatory Process

Litigation

Environmental

Please provide additional comments below regarding how your program has benefitted from the work of the above section(s):

The CFPB Ombudsman's Office appreciates the opportunity to connect with colleagues and peers via the Interagency ADR Working Group particularly as it affords the opportunity to share innovative and best practices in the ombudsman field and with respect to ADR, generally.

4. Please discuss one or more success stories from the past **ten calendar years** that illustrate the types of issues your ADR program resolves and/or the inherent benefits of ADR even when the disputed issues are not fully resolved. Consider the following, but limit the description to 300 words, if possible.

- a. The subject-matter or type of dispute;
- b. The type of ADR process utilized;
- c. How the ADR was funded;
- d. How the ADR process was critical in resolving the conflict;
- e. Whether any innovative approaches to ADR were utilized
- f. Key beneficial outcomes because of ADR use;
- g. Key lessons learned

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The CFPB Ombudsman's Office seeks to utilize innovative methods and best practices to facilitate the resolution of process issues.

For example, in FY2015, the office held its first Ombudsman Forum, inviting trade groups with which the office had engaged in outreach over time for a four hour, confidential session to discuss process issues the groups raised with the office over time. The Ombudsman's Office facilitated the conversations to further inform the work of our office. On the other side of the event, the office provided unattributed feedback to the agency and summarized the feedback and participants' recommendations in the office's public annual report. The Ombudsman's Office will hold its next Forum later this spring with consumer-focused organizations.

The Forum illustrated the flexibility inherent in the ombudsman role and in the creative tools available to the ombudsman practitioner. Additionally, the value of the ombudsman as a place to share concerns and consider solutions as an independent, impartial, and confidential resource was reinforced to stakeholders.

Department or Agency ADR use beyond the ADR Programs discussed above

Does your Department or Agency apply ADR processes or techniques to facilitate resolutions of conflicts or disputes independent of the ADR programs discussed above? If so, please describe the type of ADR processes or techniques utilized, how they are utilized, the reasons why the processes or techniques are beneficial, and how (if at all) the processes or techniques have improved the Department or Agency's ability to carry out its mission.

N/A

ADR Training

Does your Department or Agency offer ADR awareness/promotion trainings or ADR skills (techniques) training to agency employees, federal employees, or to the public? If so, please provide information about each of the different types of trainings your Department or Agency offers.

CFPB requires all supervisors and managers to attend training about ADR through a two-day course led by the EEOC Training Institute. OCR also offers a voluntary ADR workshop describing ADR, discussing the types of ADR and creative resolution possible through OCR, and allowing participants to role play a mediation. This workshop is open to any CFPB employee.

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Interagency ADR Working Group

How has your involvement with the Interagency ADR Working Group benefitted your ADR programs?

OHC and OCR have not yet actively participated with the Interagency ADR Working Group and look forward to learning and sharing best practices in the future.

The CFPB Ombudsman's Office has benefitted from the Interagency ADR Working Group's valuable and timely ADR-related programming and seminars.

Given the trends you have reported above, how can the Interagency ADR Working Group better facilitate, encourage, and provide coordination for the 1) development of ADR programs; 2) training of agency personnel; 3) the development of procedures to permit agencies to obtain the services of neutrals on an expedited basis; or 4) recordkeeping to ascertain the benefits of ADR?

CFPB welcomes the opportunity for partnerships with the Interagency ADR Working Group and participating in sub-working groups to enhance the areas noted. As a relatively new ADR program, we welcome learning about best practices, including settlement structures that best cultivate early resolution.

From the CFPB Ombudsman's Office: In connection with the growth in federal ombudsman programs and ADR in the federal sector, the Interagency ADR Working Group may seek to facilitate meetings or gatherings that explore cross-cutting practice issues arising in the space. In addition, the Interagency ADR Working Group may seek to communicate awareness of success stories, best practices and standards within federal ADR to interested agencies as they consider effective methods of working with their external stakeholders.

To: Department of Justice

From: U.S. Environmental Protection Agency, Conflict Prevention and Resolution Center

Re: 2016 ADR Report from Federal Government Agencies

ADR Dispute Resolution Specialist Contact Information

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ADR Policy

The U.S. Environmental Protection Agency (EPA) has a formal written ADR policy. The policy has not been amended during the past ten years. The link is:

<https://www.epa.gov/sites/production/files/2015-09/documents/epaadrpolicyfinal.pdf>

EPA ADR Programs

The Environmental Protection Agency (EPA) has four distinct ADR programs, each with its own management and dedicated staff. For purposes of this report the programs are grouped by whether they are external or internal facing and by subject area.

External-Facing Programs

A. Environmental Collaboration and Conflict Resolution

- Conflict Resolution and Prevention Center
- Office of Administrative Law Judges
- Environmental Appeals Board

B. Ombudsman Services

- Office of Inspector General Whistleblower Protection Ombudsman
- Asbestos Small Business Ombudsman

Internal-Facing Programs

C. Workplace and Early Intervention Conflict Resolution Program

- Workplace Solutions

D. Pilot Mediation Program to Resolve Workplace Discrimination Dispute and EEO Complaints

- Office of Civil Rights

A. Environmental Collaboration and Conflict Resolution

EPA's environmental collaboration and conflict resolution (ECCR) program supports the effective use of ADR to prevent and resolve disputes related to the Agency's environmental and public health mission. Neutrals are available to assist in matters arising under any of the laws that EPA administers, including the Clean Air Act; Clean Water Act; Comprehensive Environmental Response, Compensation and Liability Act; Federal Insecticide, Fungicide, and Rodenticide Act; Resource Conservation and Recovery Act, Safe Drinking Water Act, Toxic Substances Control Act and the National Environmental Policy Act. The ECCR program promotes ADR for environmental program issues that arise in either internal settings (e.g., interoffice dialogue) or external contexts (e.g., situations involving other agencies, state or local governments, tribes, regulated entities, or non-governmental organizations). ECCR neutrals employ a wide range of ADR techniques tailored to the needs of parties involved in agreement seeking or non-agreement seeking cases, including situation assessments, convening, facilitation, mediation, training and joint fact-finding. The ECCR program benefits from multiple sources of neutrals and related services.

The **Conflict Prevention and Resolution Center** (CPRC) in the Office of General Counsel is EPA's primary resource for services and expertise in the areas of consensus-building, collaborative problem solving, ADR and environmental conflict resolution. The CPRC develops and implements Agency ADR policy, administers Agency-wide ADR programs, coordinates case management and evaluation, and provides support to program-specific ADR activities. The CPRC provides professional facilitators and mediators experienced in environmental conflicts; workshops and seminars aimed at strengthening staff negotiation and consensus-building skills; situation assessments and stakeholder assessments; and expert one-on-one advice on addressing difficult programmatic issues and effective negotiation strategy. To improve our services and build capacity the CPRC regularly evaluates the benefits and effectiveness of our services. Since 1988, EPA has maintained a dedicated contract vehicle to provide access to private sector neutral third parties for environmental ADR. The Conflict Prevention and Resolution Services contract, managed by the CPRC, is available to all agency headquarters and regional offices and provides many of the agency's environmental conflict resolution services.

<https://www.epa.gov/adr>

The **Office of Administrative Law Judges** offer the parties ADR in the form of mediation in nearly all environmental cases filed. Mediation is offered to the parties immediately upon arrival of the case in the Office providing parties the opportunity to explore settlement in a confidential forum before the case is assigned to a judge for litigation. The mediation process is initiated only if it is accepted by all parties. The neutral mediator is one of the Administrative Law Judges, all of whom have had mediation training. There is no charge to either side in connection with the mediation. <https://www.epa.gov/alj/adr>

The **Environmental Appeals Board (EAB)** ADR program offers parties in appropriate cases the option of participating in ADR with the assistance of an EAB Judge acting as a neutral evaluator/mediator. The primary purpose of this program is to provide a neutral, confidential forum for the settlement of cases before the Board. The Board employs video conferencing equipment to provide parties remote access to the ADR process. Participation is completely voluntary and is conducted in compliance with the confidentiality provisions of the Administrative Dispute Resolution Act of 1996 (“Act”), 5 U.S.C. § 574. [https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/8f612ee7fc725edd852570760071cb8e/4cca7c779f77983b85257a3800410585/\\$FILE/INFORMATION%20SHEET.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/8f612ee7fc725edd852570760071cb8e/4cca7c779f77983b85257a3800410585/$FILE/INFORMATION%20SHEET.pdf)

Funding of ECCR Program FY2006 – FY2015

The extramural funding for EPA’s ECCR program comes from a number of EPA headquarters offices and regions. Most of this funding has supported ECCR neutrals and related services under either the Agency’s Conflict Prevention and Resolution Services Contract (CPRS) or an interagency agreement with the U.S. Institute for Environmental Conflict Resolution (USIECR) at the Udall Foundation, both managed by the Conflict Prevention and Resolution Center. EPA spent an average of about \$5 million a year on ECCR and related services through the CPRS contract between FY 2006 and FY 2015. While there is some variation, the amount of funding expended through the CPRS contract has been relatively stable, reflecting a consistent demand for ECCR and related services. With respect to the EPA-USIECR interagency agreement, while the average funding expenditures were about \$116,000 a year and the high point was \$300,000 in FY 2011, the overall trend has been downward. For example, the amount of annual expenditures in FY 2015 totaled only \$20,000. The reasons for the decline in ECCR work under the interagency agreement are threefold: 1) reduced demand for the types of ECCR expertise in which USIECR specializes (e.g., interagency and tribal issues), 2) elongated procurement timeframes resulting from changes to USIECR’s contracting practices, and 3) USIECR’s decision to no longer convene an annual ECCR conference, which EPA had been supporting through the interagency agreement. In general, any changes to the annual funding for ECCR and related services have not had a lasting impact on the EPA overall ECCR program.

Number of FTEs Devoted to ECCR Program

Approximately 10 FTEs support the ECCR program across EPA headquarters and regional offices. There has been some variation over the past ten fiscal years, mostly due to temporarily

vacant positions, but the total number of FTEs has been fairly stable. Any impacts on the ECCR program have been temporary and have not changed ECCR service provision over the long term.

Number of Cases/Disputes

EPA previously reported data on ECCR cases as part of its ECCR annual reports to OMB and CEQ for each fiscal year between FY 2007 and FY 2015. In the FY 2007 report, we were still refining our approach to collecting data on ECCR cases; thus, the data for FY 2008 onward are considered sufficiently reliable as a basis for identifying trends. We also note that OMB and CEQ's definition of ECCR prior to FY 2013 was limited to cases in which the parties were seeking to reach agreement, whereas EPA has consistently used a broader definition that also includes cases in which the parties had goals other than seeking agreement (e.g., improved dialogue, more effective information exchange). Beginning in FY 2013, OMB and CEQ's definition of ECCR cases has been the same as EPA's. For purposes for our response below, we use the EPA definition of ECCR cases.

The overall trend in EPA ECCR cases from FY 2008 to FY 2015 was downward, from 206 cases in FY 2008 to 161 cases in FY 2015. The maximum number of ECCR cases was 220 in FY 2011. Two important underlying trends help explain this overall trend. One is that the number of ECCR cases initiated for matters before administrative tribunals, such as EPA's Office of Administrative Law Judges, showed a similar pattern of decline, with 97 cases in FY 2008 and 33 cases in FY 2015. A second, related trend was the reduction in cases that addressed compliance and enforcement matters, with 142 cases in FY 2008 and 61 cases in FY 2015.

Other trends in ECCR cases from FY 2008 to FY 2015 were notably positive. In response to OMB and CEQ's direction for the ECCR annual reports, EPA tracks the number of ECCR cases that emerged from administrative tribunals (see the trend noted in the previous paragraph), judicial tribunals (e.g., the federal courts), EPA decision making processes (e.g., permits, Superfund site decisions), and "other" forums. Among these, the "other" category of ECCR cases increased. Examples of "other" ECCR case forums include voluntary programs, joint EPA state or tribal decisions, interagency coordination, collaborative planning, or decisions to be made by non-government stakeholders (e.g., EPA participated to offer advice). The number of "other" ECCR cases increased from 31 in FY 2008 to 60 in FY 2015. A second positive trend occurred in ECCR cases addressing planning matters. This category is somewhat broad, but what the majority of these cases have in common is that the participants had goals other than reaching agreement. The number of ECCR cases focused on some type of planning issue rose from 16 in FY 2008 to 47 in FY 2015.

A final trend is the change in the relative proportions of ECCR cases in which the parties are seeking agreement compared to those in which goals were other than reaching agreement. From FY 2008 until FY 2012, agreement seeking ECCR cases occurred in larger numbers than cases with other goals. Beginning in FY 2013, the non-agreement ECCR cases have consistently

reflected a larger proportion of all ECCR cases than the agreement seeking cases. Agreement seeking ECCR cases declined from a high point of 142 cases in FY 2008 to a low point of 68 cases in FY 2015. Over the same time frame, non-agreement ECCR cases rose from 64 cases in FY 2008 to 93 cases in FY 2015 (with a high point of 102 cases in FY 2010). This information suggests the increasing importance of non-agreement ECCR processes in EPA's business.

Tangible and/or Intangible Benefits Realized by Using ADR

As part of EPA's ECCR annual reporting to OMB and CEQ since FY 2013, the Agency assembled information on the comparative costs of ECCR (relative to alternatives such as litigation and unassisted negotiation) and benefits. A summary of this information is provided below.

Comparative Costs - With respect to the relative costs of ECCR, the CPRC collected quantitative data for FY 2011 to FY 2014 on EPA staff time spent on 185 individual ECCR cases, the number of EPA staff members involved, and the duration of the ECCR process. EPA compared the data for a likely decision-making process scenario that would have occurred if ECCR had not been used. We administered a survey with questions concerning staff time and case duration for ECCR cases and comparison scenarios (e.g., litigation, unassisted negotiation) to the EPA staff lead involved in all known litigation-related ECCR cases that concluded in each of these fiscal years. The ECCR cases that were part of the survey included those initiated in matters before EPA's Office of Administrative Law Judges, Environmental Appeals Board, and the Federal Courts. The parties reached agreement in all these cases, which mostly addressed environmental compliance and enforcement matters.

Based on analysis of the data collected, the CPRC estimates that ECCR cases assessed through the costs survey required 56% fewer EPA staff lead hours per case for active periods compared to the decision making processes that would likely have been used otherwise (e.g., litigation, unassisted negotiation). More specifically, the CPRC estimates a median of 38 total work hours for the EPA staff lead participating in active periods of these ECCR processes and a median of 87 hours for the decision making processes that would likely have been used otherwise.

Regarding the results for the number of EPA staff members involved, the CPRC estimates that ECCR required 22% fewer staff members compared to decision making processes that would likely have been used otherwise. This proportion is derived from an estimated median of 2.7 EPA staff members for the ECCR cases and 3.4 staff members for the likely comparison decision making processes.

The survey results also suggest one-third less elapsed time to reach a decision using ECCR compared to decision making processes that would likely have been used otherwise. The CPRC estimates a median of 16 total weeks for the ECCR cases and a median of 24 weeks for the likely comparison decision making processes.

These estimates and the methodology used to generate them are subject to a number of limitations. For example, the savings for costs other than for EPA lead attorneys were not assessed. These include savings for other EPA staff and non-personnel EPA costs (e.g., travel for court sessions, contractor analyses), as well as savings for non-EPA participants, who are usually corporations represented by outside legal counsel, and savings for other federal agencies, especially the U.S. Department of Justice, where it represented EPA. The results also do not address costs for ECCR neutral third parties nor the benefits associated with decisions reached, including any EPA personnel time savings associated with implementing a decision. In addition, the results presented here only apply to a subset of EPA ECCR cases for FY 2011 through FY 2014 the results do not include non-agreement ECCR cases or “upstream” ECCR cases that arose, for example, in the context of federal agency decisions unrelated to active litigation. Most importantly, this is only an early attempt by the CPRC to quantify time expenditures and duration for ECCR processes and likely comparison processes for a large population of cases, if possible we will refine the analysis in the future as we learn from this experience.

While acknowledging these and other important limitations, the results do suggest a noticeable net savings of EPA staff lead time, reduced need for staff participation, and a shorter case duration by using ECCR compared to other decision making processes for the population of cases studied. This conclusion is bolstered by EPA staff lead responses to two qualitative questions included in the same questionnaire. The CPRC asked about the relative expense of ECCR and the likely comparison process. A clear majority of EPA staff leads – 69% -- indicated that the comparison process would have been either significantly or somewhat more expensive than ECCR. The CPRC also asked EPA staff leads whether ECCR was a good investment for EPA in their case. Their level of agreement with this statement was 83%.

Benefits - To gather information about ECCR benefits, the CPRC asked EPA headquarter offices and regions about their views concerning the benefits associated with ECCR cases that occurred in FY 2013 through FY 2015. To minimize the burden on the responding headquarter offices and regions, the CPRC asked about collective benefits of the ECCR cases in which they participated, rather than individual case benefits. Key themes concerning the collective benefits of FY 2015 ECCR cases in each EPA office and region are very similar to those for FY 2013 and FY 2014.

- Efficiency: Nearly all headquarter offices and regions stated that the use of ECCR resulted in more efficient processes. The reported efficiency has two primary dimensions:
 - Maintaining timely progress: A neutral third party responsible for providing structure and focus to negotiations and conversations helped keep the parties’ attention on the case and moved cases along more quickly. One particular result is that the agency can better meet required case or project deadlines.
 - Savings: The cost and time savings was most often cited in the context of ECCR used for enforcement cases. Early resolution of enforcement cases resulted in cost

savings (compared to the expense of litigation), quicker case resolution (compared to the time required to litigate a case), and reduction of wasteful gamesmanship, posturing, and delays between counter-offers. Resource savings were also seen as a benefit in upstream, more collaborative cases as well.

- Avoidance of litigation: The uncertainty associated with litigation outcomes in some cases was also cited as a reason for using ECCR. Thus, the use of ECCR was considered beneficial for enforcement cases.
- More productive conversations: The use of ECCR produced more productive conversations in both enforcement and non-enforcement contexts. The use of a neutral third party resulted in better-designed processes; improved communication of all parties' interests, goals, and concerns; more efficient use of time; and more focused outcomes from conversations. Involving neutral facilitators and mediators also helped overcome language barriers, cultural differences, and challenges in communicating about risk. Even in enforcement cases where the parties did not reach agreement, offices and regions reported that ECCR resulted in a better understanding of the issues and sometimes narrowed the range of disagreement.
- Better outcomes: Many offices and regions stated the use of ECCR resulted in better outcomes, some of which could not have been achieved without neutral third party assistance. These include:
 - Outcomes that had improved environmental conditions when compared to non-ECCR cases: These include direct environmental benefits and indirect outcomes from settlements achieved (e.g., enforcement settlement proceeds were expected to or significantly increased the pace of remedy implementation).
 - More creative outcomes: In both enforcement and upstream non-litigation cases, the use of ECCR allowed for more thoughtful and creative decision making which increased the range of possible outcomes.
 - External ownership: Outside stakeholders were more likely to take ownership in the EPA's initiatives and programs.
- Improved relationships: Nearly all headquarter offices and regions stated that the use of ECCR resulted in enhanced collaboration and improved working relationships among participants, and, in particular relationships between EPA and its stakeholders. These improved relationships were exhibited during the course of the ECCR process, and enabled more productive conversations among stakeholders following the conclusion of the ECCR process.

- Capacity building: The use of ECCR professionals helped build the capacity of the EPA and external participants to engage in collaborative processes. These capacity building measures enhanced the parties' abilities to identify common interests and develop mutually satisfactory policies or action plans. Moreover, capacity building activities enabled partnerships and workgroups to work together more effectively after neutral facilitation support ended.
- Reduced stress levels: The EPA offices and regions reported reduced stress levels among staff due to the support they received from neutral third parties, particularly with respect to difficult processes, complex issues, and challenging personalities.
- Furtherance of the EPA's mission: Nearly all headquarter offices and regions reported that the use of ECCR helped further the Agency's mission to protect human health and the environment.

Types of ADR Processes/Techniques Used

EPA employs a full range of ADR processes in its ECCR cases, including: convening, formal and informal situation assessments, conciliation, facilitation, mediation, joint fact-finding, neutral evaluation, and arbitration, as well as any appropriate combination of these processes. Among these, convening, informal situation assessments, facilitation, mediation, and neutral evaluation are the most common ADR processes EPA uses for ECCR cases. EPA makes little use of arbitration for ECCR cases. Experience has shown that the types of matters addressed through ECCR do not lend themselves to successful resolution through arbitration.

Building Program Capacity

EPA has been engaging in and providing significant programmatic/institutional support for ECCR for decades. As a result, the agency has one of the more advanced ECCR programs in the executive branch. The EPA continued to provide high levels of programmatic/institutional capacity for ECCR during the period from FY 2006 to FY 2015. EPA built capacity in four areas: 1) Integrating ECCR objectives into agency mission statements, and strategic planning; 2) assuring that the agency's infrastructure supports ECCR; 3) investing in the ECCR program; and 4) focusing on accountable performance and achievement.

EPA's experience with ECCR is generally positive. Two barriers to success have been identified by some EPA's headquarters offices and regions. One is the limited availability of funding for ECCR processes, which inhibits use in situations where the parties may otherwise see a benefit. The second barrier is previous negative experiences with using ECCR, where, for example, EPA may have invested significantly in using ECCR, but failed to achieve a resolution of the matter.

As reported to OMB and CEQ in EPA's FY 2015 ECCR Annual Report, EPA worked to build capacity for the ECCR program.

Area 1) Integrate ECCR Objectives into Agency Mission Statements, Government Performance and Results Act Goals, and Strategic Planning

EPA Themes – In September 2013, EPA Administrator Gina McCarthy issued a memorandum entitled “EPA Themes – Meeting the Challenge Ahead.” In the memorandum, she articulated seven themes:

- Making a Visible Difference in Communities Across the Country
- Addressing Climate Change and Improving Air Quality
- Taking Action on Toxics and Chemical Safety
- Protecting Water: A Precious, Limited Resource
- Launching a New Era of State, Tribal and Local Partnerships
- Embracing the EPA as a High Performing Organization, and
- Working Toward a Sustainable Future
- ECCR is an important tool in furthering the EPA's work in each of these areas and the agency used ECCR, as appropriate, in related matters.

EPA's Strategic Plan – The EPA's ECCR program supports all five goals in the EPA's 2014-2018 Strategic Plan:

- addressing climate change and improving air quality;
- protecting America's waters;
- cleaning up communities and advancing sustainable development;
- ensuring the safety of chemicals and preventing pollution; and
- protecting human health and the environment by enforcing laws and assuring compliance.

One way that EPA built capacity for ECCR was to assure that the Agency programs and employees understood that there has been and continues to be high level support and an expectation that we will undertake ECCR. For example, in the EPA Administrator's message at the front of the Strategic Plan, she explicitly recognizes the importance of the agency's role in promoting dialogue and engagement on environmental issues, stating, “we will convene broad-based dialogue and engagement at the national, regional, and local levels to foster innovation and collaboration.” ECCR is an important way to encourage and facilitate this dialogue and engagement. Similar to previous years, the Agency used ECCR in processes supporting each of the five Strategic Plan goals in FY 2015.

ECCR Strategy - During FY 2015, CPRC continued implementing its second strategic plan (2011- 2015) with a commitment to bringing people together to solve their environmental problems. The CPRC meets this commitment in two ways. First, it

responds to client requests for help with facilitation, mediation, training, or advice. Second, it works to build the EPA's conflict prevention and resolution capacity. The CPRC maintained a strategic focus on providing excellent services, building knowledge and skills, cultivating opportunity, and demonstrating the results of the use of ECCR at the EPA. The strategy contains measurable performance objectives and describes the anticipated approach to reach these objectives. In FY 2015, as in previous years, the CPRC developed and implemented an annual operating plan with specific action items and dedicated personnel and funding to further the objectives of the ECCR strategy. Also in FY 2015, the CPRC began developing its third strategic plan, which covers the period from 2016 to 2020, and contemplates an increased focus on outreach and communications to build knowledge of and support for ECCR Agency wide.

Area 2) Assure that the Agency's Infrastructure Supports ECCR

The EPA provides a high degree of support for ECCR through the Agency's infrastructure. The CPRC is headed by the EPA's Dispute Resolution Specialist, who is appointed pursuant to the Administrative Dispute Resolution Act of 1996 (ADR Act of 1996). The CPRC provides policy support and access to neutral third party services for ECCR as well as alternative dispute resolution (ADR) used in other contexts.

EPA's ADR Policy - The agency's ADR policy (65 FR 81858, December 2000), which states the EPA's strong support for the use of ECCR and other forms of ADR to deal with disputes and potential conflicts, contains many themes in common with the OMB/CEQ ECCR policy memorandum. In particular, it articulates the following expected benefits from ADR/ECCR:

- Faster resolution of issues;
- More creative, satisfying and enduring solutions;
- Reduced transaction costs;
- Fostering a culture of respect and trust among the EPA, its stakeholders, and its employees;
- Improved working relationships;
- Increased likelihood of compliance with environmental laws and regulations;
- Broader stakeholder support for agency programs; and
- Better environmental outcomes.
- The EPA's ADR policy is intended to meet the following objectives, similar to those in the OMB/CEQ ECCR policy memorandum:
 - Promote understanding of ADR/ECCR techniques;
 - Encourage routine consideration of ADR/ECCR approaches to anticipate, prevent, and resolve disputes;
 - Increase the use of ADR/ECCR in EPA business;

- Highlight the importance of addressing confidentiality concerns in ADR/ECCR processes;
- Promote systematic evaluation and reporting on ADR/ECCR at the EPA; and
- Further the Agency's overall mission through ADR/ECCR program development. Based on the ADR policy, the EPA adopts a broad perspective on what qualifies as ECCR -- any technique to address environmental issues that involves a neutral third party, whether or not the participants' goal is to reach agreement. ADR/ECCR is used in many contexts at the EPA including adjudications, rulemaking, policy development, administrative and civil judicial enforcement actions, permit issuance, administration of contracts and grants, stakeholder involvement, negotiations, and litigation.

Senior Leadership Support for ECCR Use - Senior EPA leadership continues to provide encouragement and support for the use of ECCR, as it has for more than three decades. In FY 2015, EPA Assistant Administrators, Regional Administrators and their Deputies engaged in and supported the use of ECCR in high-profile matters, including the following cases and projects:

- Camp Minden Dialogue
- Cape Cod Commission 208 Water Quality Planning Process
- Clean Water Act Assumption Federal Advisory Committee
- General Electric-Housatonic Citizens Coordinating Council
- Gowanus Community Advisory Group
- Green Chemistry/Safer Choice Conference
- Green Infrastructure: ORD/New England States/Region 1 Dialogue
- Greenbelt Station Charette
- Hinkson Creek Collaborative Adaptive Management Process
- Lawrence Making a Visible Difference (MVD) Stakeholder Group
- Narragansett Tribe/Charlestown housing mediation convening
- Passaic Community Advisory Group
- Portland Harbor
- Proctor Creek Watershed Project
- Tribal/Idaho DEQ Fish Consumption Survey Collaboration

ECCR Outreach, Education, Training, and Career Development - As in previous years, the agency emphasized outreach, education, training, and career development activities to promote the increased use of ECCR in FY 2015. The EPA's ECCR outreach, education, training, and career development activities included the following:

CPRC and Other EPA Headquarters Outreach, Education, Training, and Career Development Activities

- The CPRC delivered 50 hours of ECCR training in FY 2015. There were 15 separate deliveries, and approximately 320 training attendees in FY 2015.
- CPRC training topics included interest-based negotiation, communication skills, dealing with interpersonal conflicts, and situation assessments. Audiences included internal EPA audiences from the Office of the Inspector General, Office of the Chief Financial Officer, Office of Pesticide Programs, EPA Region 4 Water Protection Division, Office of Resource Conservation and Recovery, and Office of General Counsel.
- The CPRC partnered with the U.S. Department of Justice, the U.S. Institute for Environmental Conflict Resolution (USIECR), and the U.S. Department of the Interior's (DOI's) Office of Collaborative Action and Dispute Resolution to deliver a session on Conflict Resolution and Negotiation for the National Advocacy Center's Training on Wildlife and Pollution Enforcement Issues Affecting Tribal Lands.
- The CPRC sponsored an exhibit, provided handouts, and gave a presentation on ECCR at the 2015 Community Involvement Training Conference.
- The CPRC conducted regular bi-weekly ten-minute presentations on collaboration and ECCR for new EPA hires.
- The CPRC continued to implement an ECCR outreach and marketing strategy for the agency, including identification of target audiences and working with representatives from those audiences to improve communications and service delivery to on-the-ground staff.
- The CPRC sponsored and publicized a series of activities associated with Conflict Resolution Day in October 2015. The events elevated awareness of CPRC and the ECCR and ADR services CPRC provides.

Regional Outreach, Education, Training, and Career Development Activities

- **Region 2 (New York)** conducted internal training and outreach to build capacity for ECCR. Region 2's ECCR specialist provided a full-day internal training on interest-based negotiation to the Division of Environmental Science and Assessment's Hazardous Waste Support Branch. The Branch required the negotiations course to support training requirements for credentialed employees. The ECCR specialist taught a Continuing Legal Education program for the Office of Regional Counsel and other interested Divisional staff called "Strategies for Dealing with Difficult People." Also, after co-facilitating meetings of the Long Island Smart Growth Resiliency Partnership, the ECCR specialist served as a moderator of a panel at Tuoro Law School with members of the Partnership. The panel discussion focused on the Partnership's successful collaborative process, the challenges its participants faced along the way, and the strategies to overcome those

challenges. Finally, Region 2 initiated an Effective Meetings training that was taken by nearly all of the employees in the Region. Attendees have reported to the trainers that some of the effective meeting strategies have been used in recent meetings.

- **Region 3 (Philadelphia)** provided mediation, negotiation, collaboration, conflict management/resolution and facilitation training to EPA employees in order to increase awareness, promote the use of ECCR, and enhance ECCR skills. One of Region 3's ECCR specialists is a member of the Regional Training and Skills Development management workgroup. A product of this workgroup is a framework for identifying critical competencies, learning events and target audiences in order to further the goal of leading a diverse and collaborative workforce. Chief among the competencies identified are managing conflict, teamwork, communication, and self-awareness. The ECCR specialist teamed with the Regional Training Officer (RTO) regarding the design, development and presentation of learning events. In addition, the RTO, ECCR specialist and others designed and facilitated retreats and workshops which, among other things, assist in conflict management in intra-agency relationships as well as in inter-agency relationships and in enforcement contexts.
- **Region 4 (Atlanta)** continues to support or sponsor topical training in its efforts to promote the use of ECCR and other collaborative activities in the Region. In an effort to promote capacity building and expertise within the Region, the Region sponsored seven employees from a variety of program offices to attend the Atlanta Federal Executive Board (FEB) Mediation Skills training course in June 2015. The course provided mediation training and the opportunity to network with fellow mediation oriented employees and managers in other agencies. The training and associated certification allows additional EPA staff to join and work with the FEB Mediation corps in the Southeast.
- **Region 5 (Chicago)** worked to build partnerships with other agencies via the Chicago Federal Executive Board shared neutral program and offered training, including two deliveries of "Interest-Based Negotiation" and one delivery of "Effective Advocacy in Mediation of Administrative Environmental Cases." The Region 5 ECCR specialists attended training, including a two-day training in Colorado titled "Advanced Multi-Party Negotiation of Environmental Disputes" and presented by the U.S. Institute for Environmental Conflict Resolution.
- **Region 9 (San Francisco)** offered a variety of training for EPA staff and management. Training topics included basic facilitation, designing effective meetings, group dynamics, and how to have a difficult conversation. The difficult conversation training was presented to the Region 9 Tribal Programs Office in the Land Division; all others were available to all Region 9 employees.

Planning for Future Outreach, Education, Training, and Career Development Activities

During FY 2015 the CPRC planned for FY 2016 training activities, including the possible introduction of new training topics and redesign of existing training, and development of more opportunities to practice conflict resolution skills.

- **International ECCR Outreach** – The EPA worked to develop international capacity and expertise in ECCR (and similar activities) during FY 2015. In cooperation with the Government of Chile and building on previous public participation trainings, the EPA facilitated a regional workshop in March 2015 for government and NGO representatives from Chile, Brazil, and Dominican-Central America Free Trade Agreement countries that focused on case studies and best practices of public participation and conflict resolution. A "Tools and Approaches Manual for the Latin America and Caribbean Region" (available in both English and Spanish) was developed based on the presented case studies.
- In August 2015, the EPA facilitated a training for regional government representatives throughout Chile to build their capacity for public participation, conflict resolution, use of social media, and working with indigenous communities. Region 2 supported this event by sending two staff members. The program brought together environmental ministry officials and NGOs from many countries in Central and South America, most of whom had participated in prior EPA-led ECCR training programs. This training focused on difficult challenges faced by the attendees, using a mock public hearing and other interactive exercises to build their ECCR skills. Following the training in Santiago Chile, Region 2's ECCR specialist conducted a learning session in the EPA Regional Office to discuss the cross-cultural exchanges and differences in approaches to conflict prevention and resolution in other countries.
- In FY 2015 the Office of International and Tribal Affairs (OITA), with support from the U.S. Agency for International Development, worked to improve public participation in efforts to improve urban water quality in Ouagadougou, Burkina Faso, and Accra, Ghana, as well as to increase good governance and laboratory capacity. This project is intended to serve as a model for future projects to improve urban drinking water quality throughout West Africa. EPA staff traveled to West Africa and met with leaders in government, NGOs, and representatives from civil society to assess these counties' capacities in these three focus areas. Their assessment will inform the creation of workshops in FY 2016 where EPA staff and West African partners will map assets, risks, needs, and opportunities to further develop capacity in these focus areas.
- The CPRC made presentations to visiting delegations on the topics of public participation and ADR. Delegations included representatives of government ministries from Southeast

Asia and the Pacific Islands, South Korea, and representatives from NGOs and environmental justice community members from Brazil.

Area 3) Invest in Support of Programs

Over the years, the EPA made considerable investments to support its ECCR program, a trend that continued in FY 2015. This section lists examples of key program investments.

ECCR Personnel - In FY 2015, CPRC had seven FTEs. The agency supported an additional three and a half FTEs in the New England, Denver, Kansas City, and San Francisco regional offices devoted to ECCR. In addition, at least 25 other individuals supported the ECCR program as part of their job responsibilities or on a collateral duty basis. For example, each EPA regional office has at least one staff member who serves as a liaison for ECCR activities. These regional ECCR staff members support ECCR education/training; draw on existing regional resources to resolve disputes; build expert knowledge, skills, and capacity; track requests for assistance/ECCR cases/projects; coordinate regularly with the CPRC; and contribute to the development of the ECCR annual report.

Office of Administrative Law Judges - The Office of Administrative Law Judges (OALJ) continued to make ADR a priority, offered neutral mediation services in nearly all environmental cases filed with the Office. Over the course of the year, the parties in a majority of EPA cases accepted ADR services from OALJ.

Environmental Appeals Board – Since FY 2010, the EPA’s Environmental Appeals Board (EAB) has offered parties the option to resolve disputes through ECCR with the assistance of an EAB Judge acting as a neutral evaluator/mediator. The EAB’s ECCR program has proven highly effective and efficient in fostering negotiated settlements that speed up resolution of EAB cases and preserve agency resources. To date, over 85% of the matters submitted to ECCR have reached resolution.

In FY 2015, the EAB engaged in ECCR in two complex matters that are ongoing. In one matter, the parties reached a final settlement in principle and the Clean Air Act permit modification that effectuates their agreement is out for notice and comment from the public. The second ECCR process was a complex, multi-party dispute regarding four Clean Water Act permits. The process involved two Indian tribes, two environmental NGOs, two regulated entities, and EPA Region 8. The parties have reached an agreement in principle resolving all issues in dispute. Both of these matters will likely be completed and removed from the EAB’s docket in FY 2016. In FY 2016, the EAB will continue, to

offer parties the option to participate in, and attempt to resolve their disputes through, ECCR.

Office of Land and Emergency Management – The Office of Land and Emergency Management (OLEM - formerly the Office of Solid Waste and Emergency Response - OSWER) used or built capacity for ECCR use during FY 2015 in a variety of ways:

- The Office of Resource Conservation and Recovery has used ECCR services since 2006. These services have included supporting efforts for certification programs for electronic equipment recyclers, establishing a stakeholder dialogue on sustainable financing of municipal solid waste recycling programs, developing a Memorandum of Understanding and implementing a national vehicle mercury switch recovery program, and planning and convening stakeholder meetings regarding EPA's regulatory efforts concerning CERCLA 108(b) issues.
- The Office of Superfund Remediation and Technology Innovation (OSRTI), Community Involvement and Program Initiatives Branch (CIPIB) and the CPRC made several presentations to describe EPA's Technical Assistance Services for Communities (TASC) program and the CPRC's program. The presentations discussed the types of services that can be accessed through the TASC and CPRC contracts and provided information on how to use each contract.
- OSRTI CIPIB and the CPRC worked closely to coordinate and assess ECCR services for Superfund sites through the CPRC's contract. OSRTI provided support and funding to the CPRC's Superfund Just-in-Time Task Order for short-term superfund activities.

Office of Water - A variety of units in the Office of Water (OW) have used or built capacity for ECCR use during FY 2015:

- The Office of Ground Water and Drinking Water (OGWDW) made significant contributions to increase the effective use of ECCR. OGWDW used a neutral third party conflict-resolution facilitator for continued support of the National Drinking Water Advisory Council's Working Group on Lead and Copper. This facilitated process was designed to foster open communication early in the pre-proposal development process. Activities included four public meetings and a number of working group webinars and conference calls.
- The Office of Wetlands, Oceans and Watersheds (OWOW) continued its implementation of recommendations from the U.S. Institute for Environmental Conflict Resolution/EPA/U.S. Army Corps of Engineers (USACE) programmatic assessment. In FY 2015, OWOW offered beginning, intermediate, and advanced Clean Water Act, Section 404 training in the EPA's regional offices. The training emphasized communication skills, collaboration with the USACE, and early conflict prevention.

Regional Support for ECCR – Some specific examples of EPA regional support for ECCR include the following:

- **Region 1 (Boston)** has a culture of support for ECCR that has remained strong throughout FY 2015. As in previous years, the Regional ECCR Program is managed by a full-time senior attorney-mediator. Approximately ten other regional staff from a variety of program areas and professional backgrounds provide support to the ECCR Program on a collateral basis with support from their managers. Most of the collateral staff are trained mediators and facilitators with varying degrees of experience who serve as in-house neutrals when they are needed and available. The group also included a contracts specialist from the Superfund branch who handled ECCR contracting issues and paperwork. At the highest levels of management, Regional leaders were aware of the services the program provides, frequently referred parties (from both inside and outside the agency) to the ECCR program, and are generally receptive to and support the use of ECCR when it is proposed for projects within their areas. Because of the proliferation of collaborative approaches to environmental problem-solving, there was a growing demand for facilitation services, which the Region addressed, in part, with in-house resources. Workload permitting, staff with ECCR skills were supported in their participation on the ECCR team and in their efforts to develop and hone their skills.
- **Region 2 (New York)** used ECCR in the Making a Visible Difference (MVD) program for Camden, NJ, in FY 2015 and laid the groundwork for more robust use of ECCR in other MVD communities in FY 2016. In particular, in FY 2015, the CPRC funded Region 2 for a facilitator for the Newburgh, NY MVD community, to assist with water sharing negotiations among Newburgh, New York City, and surrounding towns. The CPRC also funded the Vieques, Puerto Rico MVD community project, and the Office of Water provided funding for facilitation in the Newark, NJ MVD community to identify business process changes that will help Newark City departments implement green infrastructure projects. The funding for facilitation and collaboration in FY 2015 is expected to yield ECCR benefits in MVD communities in FY 2016.
- **Region 4 (Atlanta)** Office of Regional Counsel (ORC) regularly participated in the monthly ECCR specialist Conference Calls, which provide discussion on ways to improve and promote the use of ECCR in EPA. Region 4 ORC team members disseminate information on ECCR processes and the types of case support provided by the agency in such efforts (e.g., contracting/funding support, mediator services and training). Region 4 is currently working to improve intra-agency connections among the Superfund, Environmental Justice, Civil Rights, and other program offices concerning collaborative activities.
- **Region 6 (Dallas)** permanently appointed one of its senior attorneys to serve as the Region's ECCR specialist. During FY 2015, the Region actively supported the use of

- ECCR when appropriate. The Region 6 managers, program staff, and attorneys, were aware and familiar with ECCR as a viable option and pursue it as the need arose.
- **Region 7 (Kansas City)** continued to encourage and support the use of ECCR in addressing a wide range of agency matters, both in the Region and across the nation. During a vacancy in headquarters, the Region 7 ECCR specialist became the Acting ADR Counsel for the Alternative Dispute Resolution Law Office within the Office of General Counsel in EPA headquarters. This temporary appointment helped educate senior management and programs within the Region about the applications and cases elsewhere, the benefits of ECCR, and new ideas on how ECCR can be integrated within the EPA. The ECCR specialist continued to promote region-to-region ECCR opportunities. The Region continued to regularly participate in the ECCR opportunities offered by EPA's Office of Administrative Law Judges in contested administrative cases. Particular Region 7 efforts included during FY 15:
 - Region 7 provided facilitation and process design support for multiple high profile Superfund cases, including work with the outgoing and incoming Regional Administrators and other upper management to design helpful processes for engagement of stakeholders and communities.
 - The Region 7 ECCR specialist continued as a member of the nine-person Process Excellence Team in Region 7. He provided facilitation and conflict resolution expertise to the team and used ECCR tools internally as was necessary or useful. He shifted his duties in late FY 2015 to focusing the team on process enhancements and training in ECCR methods as implementation phases take place in the Process Excellence (LEAN) initiatives.
 - The established presence and continued high profile projects associated with ECCR in Region 7 are building an inherent understanding of the spectrum of processes available to every division and branch in the Region. All of the region's divisions participated in some form of ECCR process or training with the ECCR specialist in FY 2015. Most interactions were consultative, coaching, and advisory. In FY 2015, the process design consultative work increased from FY 2014. This is due to internal retreats and training featuring ECCR methods, a blending of ECCR into LEAN Six Sigma projects, and the higher profile of ECCR within the region.
 - The **Region 8 (Denver)** ECCR specialist gave a presentation in May 2015 to the Region 8 Regional Leadership Team regarding several successful instances where ECCR was used in the preceding twelve months. At this meeting, the Regional Administrator spoke of his personal involvement in one of the processes, encouraging every management official in attendance to consider and use environmental conflict resolution tools and processes wherever appropriate. The ECCR specialist instituted the Region's first environmental conflict resolution resource web page on Region 8's local intranet homepage.

- **Region 10 (Seattle)** supported the effective use of ECCR tools and to build institutional capacity by working with programs, staff, and outside stakeholders to identify ECCR opportunities. The Region worked with its ECCR specialists and CPRC staff to identify and evaluate potential cases, and to identify specific ECCR processes to use. The Region supported ECCR training for its staff. Superfund and water program uses were the dominant but not exclusive types of cases in the Region. The Region also continued to use ECCR processes tailored to address environmental justice and tribal issues. Consideration of ECCR was the norm in enforcement matters and becoming more routine in non-enforcement matters.

Contracting for External ECCR Services - The EPA continued to provide services under the seventh CPRS Contract which has a ceiling of \$51,000,000 over five years. The contract, now in its second year, provided comprehensive access to neutral third parties and related services all over the country, with most services being initiated within two weeks of a request. In FY 2015, the EPA spent about \$6 million on ECCR and related services (e.g., neutral third parties for ECCR cases, ECCR training) under the CPRS contract, one of the highest demand years in the 28-year history of the contract. The work occurred on 59 active task orders and nearly 100 subprojects. On average more than eight contract actions a week all year were undertaken for this contract.

Interagency Agreement with the U.S. Institute for Environmental Conflict

Resolution – The EPA’s interagency agreement (IA) with USIECR continued to provide cooperative support for conflict prevention and resolution assistance. The IA supported the National Roster of Environmental Dispute Resolution Professionals and provided access to neutral mediation and facilitation services for cases and matters in which the EPA and USIECR had a shared interest, such as those involving the National Environmental Policy Act and intergovernmental conflicts. For example, in FY 2015, the IA provided support for two projects, one related to intergovernmental coordination on section 404 of the Clean Water Act in the Northeast, and the other related to wetlands protection on tribal lands in the in the U.S. Southwest. In FY 2015, the EPA funded two projects through the IA.

Interagency Partnerships – The EPA continued to strengthen its partnerships with other federal agency ECCR programs during FY 2015. Approximately 44% of the EPA’s ECCR cases involved other federal agencies, including those in which the Department of Justice was representing the EPA in a litigation context.

Area 4) Focus on Accountable Performance and Achievement

The EPA believes that it is very important to track the use and outcomes of ECCR and has been working toward that end with other federal and state partners since before the

original OMB/CEQ ECCR policy memorandum was issued in 2005. In FY 2015, the EPA pursued three efforts addressing performance and accountability. First, it continued to collaborate with USIECR and others to evaluate the practice of ECCR. Second, it used multiple approaches to gauge the use of ECCR at the EPA. Third, it continued to evaluate ECCR-related training sponsored by the CPRC. All three of these activities were initiated prior to FY 2015 and updates on each are provided below.

Evaluating the Practice of ECCR - For many years the EPA has collaborated with USIECR, and other federal and state agencies in the development and use of common evaluation instruments to assess the practice of ECCR. In FY 2015, the EPA continued using the fourth set of OMB-approved evaluation instruments developed through this collaboration and continued to collect and analyze evaluation data and used the results to improve its program. The EPA also initiated development of a fifth set of evaluation instruments, in collaboration with USACE and DOI, for OMB approval in FY 2016.

Gauging the Use of ECCR – The EPA used three methods to gather data about the use of ECCR throughout the agency. The first method was reporting by the CPRS contractor and the USIECR on use of its IA with EPA. This reporting allowed the CPRC to quickly and regularly identify current ECCR cases where external service providers served as neutral third parties, and the nature of the cases.

Second, CPRC relied on a network of EPA Headquarters office and regional staff members who are designated to assist with the ECCR annual reporting process. Some of the designees also provided additional ECCR program services as needed by their respective organizational units. These individuals confirmed preliminary ECCR case lists generated by the CPRC and supplemented such lists with additional ECCR cases.

Third, CPRC staff members logged requests received for ADR and ECCR services in CPRC's request tracking system. Each of these three methods of tracking ECCR provided an important component of the information needed to track and understand trends in ECCR use at EPA, in spite of the unique data quality challenges that each presents.

ECCR-related Training Evaluation - In parallel to the CPRC's training efforts described above, it continued to evaluate training. By measuring both the satisfaction of participants with presentations and logistics and the participants' views about whether the training achieved the learning goals set out in the courses. The CPRC used the results of the training session evaluation to make regular improvements in training delivery. In FY 2016, the CPRC is continuing the evaluation process for CPRC sponsored training and beginning to develop additional tools to assess the impact of its training.

Plans to Expand Program in the Future

EPA's ECCR program is one of the most advanced in the executive branch and already has the ability to address the full spectrum of public health and environmental issues that the Agency and its stakeholders face, where parties in specific matters opt to use ECCR. We are continuously seeking opportunities to increase the effective use of ECCR at EPA. The CPRC's FY 2016-2020 Strategic Plan for ECCR furthers this objective by promoting the provision of excellent ECCR services, building knowledge and skills, cultivating opportunity, and demonstrating results.

Environmental Conflict Prevention and Resolution Case Example **Oregon Fish Consumption Rate and Water Quality Standards Rule Dialogue**

After nearly a decade of disagreement and frustration, leaders from the EPA, the Confederated Tribes of the Umatilla Indian Reservation, and Oregon's Department of Environmental Quality entered into a facilitated dialogue to develop a revised water quality standard for toxic pollutants to protect fish consumers, tribes and environmental justice communities that rely on subsistence fishing for their food source in Oregon. A professional facilitation team was funded by EPA to help design, convene, coordinate, and facilitate discussions around water quality standards in Oregon—specifically human health criteria relating to Oregon's fish consumption rates.

The project evolved into three separate phases:

Phase I—Public workshops & issue identification;

Phase II— Rule making working groups comprised of knowledgeable individuals from affected organizations and stakeholder groups; and

Phase III—Public hearing and input

The Oregon Fish Consumption Rate and Water Quality Standards Rule Making Project provided an opportunity for a wide range of people and interests to come together, review information, and share perspectives and data about what might work to reduce toxic chemicals in Oregon's waterways—and the fish that live in them. The facilitated dialogue supported an open and honest exchange of ideas and data among the three governments that had, in past years, struggled to have constructive discussions about how to move forward to solve the difficult issue. The representatives of the three governments worked hard to “seek to understand, not just to be understood.” They worked hard – with each other and with those who came to the public workshops or were part of the work groups—to find data, to understand impacts, and to test statements that were made about those impacts. At the end of a four year process, a new set of water quality standards were agreed upon. The adopted standards were ten times more stringent than the original proposal and set an aspirational goal for other developing standards. As a result of the ECCR process, some of the most vulnerable populations, tribes and environmental justice communities that rely on subsistence fishing for their food sources, are now protected by the strictest water quality standards in the nation.

B. Ombudsman Services

EPA has two ombudsman programs.

The **Office of Inspector General Whistleblower Protection Ombudsman** provides neutral services to educate agency employees about prohibitions on retaliation for protected disclosures. These services include educating agency employees who have made or are contemplating making a protected disclosure about their rights and the remedies against retaliation for protected disclosures. https://www.epa.gov/office-inspector-general/epa-oig-hotline#wbp_ombudsman

The **Asbestos Small Business Ombudsman** (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency. The ASBO advocates for small business issues, partners with state Small Business Environmental Assistance Programs (SBEAPs), EPA Regional Small Business Liaisons (RSBLs) trade associations, EPA headquarters and regional offices, the Small Business Administration (SBA) and other federal agencies to reach out to the small business community. Services include: Acts as a liaison between EPA and the small business community; advocates for small business during the EPA rulemaking process; provides technical assistance to small businesses; supports national network of Small Business Environmental Assistance Programs; and operates a toll free hotline for the convenience of small businesses and the general public, seeking free, confidential help as it relates to a variety of environmental regulatory topics. <https://www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman>

EPA Internal-Facing ADR Programs

C. Workplace and Early Intervention and Conflict Resolution Program

Workplace Solutions is EPA's headquarter workplace conflict management program. It is designed for early intervention in workplace issues to resolve conflict and restore productivity. This program provides employees with the opportunity to participate in conflict management processes such as conflict coaching, conflict/climate assessments, mediation, conciliation, facilitation, and group dynamics interventions to address their concerns. This program also offers workshops in conflict and communication related subjects, including self-awareness and team awareness, to develop skills and empower individuals and groups to address conflict effectively. Workplace Solutions is available for headquarters early intervention and grievance processes.

Program Funding over Past Ten Fiscal Years

EPA's workplace program has not received extramural funding over the past ten fiscal years. In FY 2015-2016, EPA initiated a limited initiative to provide extramural funds to the workplace program to tackle challenging or protracted issues and build collaboration through the provision of a more comprehensive set of conflict management services designed to meet the needs of each individual situation.

Number of FTEs Devoted to Program

In 2008 EPA's Workplace Solutions program was reduced from four full time FTE's to one full time FTE. Since 2008 the program has become responsible for additional duties such as Preventing Violence in the Workplace and outreach and course development for the agency's anti-harassment policy and program. The reduction in staff and additional duties have reduced the ability of the program to conduct outreach and proactively address workplace conflict.

Number of Cases/Disputes

Almost all of the Workplace Solution's cases are early intervention cases. The majority of cases were resolved with very few proceeding to a formal grievance process. The following number of cases were conducted each year:

Fiscal Year	Number of cases recorded
2016	64
2015	52
2014	32
2013	40
2011	42
2009	21
2007	43
2005	25

Tangible and/or Intangible Benefits Realized by using ADR

Resolution of interpersonal workplace conflict, restoration of productivity, restored relationships, personal healing, group dynamics improvement, collaboration building, self-awareness, team-awareness, team-building, trust building, united focus and united front, return customers for application of new skills and self-reflection.

Types of ADR Processes/Techniques Used

Conflict coaching, conciliation, facilitation, mediation, group dynamics processes (group/climate assessments, team-building), training (conflict management, communication, civility, change management, engagement, empowerment, collaboration, Myers-Brigs Type Indicator, Strengths Deployment Inventory, Thomas-Kilmann Conflict Mode Instrument and others,).

Building Program Capacity

During the past ten fiscal years there has been no financial support to build capacity for the workplace program. Barriers have included that the program is not directly related to the agency mission and there has been a reduction of staff throughout the agency.

Plans to Expand Program in the Future

In FY 2016-2017 EPA is conducting an assessment of its workplace conflict management services to identify, evaluate and provide recommendations regarding options to improve and strengthen the headquarters workplace conflict management services.

Workplace and Early Intervention and Conflict Resolution Program Case Example

In 2006 Workplace Solutions presented a communication skills training to an organizational retreat for 55 people. The following year, the same organization invited Workplace Solutions to provide an MBTI workshop. Conflicts were identified during that workshop and Workplace Solutions subsequently proposed that there were issue to uncover and resolve. Workplace Solutions conducted a workplace climate assessment for one staff member within the organization, provided recommendations for mediation, restructuring, and collaboration building. Workplace Solutions was then asked to conduct a similar assessment for 3 other staff members within the organization. Those assessments resulted in additional recommendations for those staff members, several group interventions, and a managerial rotation throughout the organization. The organization implemented the recommendations and obtained the highest Employee Viewpoint Survey scores within their organization. The unit further experienced improved employee engagement and less interpersonal conflict, a unified management team experience and more. When they subsequently were instructed to reorganize 2 organizations into one, they requested facilitation of a management retreat for building collaboration capacity, team awareness, and action planning. The same organization created a new staff team and immediately requested intervention to help the team gel with acting management, uncharted functions, etc. and awareness of personality challenges. Through extended engagement with Workplace Solutions, between 2006 and 2015, the office and its subgroups identified conflict early on and rapidly addressed the challenges to avoid escalation.

D: Pilot Mediation Program to Resolve Workplace Discrimination Dispute and EEO Complaints

The **Office of Civil Rights** (OCR) provides employees the option to participate in mediation to resolve workplace discrimination disputes or EEO complaints. Managers are required, absent extraordinary circumstances to participate if mediation is requested by the complainant. In November 2015, OCR initiated a Pilot Mediation Program that used internal EPA collateral duty neutrals to serve as mediators.

Program Funding over the Past Ten Fiscal Years

OCR has used the services of the Sharing Neutrals Program and Federal Executive Boards to provide mediation services. In November 2015, OCR initiated a Pilot Mediation program that utilized internal EPA collateral duty mediators to provide services. If extramural funds are required for a case, they are provided by the responsible headquarters or regional office.

Number of FTEs Devoted to Program

The Office of Civil Rights has one dedicated FTE to the program. The ADR Coordinator position is currently vacant and the duties are being handled by Title VII employees. It is anticipated that the position will be filled in the near future with the individual devoting approximately 80% of their time to ADR related services.

Number of Cases/Disputes

Since the Pilot began in November 2015, the ADR offer rate has run between 72.3% and 92.9% of all informal cases, with the ADR election rate between 48.5% and 69.1% of informal complaints received.

Tangible and/or Intangible Benefits Realized by Using ADR

Less time to resolution of complaints – less salary cost of handling individual EEO cases; increased communication between aggrieved individuals and responding management officials; better understanding of ADR; less formal complaints, etc.

Types of ADR Process and Techniques Used

Generally, ADR EEO cases handled within EPA are completed using facilitative mediation techniques. There are a few cases in a few locations where mediation has been completed using transformative mediation techniques.

Building Program Capacity

OCR continues to utilize mediators from local FEB's Sharing Neutrals Programs. In addition, since November 2015, OCR has conducted a pilot utilizing internal mediators to handle appropriate cases throughout the Agency. The internal mediation pilot program has provided additional resources through timely access to mediators, which has allowed scheduling of ADR sessions to be much faster, providing more timely resolution of cases.

Plans to Expand Program in the Future

OCR plans to expand the internal mediator pilot and make it a permanent part of the ADR program within OCR within FY 2016. OCR continues to study the results of the pilot to understand and implement best practices and streamline procedures.

Pilot Mediation Program to Resolve Workplace Discrimination Dispute and EEO Complaints Case Example

Participants elected to use mediation to address an informal complaint regarding non-selection for promotional opportunities. The internal mediation pilot provided a mediator who was available to mediate several sessions. A key lesson learned was the ability for participants to engage in multiple sessions provided the participants' time to think about options for resolution and allowed for continued open discussion. This resulted in better communication within the organization, better understanding of the EEO complaint and mediation processes and a resolution of issues that avoided a filing of a formal complaint.

Agency ADR use beyond the ADR Programs Discussed Above

EPA uses ADR in the promulgation of regulations in the regulatory negotiation process. EPA also provides facilitators and trainings to prevent or manage conflicts in community involvement activities, especially in difficult situations.

ADR Training

The EPA strongly encourages all EPA personnel to learn about ADR. The CPRC offers workshops and seminars to help EPA staff learn key skills for consensus building and conflict resolution. In addition, Workplace Solutions offers workshops in conflict and communication related subjects, including self-awareness and team awareness, to develop skills and empower individuals and groups to address conflict effectively.

The CPRC offers training both at headquarters and at its ten regional offices. The CPRC offers scheduled trainings that are open to all EPA staff to attend, for example each year in October as part of Conflict Resolution Day, CPRC offers a full day of trainings designed to help employees gain conflict resolution skills that can be applied both to environmental and workplace conflict, and works with EPA offices to custom design training to meet the organizational ADR needs.

Examples of trainings offered include:

- ADR for Environmental Advocates
- Interest-Based Negotiation
- Communication Skills
- Dealing with Interpersonal Conflict
- The Power of Apology
- Charrettes: Redevelopment by Design
- Situation Assessment: Fitting the Forum to the Fuss
- Environmental Collaboration and Conflict Resolution Foundations
- Better Decisions through Consultation and Collaboration

Interagency ADR Working Group

The Interagency ADR Working group provided EPA with the opportunity to communicate with other Federal agencies, share program information, best practices and to collaboration on training and program development.

The following sections of the Interagency ADR Working Group most closely relates to the work of EPA's ADR programs:

- Workplace
- Contracts and Procurement
- Administrative Enforcement and Regulatory Process
- Litigation
- Environmental

FEDERAL DEPOSIT INSURANCE CORPORATION 2016 REPORT ON ADR IN THE FEDERAL GOVERNMENT

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ADR Policy

The FDIC has a formal written ADR policy which can be found at <http://www.fdic.gov/regulations/laws/federal/97adrx.html>. The policy has not been amended or modified during the past ten fiscal years (FY06-FY15).

ADR Programs

A. Internal Ombudsman

The Internal Ombudsman (IO) at the FDIC is a source of independent assistance for resolving work-related concerns. The IO reports directly to the FDIC Chairman on emerging workplace trends, and recommends changes in policies, programs, and practices that would benefit all FDIC employees. The IO pledges to be impartial, neutral, and confidential in working with employees of the FDIC. The doors of the IO are open to any current or former FDIC employee who needs help working through an issue or resolving a workplace matter.

The Internal Ombudsman provides informal dispute resolution services to all levels of FDIC personnel. The IO is a place where employees can seek guidance regarding disputes or concerns, without obligation or repercussion, at any stage in the issue. The issues may involve policy concerns, interpersonal problems, leadership, career development, human resource matters, organizational change, efficiencies of operation, or any other area that has a correlation to the mission of the office or the FDIC as a whole.

The IO will confidentially receive complaints, concerns or questions about alleged acts, omissions, improprieties, and/or broader systemic problems. The response of the IO is tailored to the dynamics of the situation and the visitor's concerns. The IO will listen, make informal inquiries or otherwise review matters received, offer resolution options, make referrals, and mediate disputes independently and impartially. The Ombudsman will assist parties in reaching resolutions that are

consistent with the ideals and objectives of the FDIC. Services of the IO supplement, but do not replace, other more formal processes available to the FDIC community.

In addition, the IO will serve as an information and communication resource, consultant, facilitator, mediator, coach, dispute resolution expert and catalyst for institutional change. The Internal Ombudsman also will provide feedback to the Chairman and the executive staff when trends, patterns, policies or procedures of the FDIC generate concerns or conflicts.

The Internal Ombudsman maintains an internal facing website that is not accessible to the public.

The FDIC Internal Ombudsman function was approved as a pilot program in 2009. The pilot lasted 2 years and the first permanent IO was hired in 2012. The IO office has increased in size from one permanent employee to six permanent employees. In addition to addressing employee issues and concerns, the IO also manages two Chairman's Office employee engagement initiatives: the Workplace Excellence Program and the FDIC-NTEU Labor Management Forum.

Funding for the IO program and staff positions is part of the FDIC Executive Offices budget.

The number of individuals the IO helped to address/resolve issues has increased each year since 2012.

The following are some of the tangible benefits the IO provides to employees:

- Providing a safe environment to discuss work-related issues and concerns.
- Understanding how a situation has impacted an employee.
- Answering questions on work-related issues and concerns.
- Providing information, and clarifying FDIC policies, practices, and procedures.
- Brainstorming options for addressing specific issues and concerns.
- Reviewing and evaluating options for addressing specific issues and concerns.
- Providing employees with the confidence to address issues and concerns before situations escalate.
- Bringing people and groups together to open lines of communication about issues and concerns.
- Serving as a channel for directing feedback and views to FDIC management.
- Helping employees resolve/address a specific situation on their own.

Issues and concerns are addressed using a variety of strategies and dispute resolution techniques such as facilitation, mediation, conciliation, coaching, and organizational assessments.

The Internal Ombudsman office has expanded over the past four years to a full complement of 6 staff. The IO is included in senior executive level meetings and serves on numerous committees. The IO meets with the Chairman and Deputy to the Chairman/Chief Operating Officer/Chief of Staff, and division/office leadership on a regular basis. Coordinating the Workplace Excellence Program and Labor Management Forum has further institutionalized the IO's role as a highly effective neutral facilitator/convener for issues and concerns throughout the agency.

There are no current plans to further expand this program in the future.

1. Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

- Workplace
- Contracts and Procurement
- Administrative Enforcement and Regulatory Process
- Litigation
- Environmental

Following are two recent success stories that illustrate the type of issues the IO works on, and the outcomes achieved:

- An employee applied for numerous promotions and was not able to make the best qualified ranking for any of the positions. The employee was extremely upset and thinking about filing a formal complaint. After spending a significant amount of time with the employee, the IO (with the permission of the employee) reached out to Human Resources to verify the number of times the employee applied for promotions and the results of their applications. The IO learned that the employee was submitting an old resume that had not been updated in many years to different positions. The IO coached the employee on the importance of updating their resume and customizing it for each position of interest. The employee then successfully made the best qualified certificates for several promotional opportunities and was finally selected for a promotion.
- An employee was having a difficult time with their supervisor and reached out to the IO for assistance. The employee was interested in having a facilitated conversation with their supervisor to try and improve the

situation. The employee provided permission, and the IO reached out to the supervisor who agreed to participate in the facilitated conversation. During the conversation, the employee learned that the supervisor was very concerned about the employee's work/life balance. The employee had a large workload and volunteered to work on several additional high priority projects. The supervisor had begun to remove some assignments from the employee to reduce stress and to allow the employee to work on the high priority assignments. The employee thought the supervisor had lost confidence in them. The facilitated conversation helped them clarify recent conversations, prioritize the employee's workload, and improve their working relationship.

B. EEO Mediation Program

The FDIC EEO Mediation Program is administered through the Office of Minority and Women Inclusion (OMWI). It provides a means for individuals to attempt to resolve their EEO complaints before or after a formal EEO complaint is filed. With some exceptions, parties who contact OMWI with an EEO complaint are provided an opportunity to participate in mediation with a designated FDIC management representative in order to discuss and try to resolve the issues that are in dispute. The FDIC utilizes independent contract mediators to facilitate the mediation sessions and to help the parties in their efforts to resolve the dispute. The EEO Mediation Program is used solely for resolving EEO complaints. It is an internal program and is offered to all individuals who enter into the EEO process with a few exceptions. The types of disputes covered include non-selection (internal only), pay and performance, assignments and work environment and harassment (both sexual and non-sexual). There is no public website for this program; only an internal webpage is available.

The EEO Mediation Program is an internally funded program of the FDIC and has not been impacted by budget constraints. There is at least one FTE in the EEO (OMWI) office devoted to administering the EEO Mediation Program on a full-time basis. EEO Mediation is generally requested over traditional EEO counseling anywhere from 30%-50% of the time. Benefits realized vary. There are no plans to expand this program in the future; access to EEO mediation is currently offered to all EEO complainants with a few exceptions.

The FDIC has not added resources to the EEO Mediation Program. The EEO Counselors encourage mediation as a good option to try and resolve EEO complaints. Information has been provided to employees, managers and supervisors regarding the EEO Mediation Program, and managers and supervisors have received training on the benefits of mediation and their roles and responsibilities in the mediation program.

There have been a number of cases where we had resolutions of multiple EEO complaints as a result of mediation. This saved the agency time and money from

protracted litigation. The cases that have had the highest success rates from mediation tend to be those related to evaluation or training issues.

C. Workplace Disputes Program

The FDIC Workplace Disputes Program (WDP), which was authorized as a permanent program in 2004, is an internally-facing program that provides FDIC employees with a confidential, informal forum for resolving workplace issues with the assistance of a third-party neutral. The WDP is intended as a mechanism to help resolve conflicts through early intervention and without the need to file a formal claim in any other administrative forum; it is available to all FDIC employees on a voluntary basis, and does not take the place of EEO or established employee grievance processes. The WDP is designed to be flexible and to handle a variety of situations: conflicts between co-workers, between employees and supervisors, within work units, and other situations as appropriate. The WDP uses contract neutrals that are selected and retained by the ADR Team (as part of the Legal Division) on a case-by-case basis and at no cost to the parties. ADR processes that are typically used are mediation and facilitation, although other processes, such as conflict coaching, may be employed in appropriate circumstances. The WDP does not have a public website; only an internal webpage is available.

The WDP is funded out of the Legal Division's operating budget; the amount of funding for the WDP has not changed in the last ten years, nor has the number of employees dedicated to the program. Participation in the program has remained fairly constant as well. There are currently no plans to expand this program in the future.

Steps that have been taken to increase program capacity for the WDP include a variety of outreach measures, including presentations at staff meetings, targeted dissemination of program pamphlets, and a webpage that's available through several different access points on the FDIC's internal website.

1. Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

- Workplace
- Contracts and Procurement
- Administrative Enforcement and Regulatory Process
- Litigation
- Environmental

Please provide additional comments below regarding how your program has benefitted from the work of the above section(s):

The FDIC has benefitted from the ADR Resources and Guidance (drafted by members of the Workplace Section) on several key issues of importance to workplace ADR practitioners, as well as the ADR Lunchtime Series Presentations, which has hosted speakers on a variety of substantive topics relevant to the ADR community. Also of benefit is the Conflict Management Consortium (CMC), which is an offshoot of the Workplace Section. The CMC is a group for federal workplace ADR professionals who spend a substantial amount of their time managing, developing or working within a federal workplace ADR program as a neutral. The CMC serves as a forum for informal discussions about the issues and challenges faced by those ADR professionals in their respective programs.

D. Office of Ombudsman

The FDIC's Office of Ombudsman (OO) is an independent, neutral, and confidential resource and liaison to anyone affected by the FDIC in its regulatory, resolution, receivership, or asset disposition activities. As an external-facing ADR program, the OO facilitates the resolution of problems and complaints from the banking industry and general public against the FDIC in a fair, impartial, and timely manner. The OO uses various types of ADR processes/techniques, ranging from facilitation to shuttle diplomacy to informal mediation. OO staff is comprised of former bank examiners and liquidation specialists.

The OO maintains the following external website: www.fdic.gov/ombudsman.

Staffing and funding increased during the financial crisis starting in 2008, primarily due to the OO's role in financial institution failures and post-closing receivership issues. New employees were hired on two-year terms, with options to extend two additional years. In support of the Division of Resolutions and Receiverships (DRR) and the geographic concentrations of bank failures, these OO term employees were located in each satellite office. As the pace of bank failures has decreased, these term employees have been released. The post-crisis staffing stands at 20, down from a high of 32 in 2010. There are currently no plans to expand this program in the future.

Receivership Role: The greatest intangible benefit of OO involvement in receivership activity was the increased public confidence achieved due to the availability of an on-site person to handle problems and complaints from

customers and a local face of the FDIC to calm depositors and provide factual information, especially in small towns or high-profile situations where rumors run rampant.

While assisting in navigating bureaucracy can be one of the purposes of an ombudsman program, managing volatile emotions and expectations while explaining processes and providing intra-divisional facilitation requires a high degree of conflict resolution skills. Many public callers to the FDIC have been impacted in some way by a bank failure; therefore, they can be very emotional, especially if they are facing some adverse action such as foreclosure.

The OO serves as the primary FDIC contact with customers of failed banks who have questions, problems or complaints. Some depositors with deposits over the FDIC insurance limit do lose money, and such situations understandably involve high emotions. In one such situation, the OO was called upon to meet with someone who had lost a significant amount of money. This money represented the proceeds of a life insurance policy resulting from the death of the depositor's son in Iraq and the matter had drawn attention in the media. The OO teamed up with a counselor to meet with the depositor. While the OO explained the FDIC processes and served as a liaison between the depositor and the FDIC, the counselor managed emotions during the meeting and provided coping techniques. Several follow-up calls were required after the meeting, and the OO continued to manage emotions and expectations.

Regulatory Role: The OO provides informal mediation between bankers and examination staff. OO representatives use interest-based problem-solving, shuttle diplomacy, and reframing complaints into goals. This way both sides are provided an opportunity to vent and present their side and desired outcomes to a neutral party. One banker who used this process said he was happy to see this matter resolved without spending money on legal fees.

Department or Agency ADR use beyond the ADR Programs discussed above

With an ADR Program that's been in existence for over 20 years, the FDIC has long used ADR appropriately and creatively to save time, money and human resources. Currently, ADR at the FDIC involves a full spectrum of services to promote the prevention, de-escalation, resolution and settlement of disputes. In addition to the programs described above, the FDIC uses ADR skills and techniques in the following areas:

1. As mentioned above, the Internal Ombudsman manages and facilitates two Chairman's Office employee engagement initiatives: Workplace Excellence Program and the FDIC-National Treasury Employees Union (NTEU) Labor Management Forum. The FDIC's Workplace Excellence Program plays an important role in helping the FDIC engage employees. Workplace Excellence (WE) is a partnership between the FDIC and

NTEU. The WE program is composed of a national-level WE Steering Committee and 10 Division/Office WE Councils that are focused on maintaining, enhancing, and institutionalizing a positive workplace environment throughout the agency. In addition to the WE Program, the FDIC-NTEU Labor Management Forum serves as a mechanism for the union and employees to have pre-decisional input on workplace matters. The WE Program and Labor Management Forum enhance communications, provide additional opportunities for employee input and engagement, and improve employee empowerment.

2. The FDIC also uses ADR processes, such as mediation and, to a lesser extent, arbitration, to resolve disputes with outside parties whenever this course of action appears appropriate, is required by contract, or is ordered by a court. These ADR processes can be effective in saving time, resources and money.
3. The FDIC uses other ADR processes, such as facilitation and collaborative problem-solving, as tools to conduct effective meetings, to create an environment conducive to open dialogue on difficult issues, to coordinate with other banking agencies and the banking community, and to increase participation by stakeholders in important external and internal decision-making.

ADR Training

A large number of ADR-related training and educational opportunities are made available to agency employees through the FDIC's Corporate University. In 2015, ADR-related training constituted a part of 17 courses taken by nearly 1,000 employees, including EEO training that contains a component addressing a manager's/supervisor's role in the mediation process. The FDIC's No FEAR Act training also contains information about the availability of mediation during the EEO process.

Interagency ADR Working Group

In addition to the Workplace Section resources noted above, participation in the IADRWG has been beneficial in a number of ways; most notably, it has allowed us to keep abreast of issues and trends in federal ADR, to develop an invaluable network of federal ADR professionals and resources, and to learn from the collective knowledge and experiences of those ADR professionals.

Alternative Dispute Resolution Presidential Report- Appendix

Federal Executive Boards Shared Neutrals Programs

Federal agencies often work together to share resources to resolve workplace disputes using Alternative Dispute Resolution (ADR). In some cases, agencies developed formal programs for sharing staff who serve as Neutrals (mediators); many of these efforts are accomplished through local Federal Executive Boards (FEB).

The basic concept of a shared Neutrals program is that agencies “share” employees who are qualified to serve as Neutrals (mediators). Through ADR programs, an employee of one agency acts as a mediator for a dispute in another agency. The employing agency continues to pay the mediator's salary, and the agency receiving the mediator's service pays other necessary expenses such as travel. This arrangement typically includes a written agreement between all of the participating agencies.

Shared Neutrals programs operate in the following FEB locations:

Atlanta	Houston	Oregon
Baltimore	Kansas City	Philadelphia
Boston	Los Angeles	Pittsburgh
Chicago	Minnesota	San Antonio
Cleveland	New Mexico	San Francisco
Colorado	New Orleans	Seattle
Dallas-Ft. Worth	New York City	South Florida
Detroit	Oklahoma	

Summary description and metrics from the Los Angeles, Kansas City, and Seattle FEBs Shared Neutrals Programs:

Greater Kansas City FEB: <https://kansascity.feb.gov/committees/adrshared-neutrals/>

Program Overview:

The Shared Neutrals Program is a cooperative arrangement between diverse Federal agencies in the greater Kansas City area. Each member agency makes a reciprocal agreement to submit requests for ADR services and to share resources cooperatively. The program maintains a roster of 40 active mediators from various agencies who mediate cases as assigned. The Shared Neutrals Program is designed to serve three objectives: 1) Provide agencies with a no cost alternative and flexible access to effective dispute resolution services; 2) Provide disputing individuals with accessible, timely, and

confidential neutral services; and 3) Support a diverse cadre of trained and experienced neutrals (mediators) who mentor less experienced neutrals from other agencies on a collateral duty basis.

Metrics

FY	Total # ADR Interventions	Mediation Resolution Rate	Cost Avoidance*
			\$1,518,413.61
2015	33	64%	
2014	26	54%	\$1,041,562.22
2013	50	56%	\$1,891,619.97
2012	43	56%	\$1,728,161.52
2011	31	65%	\$1,340,900.28

Los Angeles Federal Executive Board: <http://www.losangeles.feb.gov/services/>

Program Overview:

Each participating Federal agency appoints an Agency Coordinator, often the EEO or Labor Relations Manager, to work with the SMART (Shared Mediator Team) Manager, who works for the Greater Los Angeles Federal Executive Board.

When a dispute arises, the Agency Coordinator completes the 'Request and Intake Form' and faxes or e-mails it to the SMART Manager. The SMART Manager identifies an appropriate co-mediation team from other agencies from a pool of trained mediators, confirms their availability, and provides them with the Agency Coordinator's contact information for scheduling the mediation. The 'Consent to Mediation Form' is signed by the Parties, Representatives, Agency Coordinator, and Mediators before the mediation. If agreement is reached, the 'Settlement Agreement Form' is used. At the conclusion of the mediation, the co-mediation team provides the parties with the required 'Confidential Customer Feedback Form'. The SMART Manager receives all the forms, which are kept strictly confidential. SMART is available for all types of internal workplace disputes at any stage, including EEO complaints and grievances. There is no cost to the receiving agency except mediator travel expenses, if any.

The Los Angeles FEB SMART program maintains a roster of 35 active Mediators from various agencies who mediate cases as assigned.

Metrics

FY	Total # ADR Interventions	Mediation Resolution Rate	Cost Avoidance*
			\$1,356,796.25
2015	32	88%	
2014	22	95%	\$1,115,015.32
2013	27	93%	\$1,256,258.45
			\$1,003,463.03
2012	24	96%	
2011	25	92%	\$1,414,492.57

Seattle FEB: <http://www.seattlefeb.us/disputeresolution.htm>

Program Overview:

The Seattle FEB Dispute Resolution (DR) Program is an intergovernmental pool of Washington Mediation Association (WMA) certified mediators. The program is served by a dozen Federal agencies in the Puget Sound, King County, City of Seattle, and from Private Practice Mediators in Seattle. There are currently 85 mediators on the Seattle FEB DR Program Roster. The DR Program serves over two dozen Federal agencies in the Puget Sound, the City of Seattle, King County, and the Port of Seattle. The program offers the following services: Work Place Mediations, Grievance Mediations, EEO Mediations, Interpersonal Conflict Mediations, Team Mediations, Conflict Coaching, Facilitation Services and Conflict Resolution

The Dispute Resolution Consortium is chartered to administer the sharing of the expertise of Federal employees trained in dispute resolution. The consortium provides trained mediators to help resolve workplace conflicts in Federal government agencies in the Seattle area. The mediators help co-workers settle disputes ranging from work style differences and personality disputes, to cases involving possible harassment, discrimination, or unfair treatment

Metrics

FY	Total # ADR Interventions	Mediation Resolution Rate	Cost Avoidance*
2015	62	73%	\$1,902,130
2014	92	80%	\$2,155,798
2013	102	77%	\$2,999,598
2012	195	87%	\$4,660,661
2011	209	85%	\$7,920,897

* Cost avoidance calculation is based on “Cost Savings Associated with the Air Force Alternative Dispute Resolution Program, 1996.” It is adjusted for inflation using the Bureau of Labor Statistics inflation calculator

FEDERAL ENERGY REGULATORY COMMISSION **2016 REPORT ON ADR IN THE FEDERAL GOVERNMENT**

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ADR Policy

The Final Rule which implements FERC's ADR policy can be found by clicking Quick Links at FERC's website: <http://www.ferc.fed.us/legal/adr.asp> You can also access FERC's regulations on ADR policy at the link you provided above: www.adr.gov

ADR Programs

- Dispute Resolution Division

The Commission's Dispute Resolution Division (DRD) promotes and conducts ADR processes for the timely and high quality resolution of business and environmental-related energy regulatory disputes through consensual decision-making processes. DRD Specialists are highly trained in mediation, negotiation, and facilitation and also provide ADR education, training, and consultation on effective dispute resolution design to internal and external stakeholders and the public.

- DRD staff serve as neutral third parties in disputes and can become involved before or after a formal complaint is filed with the Commission. DRD will initiate a voluntary ADR process of the parties choice once they have voluntarily agreed to ADR. The parties may also select a neutral third party neutral from inside or outside the Commission. For example, parties may request an Administrative Law Judge from the Commission's Office of Administrative Law Judges and Dispute Resolution to conduct an ADR process. In addition, parties may request separated staff for their technical, subject matter or legal expert to conduct a non-binding Early Neutral Evaluation. DRD typically coordinates the efforts for an ENE during a convening session with the parties in order to fit the ADR process to the fuss and be inclusive of the parties' needs for an ENE. Non-decisional ENEs and Subject Matter Experts are recused from the case should the case not be resolved through ADR. In addition, the Commission maintains the Landowner Helpline, which addresses landowner matters and guides parties to the informal resolution of disputes using ADR techniques associated with the construction or

operation of FERC energy infrastructure facilities and projects. The Landowner Helpline has a dedicated FERC employee.

See more on the Commission's ADR services at this link:

<http://www.ferc.gov/legal/adr/brochure.pdf>

- EEO, Workplace, Labor Relations
- The Office of the Executive Director addresses workplace, EEO, and Labor Relations disputes. These conflicts tend to be handled early in the process through informal ADR proceedings using outside neutrals and both binding and non-binding arbitration. Even once a case progresses to a hearing ADR is strongly encouraged and in some cases the Judge will order the parties to make a good faith attempt to resolve the dispute through mediation or settlement negotiation.

1. The program maintains a website that is accessible by the public:

<http://www.ferc.gov/about/offices/oaljdr/drd.asp>

- Over the past 10 years as many agencies have experienced we have had to be prudent with financial resources. We continue to receive a budget for travel, training, and educational resources and tools to streamline our performance per our mandated ADR functions and activities. Major components of our work are casework, training and public education, and consultation related to effective dispute resolution design.
- Currently, DRD has 6 FTEs inclusive of the Landowner Helpline function. Over 10 years DRD lost 1 FTE for a Senior Dispute Resolution Specialist/Attorney Advisor. To compensate for a reduction of 1 FTE we reduced slightly the number and length of training sessions we deliver on ADR tools and skills sets to Commission employees and external entities in their own work to prevent and resolve conflict. ADR casework services for energy business and related environmental conflicts take priority when workload is high.
- The DRD addressed a total of 1,660 matters from FY 2006 to FY 2015. This number includes inquiries about ADR, matters that we referred to another office or entity, matters in which persons eventually said they were not interested in ADR, and matters that became ADR cases. DRD can become involved in a dispute at any point in the process. We are seeing an increase in early requests for

ADR, often before a complaint is filed or before it has been set for hearing if the complaint has been filed.

- From FY 2010 to FY 2015 DRD handled 560 energy business, environmental, and landowner cases. These cases were addressed through the application of voluntary ADR processes such as mediation, facilitation, and conciliation. Due to technical changes to our record keeping systems, we do not have the ability to filter data from FY 2006 to FY 2009 by process used or sector. Of the 560 ADR cases addressed in FY 2010 to FY 2015, 76 were electric cases, 34 were hydro cases, 439 were natural gas cases, and 11 were oil cases.
- Flexibility: One of the strengths of ADR is its flexibility. The parties design the process and choose the third party neutral, based on their needs and comfort level. With the help of a third party neutral, the parties explore how to satisfy underlying interest in their disputes.
- Confidentiality: One of the major advantages of ADR is that parties can agree on the level of confidentiality they need during dispute resolution discussions. An agreement by participants to keep the process confidential allows all sides in a dispute to speak more openly, share more information, and explore ideas and options in order to come to a resolution. The Commission recognizes that participants should feel free to be completely forthcoming without fear that their statements may later be used against them if settlement is not achieved. Likewise, a neutral is protected from being required to divulge such information. The Commission's regulations on confidentiality adopt the same guidelines as Section 574 of the Administrative Dispute Resolution Act. They are provided on the Code of Federal Regulations website at 18 C.F.R. § 385.606
- Time and Money: Often litigation can take years to achieve a resolution. Our ADR processes can save parties time and money by coming to a quicker more economical and final resolution earlier in the process.
- Regulatory Efficiency: We work with the Judges, ENEs and Subject Matter Experts within FERC to ensure the ADR processes we design with the parties' input to help bring narrow to extremely complex energy disputes to an effective and quicker resolution. This promotes regulatory efficiency and facilitates the ability for FERC to accomplish its energy mission.

- Conciliation, Facilitation, Assisted Negotiation, Mediation, Early Neutral Evaluation, Arbitration, and Settlement Judge processes.
- Notification Letters with our Toll-Free Landowner Helpline's contact information are sent out on new environmental projects associated with natural gas facilities. This has increased the number of cases where ADR techniques and tools have been utilized.
- DRD has an ADR Helpline that provides an avenue for energy stakeholders to receive information on ADR or to request ADR services.
- Outreach: We have seen more parties reaching out to us to mediate their disputes as a direct result of our outreach efforts.
- Training: We have seen more cases come to us internally through our internal training and outreach efforts.
- Performance: the application of ADR usage is tied to employee's position descriptions, performance standards, and the Commission's measurable performance measures and performance results in Commission-wide and public administrative documents.
- Institutionalization: Over the course of the last ten years we have worked on institutionalization of our ADR services and processes in a multitude of ways with internal and external stakeholders and partnerships.
 - a. Our regulations have helped to cement our role within the agency taking actions like delegating to the Secretary to direct DRD staff to contact parties about ADR, updating our ADR confidentiality rules, and giving a formal structure to the Landowner Helpline.
 - b. The Commission has issued Orders to include DRD as a part of Interconnection agreements.
 - c. The industry on their own has begun to make DRD a fixture by including DRD in Tariffs as a means of dispute resolution.
 - d. From an institutionalization standpoint we are firmly ensconced in the Commission, currently with 6 FTEs dedicated solely to ADR. Now that our independent unit has merged with Administrative Law Judges in the renamed OALJDR not only do we provide the full spectrum of ADR services from upstream to downstream conflict situations associated with energy regulatory

processes we also have worked to institutionalize processes that have helped to make sure that ADR is a part of each case whether through the use of conciliation, facilitation, mediation or even in a Settlement Judge Process.

- e. DRD integrates its own talents as neutrals and works with the Judges to help resolve cases. Our ADR processes are inclusive of broad and narrow problems and conflicts. Our role is to promote enhanced regulatory efficiency from the initial screening of complaints and disputes to determine their ripeness for ADR to systematic inclusion of tiered Dispute Resolution provisions in Settlement Agreements to ensure parties have a choice to work out consensus based agreements should conflicts arise during implementation of agreements. Citations to Commission’s regulations on the institutionalization of ADR in 18 CFR and Commission Orders are available upon request and a search of <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>. Citations to referenced items are available upon request.
- We anticipate as the demand for consensual decision-making is encouraged and grows as a cost-effective resolution of disputes, the expansion of ADR services will increase.

We benefit from knowledge sharing, state-of the-art technology and tools, and expertise based on other federal agency program’s experiences and successes to build on that foundation and continue to innovate ADR practice for the prevent and resolution of disputes across the broad canvas of our Commission’s regulatory functions to accomplish mission.

DRD staff successfully mediated an outcome on the American Midstream (“Midla”) application before FERC for over 300 miles of abandonment of natural gas pipeline facilities in Louisiana and Mississippi. Although politically visible and highly contentious with multiple interests, issues, all levels of government and sophisticated parties involved, within 7 months Midla filed a complete and unanimous or uncontested agreement that resolved all issues and affiliated complaints. Although the issues mediated were tough--pipeline safety, future energy infrastructure reliability and gas service for impacted customers and energy consumers, gas contracts and rates, and costs associated with replacement facilities and energy services, the parties, guided by FERC neutral staff mediators rolled up their sleeves to

work hard at solving the problems together to achieve the mutually satisfactory resolution. A case like the Midla Pipeline Case shows the effectiveness of mediation when parties are motivated to find a resolution and guided by experienced neutrals at the Commission.

Case 2

Resolution of a decade old dispute that arose out of the California energy crises is another great example of the successful use of ADR. This case was originally heard by the Federal Energy Regulatory Commission (FERC), appealed to the Ninth Circuit Court of Appeals, and eventually was heard by the United States Supreme Court. Finally, this case was remanded to the FERC.

FERC's Dispute Resolution Division (DRD) engaged the parties in an ADR process.

DRD worked with the parties to create an open process to resolve this long standing dispute. By engaging the parties in an ADR process the participants were able to explore different options, to seek a final resolution, and avoid further litigation. After discussing interests and options one of the parties to this dispute came up with a novel solution. After exploring the ability to implement the solution and get buy in from all effected stake holders including the Attorney General of California a settlement was reached.

The settlement that resulted from this process was \$20 million in cash and \$100 million to be invested in electric car charging stations in the State of California. All claims associated with the short term and long term contract stemming from this period were released. Included in the agreement was: i) two-hundred fast charging stations that will be available to the public; ii) the installation of infrastructure to support ten-thousand privately owned chargers at a total of one thousand multi-family, workplace, and public interest sites like universities; iii) the development, funding and implementation of electric vehicle related technology programs and electric vehicle car sharing programs.

Using ADR allows litigants to bring not only their legal positions but also their business interests into resolving disputes.

Department or Agency ADR use beyond the ADR Programs discussed above

- When cases come in that are set for trial we utilize a Settlement Judge process prior to a hearing. It allows the Judge to work as a mediator and help to resolve the conflict without the necessity of a trial and initial decision or subsequent litigation.

ADR skills training courses DRD provides to employees at FERC and externally help these stakeholders facilitate good decision-making and the resolution of disputes on behalf everyone involved in FERC matters.

- **ADR Training**
- We provide training in a variety of areas both internally as well as externally. We have had trainings in:
 - Negotiation skills
 - ADR Skills in a team environment
 - Communication Skills
 - Advanced Negotiation
 - Facilitation
 - Emotional Intelligence

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As we move through 2016 and into 2017 the world and legal markets have changed. Clients are no longer interested in paying large fees for litigation and the use of ADR has become more commonplace. Arbitration clauses exist in most commercial contracts and mediation is moving more and more into the mainstream. Increased institutionalization of ADR and use of ADR techniques has proven effective in resolving many disputes before they get to litigation and the technology that exists has made things even easier. Telephones and videoconferencing have made it so that the parties in conflict do not need to be in the same room or even the same state, and shuttle diplomacy has allowed for a neutral to even resolve conflicts through email communication. As ADR and the world changes our agencies have been quick to adopt that change and make effective use of the tools they have available.

The Federal Energy Regulatory Commission (FERC) issued Order 821 which among other things moved the Dispute Resolution Division (DRD) into the Office of Administrative Law Judges giving DRD the opportunity to better institutionalize ADR. In addition to handling their own cases and the landowner helpline FERC DRD has begun assisting ALJ's in settlement cases. DRD has also begun the process of institutionalizing the use of ADR in that setting by presenting to the ALJ's on several ways dispute resolution could be beneficial to the Settlement Judge process or even in hearings to bifurcate issues that could be removed and resolved. We employ telephonic mediation through the ADR Helpline and Landowner Helpline, as well as with individual cases referred through FERC.

DRD has continued both internal as well as external outreach looking to get cases to mediation before a complaint has even been filed. DRD staff has created and run education programs on the benefits of ADR as well as participated in panels working with law firms, the Energy Bar Association, and the American Bar Association to increase knowledge and awareness of ADR and its benefits to the lawyers as well as the clients involved in disputes. We have also worked to increase ADR knowledge in the community thorough involvement in and Chairing the ADR and Consensus Building committee.

DRD has been successful at bringing in and resolving cases early in the process. The FERC Dispute Resolution Division has been tracking and reporting data in order to determine the types of cases handled as well as the effectiveness of the dispute resolution practices being used in DRD. They have also been tracking and reporting trends that have come up in order to better handle the overarching issues that need to be addressed. The reporting has also allowed DRD to tailor their ADR techniques to specific cases in order to best address the specific needs of each case and the parties involved.

In the recent years our Chairman Norman Bay along with other Commissioners has made public statements expressing support for the use of ADR and how beneficial it has been to the agency.

Alternative Dispute Resolution Report

The Federal Labor Relations Authority

The Federal Labor Relations Authority (“FLRA”) promotes stable, constructive labor-management relations through the prevention and resolution of federal-sector labor disputes in a manner that gives full effect to the collective-bargaining rights of employees, unions, and agency employers. More specifically, the FLRA resolves complaints of unfair labor practices; determines the appropriateness of units for labor organization representation; adjudicates exceptions to arbitration awards; adjudicates legal issues relating to the duty to bargain; and resolves impasses during negotiations.

The FLRA has integrated ADR into virtually all of its processes, and it has significantly expanded its ADR-related training, outreach, and facilitation activities. All components of the FLRA help parties to resolve disputes, using consensus decision-making and other ADR techniques, to reduce unnecessary litigation and its related costs.

External ADR Programs

1. Collaboration and Alternative Dispute Resolution Office (CADRO)

[CADRO](#) helps federal agencies and labor organizations more effectively perform their mission, improve quality of work life, and mend labor-management relationships. CADRO dispute-resolution services offer parties an informal, voluntary, expeditious, and confidential way to minimize risks and increase opportunities to successfully resolve certain matters pending before the FLRA.

Federal agencies and unions can appeal final arbitration awards to the FLRA on specific, narrow grounds. These appeals are called "exceptions." At any point during the exceptions process, the parties can voluntarily agree to use CADRO assistance to resolve the exceptions.

Federal-sector unions can file a negotiability appeal with the FLRA to challenge an agency head's disapproval of negotiated contract language or an agency's claim that the union's proposals are outside the duty to bargain or contrary to law, rule, or regulation. At any point after the union files its negotiability appeal, the parties can voluntarily agree to use CADRO assistance to resolve the negotiability disputes and any related bargaining-obligation disputes. And most parties do.

Under the CADRO umbrella, a team of FLRA process and substance experts annually help parties voluntarily resolve 150 to 200 legal questions that arise in arbitration exceptions and negotiability appeals. The CADRO team helps parties identify the issues that must be resolved, assess the strengths and weaknesses of their case, explore possible solutions, and usually resolve the case in a mutually agreeable manner. They most often do so using a quicker, less costly, and less risky approach than the litigation that brought them to the FLRA. At the election of the parties, they also can go beyond the legal questions and solve the underlying problems that litigation often ignores.

To expand the reach of CADRO’s valuable services and assist parties wherever they might be, CADRO normally employs a variety of user-friendly technology tools to deliver its

Alternative Dispute Resolution Report

array of ADR services. This conserves valuable resources and makes the ADR process more efficient for federal agencies and labor organizations.

Some of the most important work performed by the CADRO staff is to help labor and management representatives acquire the knowledge, skills, and abilities necessary to grow healthy workplace relationships that support mission accomplishment and quality of work life. CADRO staff can help unions and agencies jointly assess their training needs and develop action plans to turn training into effective solutions. They offer custom training for joint labor-management groups to improve collaborative problem solving and decision-making (including interest-based bargaining), effective labor-management forums and pre-decisional involvement, collective bargaining, repairing damaged labor-management relationships, effective communication skills and other skills such as brainstorming and building consensus. Training is offered at no cost other than reimbursement for any travel costs.

In addition to dispute resolution services and training, CADRO facilitates federal-sector labor-management matters. Facilitation is a process in which someone with no stake in the outcome -- a facilitator -- helps participants to accomplish goals by managing group processes. CADRO offers facilitation services to provide labor-management groups with structure, help participants to develop ground rules, and remain focused. As needed, CADRO facilitators manage discussion, group dynamics, conflict, communication, problem solving, and decision-making processes. CADRO facilitators always allow participants to determine content and make the decisions. CADRO offers facilitation services during joint meetings of federal agencies and unions, including labor-management forums, problem solving & decision making sessions, leadership meetings, and collective bargaining.

Michael Wolf serves as the CADRO Director and the FLRA's settlement official for post-complaint unfair labor practice cases. He can be reached at 202-218-7933 or mwolf@flra.gov.

2. Office of the General Counsel (OGC)

The [OGC](#) promotes effective labor-management relations in the federal sector by investigating alleged unfair labor practices and prosecuting them when warranted; conducting union elections and otherwise determining representation matters; issuing guidance and providing training to federal managers and unions; and providing case-related ADR services and training to labor-management parties across the FLRA's seven regions. The OGC professional staff have been trained in ADR techniques and are encouraged to use ADR, as appropriate, to resolve disputes at all stages of case processing. For the past three fiscal years, the OGC has used ADR to resolve, on average, 13% of all ULP and REP cases, or around 3,700 cases. During this period, the OGC obtained over \$1.7 million in backpay on behalf of parties to unfair labor practice charges. In addition, the OGC has provided ADR services including facilitation, intervention, training, and education in an effort to educate the parties and prevent future unfair labor practice charges. During the past year, the OGC has collaborated with Federal Mediation and Conciliation Service and General Services Administration to develop and present a nation-wide series of training programs on union and management rights and responsibilities relating to office moves and space allocation and how to use ADR to avoid disputes and litigation.

Alternative Dispute Resolution Report

Assistant General Counsel Kurt Rumsfeld is the OGC contact for ADR services and he can be reached at 202-218-7789, krumsfeld@flra.gov.

3. The Federal Service Impasses Panel (FSIP)

The [FSIP](#) resolves collective bargaining impasses between federal agencies and unions representing federal employees. These impasses arise from negotiations under the Federal Service Labor-Management Relations Statute and the Federal Employees Flexible and Compressed Work Schedules Act. The Panel utilizes mediation, med-arb, and a wide range of other ADR methods to help parties voluntarily resolve these impasses. In cases where parties fail to achieve voluntary resolutions, the Panel is empowered to make determinations to resolve the impasse.

4. The Office of Administrative Law Judges (OALJ)

The [OALJ](#) conducts hearings and issues recommended decisions in cases involving alleged unfair labor practices. Administrative Law Judges also render recommended decisions involving applications for attorney fees filed under the Back Pay Act and the Equal Access to Justice Act.

The OALJ encourages the use of ADR through its Settlement Judge Program. After the FLRA General Counsel issues an unfair labor practice complaint, and the OALJ sets a hearing date, the General Counsel, a union, or an agency representative can ask the OALJ to assign a settlement official to help resolve the case.

The CADRO Director serves as the settlement official for most post-complaint unfair labor practice cases in which parties elect to utilize the FLRA's Settlement Judge Program. The settlement official schedules a settlement conference with the parties, usually prior to the filing of prehearing disclosures. During the conference, the settlement official helps the parties explore ways to reach a negotiated resolution to the case. For this reason, the settlement official normally requires that persons with full settlement authority actively participate or at least be available by telephone.

The settlement official does not discuss any aspect of the case with the hearing judge or anyone else in- or outside of the FLRA. To further minimize risk to the parties, the FLRA's regulations provide that no evidence regarding statements, conduct, offers of settlement, or concessions made in proceedings before the settlement official are admissible in any proceeding before the judge or on appeal to the FLRA, except by stipulation of the parties.

Internal ADR Programs

The FLRA utilizes ADR when appropriate to resolve internal matters regarding its Equal Employment Opportunity program, its own labor-management forum, and employee performance-appraisal concerns. The FLRA has adopted appropriate policies and protocols in support of its internal ADR practices.

Alternative Dispute Resolution Report

Metrics

CADRO, the OGC, and the FSIP each carefully collect and maintain extensive data on the application of their various external-facing ADR services. For example, during the twelve-month period ending in June 2016, CADRO helped parties fully resolve 92% of 204 negotiability disputes, 84% of exceptions to arbitration awards in which both parties accepted CADRO's invitation to use ADR services, and more than 80% of cases in which parties agreed to utilize the FLRA's post-complaint ULP settlement judge program.

Trends and Changes

CADRO was established in 1996 to support the growth of ADR throughout the FLRA. For most of the 21st Century, CADRO remained a one-person office. But in the last several years, CADRO has experienced an explosion in the number of labor-management parties that have voluntarily sought CADRO ADR services, facilitation, and training. As a result, the FLRA determined that it could more effectively accomplish its mission by allocating additional resources to CADRO. During FY 2016, CADRO grew to three full time professional staff. In addition, fourteen attorney advisors in the Authority component of the FLRA each provide legal support for two or three CADRO cases annually. The FLRA expects that CADRO will continue to play a pivotal role in helping the FLRA accomplish its mission.

The OGC FTE level has remained essentially unchanged over the years and is not expected to increase in the future. The OGC's ability to provide requested ADR services is dependent on staff availability.

CADRO has become dependent on the application of appropriate technology to satisfy its mission-related goals. Secure videoconferencing, teleconferencing, and data-conferencing have become the rule rather than exception in CADRO's nationwide caseload handled by a Washington, DC-based professional staff. Technology also is at the heart of scheduling CADRO cases, engaging other agencies for travel expenses related to training, and sometimes even delivering training online. This trend line is expected to continually strengthen.

The only source of funds for FLRA ADR services is appropriated funds, supplemented in a very minor way by reimbursement from other federal agencies for case-related travel costs.

END

Federal Maritime Commission
2016 Report on ADR in the Federal Government Questionnaire

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ADR Policy

The Federal Maritime Commission's (FMC) formal written ADR policy is located at 46 C.F.R. §502.401 *available* at http://www.ecfr.gov/cgi-bin/text-idx?SID=aa16c7cc8c5f061120825f32caf09fd1&node=se46.9.502_1401&rgn=div8 as well as <http://www.adr.gov/fai.html>. The policy has not been amended within the past 10 years.

ADR Programs

1. Program description

The FMC regulates international ocean shipping between U.S. and foreign ports pursuant to the Shipping Act of 1984 (Shipping Act) as amended by the Ocean Shipping Reform Act, 46 U.S.C. § 40101- 41309. Regulated entities include: ocean transportation intermediaries such as freight forwarders and non-vessel operating common carriers, vessel operators, and marine terminal operators. In addition to the FMC's civil enforcement authority, a private party may file a formal complaint before the FMC asserting a violation of the Shipping Act. As such, in an effort to reduce its docket load and to prevent the unnecessary filing of formal complaints, the FMC created an externally-facing ADR program.

The FMC's ADR program resides within the agency's Office of Consumer Affairs & Dispute Resolution Services (CADRS). CADRS employs a staff of seven FTEs that provide *ombuds*, *rapid response*, mediation, facilitation, and arbitration services. For example, CADRS routinely addresses disputes between U.S. exporters/importers and ocean transportation intermediaries and/or vessel operators involving cargo delays or failure to deliver cargo.

The FMC has limited jurisdiction over cruise lines pursuant to Public Law 89-777 (Financial Responsibility for Death or Injury to Passengers and Nonperformance of a Voyage), and CADRS also provides ADR services to assist parties resolve commercial disputes such as cancellations, itinerary changes, and billing disputes.

2. *Web Presence*

CADRS maintains several landing pages on the FMC's website, which provide ADR guidance and tools as well as subject matter pages that address specific shipping and cruise concerns. The main CADRS's webpage is located at:

http://www.fmc.gov/bureaus_offices/consumer_affairs_and_dispute_resolution_services.aspx

3. *Trends*

Funding and FTEs

There are no notable trends with respect to funding or FTE levels over the past 10 year period. The only significant administrative change occurred in 2010 when an agency reorganization established CADRS as an independent office reporting directly to Chairman. Prior to 2010, CADRS resided within the Office of the Secretary. The establishment of CADRS as an independent office was undertaken to ensure CADRS's independence and neutrality when providing ADR services. It should also be noted that once CADRS was established as an independent office, the position of Director became an SES-level position. The position of Deputy Director was established in 2011.

ADR Usage: Case Numbers, Subject Matter, and Timing

There is no discernable trend regarding case volume over the past ten year period. With the exception of 2013 and 2014 when CADRS received 1,211 and 1,664 cases, respectively, due to multiple disputes involving a single failing intermediary, the average case load per year for the years FY 2006-2015 was 585 cases.

With respect to subject matter, CADRS divides its casework into three basic categories: commercial cargo, shipments of consumer household goods, and cruise line disputes. Between FY 2011 and FY 2014, household goods comprised the largest percentage of CADRS *ombuds* casework.¹ However, in FY 2015, commercial cargo matters comprised 60% of CADRS *ombuds* matters, while HHG cases fell to 26% of matters handled.² CADRS speculates that the shift in volume is attributable to four factors: (1) the emergence of port congestion challenges; (2) the resolution of a series of matters involving the failure of a large household goods intermediary; (3) commercial outreach efforts; and (4) CADRS's continued and targeted outreach and education campaign to educate consumers regarding best practices when

¹ Household goods cases comprised 45% of *ombuds* matters in FY 2011; 45% of *ombuds* matters in FY 2012; 71% of *ombuds* matters in FY 2013; and 78% of *ombuds* matters in FY 2014.

² Commercial cargo claims comprised of 30% of *ombuds* matters in 2011; 39% of *ombuds* matters in FY 2012; 19% of *ombuds* matters in FY 2013; and 14% of *ombuds* matters in FY 2014.

shipping goods abroad. Despite the significant fluctuation in household goods and commercial cargo matters, cruise matters between FY 2011-2015 ranged between 8-25% of the cases handled by CADRS.³

Ombuds matters are typically submitted prior to the filing of litigation and CADRS regularly tracks subject matter trends. Perhaps one of the most notable *ombuds* subject matter trends generally, is the provision of services to address disputes that occur between consumers that ship their household goods abroad and the ocean transportation intermediaries that serve as international moving companies. In 2010, the FMC initiated Fact Finding 27 “*Potentially Unlawful, Unfair, or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods of Personal Property in US – Foreign Oceanborne Trades*” (served June 23, 2010), after the Commission and in particular CADRS had addressed 2,500 disputes involving household goods over a four year period. Specifically, consumers reported complaints involving non-delivery of cargo, failure of the moving companies to pay other in the logistics chain, failure of companies to procure insurance, loss or damage of cargo, and related claims. While the Fact Finding concluded in 2011, as discussed above, CADRS continues to receive a significant requests for ADR services involving disputes regarding the shipment of household goods.

CADRS also tracks trends that occur within the commercial case context. For example, in FY 2015, CADRS received over 250 *ombuds* matters involving problems arising out of the highly publicized congestion experienced at U.S. ports. Specifically, importers and exporters engaged in disputes with vessel operators and marine terminal operators regarding demurrage fees (i.e. storage fees for containers at the port). Another example of commercial cargo dispute trends involves 258 requests for ADR services over the past six years involving exports of used autos.

There are no notable trends regarding the volume or subject matter of mediation cases over the past ten years, as the Office did not maintain a formal mediation log until 2012. Anecdotally, the Office historically has mediated matters in both the pre and post litigation phases. Generally, parties have used the mediation process to provide “one-stop shopping” to address Shipping Act, legal, and regulatory concerns along with contractual and commercial concerns.

A major mediation development occurred in 2012 with the FMC’s introduction of mandatory mediation conferences for private party complaints (“formal dockets”). *See* 46 C.F.R. § 502.62. Under the new requirement, parties must contact CADRS within 15 days of the filing of an answer to explore whether the matter may be resolved through mediation. CADRS has conducted six mediation conferences under the new rule. Three out of the six mediation conferences resulted in parties opting to utilize mediation. One of those cases settled; in another matter that did not settle, the parties provided feedback to CADRS staff that even though the process did not generate settlement, it provided the parties with a better understanding of the underlying facts and even assisted the parties with gaining a higher level of trust.

Out of the three matters where parties did not elect to mediate, one party independently settled shortly after the mediation conference. CADRS also notes that there are currently eight pending formal docket proceedings that will ultimately require a mediation conference under the FMC’s rules.

With respect to arbitration, CADRS has conducted two arbitrations within the past ten years. The only notable trend was that arbitration occurred as the result of a post-dispute agreement to arbitrate.

³ Cruise matters comprised of 25% of *ombuds* matters in FY 2011; 20% of *ombuds* matters in FY 2012; 10% of *ombuds* matters in FY 2013; 8% of *ombuds* matters in FY 2014; and 14% of *ombuds* matters in FY 2015.

However, CADRS is currently aware of five service contracts that provide for CADRS provided ADR in the event of a dispute.

Techniques Used and Tangible Benefits

With respect to techniques and tangible benefits, there are two particular areas where CADRS has evolved in recent years. The first involves an emphasis on dispute prevention and management through the analysis of *ombuds* dispute trends and targeted education and outreach initiatives. For example, in 2013, CADRS noted a growing trend of disputes involving yacht transportation services provided by various ocean transportation intermediaries. Specifically, yacht owners alleged significant transportation delays and the failure of ocean transportation intermediaries to accurately disclose transportation costs and terms of service. Some of the complaints received involved unlicensed ocean transportation intermediaries. In response, CADRS recommended the issuance of an alert to yacht owners that discussed the general types of problems encountered as well as steps that yacht owners and brokers could take to avoid problems when shipping yachts. CADRS continued to monitor the trends, noting that between 2011 and 2014, it received 20 complaints involving yacht transportation concerns. During this period, CADRS reached out to a trade association that addressed yacht brokerage concerns who published an article written by the Deputy Director, CADRS, in February of 2015 that provided general information and tips on how to avoid challenges and disputes when shipping yachts to and from the U.S. Since February 2015, CADRS has only received two matters involving yacht disputes.

In addition to its work regarding yacht shipping, CADRS has also undertaken significant education and outreach efforts to address problems encountered while shipping household goods as well as cruise related disputes and challenges. This effort has included the issuance of brochures, webpage development, articles in industry trade publications, and industry alerts on the agency's website.

Another ADR innovation at the FMC within the past ten years involves the parties' greater emphasis on the need for real time rapid solution of shipping disputes. This need was particularly evident in 2010 when the FMC initiated Fact Finding 26, "*Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades*" (served March 17, 2010) to investigate U.S. shipper claims of lack of capacity and access to shipping containers and chassis. Through the auspices of Fact Finding 26, the FMC augmented its existing *ombuds* service with a rapid response service. Essentially, the agency and CADRS worked with vessel operator's senior executives to create a senior level contact list for each vessel operator. Vessel operators agreed that the contact would begin to work with CADRS and shippers within 24 hours of being contacted by CADRS staff. Initially, rapid response cases typically addressed an exporter's inability to obtain a container or to ensure that a loaded container was timely placed on a vessel. The new service created immediate tangible results as parties were able to obtain immediate satisfaction of their needs (i.e., ensuring that continuous flow of cargo and/or obtaining delivery of cargo) rather than waiting to litigate the matter for monetary damages.

To further illustrate this benefit, recently, during a period of high port congestion in FY 2015, CADRS initiated rapid response services to assist a funeral home owner in a small town obtain a shipment of urgently-needed caskets. The importer was unable to obtain an estimated date of arrival for the shipment; CADRS reached out to the vessel operator and was able to work with the parties to effectuate delivery.

4. *Efforts to Build Program Capacity*

CADRS constantly strives to enhance its program capacity in several ways. First, CADRS has developed strong relationships with other federal and state agencies. Such relationships provide collaborative opportunities for training, general information sharing, and case referrals as appropriate. For example, the FMC has a Memorandum of Understanding with the Federal Motor Carrier Safety Administration (FMCSA) that incorporates referrals of ADR matters to CADRS, as appropriate, while the FMC refers all matters within the jurisdiction of the FMCSA to that agency. Further, under the auspices of the MOU, the agencies have agreed to explore joint outreach, education, and training opportunities to further enhance the missions of both agencies.

Similarly, CADRS works closely with State Attorneys General Offices and local jurisdictions to exchange referrals as appropriate and to provide more immediate service to localities that may be outside the immediate reach of CADRS. For example, CADRS recently worked with Miami-Dade Consumer Protection Office in its efforts to negotiate with a landlord whose tenant abandoned over 200 shipments for unnamed consumers. It successfully negotiated with the landlord to allow third parties to inventory the goods and attempt to contact the ultimate consignees, most of which were ultimately reunited with their cargo.

CADRS also strives to ensure that its staff is current with respect to both ADR and transportation law training. Staff is encouraged to attend at least one type of transportation or ADR related training each calendar quarter, as the Office's budget allows. Staff are also encouraged to take advantage of free brown bags and other webinars offered through the IADRWG. Further, CADRS's participation on the IADRWG and in IADRWG committees has provided staff with greater exposure to innovative techniques such as coaching and facilitation and has raised awareness to new technical advances to provide ADR services remotely.

5. *Plans to Expand Program in the Future*

While there are no specific plans to expand the program, CADRS is consistently looking for new and innovative mechanisms to enhance its services. For example, CADRS is exploring ways to incorporate additional electronic communications and social media channels in order to expand its reach to the public. Further, CADRS is closely monitoring complaint volume and trends so that it might make recommendations relating to program augmentation as appropriate and supported by the data it collects.

6. *IADRWG Section: Administrative Enforcement and Regulatory Processes*

CADRS regularly participates in the Administrative Enforcement and Regulatory Processes Section. Its participation on that committee has been particularly beneficial as a means to compare the various ADR techniques, methodologies, and advancements employed by other regulatory agencies in providing ADR services. For example, in FY 2015 the Deputy Director of CADRS provided a panel presentation at the American Bar Association's Dispute Resolution Conference, discussing the various techniques and processes implemented by members of the Section.

7. Case Example

In 2009, CADRS received a request from an attorney to mediate a complex multi-party case that involved Shipping Act, contractual, environmental, and commercial considerations. Essentially, an exporter who lacked experience with shipping matters purchased machinery online and hired an ocean transportation intermediary to load and transport the cargo from a storage facility to the ultimate destination. The ocean transportation intermediary loaded the cargo and hired another ocean transportation intermediary to arrange for transportation of the cargo from the facility to destination. Unfortunately, neither the exporter nor the first ocean transportation intermediary, labeled the machinery as hazardous, and the machinery contained oil, which began to leak as it was loaded into several containers and arrived at port. The port authority and the vessel operator refused to allow the containers to be loaded and while the cargo languished at port, the bottoms of several of containers sustained significant damage. The various parties (the ocean transportation intermediaries, port authority, and vessel operator) asserted various claims against one another on various regulatory and contractual basis. CADRS accepted the request for mediation and over the course of several months used various convening and multi-party telephone calls to begin to address the issues of immediate port clean up and repair of the containers between the various parties. CADRS held a traditional mediation between one of the ocean transportation intermediaries and the vessel operator to address specific issues between those parties. The matter was ultimately settled and at least two of the parties reported that they were able to deepen their commercial relationship based upon the work performed in the mediation. From a pedagogical standpoint, the emphasis on the use of strong convening meetings as well as the use of several telephonic mini mediation sessions significantly impacted the success of the mediation.

Department or Agency use beyond the ADR Programs Discussed Above

CADRS is the only agency office that provides ADR services. However, the FMC's Office of Equal Employment Opportunity utilizes the Shared Neutrals program to resolve personnel related disputes. A CADRS staff member was recently accepted into the Shared Neutrals program in 2016 and will be providing mediation services on a collateral duty basis to assist other agencies.

ADR Training

CADRS regularly provides education and outreach to the public regarding its ADR service offerings. It has also developed a web tutorial and other tools to assist parties preparing for mediation and negotiation generally. The tools are located at: http://www.fmc.gov/resources/cadrs_resources.aspx

With respect to other agencies, in 2014, the Deputy Director of CADRS was assigned to a 120 day detail at the Federal Motor Carrier Safety Administration (FMCSA) to develop and provide a negotiation and mediation course to that agency's civil enforcement staff. FMCSA requested the training to enhance its investigators' ability to negotiate the release of cargo held hostage by domestic interstate moving companies. FMCSA has provided feedback that it has implemented the training and that the use of negotiation and mediation techniques have further enhanced its programmatic efforts.

Interagency ADR Working Group

CADRS has been an active participant in the IADRWG. Through its participation in the Administrative Enforcement and Regulatory Processes Section, and committees such as the Collaborative and Facilitative

Processes Committee, Outreach Committee, and Technology Committee, CADRS has had the opportunity to gain a better understanding of the processes, tools, and techniques implemented in other agencies, and to have the benefit of the guidance materials posted on the adr.gov website as well as the experience of senior practitioners in the field. For example, in FY 2016, the Deputy Director participated on a panel discussion comprised of members from the Workplace and Administrative Enforcement and Regulatory Processes Sections that provided tips and tools for providing real time dispute resolution services.

With respect to IADRWG enhancements, perhaps the best way to facilitate IADRWG support and development of programs and to enhance training while enhancing recordkeeping would be to provide additional access to the adr.gov website for agency and committee contributions with respect to: guidance documents as well as announcements regarding potential free training opportunities.



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FEDERAL MEDIATION & CONCILIATION SERVICE

2016 ADR Report from Federal Government Agencies

ADR Dispute Resolution Specialist Contact Information

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ADR Policy

The Federal Mediation and Conciliation Service (FMCS) has a formal written ADR policy. The policy has not changed substantively in the past ten years. The link is:

https://www.fmcs.gov/wp-content/uploads/2015/10/DIRECTIVE_9101-EQUAL_EMPLOYMENT_OPPORTUNITY.pdf

Please include Edward “Ted” Bantle and Rozmyn Miller to FMCS’ information section on the ADR.gov website.

ADR Programs at FMCS:

Internal Facing ADR Programs:

For disputes within the Agency:

- (a) FMCS has a grievance procedure under its collective bargaining agreement covering a unit of approximately 29 employees that includes arbitration as the ADR process;
- (b) for EEO disputes, FMCS has a procedure that includes the use of both internal and external mediators.

The FMCS policy for EEO disputes, including the references to ADR, is at the following link:

https://www.fmcs.gov/wp-content/uploads/2015/10/DIRECTIVE_9101-EQUAL_EMPLOYMENT_OPPORTUNITY.pdf



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External Facing ADR Programs:

FMCS provides three types of external ADR programs

- (A) Labor-Management ADR services
- (B) ADR for Government
- (C) Arbitration Services

Congress created FMCS in 1947 as an independent agency through the Taft-Hartley Act. FMCS has more than 60 offices strategically located throughout the United States in areas of concentrated economic activity.

A. Labor-Management ADR Services:

The Agency's core mission is to promote sound and stable labor-management relations by providing mediation assistance in contract negotiations disputes between employers and the representatives of their unionized employees. FMCS also provides collective bargaining facilitation or mediation using a joint problem solving approach in contract negotiations. FMCS grievance mediation is offered as a means of helping labor and management improve their relationships by more quickly resolving contractual disputes and improving workplace communications. Through a needs assessment and training, FMCS can assist parties to develop a new labor-management partnership or improve a current relationship. A commitment from both labor and management to rebuild and heal a damaged workplace relationship can be strengthened by FMCS through the Relationships-By-Objectives (RBO) program. Upon request, FMCS can provide panels of arbitrators experienced in labor relations issues.

B. ADR for Government:

Pursuant to statutory authority, the Agency provides mediation, facilitation, training and other assistance within the Federal government. FMCS mediates workplace and discrimination complaints as well as disputes involving the administrative, regulatory, or enforcement responsibility of an agency, including whistleblower complaints. FMCS provides skilled facilitation to help working groups and teams function more effectively, including public policy dialogues. In addition, FMCS provides services for dispute resolution system design and regulatory negotiations. FMCS has trained many mediators for the Federal government and provides many types of conflict resolution training courses for the workplace, both through the ADR Department and through the FMCS Institute. The Agency has also spread the use of ADR by providing training, consultation, and other technical assistance to many countries around the world. FMCS receives funding for these international cases through inter-agency agreements with, among others, the US Department of Labor-ILAB and the US Department of State.



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C. Arbitration Services

The FMCS Office of Arbitration maintains a roster of arbitrators comprising approximately 1,000 individuals who are private citizens with specific expertise in holding hearings and understanding the dynamics of labor-management relations. Each year, pursuant to FMCS requirements and party selection, the arbitrators adjudicate between 1,500 and 2,000 disputes, while thousands of others settle prior to or during the hearing, or pending the decision of the arbitrator. The Office of Arbitration reviews arbitrator compliance with FMCS regulations and with the code of professional responsibility for labor arbitrators. It also investigates and resolves complaints about arbitrators. Instances of serious arbitrator misconduct may be referred by the Office of arbitration to the FMCS Arbitrator Review Board for further action. In addition, the Office of Arbitration reviews contractual arrangements for arbitration within the collective bargaining agreements of the parties to assure that the selection process is consistent with the mutual obligations the parties have established.

Website accessible by the public: <https://www.fmcs.gov/>

Funding and Trends in Case Numbers

The amount of funding for FMCS's inward looking program is 2/5 of one full time position, occupied by the Agency's EEO Director, plus EEO counselors, all of whom perform this work as an ancillary duty. The EEO counselors provide facilitated conversations, which resolve some of the concerns. The number of referrals to mediation from the EEO office is generally one to five per year. When mediation is used, the Agency uses both inside and outside mediators. FMCS has a total of 240 employees in the Agency.

The amount of funding for the Agency's outward looking ADR programs is different than many agencies. FMCS's ADR work for Federal government agencies is performed pursuant to statutory authority on a reimbursable basis, under interagency agreements. As an example of case numbers, between 2011 and 2014, FMCS received about 4,300 ADR cases from other Federal government agencies. The reimbursement from these cases varies from year-to-year. In the last ten years, Federal agencies have reimbursed FMCS approximately \$1 million per year for the ADR services it provides.

Number of Cases/Disputes

Between 2012 and 2016, FMCS processed about 6,888 ADR cases from other Federal government agencies. These cases include the mediation of EEO disputes, general workplace conflicts, certain cases for the Postal Service, Age Discrimination Act cases (between individuals and agencies receiving money from the Federal government), administrative program disputes, training, systems design, outreach, education, and international mediations for the



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National Contact Point at the U.S. Department of State dealing with OECD Guidelines for multi-national corporations.

Tangible and/or Intangible Benefits Realized by using ADR

The benefits of using alternative dispute resolution in lieu of litigation are well recognized in the legal and business communities. For its internal dispute resolution processes, FMCS does not have enough data to specifically measure the benefits of ADR. The greatest intangible benefit is realized in the speedy resolution of internal disputes and misunderstandings. Early intervention in minor disputes and misunderstandings prevents these incidents from escalating into more serious situations.

The benefits from FMCS's external ADR work are better established. FMCS's agreement rate is in the 47 to 52 percent range, which is significant considering that in many cases FMCS mediators are utilized to mediate the more complex disputes, with agency-based neutrals handling more routine cases. Additionally, proactive skills-building and process design and implementation allow agencies to deal more effectively and thus more cost-efficiently with inevitable conflict.

More importantly, FMCS ADR work in areas such as regulatory negotiations has paid tremendous dividends to the American economy

Types of ADR Processes/Techniques used

FMCS provides a full range of processes and techniques in its ADR work. These include mediation, facilitation, training, team-building, ADR systems design, and coaching for other agencies.

Building Program Capacity

For its outward looking programs, FMCS has conducted outreach with other Federal government agencies to acquaint them with the Agency's ADR services and to encourage them to enter into interagency agreements for mediation, facilitation, coaching, training, and other processes. For example, FMCS held an open house in 2012 for Federal government agencies, and the Agency plans another one in January 2017, to coincide with the national headquarters move to 250 E Street, SW, Washington, DC.

FMCS did additional outreach for its labor management work this year by hosting a national labor management conference in Chicago in mid-August, 2016, where more than 1,000 labor/management and ADR practitioners attended.



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FMCS is always open to expanding the Agency's outward program offerings, based on the needs of the agencies who contact FMCS.

The following sections of the Interagency ADR Working Group most closely relate to the work of this ADR program:

Workplace

Contracts and Procurement (on occasion)

Administrative Enforcement and Regulatory Process

Litigation

Environmental (on occasion)

Some Experiences from our Cases:

Pursuant to the Administrative Dispute Resolution Act of 1996 and the Negotiated Rulemaking Act, the FMCS has been tasked with fostering the effective use of ADR by government agencies to help reduce the costs associated with litigation, improve stakeholder engagement, and encourage better governmental decision-making. In carrying out its ADR mission, the Agency has assisted with the resolution of a wide variety of issues, processes, and forums, including:

During 2015, FMCS provided negotiated rulemaking services to the U.S. Department of Energy (DOE), which had a goal of defining energy efficiency standards for manufactured housing. FMCS mediators helped a working group successfully develop a draft document detailing these standards. Those involved praised the facilitators for having played a critical role in convening industry, efficiency advocates, and consumer interest groups to negotiate an all-encompassing new efficiency standard. The parties successfully concluded the draft rule in less than four months – a particularly impressive feat given that industry consensus on the rule had been elusive for several years.

Also during 2015, in what has been hailed by the DOE as the biggest energy-saving standards rulemaking in DOE history, FMCS assisted industry, government, and advocacy groups in achieving major new consensus energy standards for commercial heating and air conditioning equipment. The new standards have the potential to save nearly 15 quadrillion BTUs (quads) of energy over 30 years and reduce energy consumption and costs by billions of dollars over the lifespan of the equipment.

In 2015, FMCS also provided training to more than 20 agencies in the skills and procedures of alternative dispute resolution. These trainings included an agency-wide



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effort to assist the Social Security Administration's ADR program by training 6,000 supervisors and managers in the effective utilization of ADR. Additionally, in conjunction with the Office of Personnel Management (OPM), the Federal Executive Boards in Philadelphia, Detroit, Atlanta, Dallas, Washington, and Baltimore, and other federal agencies, FMCS provided basic, advanced, and refresher mediation skills training to more than 320 neutrals for the Federal Neutral Shared Services and other Federal agency ADR programs. The training included more than 120 IRS agents from the IRS Office of Appeals.

FMCS also assisted with a number of complex and high-level disputes, including: a dispute under the auspices of the U.S. Department of Labor between two states over the application of unemployment compensation payments to dual-state workers; securing the first-ever resolution of a complaint filed with the U.S. State Department's National Contact Point for the OECD Guidelines; and supporting the Surface Transportation Board's efforts to resolve long-standing issues between Amtrak and more than 20 states over implementing terms of the Passenger Rail Improvement and Investment Act (PRIIA).

Department or Agency ADR use beyond the ADR Programs discussed above

FMCS's labor-management services are quite extensive and are described above in the External Facing Programs in Section A. FMCS has also provided mediation for international disputes, several of them referred to FMCS by the National Contact Point under the Department of State. These services included mediating cases involving disputes in Cameroon, Ethiopia, and the Maldives. FMCS has also provided regulatory negotiation facilitation for agencies needing help in the process of formulating draft consensus-made rules for regulatory notice and comment.

ADR Training

FMCS offers basic mediation training, advanced mediation training, facilitation training, conflict resolution training - particularly for workplace venues - and training on specific topics such as generational differences, bullying in the workplace, cultural awareness, team building, tele-mediation, the art and science of inquiry, and mindfulness. Some courses are offered through the FMCS Institute, which offers trainings around the country for individuals in the public and private sectors. The ADR Office offers training for specific agencies, based on agency needs. A recent example was an advanced mediation skills course given through the Department of Justice at the National Advocacy Center in Columbia, South Carolina. FMCS also offers occasional, free, online webinars available to both the Federal agency ADR community and the general public.



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Interagency ADR Working Group

Given FMCS's role under the Administrative Dispute Resolution Act, it is essential that the Agency maintain a high level of awareness about the programs, best practices, successes, and challenges faced by the Federal ADR community. Close involvement with the working group provides the Agency with critical insights, as well as ensures that agencies are aware of FMCS's mission to support them in their ADR efforts.

The ADR Working Group Steering Committee provides a great opportunity for communication among agencies so that no one agency's program is operating in a vacuum. The group promotes collaboration rather than competition and, in so doing, benefits the entire Federal government workforce.

FEDERAL RESERVE OMBUDSMAN'S
SUMMARY FOR THE 2016 REPORT FOR THE PRESIDENT ON THE USE AND
RESULTS OF ALTERNATIVE DISPUTE RESOLUTION IN THE EXECUTIVE
BRANCH OF THE FEDERAL GOVERNMENT

The Federal Reserve Ombudsman is responsible for acting as a liaison between the Federal Reserve and financial institutions or persons affected by its regulatory activities, as well as making sure that safeguards exist to encourage those affected to come forward and to preserve confidentiality. As such, the Ombudsman's function is external-facing. The Ombudsman performs several key functions in accomplishing its responsibilities, including serving as a facilitator; receiving, reviewing, and deciding claims of retaliatory conduct made against Federal Reserve staff; reporting to Federal Reserve staff on recurring issues; and advising financial institutions regarding available processes for resolving disputes, including procedures for appealing material supervisory determinations.

The Ombudsman maintains a publicly accessible website, which is located at: <http://www.federalreserve.gov/aboutthefed/ombudsman.htm>.

National Aeronautics and Space Administration
2016 REPORT ON ADR IN THE FEDERAL GOVERNMENT

ADR Dispute Resolution Specialist Contact Information

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ADR Policy

Does your Department or Agency have a formal written ADR policy? Yes

Has the written ADR policy been amended or modified during the past ten fiscal years (FY06-FY15)? If so, please describe how.

NASA's general policy on ADR is enshrined in NASA Policy Directive 2010.2C, with the responsible office being the Office of the General Counsel. NDP 2010.2C designates the Deputy General Counsel as the agency Dispute Resolution Specialist. Please see the NPD at the following address: <http://nodis3.gsfc.nasa.gov/displayDir.cfm?t=NPD&c=2010&s=2C>

This directive delegates the authority to address ADR in EEO matters to the Associate Administrator for the Office of Diversity and Equal Opportunity.

The NASA's EEO ADR Policy is specified under the NASA Procedural Requirements (NPR) 3713.2A. The NPR is currently being updated to incorporate new requirements under the revised Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 110 issued in August 2015.

ADR Programs

List each distinct ADR program at your Department or Agency and for each ADR program:

NASA ADR Program:

- Ombudsman Program
- EEO ADR
- Procurement ADR

I. *Program Descriptions:*

a. *Whether the program is internal-facing or external-facing;*

The NASA Ombudsman Program is an internal-facing program that was established in 2005 as an informal, independent, confidential and neutral means of communicating and facilitating the resolution of safety, organizational performance, and mission related issues without fear of retaliation. All NASA Centers have Ombudsmen who will listen to an employee's issues, explore options, and weigh the pros and cons of various options for resolution. The Ombudsmen reports to the Center Directors at each site.

NASA has an agency-wide EEO ADR Program. The Associate Administrator (AA) for Diversity and Equal Opportunity (EO) is responsible for the development and direction of the EEO ADR Program across the Agency. The Agency EEO ADR Program Manager is responsible for the daily operation of the EEO ADR Program at the agency level. The Center EEO Directors manage the EEO ADR requirements at the Center level. Centers also have an EEO ADR Program Manager.

NASA OGC also supports the use of ADR in the context of procurement and acquisition matters. Specifically, use of ADR techniques in bid protest litigation at the Government Accountability Office (GAO), and contract claim ADR at the Armed Services Board of Contract Appeals (ASBCA).

b. *The subject-matter of the disputes covered by the program;*

The NASA EEO ADR Program is designed to resolve EEO complaints at every Center (informal EEO process) and at the Agency level (formal EEO process) through facilitation by a neutral third party. The EEO ADR Program is used for a variety of issues from non-selection, failure to accommodate to harassment and hostile working environment allegations.

c. *The types of ADR processes/techniques used by the program; and*

The NASA EEO ADR Program primarily utilizes mediation, one of the most common and effective methods of ADR, as a way to quickly and appropriately resolve EEO complaints. It provides individuals with the opportunity to develop mutually agreeable solutions. It also allows the individuals involved in the dispute to have a greater voice in the outcome than in the traditional EEO process, where the outcome is determined by a NASA official or Equal Employment Opportunity Commission (EEOC) Administrative Judge. Although Mediation is the most widely used method of EEO ADR at NASA, occasionally other forms of EEO ADR are utilized such as facilitation, settlement conferences, and shuttle diplomacy.

d. The source of neutrals;

At the Agency level, NASA uses contract mediators for EEO complaints. Some NASA centers work collaboratively with other federal agencies within the local area and utilize shared-neutral resource to mediate EEO complaints.

II. Program Websites

The NASA Ombudsman Program website can be found at:

<http://ombuds.hq.nasa.gov/index.html>

NASA has developed and is currently finalizing an EEO ADR Website for deployment towards the end of FY 2016.

NASA also plans to deploy another website where information on other avenues of redress to resolve conflicts in the workplace will be made available.

III. Trends over the past ten fiscal years (FY06-FY15):

a. The amount of funding for the program, and if it has changed, whether there has been any impact on the program, and the nature of that impact

The Agency has a robust EEO ADR Program and makes EEO ADR available both at the agency and center levels. The program is well funded and resourced accordingly. The agency has budget allocation for EEO ADR during the formal complaint process. Each center manages their EEO ADR budget for informal complaints.

The success of the Agency's EEO ADR Program is attributed to NASA leadership's commitment to early and informal resolution of complaints. Agency leadership's support is evident in its steadfast efforts to ensure appropriate allocation of funds and resources for EEO ADR services, training for managers and supervisors as well as marketing materials. Consequently, there is more engagement from managers and supervisors and other appropriate stakeholders and significant increase in EEO ADR offer and participation rates.

b. The number of full time employees (FTE's) devoted to the program, and, if the number has changed, whether there has been any impact, and the nature of that impact;

NASA Ombudsmen are collateral duty Ombudsmen at the GS 14, 15, or SES level. When selected by their Center Director, concerted effort is made to ensure that Ombudsmen do not hold supervisory positions or have other duties that would make fulfillment of the duties burdensome.

NASA has Agency and Center EEO ADR Program Managers. The Agency EEO ADR Program Manager provides policy and operational guidance for the Center ADR Programs and responsible for the day-to-day operation of the EEO ADR Program in the formal stage of the EEO complaints process. The Center EEO ADR Program Managers are responsible for the Center's informal EEO ADR requirements.

c. ADR usage (number of cases or disputes, subject-matter, early or late);

In 2015, the NASA Ombudsmen saw 237 visitors.

Of the new informal complaints received in FY 2016, 44% were offered the opportunity to resolve their issues through EEO ADR process. This shows an increase from 38% in FY 2015 and 35% in FY 2014. The Agency's offer rate at the formal process jumped from 13% in FY 2015 to 48% in FY 2016.¹

Participation rate in EEO ADR at the informal stage has tripled from 19% in FY 2015 to 57% in FY 2016², which is above the federal-wide participation rate of 53%.³ At the formal stage, participation also shows significant increase from 3% in FY 2015 to 46% in FY 2016,⁴ which is over the federal-wide rate of 9%.⁵ This positive trend is attributed to support from leadership, active engagement of all stakeholders to utilize EEO ADR at various stages in complaints processing as well as aggressive marketing of the program.

The issues where EEO ADR was utilized ranged from non-promotion, disciplinary actions, failure accommodate to workplace harassment.

d. Tangible and/or intangible benefits realized by using ADR; and

The NASA Ombudsman Program complements the formal dispute resolution programs available within NASA. Often times the Ombudsmen will refer their visitors to these formal resources and in return these programs refer people to the Ombudsman Office for assistance with dispute resolution. The difference between the Ombudsman Program and these other resources is that the Ombudsman is an "off the record informal resource." Going to the Ombudsman does not rule out utilization of the formal options.

Resolution of cases through EEO ADR was definitely a win-win for the Agency. The processing time was considerably faster when compared to the traditional EEO complaints processing. In FY 2015, average days for formal EEO ADR process was 19 days while average to close formal complaint process was 449 days. Feedback received from managers and supervisors who participated in EEO ADR showed that they have a

¹As of April 2016

²As of April 2016

³Federal-wide participation rate based on EEOC's Annual Report on the Federal Workforce Fiscal Year 2014.

⁴As of April 2016

⁵Federal-wide participation rate based on EEOC's Annual Report on the Federal Workforce Fiscal Year 2014.

better understanding and more appreciation of the process as well as more likely to utilize the process when resolving EEO complaints and/or workplace conflicts in the future.

e. Types of ADR processes/ techniques used.

EEO ADR: Majority of the cases used mediation. For those cases at hearing, settlement conference was utilized.

IV. Steps taken to build program capacity in this ADR program during the past ten fiscal years (FY06-FY15):

The most significant factor that made it possible to establish and maintain an effective EEO ADR Program at NASA is leadership's commitment to and support for the program. NASA issued and revised its EEO ADR policy to ensure it is responsive to the changes in the working environment. Sufficient funding for EEO ADR was established to assure successful operation of the program. EEO ADR Program Managers, both at the center and agency levels, were put in place to manage the program effectively and efficiently. Furthermore, effective FY 2015, NASA established an EEO ADR scorecard measuring each center and agency-wide offer and participation rates. The agency also uses the scorecard to identify deficiencies, common solutions to challenges and promising practices.

V. Are there any plans to expand this program in the future?

Another critical element to a successful EEO ADR Program is buy-in from appropriate stakeholders, i.e., managers and supervisors, employees, Office of General Counsel, etc. The agency will continue to engage appropriate stakeholders through training and marketing of EEO ADR. The Agency is currently developing a more comprehensive training for managers and supervisors with a projected deployment towards the end of FY 2016. This training will be made mandatory for managers and supervisors with a plan to provide an annual refresher to keep the momentum and engagement. The Agency's EEO ADR brochures for managers, supervisors and employees underwent a major facelift with updated and critical information and an EEO ADR toolkit for managers and supervisors is under development with the goal of increasing engagement and utilization of the program. NASA also established an EEO ADR Working Group (ADRWG). The group will be utilized as a platform to discuss issues, concerns and common solutions and work collaboratively with our stakeholders to promote EEO ADR across NASA. All these efforts are geared towards ensuring the employees and managers understand the EEO ADR process and appreciate the many benefits of using EEO ADR to resolve EEO complaints and/or workplace conflicts.

VI. Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

Workplace

Contracts and Procurement

Administrative Enforcement and Regulatory Process

Litigation

Environmental

a. Success stories from the past ten calendar years:

In 2014, NASA engaged the Armed Service Board of Contract Appeals (ASBCA) in an ADR process to resolve a construction-related dispute at the Armstrong Flight Research Center (Edwards AFB, California). The contractor had submitted a certified claim on a road and piping project. NASA counsel at HQ and the center realized the case was well suited for the ADR program offered by the ASBCA. Upon the agreement of the contractor, the parties entered into an ADR agreement that included an informal hearing and mediation by an ASBCA judge in Palmdale, California. The result was a reasonable settlement of the dispute for both sides. Procurement disputes, particularly over contract administration issues, are often good candidates for ADR. In addition, the ASBCA and other administrative tribunals now offer ADR services upon request and agreement. NASA OGC actively encourages the various NASA Centers (through the center Chief Counsel offices) to consider ADR in all potential litigation situations.

Department or Agency ADR use beyond the ADR Programs discussed above

The Office of Diversity and Equal Opportunity (ODEO) sponsors the Agency's Conflict Management Program (CMP). The CMP provides managers, supervisors, and employees with tools to explore the sources of conflict and create an environment in which effective communication and engagement are consistently utilized. The CMP approach is intended to help individuals and organizations improve overall communications across the Agency to maintain maximum focus on mission accomplishment.

The CMP has been recognized by the Office of Personnel Management (OPM) as one of the most innovative and proactive civil rights programs government-wide, and OPM's No FEAR Act report to Congress cited the CMP as a Best Practice. In addition, the CMP has been integrated into the Agency's strategy to address heightened levels of stress and strain on the

NASA workforce associated with the Agency's transition from the Shuttle to the Constellation Program.

In January 2008, ODEO launched CMP Agency-wide to assist NASA in responding more constructively to workplace conflict at both the individual and organizational levels. In July 2008, ODEO, in partnership with the Office of Headquarters Operations, began offering full-day CMP training sessions for HQ managers, supervisors, and employees, which continue to be offered on an ongoing basis.

Each year, ODEO sponsors Conflict Management instructor-led training at centers across the Agency. Course offerings include the following:

- Basic Conflict Management Training for Managers/Supervisors
- Basic Conflict Management Training for Employees
- Conflict Management Training for High Performing Teams
- Conflict Management Training for Intact Teams

The Conflict Management Program also offers a Webinar Series designed to further the objectives of the above referenced programs for the Agency's managers, supervisors and employees. The Series showcases interactive and engaging 1-hour webinars covering the following topics: Trust Building, Effective Communication, Handling Difficult Emotional Situations, and Performance Expectations.

ADR Training

The Agency will deploy an EEO ADR Training specifically targeting managers and supervisors. This training is mandatory effective FY 2011 with annual refresher requirement as a follow-up to this mandatory training. ADR Training is currently on the agenda at the New Employee Orientation and New Supervisor Orientation. NASA also has an ADR training in place for ADR Teams and EEO Practitioners as well as for Employees. In addition, the newly-established brochure for Managers and Supervisors contain helpful tips for managers and supervisors to ensure they have all the information they need to assist them when utilizing EEO ADR. To encourage participation from employees, the employee brochure was updated with more information on EEO ADR Program. EEO ADR and other conflict resolution techniques are also highlighted during the Conflict Resolution Day in October. Centers bring in speakers and/or conduct brown-bag luncheons discussing EEO ADR and other avenues of redress available at the Center and Agency levels to resolve workplace disputes.

Interagency ADR Working Group

The information from the IADRWG was shared across the NASA EEO community including training opportunities and/or brown bag discussions. Relevant information assists EEO practitioners in the execution of their EEO ADR function.

Given the trends you have reported above, how can the Interagency ADR Working Group better facilitate, encourage, and provide coordination for the 1) development of ADR programs; 2) training of agency personnel; 3) the development of procedures to permit agencies to obtain the services of neutrals on an expedited basis; or 4) recordkeeping to ascertain the benefits of ADR?

Members will benefit through continued collaboration and discussions between agencies on promising practices, challenges and training opportunities. Some agencies may also benefit if IADRWG will establish a cadre of shared-neutrals to augment the agencies' ADR resources (or lack thereof).

NRC 2016 REPORT ON ADR IN THE FEDERAL GOVERNMENT

ADR Dispute Resolution Specialist Contact Information

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ADR Policy

Does your Department or Agency have a formal written ADR policy? Yes No (check one).

ADR Programs

At the NRC there are two distinct ADR programs, each with its own dedicated staff:

- The US Nuclear Regulatory Commission Office of Enforcement (OE) Alternative Dispute Resolution (ADR) program; and
- The Alternative Dispute Resolution Program (ADR) in the Office of Small Business and Civil Rights (SBCR)

Descriptions of each NRC program are provided below.

1. The US Nuclear Regulatory Commission Office of Enforcement (OE) Alternative Dispute Resolution (ADR) program

The US Nuclear Regulatory Commission Office of Enforcement (OE) Alternative Dispute Resolution (ADR) program is an external facing program available to NRC licensees, applicants, contractors, and their employees. The program is comprised of two sub-programs, Pre-Investigation (or “Early”) ADR and Enforcement ADR. The Early ADR program is offered prior to the initiation of an investigation by the NRC’s Office of Investigations (OI) and is only available to allegers and their employers for resolving allegations of retaliation for raising nuclear safety concerns associated with NRC regulations. The Enforcement ADR program, formerly known as the “Post-Investigation” ADR program is available for cases where the NRC has concluded that an enforcement action may be warranted, due to noncompliance with NRC regulations. The Enforcement ADR program is available for purposes of resolving NRC enforcement cases involving discrimination and other wrongdoing, after the

completion of a NRC investigation. Enforcement ADR is also available for escalated non-willful (traditional) enforcement cases, with the potential for civil penalties. The primary type of ADR process used for these programs is mediation. The source of neutrals is contractual with both parties incurring the expense of providing a mediator in the case of Enforcement ADR and NRC bearing the mediation expense in the case of an Early ADR.

2. The Alternative Dispute Resolution Program (ADR) in the Office of Small Business and Civil Rights (SBCR)

The Alternative Dispute Resolution Program (ADR) in the Office of Small Business and Civil Rights (SBCR) is administered by an ADR Coordinator and is available to all NRC current and former employees and applicants for employment (hereinafter referred to as employees). The program is internally facing to the extent that it applies to internal NRC employees and externally facing to the extent that it is also available to job applicants that are not NRC employees and former employees. A Sr. Civil Rights Specialist, Civil Rights Program, Civil Rights and Diversity Directorate, SBCR, serves as the ADR Coordinator. SBCR's ADR Program is made available consistent with 29 C.F.R. Part 1614, in order to set forth an informal mechanism to attempt resolution of complaints of discrimination, harassment, failure to accommodate, etc. arising under laws enforced by the Equal Employment Opportunity Commission (EEOC). The ADR program is also available to the NRC's Office of the Chief Human Capital Officer as a tool to resolve workplace discord that may not be rooted in EEO related issues.

The ADR process does not replace already existing equal employment opportunity (EEO) discrimination complaint procedures, but supplements them in an effort to resolve claims of employment discrimination. The Agency uses mediation as the primary form of ADR. Facilitated discussion is also utilized by Civil Rights Program staff in appropriate cases to reach informal resolution of claims. Employees may request mediation at the pre-complaint or formal complaint stage (after filing a formal EEO complaint but before a request for an EEOC administrative hearing). The Agency obtains mediators through the Sharing Neutrals Program, U.S. Department of Health and Human Services and the Federal Mediation and Conciliation Service (FMCS).

Each NRC ADR Program maintains its own website.

The Office of Enforcement, Alternative Dispute Resolution Page that is accessible to the public. The URL for the site is: <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>

The SBCR's ADR Program is accessible by the public. The URL for the site is <http://www.nrc.gov/about-nrc/civil-rights/crp/eo-adr-program.html>

Trends that NRC ADR Program managers have observed in each program over the past ten fiscal years (FY06-FY15) are described below:

The Office of Enforcement, Alternative Dispute Resolution Program

- i. Program funding experienced minimal increase in budget since its inception. The minimal increase was due to inflation and increase in usage. There has been an increase in the use of both subprograms, accredited to increased program awareness, expansion of program applicability, and increased appreciation for its benefits. The program is funded through our Agency overhead budget (based on specific regulatory mission area – oversight).
- ii. In the recent past, approximately 1.0 FTE has been devoted to the OE ADR program. The assigned FTE addresses program policy, support and oversight, as well as contract oversight and operational tasks.
- iii. Early ADR has an average of 36 cases per year. Enforcement ADR has an average of 7 cases per year.

Trending data for the last 5 years is available on the NRC public website:

<http://www.nrc.gov/about-nrc/regulatory/enforcement/adr/trending-data.html>

- iv. A benefit of the Early ADR program is that it encourages quick resolution of matters between the allegor and employer, with the goal of minimizing negative impact to the environment of raising safety concerns. The use of the Early ADR program (and associated settlement of cases) also decreases the length of time exhausted addressing the matters. The alternative, an investigation by the USNRC Office of Investigation typically takes 1-2 years to complete, whereas cases settled using mediation are typically resolved within a matter of a few months.

The Enforcement ADR program provides both tangible and intangible benefit of allowing the NRC staff and the licensee to communicate openly and directly and enables the parties to reach effective and workable agreements that meet the NRC’s regulatory interests. Historically, the Enforcement ADR program has resulted in broader and more comprehensive corrective actions than would be expected using traditional enforcement means.

- v. The type of ADR method used by the Office of Enforcement, Alternative Dispute Resolution Program is mediation.

The Office of Small Business and Civil Rights (SBCR) ADR Program

- i. SBCR has very low complaint activity (less than one-half of one percent of employees file EEO complaints each fiscal year). Thus, we can discern no statistically significant

trends based on the limited data. Overall, ADR usage since 2006 has been relatively consistent. NRC's ADR Program run through SBCR does not have a separate budget line item. Rather, the funding needed to run the ADR Program is contained within SBCR's budget. During the past two (2) fiscal years, the Agency has solely used the Sharing Neutrals Program for all mediations conducted at its headquarters facility in Rockville, Maryland, and there is no cost associated with these mediations. Conversely, the Agency also uses the FMCS for mediations in any of NRC's four (4) regional offices, which occur a few times a year. These mediations average \$400-\$600 per mediation based on the hourly rate charged by FMCS mediators. Recently, due to travel budget constraints, the Agency has successfully used video teleconferencing methods to conduct mediations when participants are located in different geographical locations.

ii. The ADR program function within SBCR is not a full time responsibility. There is a Sr. Civil Rights Specialist/ADR Coordinator who oversees the program and a Civil Rights Specialist who assists with logistical matters. A contract Civil Rights Specialist also provides support to the ADR Program. In prior years, the Civil Rights Program Manager and/or the Associate Director, Civil Rights and Diversity Directorate, have served as the ADR Coordinator.

iii. Based on data presented in response to question three above, ADR usage in SBCR has remained relatively consistent between FY 2006 and FY 2016 (to date) with only minor fluctuations in the level of usage of the ADR program from fiscal year to fiscal year. In addition, based on general observations of the ADR Program and an emphasis to resolve EEO complaints early, more employees request ADR during the pre-complaint EEO process than during the formal complaint stage. SBCR makes its ADR Program accessible in 100% of EEO cases, but the program is voluntary (as required by EEOC directives). Thus, even if one party wishes to engage in ADR, if the other party declines participation, then no ADR session will occur.

iv. SBCR's ADR program have yielded several tangible benefits. First, mediation has been successful in opening up the lines of communication between management and staff. It has given both parties the opportunity to speak frankly and confidentially in a safe environment. This results in a greater potential to repair fractured relationships, a possible increase in productivity in the branch/program office and an improved environment in the Agency. Moreover, SBCR makes its ADR program available to the Office of the Chief Human Capital Officer if there are non-EEO related disputes that are interfering with workplace productivity and/or creating an environment that is not conducive to performing NRC's mission. On a few prior occasions, the ADR program has been instrumental in helping to mend rifts between employees that may not be rooted in EEO related issues. Furthermore, SBCR's ADR Program has benefitted the Agency by reducing costs to investigate cases that are resolved, as well as to improve complaint processing efficiency. Finally, EEOC has lauded NRC's ADR program because it provides an "Agency Official" at its mediations. An "Agency Official" serves an important role as a neutral conduit, someone who can provide information and/or obtain information so a mediation can continue without interruption.

v. NRC uses mediation as the primary form of ADR. However, all of the Civil Rights Program staff are certified mediators and use their skills to obtain settlements of both informal and formal EEO complaints through facilitated discussions, when applicable.

Steps taken by NRC to build program capacity in NRC's two ADR programs during fiscal years (FY06 to FY15) are described for each program as follows:

The Office of Enforcement, Alternative Dispute Resolution Program

The Office of Enforcement (OE) ADR program was formalized in 2004, and included the Early and Enforcement ADR program components. In 2015, the scope of the Enforcement ADR program was expanded to include traditional, non-willful cases with the potential for a civil penalty.

To facilitate utilization of the program, OE has performed outreach activities at various conferences/events and maintains a webpage. OE has also maintained a contractual relationship with Cornell University's Scheinman Institute on Conflict Resolution. The Institute provides the ADR program with an intake neutral (program manager) and nationwide roster of session neutrals thereby providing a resource for maintaining and potentially building NRC's OE ADR program capacity.

Early ADR may be offered prior to an OI investigation, increasing the likelihood that the matter can be resolved prior to potential impacts to the work environment. Enforcement ADR may be offered at three distinct points within the enforcement program providing the parties with multiple opportunities to utilize the program. Parties are informed about the availability of Enforcement ADR, in applicable cases, (1) before a pre-decisional enforcement conference, (2) after the initial enforcement action is taken, and (3) with the imposition of a civil penalty and prior to a hearing request.

The Office of Small Business and Civil Rights (SBCR) ADR Program

Over the last ten years, SBCR has engaged in a number of activities in support of expanding the use, effectiveness and capacity of its ADR program. First, NRC believes it is vital to share information about SBCR's ADR Program with NRC employees. On an average of once a year, SBCR sponsors a lunch time ADR information table, in a strategic location, to maximize the potential for interaction with NRC staff. The information table provides employees with the opportunity to ask questions about mediation and obtain handouts about the ADR program. SBCR also takes advantage of other opportunities to publicize its ADR program such as the SBCR webpage and making information available during agency-wide public events (such as Diversity Day) and its bi-annual public meeting to the NRC Commissioners. All managers and supervisors receive training on NRC's ADR Program and the value of attempting informal resolution early. Furthermore, information about the ADR Program is regularly shared with collateral duty EEO counselors so they are in a position to tout its benefits and

advantages to aggrieved individuals during EEO counseling. Finally, the Chairman of the NRC also issues an announcement to all employees which strongly supports the ADR program and encourages managers, supervisors, and staff to participate in the program, as appropriate. The support of the Chairman and the Commissioners is instrumental in helping SBCR to maintain a successful ADR program. Additionally, SBCR's ADR Coordinator has been instrumental in taking advantage of technology to facilitate discussions between staff in different geographic regions in appropriate cases. While in person mediations are preferred, when budgets or other barriers preclude face-to-face communication, the use of technology has helped expand the reach of ADR in appropriate cases. Finally, SBCR continually seeks resources that can help to resolve disputes for minimal cost. As an example, for a dispute arising in NRC's Region II facility in Atlanta, Georgia, SBCR staff were able to locate and utilize a mediator through the Sharing Neutrals Program administered by the Federal Executive Board in Atlanta, Georgia.

Which of the following sections of the Interagency ADR Working Group most closely relates to the work of this ADR program (you may check multiple sections):

Workplace

Contracts and Procurement

Administrative Enforcement and Regulatory Process

Litigation

Environmental

NRC ADR Program Success Stories

Explicit examples of ADR use at NRC cannot be provided without divulging confidential or sensitive information. A global response is provided below pertaining to NRC's Office of Enforcement ADR program success and NRC's Office of Small Business and Civil Rights program success:

Office of Enforcement Example:

ADR has been used to improve the work environment at nuclear user sites and nuclear user contractor facilities. Corrective actions are broader in that they are implemented across the licensee's fleet of reactors, not just at the site where the adverse condition may have existed, as appropriate. In some instances, it was found that the corrective actions were also implemented across company programs, not just those directly related to the matter at hand. The program also presumably improves performance throughout the industry as lessons learned are shared amongst the companies.

Office of Small Business and Civil Rights Example:

Under EEOC regulations, an agency offers ADR up to the point when a complainant requests a hearing by EEOC. SBCR had an EEO case where a complainant requested a hearing and still wanted to go to mediation. Although the agency no longer had jurisdiction, it reached out to EEOC and obtained their approval for SBCR to arrange mediation. SBCR utilized the Intra-agency Sharing Neutral Program which was of no cost to the NRC. The case settled and a hearing was avoided. The lesson learned was that for some cases, it is important to consider ADR as a viable option and to communicate with our counterparts even when a hearing has been requested.

Department or Agency ADR use beyond the ADR Programs discussed above

Does your Department or Agency apply ADR processes or techniques to facilitate resolutions of conflicts or disputes independent of the ADR programs discussed above? Yes. If so, please describe the type of ADR processes or techniques utilized, how they are utilized, the reasons why the processes or techniques are beneficial, and how (if at all) the processes or techniques have improved the Department or Agency's ability to carry out its mission.

Although they are not intended to be policies that resolve conflicts and disputes, NRC does have policies and processes in place designed to promote free and open discussion of differing views to the development of sound regulatory policy and decisions. The NRC's processes are communication tools to communicate information from staff to management to support decision making. These policies and processes permit employees at all levels to provide differing viewpoints on virtually all matters pertaining to the agency's mission.

NRC uses a three-tiered system for the management of mission-related differing views. This includes the Open Door Policy, the Non-Concurrence Process (NCP), and the Differing Professional Opinion (DPO) Program. These policies provide increasing levels of formality to air differences. The broad Open Door Policy is the least formal method for airing a differing view and does not require documentation, the NCP requires documentation and is part of "business-as-usual," and the DPO Program is most formal and provides for a high level of agency review. NRC believes that these processes are beneficial because they provide multiple, voluntary channels for expressing differing views and that they support transparency, including the ability to have records available to the staff and public. The differing view processes have improved the NRC's ability to carry out its mission by fostering employee engagement and supporting effective decision making by the agency. Additional information regarding NRC's philosophy, approach, and processes for addressing differing views can be found at the NRC public Web site at <http://www.nrc.gov/about-nrc/values.html>

In addition to NRC differing view processes, NRC also has a robust stakeholder facilitation program that is utilized by NRC for many purposes including airing differing views at public meetings where NRC programs and policies are discussed with the public. In these cases, the facilitation technique utilized involves use of a meeting moderator/facilitator who helps ensure that all views are aired in a manner that does not disrupt or curtail the flow of ideas or otherwise derail the accomplishment of meeting objectives. In those instances where a charged topic is raised that may require further vetting or response by NRC, the facilitator will advise the questioner that the question can be discussed outside or after the meeting with NRC staff or ask that the commentator submit their view or question in writing so that it can be further addressed by NRC outside the confines of the meeting. The facilitation process benefits NRC because it provides a means by which all views can be heard, represented and respected without disrupting the public meeting. The facilitation process has helped improve the NRC's ability to carry out its mission by helping make public interactions more effective for all those involved.

Finally, in those instances where NRC initiates a case to impose requirements on a licensee or modify, revoke or suspend a license that results in litigation, 10 CFR § 2.203 "Settlement and Compromise" and 10 CFR § 2.338 "Settlement of Issues, Alternative Dispute Resolution" encourages ADR including assigning a settlement judge. While not frequently used, boards have cited these provisions in encouraging dispute resolution and cases over the years have been settled by presiding officers encouraging the use of settlements.

ADR Training

Does your Department or Agency offer ADR awareness/promotion trainings or ADR skills (techniques) training to agency employees, federal employees, or to the public?

No.

Additional Points of Contact

Please provide the names and contact information for no more than four people who can provide follow-up information to help clarify any questions that the drafters of this report may have.

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REPORT OF THE U.S. OFFICE OF SPECIAL COUNSEL FOR THE 2016 SURVEY ON ADR IN THE FEDERAL GOVERNMENT

The U.S. Office of Special Counsel (OSC)

OSC is an independent federal investigative and prosecutorial agency. Its basic enforcement authorities come from four federal statutes: the Civil Service Reform Act (CSRA), the Whistleblower Protection Act (WPA), the Hatch Act, and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

OSC's roots lie in the reform efforts of Gilded Age America. In 1883, Congress passed the Pendleton Act, creating the Civil Service Commission, which was intended to help ensure a stable, highly qualified federal workforce free from partisan political pressure. Nearly a century later, in the wake of the Watergate scandal and well-publicized allegations of retaliation by agencies against employees who had blown the whistle on wasteful defense spending and revelations of partisan political coercion in the federal government, Congress enacted sweeping reform of the civil service system in the Civil Service Reform Act of 1978. This law replaced the Civil Service Commission with the Merit Systems Protection Board (MSPB), with OSC serving as the investigative and prosecutorial arm of the MSPB for the next decade.

In 1989, Congress enacted the WPA, making OSC an independent agency within the federal executive branch. The WPA also strengthened protections against retaliation for employees who disclose government wrongdoing and enhanced OSC's ability to enforce those protections. Ensuing legislation such as the WPEA and Hatch Act Modernization Act—both passed in 2012—has significantly affected the agency's enforcement responsibilities.

Mission and Responsibilities

OSC's mission is to safeguard employee rights and hold the government accountable. To achieve this mission and promote good government in the federal executive branch, OSC's obligations are, broadly speaking: (1) to uphold the merit system by protecting federal employees, applicants, and former employees from prohibited personnel practices, curbing prohibited political activities in the workplace, and preserving the civilian jobs of federal employees who are reservists and National Guardsmen; and (2) to provide a safe channel for federal employees, applicants, and former employees to disclose wrongdoing at their agencies. These two responsibilities work in tandem to maintain the integrity and fairness of the federal workplace and to make the government more accountable.

*Excerpted from “OSC’s Strategic Plan (FY 2017-2022)” available at:
<https://osc.gov/Resources/Strategic-Plan-FY-2017-22-FINAL.pdf>.*

ADR at OSC

Through its Alternative Dispute Resolution Unit (ADR Unit), OSC offers mediation in select complaints alleging a prohibited personnel practice or “PPP” (see 5 U.S.C. §2302, et seq.) or a violation of USERRA (38 U.S.C. §4301 et seq.).

Dispute Resolution Specialist Contact Information

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ADR Policy

The OSC ADR Unit screens most cases that are referred for full investigation to OSC’s Investigation and Prosecution Division or OSC’s USERRA Unit to determine if the case is appropriate for mediation. If the case is deemed appropriate, an ADR Unit staff member contacts the complainant and the employing agency to invite them to participate in the mediation program. If both parties agree, OSC schedules a mediation session.

Mediation sessions occur in person, by videoconference or telephone. During mediation, each party has the opportunity to explain its understanding of the events that transpired and its perspectives on how the matter can be resolved. The mediator assists the parties in this process, uncovering areas of agreement and exploring creative options to resolve the complaint. OSC’s process also includes information resources for the parties. The mediators can arrange for an OSC subject matter expert to help parties better understand their alternatives to settlement. This information is critical in giving the parties the tools they need to assess whether they want to settle the case in mediation or proceed to OSC’s Investigation and Prosecution Division (IPD). If both parties agree to settlement terms, the settlement is memorialized in writing.

See <http://www.adr.gov/fai.html>.

ADR Program and Information Tracking

OSC’s ADR program is for parties to cases filed with OSC as described above.

OSC currently uses two ADR processes: mediation and conciliation. We define conciliation as mediation via asynchronous “shuttle diplomacy” whereby the mediators take the parties through the steps of mediation in sequential phone calls.

We keep track of cases that pass through the ADR Unit in a separate, confidential database system (we use Microsoft Access). This database contains all case-related data such as: when the case was transferred into ADR Unit, whether and when mediation was offered, mediator assignments, mediation session dates and location and case disposition.

OSC does not keep track of individual attorney or administrative staff hours, though an approximation of resources dedicated to ADR may be estimated by calculating the FTEs used for mediation and adding the value of this time together with travel expenses dedicated to mediations.

As to measuring the benefits realized to the parties as well as to OSC, we rely on mediation evaluations and feedback from stakeholder groups. We have conducted post-mediation evaluations by calling mediation attendees and asking them a standard set of questions. OSC expects to transition to written or on-line evaluations (with potential follow up phone calls) within the next two fiscal years.

Statistics on our cases are available in our annual reports, which are posted on our web site. <<https://osc.gov/reportsandinfo>>.

OSC’s EEO policy also provides for the option of mediation of internal EEO disputes. OSC maintains EEO case data as required by Federal regulations.

Plans to expand or implement new ADR programs

OSC’s ADR Unit implements a continual dispute systems design approach. ADR Unit staff evaluates each case experience and consider program adjustments when it appears that some aspect of our ADR program or process can be improved. We have also engaged the Harvard Negotiation and Mediation Clinical Program several times in recent years to help study our ADR program and provide suggestions for process improvements and innovations.

ADR Unit budget and staffing

OSC does not utilize individual unit budgets. Three FTEs work in ADR full time and 13 collateral duty mediators. OSC’s ADR program has no outside sources of funding.

Building ADR capacity

OSC established its first mediation program in 2000. After the mediator who handled the program left the agency, cases waned to about ten per year.

Shortly after Special Counsel Carolyn Lerner was appointed by the President to head the agency in 2011, OSC's caseload skyrocketed. Drawing on her own background in mediation, Special Counsel Lerner recognized that the benefits to complainants, agencies and to OSC of making voluntary mediation more widely available.

She established an independent ADR Unit separate from the Investigation and Prosecution Division, and instructed its staff to increase OSC's capacity to offer and conduct mediations so that more parties could take advantage of this process. To implement these directions, the ADR Unit took a number of steps:

- Expanded the eligibility criteria so that many more cases qualified for the mediation program
- Made USERRA in addition to PPP cases eligible for mediation
- Increased its mediator capacity to accommodate more cases: added to OSC's in-house mediator roster and enhanced the skills of those already trained with a four-day comprehensive mediation training
- Conducted a Dispute Systems Design (DSD) process to explore the interests of stakeholders and identify mediation features that would work best for PPP and USERRA cases; convened meetings with nonprofit "good governance" and veterans' organizations, plaintiff employment attorneys and agency employment lawyers
- Gave presentations about OSC's expanded ADR program to agency attorneys, plaintiffs' attorneys and non-profit groups that represent parties in OSC cases
- Partnered with the Harvard Negotiation and Mediation Clinical Program to obtain an independent review and recommendations for the newly expanded ADR program

Some of the key findings from the DSD process were:

- Complainants and agencies both saw mediation as a time and expense saver and wanted the option of mediation when possible;
- Both complainants and agency attorneys were interested in obtaining information regarding the law involved (especially in USERRA cases) and OSC's investigation/prosecution process that would ensue if there were no settlement;
- Many complainants did not wish to incur the expense of an attorney;
- Unrepresented parties often felt "outnumbered" as the agency usually had both a management representative and an attorney;
- Most parties and their representatives valued the confidentiality of the process.

As a result of this feedback, OSC offers subject matter experts prior to a mediation session or at any point in the mediation process. These experts are senior IPD attorneys who have broad knowledge of OSC investigation and prosecution practices as well as MSPB case law and outcomes. They help each side understand how IPD would approach their type of case, the legal

standards for establishing a case for violation of the PPP or USERRA laws, and a sense of applicable MSPB decisions. The subject matter expert is then disqualified from investigating the case should it not settle and move on to IPD.

Because of limited resources, OSC's ADR staff works carefully with the parties to set a fruitful environment for the mediation session. They help the parties to identify and determine who will attend the mediation and for unrepresented employees, whether they wish to bring a support person.

OSC cases are typically mediated where the parties are located throughout the United States and sometimes overseas. OSC's mediators put special emphasis on mediation preparation so that in-person mediation sessions are focused and productive. In pre-mediation discussions, the mediators encourage the parties to begin to think about their interests and options for resolution; information may be shared in advance of session in order to give the mediation participants time to research desired options.

Indicators of Success

OSC considers its mediation program a resounding success. We have received consistent feedback from stakeholders, complainants, attorneys for complainants as well as agency representatives thanking us for this process option and encouraging OSC to provide it in as many cases as possible. Secondly, mediation requires less of the subject agency's and OSC's time and resources than an investigation would—a clear benefit to taxpayers. Finally, parties now ask for ADR when they realize that they prefer settlement terms beyond what the law provides.

Examples of Mediated Settlements (*from U.S. Office of Special Counsel Annual Reports for Fiscal Years 2013 and 2014*, <<https://osc.gov/reportsandinfo>>)

PPP cases

Reprisal after Reporting Agency Culpability

A senior management official claimed retaliation after reporting agency culpability in a safety incident that occurred in a federal building. The situation had drawn media interest and congressional oversight. The employee and agency leadership discussed their differences, brainstormed solutions and reached a collaborative agreement that included flexibility for the employee's next work assignment and a significant monetary settlement. The agency was able to resolve the OSC case and several other related legal matters, and move forward with management reorganization plans.

Reprisal Complaint after a Substantiated Disclosure

A federal employee claimed that in retaliation for raising concerns about erroneously high

locality pay of a senior employee, he was denied telework options and transferred to an undesirable location. Through mediation with OSC, parties were able to clarify key misunderstandings and discuss creative proposals and resolutions. This led to a settlement that met both parties' interests, including a specific telework arrangement, a new office location assignment, whistleblower training at the agency, and a modest change of work duties.

USERRA Cases

Lack of Training

A federal employee, who is also a reservist with the Army, filed a claim of USERRA discrimination. The claimant alleged that the agency did not provide the training and tools needed to reintegrate the claimant after deployment. As a consequence, work performance suffered, resulting in reprimands and lowered performance evaluations. The claimant and the agency came together and discussed ideas for a mutually beneficial solution. Settlement was achieved, with the claimant agreeing to withdraw the claim in exchange for the agency returning the claimant to work under a different supervisor, providing training and tools for the claimant to do the job, providing the claimant with a new performance plan, establishing a clean performance record, and considering a within grade increase within 30 days of the claimant's return to work.

Leave without Pay

Another federal employee, a member of the Reserve, claimed his agency violated USERRA when it put him on light duty and then leave without pay (LWOP) after he returned from military duty in which he sustained injuries that impaired his ability to perform his work. The employee asked for monetary compensation, restoration of leave, and assignment to a position equal in pay and status to his pre-deployment position. Through mediation, the parties explored their interests in compensation for the employee, reassignment or retirement for the employee, and increased USERRA awareness for agency personnel involved in the mediation. The case settled with the claimant agreeing to withdraw the claim and retire in exchange for the agency paying him a settlement, and supporting him in the disability retirement application process.

Section of the Interagency ADR Working Group most closely relates to the work of our program/office: Workplace

ADR Training

OSC's ADR Unit conducted a four-day training for new mediators in the fall of 2012. This allowed us to greatly expand our collateral duty mediator panel and update the skills of all our mediators. The ADR Unit has conducted many more trainings on topics related to conflict resolution, negotiation and recent scientific research that relates to dispute resolution (e.g.,

dealing with difficult behavior, decision fatigue, loss aversion, complex negotiation techniques). The trainings are for OSC mediators or all of OSC, but they have not been open to the public.

Interagency ADR Working Group Steering Committee

OSC has benefited from the work of the Interagency ADR Working Group. When OSC expanded its ADR program in 2011-2012, the Chief of the ADR Unit met with several long-time IADRWG attendees to learn about their experience and obtain advice. ADR Unit members attend the IADRWG meetings and find the networking, sharing of information and contacts in other agency ADR programs to be extremely beneficial in OSC's ability to provide quality ADR services and to continually improve its ADR process.

ADR Trends

ADR skills and techniques are being used more extensively throughout OSC. Staff who have attended the ADR Unit's mediation and/or negotiation trainings note that they have found it very useful to employ mediation techniques when settling cases at all stages of case processing.

The future direction of ADR at OSC includes the strategic integration of ADR with our investigation and prosecution function. Recently we have experimenting with transferring cases back and forth IPD and the ADR Unit in a way that is tailored to the needs of a particular case. A complex and complicated whistleblower retaliation complaint, for example, the IPD attorney conducts a preliminary investigation and realizes that ADR may be the best process for the parties. The parties agree and their case is sent to OSC's ADR Unit. The parties settle all but one issue. The case returns to IPD for a targeted evaluation and opinion from the case prosecutor. The case can then either return to ADR for final negotiations, or negotiations may simply conclude in IPD. With units working in concert, OSC has a unique capacity to help parties to complaints before it.

In fulfilling its mission to safeguard employee rights and hold the government accountable, OSC seeks to employ the most effective and efficient processes possible. ADR has been an important part of these processes.

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Challenges compiling information

Our primary challenge was our limited staff.



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Equal Employment
Opportunity

To: Department of Justice
From: US Office of Personnel Management (OPM)
Re: 2016 ADR Report from Federal Government Agencies

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ADR Policy

The OPM does not have a formal written ADR policy.

ADR Program

OPM's ADR is an internal-facing program administered by the EEO Office. Requests for ADR are subject to approval by the EEO Director, who will determine, on a case-by-case basis, whether a matter is appropriate for mediation. As a general matter, claims regarding employment applications (eligibility, selection, or referral) or regarding benefits (Federal Employees Health Benefits (FEHB), Federal Employees' Group Life Insurance (FEGLI) or annuity will not be approved for ADR. OPM has chosen mediation as its form of ADR technique.

In order to preserve and delineate the role of the OPM EEO Office and its staff, the OPM EEO Office staff will not serve as mediators for any OPM EEO cases. In the Washington DC Metropolitan area OPM will use the Sharing Neutrals interagency program, coordinated by the US Department of Health and Human Services. Outside the Washington DC Metropolitan area, similar programs/resources (e.g., Federal Executive Board shared neutrals program) will be identified on an as needed basis.

ADR is an essential part of OPM's EEO Office; therefore, funding and staff is administered as part of the EEO Office.

From fiscal year (FY) 2009 – 2013 OPM’s ADR program averaged three (3) cases, with a resolution rate of 45.0%. In November 2013 (FY14), OPM implemented an Alternative Dispute Resolution (ADR) Pilot Program with the purpose of:

- a. Maximize possibilities for the collaborative informal resolution of disputes.
- b. Minimize the escalation of disputes into multiple complaints of discrimination.
- c. Avoid the unnecessary escalation of disputes to entities outside of OPM or to the courts.
- d. Create stronger relationships and enhance overall morale through the process of collaborative problem solving and decision making.
- e. Assist employees at all levels in developing the skills needed to prevent and manage disputes and conflicts in a constructive manner.

OPM’s ADR Program will use mediation as its principal ADR technique. The program encouraged employees to use ADR whenever possible. Furthermore, once a determination has been made as to the appropriateness of ADR to a particular case, the designated agency official(s) is required (mandatory) to participate.

Following the implementation of the aforementioned ADR Pilot program participation in the ADR program increased by 133.0% (from 3 to 7 cases), with a resolution rate of 70.0%. There are no current plans to expand this program in the near future.

Information and availability of OPM’s ADR program is provided during New Employees Orientation, EEO training, EEO correspondence during informal and formal processes, and posted in OPM’s Intranet.

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2016 REPORT ON ADR IN THE FEDERAL GOVERNMENT

Small Business Administration

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ADR Programs

- **Ombudsman Services for America’s Small Businesses:** As an advocate for small businesses, the National Ombudsman helps small business owners navigate federal rules, regulations and requirements. In partnership with federal regulators, the Ombudsman delivers fair solutions and value to small businesses through a level regulatory playing field that supports small business growth and the American economy. SBA’s National Ombudsman assists small businesses with unfair and excessive federal regulatory enforcement. As an impartial liaison, the Office of the National Ombudsman directs regulatory fairness matters to the appropriate agency for a high-level fairness review and works across government to address those concerns and reduce regulatory burdens. Congress established the Office of the National Ombudsman in 1996 as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA). The Act ensures that businesses, small government entities, and small nonprofit organizations that experience unfair regulatory enforcement actions by federal agencies have a means to comment about such actions. The National Ombudsman is an independent office that reports directly to SBA’s Administrator. The National Ombudsman office staff serves as a neutral third party in processing the complaints from small businesses and facilitating a response from the federal agency. The National Ombudsman also reports to Congress annually on how federal agencies work with the small businesses they regulate, including the timeliness and quality of its responses to concerns about regulatory compliance and enforcement. The National Ombudsman is advised by ten Regional Regulatory Fairness Boards comprised of small business owners who contribute insights into regulatory challenges confronting small businesses. Office of the National Ombudsman website: <https://www.sba.gov/ombudsman>
- **SBA’s Workplace Conflict Resolution Center:** In March 2015, SBA launched the Workplace Conflict Resolution Center (The Center), which helps SBA’s workforce address conflict at the earliest stage by providing the tools and support needed to deal with conflict proactively and constructively. The Center is an informal, confidential, impartial, and voluntary resource that helps empower employees and leaders to address workplace conflicts in a way that preserves professional relationships and encourages a collaborative, problem-solving agency culture. The Center is an independent program of the SBA’s Office of Diversity, Inclusion & Civil Rights, and is completely separate from the EEO process. As a proactive, prevention-oriented resource, The Center provides services before a complaint or grievance has been filed. The Center offers

significant value to SBA, including reducing time and money spent on formal complaints; increasing organizational performance and productivity; and fostering improved communication. The Center provides collaborative, interest-based ADR services including: facilitated discussions, conflict coaching, and group facilitation. The Center also provides conflict resolution training to employees and supervisors. The Center uses its staff or SBA employees who have been credentialed by The Center as a neutral to deliver its services.

- **Mediation & Arbitration for Employee Complaints and Grievances:**
 - *Union Grievance Mediation & Arbitration:* At any point during the formal stage of the negotiated grievance procedure, the parties may request mediation using the Federal Mediation and Conciliation Service (FMCS), the Federal Shared Neutral Program or other certified mediation service. Alternatively, during the formal stage, parties may also request an arbitration panel from Federal Mediation and Conciliation Services (FMCS).
 - *Informal EEO ADR/Mediation:* ADR is more efficient and cost effective than the traditional complaint and litigation process. The use of ADR also can mend or improve the overall relationship between the parties. SBA primarily uses ADR in the form of mediation to resolve issues at the informal stage. Mediation through the EEO process is voluntary and allows the parties to craft the agreement or solution themselves. A neutral mediator assists participants in reaching a negotiated agreement. SBA primarily relies on Federal Mediation and Conciliation Services (FMCS) for EEO mediations.
 - *Administrative Grievance Mediation:* As part of the Administrative Grievance process facilitated by the Office of Human Resources Solutions (OHRS), if both parties agree to participate, mediation is offered as a means to settle an administrative grievance. Mediators are sourced from SBA employees with mediation training or from Federal Mediation and Conciliation Services (FMCS). At the appeals level, the Agency's Office of Hearings and Appeals (OHA) may require the parties to participate in mediation before the Agency renders a final decision to try to resolve the matter.

Agency ADR Trends

- **Implementation of Proactive, Informal Resource to Resolve Conflicts:** One major trend in ADR at SBA has been the launch of the Workplace Conflict Resolution Center (The Center), a resource for addressing conflict proactively and at the lowest level possible. A major contributor to this decision was senior leadership and other key stakeholders' assessment that employees were turning to formal complaint or grievance procedures to resolve interpersonal conflicts as their only option for assistance. This raised significant challenges, as filing a complaint or grievance is often perceived as adversarial and entering these forums often leads to parties becoming more entrenched in their positions and less willing to consider an interest-best approach to resolution. Additionally, direct and indirect costs associated with processing complaints and grievances made this trend less than optimal from an Agency resource standpoint. To create a more effective and efficient channel for addressing workplace conflict, SBA established The Center as a resource for its workforce to get neutral, confidential assistance to help resolve issues and prevent escalation to a grievance or complaint. Importantly, The Center supports SBA's commitment to foster an inclusive organizational culture that inspires employee engagement, cooperation, and fairness. The Center currently has one FTE devoted to the program and serves both headquarters and field employees. Based on demand, the Agency is

prepared to scale the program through a cadre of credentialed internal neutrals and additional FTE positions.

- **Increased Awareness and Utilization of the National Ombudsman Program:** In the last four years, the National Ombudsman has focused heavily on outreach and connecting directly with small business stakeholders in new areas and underserved markets to broaden awareness of the resources the office provides to small business owners. As a result, in FY 2014, The National Ombudsman's caseload reached the highest level in six years, with 420 small business owners filing formal cases seeking assistance with federal regulations, an increase of 65% over the level just two years ago. The Ombuds team assisted more than 400 small businesses and responded to thousands of general inquiries. The Ombudsman office has 7 FTE positions but currently has 4 FTEs onboard.

Success Stories from the National Ombudsman's Office

- **National Ombudsman Success Story- Individual Small Business:** In one particularly compelling case, a woman-owned small business, 8(a) graduate and successful government contractor reported that her business was owed \$626,216 for services performed and accepted but not paid. The business suffered harassment, discrimination and verbal abuse by federal contracting personnel and received a negative performance rating due to retaliation and discrimination from the issue. In addition to referring the matter to the contracting agency's Office of Inspector General as required by law, the Ombudsman's Office worked with its contacts at that agency and with the SBA Procurement Center Representative (PCR) to assist the small business owner. In response, the contracting agency replaced the Contracting Officer's Representative and affirmed that any inappropriate language or the appearance of discrimination would not be tolerated. To address the payment for services and performance rating issues, on behalf of the small business, the Office requested a meeting with officials at the contracting authority, who were extremely supportive and engaged. Immediately following that meeting, the small business owner wrote to the Office: "I'm pleased to report that all three issues were addressed and the outcome very favorable. The [agency] has agreed to compensate [the business] for the expended labor and material purchases in the entire amount of \$626,216. They also agreed to submit a final contract rating of 'SATISFACTORY'."
- **National Ombudsman Success Story- Systemic Issue Resolution:** By addressing systemic issues in a proactive way, the impacts of individual case resolutions are magnified and the entire small business community benefits from smarter, more effective and proportionate regulation. Examples of successful advocacy efforts that yielded widespread, systemic benefits including a case in FY 2014, involving the Defense Contract Audit Agency. At a small business roundtable in Norfolk, Virginia, small business owners reported to the Ombudsman that some Navy contracting officers were requiring "DCAA certification," which had the effect of excluding them from bidding on contracts for which they were qualified. Some DoD contracting officers had been using language to state that only contractors whose accounting systems had previously been "certified" by DCAA could bid on certain contracting opportunities. In response, DCAA provided written clarification that DCAA does not "certify" prospective contractors' accounting systems and therefore that "DCAA certification" should not be required as a precondition to bid submission. It stated, "DCAA does not 'certify' or 'approve' accounting systems...There is no FAR requirement for a contractor's system to be deemed adequate in order to compete for an

award.... [T]he FAR does not require that the system already be audited and deemed adequate in order to bid.”

ADR Training

ADR Training: SBA’s Workplace Conflict Resolution Center (The Center) offers conflict resolution training upon request to employees and supervisors on a variety of topics including: communication in conflict; interest-based problem solving; the Thomas Kilmann Inventory (TKI); building and maintaining trust; being an effective negotiator; and conflict management skills for supervisors and managers.

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