



**The U.S. Department of Housing and Urban Development
The Office of Departmental Equal Employment Opportunity**



**STANDARD OPERATING PROCEDURES (SOP)
FOR THE
OFFICE OF DEPARTMENTAL EQUAL EMPLOYMENT
OPPORTUNITY (ODEEO)

ALTERNATIVE DISPUTE RESOLUTION**

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CHAPTER 1. GENERAL

1.1 PURPOSE

- a. This SOP outlines the parameters for the Alternative Dispute Resolution (ADR) Program (ADRP) to resolve workplace disputes and Equal Employment Opportunity (EEO) complaints at the U.S. Department of Housing and Urban Development (HUD). This SOP provides guidance for all HUD Program Offices.
- b. HUD's Office of Departmental Equal Employment Opportunity (ODEEO) processes EEO complaints raised by HUD employees, former employees, and applicants for employment based on Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act (ADEA), The Rehabilitation Act of 1973 (RA), Equal Pay Act (EPA), Genetic Information Nondiscrimination Act (GINA) and Pregnant Workers Fairness Act of 2023 (PWFA.). This SOP applies to all ADR requests made during the EEO complaint process that originate from HUD Program Offices and applicants. The Program Offices may delegate authority and responsibility regarding participation in the ADR Program, as appropriate, including but not limited to the authority to resolve an EEO complaint.

1.2 SCOPE

There are various forms of ADR, such as mediation, facilitation, and fact-finding. HUD primarily uses mediation as its ADR approach and, when determined appropriate, HUD may offer mediation during any stage of the EEO complaint process. Mediation has proven to be a highly valuable tool in resolving EEO complaints in an efficient and effective manner. Other forms of ADR in addition to, or as an alternative to mediation may also be used if deemed more appropriate. Additionally, although the procedures set forth in this SOP focus on ADR during the EEO complaint process, the SOP may also be applicable to ADR in disputes outside of the EEO process.

1.3 OBJECTIVE

The objective of HUD's ADR Program is to resolve EEO complaints at the earliest possible stage of the EEO process. Early settlement of disputes benefits HUD and its employees by supporting a positive workplace environment, enhancing communication and trust, reducing costs associated with processing formal EEO complaints and prolonged litigation, and increasing morale.

1.4 BACKGROUND

- a. **The Civil Rights Act (CRA) of 1991 (Public Law 102-166).** The CRA encourages the use of ADR to resolve disputes of discrimination and unlawful harassment in the workplace.
- b. **The Administrative Dispute Resolution Act (ADRA) of 1996 (Public Law 104-320).** The ADRA authorizes Federal agencies to use dispute resolution methods to resolve claims that relate to an administrative program.
- c. **Title 29 of the Code of Federal Regulations (C.F.R.) § 1614, Federal Sector Equal Employment Opportunity.** 29 C.F.R. §1614 requires Federal agencies to establish or make available an ADR Program at all stages of the EEO process.

- d. **U.S. Equal Employment Opportunity Commission's (EEOC) Management Directive (MD) 110.** MD 110 provides guidance to Federal agencies regarding the establishment of an ADR Program to resolve EEO complaints.

1.5 POLICY

As stated in the ADR Policy Statement issued by Secretary Marcia L. Fudge, HUD supports and promotes the use of ADR in helping to resolve workplace disputes between HUD employees. HUD strives to be a model Federal employer, by sustaining a harmonious and productive work environment, and is committed to the use of ADR to resolve disputes expeditiously and fairly. Employees, former employees, and applicants for employment, are strongly encouraged to use ADR throughout the EEO process, up to adjudication. In addition, executives, supervisors, and managers have a duty to participate in ADR to resolve workplace disputes. Parties to ADR must participate in good faith.

1.6 DEFINITIONS

- a. **Alternative Dispute Resolution Program (ADRP).** HUD established the ADRP to increase the knowledge, quality, and use of ADR. The ADRP provides mediation and other services to resolve disputes efficiently and effectively. In addition, the ADRP offers conflict management awareness and training workshops on conflict management and problem-solving topics.
- b. **Agency Representative.** An attorney who represents HUD and advises agency leaders, managers, and supervisors regarding laws, regulations, and policies that govern mediation and settlement.
- c. **Aggrieved Party.** An individual who has suffered alleged harm or/and contacts an EEO Counselor to resolve an informal EEO complaint.
- d. **Alternative Dispute Resolution (ADR).** A variety of approaches to informally resolve issues in controversy, such as conciliation, facilitation, mediation, and factfinding. At HUD, mediation is the primary ADR approach used in EEO complaints.
- e. **Alternative Dispute Resolution Coordinator (ADRC).** An ODEEO employee responsible for coordinating mediations and monitoring and evaluating the effectiveness of the ADRP. In addition, an ADRC is responsible for coordinating execution and overseeing implementation of the terms of Settlement Agreements and responding to allegations of breach of a Settlement Agreement.
- f. **Complainant.** An Aggrieved Party who has completed the informal EEO complaint stage or counseling and filed a formal EEO complaint against HUD.
- g. **EEO Complaint Process.** The process for raising claims of prohibited discrimination, harassment, and retaliation. The EEO complaint process has two distinct phases: informal and formal. The informal phase includes counseling and mediation. The formal phase includes investigation. Following the completion of the EEO complaint process, the EEO complaint is generally adjudicated either through a Final Agency Decision issued by ODEEO, a hearing before an EEOC Administrative Judge (AJ), or a decision without a hearing issued by an EEOC AJ.

- h. **EEO Counselor.** An ODEEO employee or contractor who advises Aggrieved Parties of their rights and responsibilities in the EEO Complaint Process; determines the basis(es) and claim(s) of the potential EEO complaint; conducts a limited inquiry; determines if the EEO complaint is appropriate for mediation; attempts and documents settlement; issues a Notice of Right to File a Formal Complaint if settlement is not obtained; and, prepares a report on counseling activities. The EEO Counselor is not a mediator and does not conduct mediations.
- i. **Employee Representative.** An individual designated by an Aggrieved Party or Complainant to advise them and represent their interests. Employee representatives can be co-workers, private attorneys, or union representatives.
- j. **Mediation.** A form of ADR in which a third-party neutral, referred to as a mediator, assists parties with communication to achieve understanding, identify positions, and potentially achieve a settlement of the matter in dispute. Mediation can be conducted by one third-party neutral or by co-mediators, which include more than one mediator working as a team. Mediation may be used at any stage of the EEO process.
- k. **Neutral.** An employee or contractor who has no official, financial, or personal interest regarding the claims in controversy and who, with respect to a controversy, functions specifically to aid parties in resolving the controversy.
- l. **Office of the Chief Human Capital Officer (OCHCO).** The HUD Program Office that is responsible for developing and implementing policies and procedures associated with human capital management. OCHCO is also responsible for reviewing and approving Settlement Agreements reached during ADR and ensuring compliance with relevant collective bargaining agreements, Office of Personnel Management (OPM) processes, HUD policies, and other regulatory requirements pursuant to Title 5 Code of Federal Regulations (CFR).
- m. **Office of Departmental Equal Employment Opportunity (ODEEO).** The HUD Program Office, responsible for ensuring the enforcement of Federal laws relating to the prevention and elimination of all forms of discrimination in HUD's employment practices. Specifically, ODEEO administers the EEO complaints process and ADRP. ODEEO is led by the ODEEO Director who is responsible for all ODEEO programs.
- n. **Office of General Counsel (OGC).** The HUD Program Office, responsible for providing legal opinions, advice, and services regarding all HUD programs and activities. OGC is also responsible for conducting legal sufficiency reviews and/or approving settlement agreements reached during ADR.
- o. **Parties.** The Aggrieved Party /Complainant and the Agency.
- p. **Pre-Complaint EEO Process.** The initial problem-solving phase of the EEO complaint process, set forth in 29 C.F.R. Part 1614. This phase involves EEO counseling, and ADR, if elected.
- q. **Resolving Official (RO).** An individual who participates in mediation on behalf of their Program Office with the authority to approve the requested relief. The RO with settlement authority should not be the agency official directly involved in the case or a responsible management official.

- r. **Responsible Management Official (RMO).** A manager or supervisor directly involved in the EEO complaint or another official designated to participate in the mediation. RMOs are prohibited from being the officials at mediation with settlement authority or the RO; however, there is no prohibition against RMOs being present at settlement discussions and participating in mediation.
- s. **Settlement Agreement.** A written agreement that sets forth the provisions agreed to during ADR to resolve the underlying EEO complaint. (See Appendix 8, Format 8.)

1.7 REQUEST FOR INFORMATION

Contact ODEEO for additional information on the ADR Program at (202) 708-5921 and via email at eeo@hud.gov.

HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

HUD's ADR website is available at: https://www.hud.gov/program_offices/eeo

CHAPTER 2. MEDIATION PROCEDURES

2.1 ADR OFFER

- a. **ADR Offer at the Informal EEO Stage.** During the informal EEO complaint process, the EEO Counselor will describe ADR, and inform the Aggrieved Party of his/her right to request ADR. If the Aggrieved Party would like to request ADR, the EEO Counselor will provide the Aggrieved Party with a Request for Mediation Form (See Appendix 1, Format 1). If the Aggrieved Party submits a Request for Mediation Form, the EEO Counselor will forward it to the ADRC to review the underlying basis(es) and claim(s) to determine if mediation is appropriate.
- b. **ADR Offer at the Formal EEO Stage.** ADR may be requested at any stage of the EEO process by either party. When ADR is requested at the formal EEO stage, ODEEO will review the request and determine if the EEO complaint is appropriate for ADR. If the matter is determined appropriate, the ADRC will work with the parties to schedule the mediation. If the matter is deemed inappropriate, the ADRC will advise the Case Manager that the complaint was not appropriate for ADR, and the complaint will continue in the formal EEO Complaint Process.
- c. **Appropriateness of ADR.** The majority of EEO complaints are appropriate for ADR; however, ODEEO has discretion to review and determine if each underlying EEO complaint is appropriate for ADR. ODEEO may consider *not* using ADR when:
 - (1) A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;
 - (2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;
 - (3) Maintaining established policies of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;
 - (4) The matter significantly affects persons or organizations who are not parties to the proceeding;
 - (5) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and
 - (6) The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement." 5 U.S.C. §572(b).

The ADRC will prepare and issue a written determination of the Aggrieved Party's Request for Mediation within two business days. If ODEEO determines the EEO complaint is appropriate for ADR, the ADRC will provide the Aggrieved Party/Complainant with the determination and an Election Form (See Appendix 2,

Format 2) to complete. If ODEEO determines the EEO complaint is not appropriate for ADR, the ADRC will provide the Aggrieved Party/Complainant with the determination and return the EEO complaint to the EEO Counselor/Case Manager to resume processing of the complaint. Where a Program Office does not believe that ADR is appropriate, the Head of the Program Office, or designee shall consult with the ADRC who will determine whether the complaint is appropriate for ADR.

Where the ADRC determines that the complaint is appropriate for ADR, and this opinion is inconsistent with the Program Office's determination, the ADRC will apprise the ODEEO Director of the Program Office's determination and will advise why his/her assessment of the issues provides that ADR is appropriate. The ODEEO Director will be notified in writing of the Program Office's request, as well as the ADRC's opinion and the rationale for the opinion. The Deputy Secretary will be advised of any ongoing conflicts between ODEEO and Program Offices as it pertains to the determination of appropriateness of ADR, and he/she will decide if the program office is required to participate in ADR.

The ADRC will advise the Aggrieved Party/Complainant of the final decision and will notify the EEO Counselor/Case Manager how to proceed with the processing of the complaint. The informal EEO Complaint Process must be completed within 30 calendar days; however, when ADR is offered and the Aggrieved Party agrees to participate in ADR, the informal EEO Complaint Process may be extended by 60 calendar days so as not to exceed 90 calendar days total. When the Parties agree to participate in ADR during the formal stage of the EEO Complaint Process, the Process must be completed within the regulatory timeframe of 180 calendar days and cannot exceed 360 calendar days of the filing of the formal complaint as participation in ADR during the formal stage does not toll the time for the processing of a formal complaint.

2.2 PRE-MEDIATION COORDINATION

- a. **RO Designation.** Upon notification of an ADR offer from an EEO Counselor, the ADRC will issue a memorandum to the respective Program Office. (See Appendix 3, Format 3). The memorandum will advise the Program Office that their employee, an Aggrieved Party, elected to participate in ADR and ODEEO has offered to conduct mediation in the underlying informal EEO complaint. In addition, the memorandum will request the identification of a RO within five (5) business days of receipt, advise the Program Office whether the Aggrieved Party is represented, and provide a summary of the Aggrieved Party's informal EEO complaint, including requested remedies. Finally, if the Aggrieved Party is represented, the ADRC will copy OGC on its request to ensure coordination between the RO and OGC for the appointment of an Agency Representative to advise management and participate in mediation, if appropriate.
- b. **ADR Pre-Consultation with Aggrieved Party.** Upon notification of an ADR election from an EEO Counselor, the ADRC will also contact the Aggrieved Party or their Representative to schedule an ADR pre-consultation. During the ADR pre-consultation, the ADRC will provide information and answer questions regarding the mediation process.
- c. **Request for Mediator and Logistics.** Upon identification of the RO from the Program Office and the conclusion of the pre-consultation, the ADRC will request a neutral mediator external to the organization. Selection of mediators is discussed more thoroughly in Chapter 3 of this SOP. The ADRC will contact potential mediator(s) and determine if

any conflict of interest exists. The ADRC will inform the mediator(s) of the name of the Aggrieved Party or Complainant, RO and RMO(s), and a summary of the claim(s). The mediator will have the opportunity to decline if a conflict of interest or the appearance of a conflict exists.

Following the identification of the mediator, the ADRC will schedule the mediation, including time and date, method of conducting the mediation including video teleconferencing (VTC), and location. The ADRC will confer with the RO and Aggrieved Party or their Representative to identify a mutually agreeable time, date, and location for the mediation. The ADRC will take appropriate steps to ensure accessibility and allow full participation in the mediation process by individuals with disabilities. This may include providing auxiliary aids or services or providing reasonable accommodation(s).

- d. **Agreement to Mediate.** The ADRC emails the Parties, the Agency Representative, and the Representatives, if appropriate, with the identification of a mediator and mutually agreeable time, date and location (See Appendix 4, Format 4), as well as an Agreement to Engage in ADR form (See Appendix 5, Format 5) that must be executed prior to the mediation, and an overview of the mediation process and information regarding confidentiality (See Appendix 6, Format 6). The ADRC also provides the Parties with an ADR Voluntary Evaluation Form (See Appendix 7, Format 7) so that the Parties can provide feedback upon the conclusion of the mediation.

Upon receipt of the identity of the mediator(s), the Parties will have an opportunity to raise an objection to the use of the mediator(s). If no objection is raised, such as a conflict of interest, the ADRC will notify the mediator(s) that the process may begin. If a valid objection exists, the ADRC will secure another mediator(s).

2.3 MEDIATION SESSION

- a. **Mechanics.** The mediator(s) will begin the mediation by making introductory remarks that may include an outline of participants' roles, description of the mediator(s) neutrality, summary of mediation procedural rules, and explanation of confidentiality during mediation. Next, the mediator will provide each party an opportunity to make a statement and frame the issues for mediation. Thereafter, the mediator may ask open-ended questions to the Parties to gather additional information or clarify positions; call for separate caucuses with each Party; and develop settlement options for the Parties to discuss. Some disputes resolve in a single mediation session, but additional sessions may be scheduled if progress is being made but settlement is not reached. If settlement is not possible, mediation may be terminated. Either Party is free to withdraw from the mediation at any time.
- b. **Settlement.** When mediation results in a potential settlement, the mediator(s) and Parties will draft the terms agreed upon for review and concurrence. (See Sample Template at Appendix 8, Format 8; See also Appendix 9, Format 9). The ADRC will then coordinate review and approval of the terms of the Settlement Agreement with appropriate officials, including OGC and the Office of the Chief Human Capital Officer (OCHCO), to ensure the terms are in accordance with all applicable laws, regulations, collective bargaining agreements, and HUD policies, and to ensure the Settlement Agreement can be administratively completed within the agreed upon timeframe. (See Appendix 9, Format 9). If the settlement terms cannot be implemented as written, the ADRC will coordinate changes with the Parties or arrange for another meeting between the Parties and the

mediator(s). Upon approval by OGC and OCHCO, the Settlement Agreement will be signed by the parties and copies will be provided to the Aggrieved Party and their Representative, as well as to the Program Office and OGC. ODEEO will maintain the Settlement Agreement with the original signatures. Where a Settlement Agreement is reached, OGC, the Program Office, and ODEEO will maintain a copy of the Settlement Agreement. The Settlement Agreement contains instructions for the Aggrieved Party/Complainant to follow if they believe a breach of the Settlement Agreement has occurred.

- c. **No Settlement.** If settlement is not reached during mediation, the mediator(s) will notify the ADRC, who will take appropriate action to ensure that the Aggrieved Party/Complainant's EEO claim(s) continues to be processed. Specifically, if the complaint is at the informal stage, the ADRC will refer the Aggrieved Party to the EEO Counselor who will issue a Notice of Right to File a Formal Complaint of Discrimination. If the complaint is at the formal stage, the ADRC will advise the Case Manager that the matter was not resolved and to continue the processing of the complaint.

2.4 CONFIDENTIALITY

Requirements. The *mediator* shall not voluntarily disclose, or be required to disclose, any communication made during mediation unless: (1) the Parties to mediation and mediator consent in writing; (2) the communication has already been made public; (3) the communication is statutorily required to be made public, and no other person is available to disclose the information; or (4) a court determines such disclosure is necessary to prevent manifest injustice, help establish a violation of law, or prevent harm to the public health or safety. 5 U.S.C. §574(a).

Parties to a mediation shall not voluntarily disclose any communication made during mediation unless: (1) the communication was prepared by the party seeking disclosure; (2) all Parties consent in writing; (3) the communication was already made public; (4) the communication is statutorily required to be made public; (5) a court determines a communication is necessary; (6) the communication is necessary to determine the meaning of an agreement or award that resulted from the mediation; or (7) except for the communications generated by the mediator, the communication was provided to or was available to all Parties to the mediation. See 5 U.S.C. §574(b). Any communication improperly disclosed is inadmissible in any proceeding relating to the issues underlying the mediation. See 5 U.S.C. § 574(c). If a party makes a demand for disclosure by way of a discovery request or other legal process, the mediator shall make efforts to notify all Parties of the demand and provide them with an opportunity to object to the disclosure. See 5 U.S.C. § 574(e).

2.5 EVALUATION

Upon completion of the mediation, the mediator will encourage the parties to complete the ADR Voluntary Evaluation Form (See Appendix 7) assessing the mediation process that will be forwarded to the ADRC. Feedback obtained will be considered in determining methods to improve the process and services provided to the parties. If the parties prefer not to complete the evaluation at that time, the parties will be encouraged to complete and later forward the evaluation to the ODEEO or ADRC.

- a. **Efficiency.** The ADR Program's efficiency will be measured by: (1) determining the ADR acceptance rate; (2) evaluating the cost to HUD of utilizing ADR in terms of funding and resources; and (3) funding and resources required to resolve disputes compared to EEO processing and litigation.
- b. **Effectiveness.** The ADR Program's effectiveness will be measured by: (1) evaluating the dispute outcomes or number of settlements achieved for both workplace disputes and EEO complaints, as compared to those disputes not resulting in settlement; (2) the nature of the outcomes and provisions; and (3) the rate of compliance with settlement agreements.
- c. **Customer Satisfaction.** The ADPR's customer service will be measured by evaluating the participant's satisfaction with the process, using the ADR Voluntary Evaluation Form (See Appendix 7) described in this section above.

2.6 FUNDING

ODEEO is responsible for funding mediation. Mediation costs may include, but are not limited to, hourly service and/or travel costs for contract mediators or reimbursement of travel costs for Federal mediators. However, any costs associated with the representation of the parties are the sole responsibility of the parties.

2.7 RELATED NON EEO CLAIMS

Although this SOP focuses on mediation during the EEO complaint process, many workplace disputes include non-EEO claims that are raised during the mediation. The parties and mediators have discretion to raise and address both the EEO and non-EEO claims in the settlement of their disputes. However, if settlement of the matter is unsuccessful in ADR, non-EEO claims raised for the first-time during mediation cannot be included in the formal EEO complaint. Similarly, EEO claims not brought to the attention of the EEO Counselor cannot be included in the formal EEO complaint unless the claim is like or related to claims raised during the EEO counseling stage.

2.8 POST-MEDIATION

- a. **Implementation of the Terms of the Settlement Agreement.** The Parties who sign the Settlement Agreement (i.e., Program Office and Aggrieved Party or Complainant) are responsible for implementing its terms. The ADRC will coordinate with the program office to obtain approval for terms that require action by an authorizing official not present at the mediation.
- b. **Administration of the Settlement Agreement.** ODEEO will monitor compliance with Settlement Agreements. Specifically, following the execution of a Settlement Agreement and the conclusion of agreed upon timelines, the ADRC will request evidence from the parties to establish the implementation of the terms. ODEEO will maintain this evidence in the event of a claim of breach of a settlement agreement.
- c. **Breach of Settlement Agreements.** If the Aggrieved Party or Complainant believes HUD failed to comply with the terms of the Settlement Agreement, they shall notify ODEEO in writing within 30 calendar days of the date when the Aggrieved Party or Complainant knew, or should have known, of the alleged non-compliance. ODEEO will

review the allegations and compliance evidence, and then issue the Aggrieved Party or Complainant a decision, in writing, within 30 calendar days of receipt. If ODEEO determines a breach occurred, the Aggrieved Party or Complainant may request that the terms of the Settlement Agreement be specifically implemented or, alternatively, that the EEO claim(s) be reinstated for further action from the point the EEO Complaint Processing ceased. If the Aggrieved Party or Complainant chooses to reinstate their EEO complaint, such request restores the Parties to their respective positions prior to the execution of the Settlement Agreement and requires the return of any relief that was provided pursuant to the terms of the Settlement Agreement.

- d. **Appeal Rights.** If the Aggrieved Party or Complainant does not agree or is not satisfied with ODEEO's decision regarding an alleged breach of the Settlement Agreement, he/she may appeal to the EEOC's Office of Federal Operations for a determination as to whether HUD complied with the terms of the Settlement Agreement. The Aggrieved Party or Complainant may file an appeal 35 days after service to the ODEEO of the allegations of non-compliance, regardless of whether ODEEO timely responds, but must file an appeal within 30 calendar days of his/her receipt of the ODEEO's determination. The Aggrieved Party or Complainant must serve a copy of the appeal to ODEEO. See 29 C.F.R. § 1614.504.

2.9 REPORTING REQUIREMENTS

The ADRC and ODEEO are required to ensure that all documentation regarding the ADR case is timely and accurately entered into EEOC's automated EEO complaint tracking system. In addition, the ADRC and ODEEO are required to compile and analyze ADR and EEO data for inclusion in HUD's annual Management Directive (MD) 715 Report and annual EEOC 462 Report.

CHAPTER 3. MEDIATORS

3.1 MEDIATORS

To ensure neutrality and impartiality, HUD utilizes mediators from various outside sources. However, nothing in this SOP restricts or otherwise prohibits HUD from utilizing additional sources of mediators.

3.2 MEDIATORS' SKILLS AND ABILITIES AND STANDARDS OF CONDUCT

General. ODEEO uses trained mediators who possess the following skills and abilities: (1) Effectiveness in identifying and seeking out information relevant to the Parties; (2) Conspicuous awareness and consideration of the needs of others; (3) Maintaining equal respect for all Parties, remaining neutral, and keeping an open mind; (4) Pursuit of collaborative solutions and generation of ideas and proposals consistent with case facts and workable for opposing Parties; (5) Effectiveness in moving the Parties toward finality and in "closing" and preparing an agreement; and (6) Effectiveness in developing strategy, managing the process, and coping with conflicts between Parties and representatives.

3.3 MEDIATORS' STANDARDS OF CONDUCT

Mediators' Standards of Conduct. Mediators will adhere to the *Model Standards of Conduct for Mediators (adopted in August 2005)* (Appendix 4) jointly published by the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Settlement.

Appendix 1, Format 1

**U.S. Department of Housing and Urban Development
Office of Departmental Equal Employment Opportunity
Alternative Dispute Resolution Program**

REQUEST FOR MEDIATION

I request that my EEO complaint be considered for mediation. I understand that the Agency is not offering mediation, and that I may not elect mediation until such an offer is made. I further understand that the Agency will consider my request and assess the EEO complaint's appropriateness for mediation. If the Agency offers mediation, I will have five (5) calendar days to make an election to participate in the mediation process. If I choose not to elect mediation, processing of my EEO Complaint will continue in accordance with 29 C.F.R. §1614.

Aggrieved Party/Complainant

Date

Appendix 2, Format 2

ELECTION FORM **EEO Complaint Process**

The purpose of the EEO pre-complaint counseling period is to attempt settlement of your claim(s) quickly and informally. In accordance with Equal Employment Opportunity (EEO) regulations you have the right, in most cases, to choose traditional counseling *OR* alternative dispute resolution(ADR). If you elect ADR, it will result in either a Settlement Agreement, Withdrawal, or a Notice of Right to File a Formal Complaint. .

- ***If you elect traditional counseling***, your Counselor will conduct a limited inquiry and attempt to resolve your claim(s). Your Counselor will not place blame, or determine credibility, or determine if laws have been violated. In traditional counseling, your Counselor's goal is to resolve the matter before it becomes a formal complaint. If your claim(s) are not resolved, your Counselor will conduct a final interview and issue a written notice within 30 calendar days of your first EEO contact (unless you agree in writing to an extension up to 60 calendar days). The notice will terminate counseling and inform you of your right to file a formal complaint.

- ***If you elect ADR***, the Department offers mediation, a process guided by a trained, neutral third party. Mediators use their negotiation skills to help the parties work through their differences. Mediation can be healing; it offers an opportunity for parties to communicate in a non-adversarial setting. If your claim(s) are not resolved, your Counselor will issue a written notice at the completion of ADR, or within 90 calendar days of your first EEO contact, whichever is earlier. The notice will inform you of your right to file a formal complaint.

I elect traditional EEO counseling.

I elect ADR (mediation).

Counselee (Print Name): _____

Counselee (Sign Name): _____

Date: _____

Memorandum

**U.S. Department of
Housing and Urban Development**

Office of Departmental Equal Employment Opportunity
Alternative Dispute Resolution Program

From: _____
Office of Departmental Equal Employment Opportunity
Alternative Dispute Resolution Coordinator

To: _____
(Insert Title and Program Office)

Subject: EEO Mediation

Date: _____

Mr./Ms. _____,

The Office of Departmental Equal Employment Opportunity (ODEEO) hereby notifies you that _____, an employee in _____, has elected to participate in Alternative Dispute Resolution (ADR) to attempt to resolve their informal Equal Employment Opportunity (EEO) complaint, brought forth pursuant to _____ and implementing regulations. HUD Secretary _____ has endorsed the use of ADR to promote and maintain a healthy workplace at HUD that fosters communication, trust, and an environment where all employees are treated with dignity and respect.

Please designate a Settlement Official from your office who will participate in ADR and notify ODEEO within five (5) calendar days of receipt of this email of the designation. The Settlement Official designation should be submitted to the ADR Coordinator via email at _____. Please note that the individual, _____ is/is not represented by an attorney. Attached please find a Summary of _____ informal EEO complaint, including their requested remedies.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions or concerns regarding the ADR Program or your participation in ADR. Your expeditious response is greatly appreciated.

Respectfully,

(Insert ADRC Name)

Appendix 4, Format 4

Agreement to Mediate Correspondence

To _____,

This email confirms that you have agreed to participate in mediation to attempt Settlement of _____'s informal Equal Employment Opportunity (EEO) complaint on [insert date and time]. The mediation will be conducted at [insert location]. The mediator is [insert name].

The purpose of the mediation is to achieve an amicable Settlement to a dispute that satisfies all parties and negates the needs for further action, either administrative or adjudicatory, except for those steps required to implement the Settlement. Mediation is confidential, and confidentiality will be discussed at the beginning of the mediation. However, mediators are required by law to report threats of imminent physical harm or criminal activity.

Please find attached an Agreement to Mediate form that must be executed prior to the start of mediation. Also attached is an overview of the mediation process, as well as an ADR Voluntary Evaluation Form.

If the mediation results in a Settlement, the agreed upon terms will be reduced to writing in a Settlement Agreement. The Settlement must be routed for review and approval through the Office of General Counsel (OGC) and Office of Chief Human Capital Officer (OCHCO), after which the Settlement Agreement can be executed by the parties. The Settlement Agreement is not final until both parties execute the document, and any applicable revocation period has elapsed.

Thank you for your willingness to mediate this matter. If you have any questions regarding mediation or your participation, please do not hesitate to contact me via email at _____ or via telephone at _____.

Respectfully,

Concurrence Email.

Appendix 5, Format 5

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF DEPARTMENTAL EQUAL EMPLOYMENT OPPORTUNITY ALTERNATIVE DISPUTE RESOLUTION PROGRAM

AGREEMENT TO MEDIATE

The parties agree to engage in mediation. The parties understand that the mediator(s) has no authority to decide the case and is not acting as an advocate or attorney for any party. The parties understand that they have a right to have a representative or counsel assist them during the mediation process.

Mediation is a confidential process. The parties and, if applicable, their representatives or counsel, agree that the mediator's work product, case file, any documents submitted to the mediator, and any communications made during the mediation shall be confidential and not subject to disclosure in any subsequent judicial, administrative, or private proceeding. The parties also agree not to subpoena the mediator to produce any documents prepared or submitted to the mediator in any future procedures. The mediator will not testify on behalf of any party or submit any type of report on the substance of the mediation. Confidentiality will not be afforded to threats of imminent physical harm or criminal activity.

The parties agree that this mediation is an attempt to compromise and resolve their differences regarding the issues to be mediated and shall constitute compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence, which states:

Rule 408. Compromise and Offers to Compromise.

(1) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

- (1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and
- (2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

No party shall be bound by anything said or done at the mediation unless a written settlement agreement is prepared and signed by all necessary parties. The parties and the mediator may withdraw from mediation at any time. Prior to withdrawing from mediation, the parties and the mediator agree to discuss the reasons for withdrawal.

If settlement is reached, the settlement shall be reduced to writing and approved by the signed parties, their representatives and counsel, if applicable. The settlement agreement does not become effective until after it is reviewed and approved for accuracy, completeness, and legality by management officials, the Director for the Office of Departmental Equal Employment Opportunity, or their designee, the Office of the Chief Human Capital Officer, or their designee, and the General Counsel, or their designee.

By signature, we acknowledge that we have read, understand, and agree to this Agreement to Mediate.

Aggrieved Party/Complainant

Date

Aggrieved Party/Complainant Representative

Date

Resolving Official

Date

Participant

Date

Participant

Date

Mediator

Date

Mediator

Date

Appendix 6, Format 6

The Mediation Process

What is Mediation?

Mediation is a process whereby a neutral third-party explores and clarifies a dispute and assists in resolving the dispute in a manner acceptable to both parties. Mediation is different from litigation in that it is informal, the parties decide how to resolve the dispute, the rules of evidence do not apply, and testimony is not taken.

The mediator's role is to create a safe environment where the parties can openly discuss their dispute. The mediator will facilitate discussions with both parties present and may also speak to each party in private during a caucus. The mediator will not reveal anything from caucuses that one party does not want revealed. As a result, the mediator may have more information, or a more complete picture of the problem, than either party alone or can help identify possible settlements. In addition, a mediator may educate the parties on the applicable standards, discuss the strengths and weakness of each party's position, and help create realistic expectations.

Why Request Mediation?

Mediation acknowledges the parties' perspectives and emotions in a conflict and focuses on resolving problems in a constructive manner and finding workable solutions to the dispute, rather than on the cause or who is at fault. Further, mediation saves parties time and resources, as well as the emotional burden of unsolved conflict in the workplace. Finally, mediation promotes a renewed, positive relationship between parties that enables the agency's mission to be accomplished.

While conflict is a normal part of life, it can be uncomfortable and counterproductive in the workplace. When a dispute arises, mediation can help resolve issues in a private, confidential, and timely manner. Mediators are trained in communication and problem-solving, and mediation can facilitate a constructive exchange of views and develop previously unseen options for settlement.

People sometimes avoid mediation due to the belief it requires forced compromise; however, requesting mediation does not require a settlement by any specific method or provision. Rather, it only requires parties to talk in a confidential setting to determine whether the dispute can be resolved without litigation. The parties retain control throughout the mediation and are never required to agree to anything they believe is not in their best interest. In fact, the parties may withdraw from the mediation at any time.

Bottom line - mediation offers the parties an opportunity to be heard, develop new ways of dealing with a dispute, and create their own solution.

Who is the Mediator?

A mediator is a trained professional in conflict resolution who serves as a neutral third party and does not render a decision on the merits of the dispute. The mediator performs the role of catalyst to enable the parties to make progress toward resolving the issues in dispute. Occasionally, a mediator may suggest some options as a means of encouraging the parties to expand the range of possible settlements under consideration, but a mediator will never require the parties to agree to their suggestion.

Is Mediation Confidential?

Conversation and materials produced during a mediation session are confidential. The mediator will not disclose or discuss with anyone outside of the mediation session what occurred during mediation. Prior to beginning mediation, the parties agree in writing not to disclose any information regarding the mediation without the consent of the mediator and the other party. However, confidentiality has limits and will not be afforded to threats of imminent physical harm or criminal activity.

Mediation is Not Litigation and Not an Investigation

Mediators do not determine who is correct or incorrect. They do not uncover facts, take testimony, or determine the evidentiary value or admissibility of documents. They also do not provide legal advice. Rather, they provide an opportunity for the parties to discuss their dispute and attempt settlement.

What happens during the Mediation Process?

❖ Opening statement by the mediators:

First, mediators introduce themselves, outline the mediation format, and may provide rules of conduct. Parties are asked to confirm their willingness to negotiate in good faith and intention to conduct the session with common courtesy.

❖ Opening statement by participants:

Then, each party makes an opening statement, which is an uninterrupted time to speak regarding the dispute. Afterwards, the mediator will restate the parties' opening statements and may ask clarifying questions. The party's opening statement should include a clear description of the dispute leading to the mediation.

❖ Agenda building:

Together, the parties will outline the disputes to be resolved, as well as any underlying issues, or other relevant information. The issues can be concerning to one, or both parties.

❖ Discussion and Settlement:

A mediator facilitates a discussion to explore issues, obtain a deeper understanding of the dispute, and develop options that satisfy all or part of the interests of the parties. Parties will be asked to think of workable, mutually satisfactory solutions or settlements.

❖ **Caucus:**

Occasionally during the discussion and resolution phase, the mediator or parties may decide it would be beneficial to meet with the mediator separately or hold a caucus. Discussions held in caucus are confidential and the mediator will not share those discussions with the other parties unless authorized to do so.

Settlement – A Written Agreement

If the parties agree to a mutually acceptable settlement to a dispute during mediation, the settlement is reduced to writing and all parties sign a Settlement Agreement. The Settlement Agreement only becomes effective and binding following execution by both parties. A Settlement Agreement should set forth the specific responsibilities or actions of each party and how they will conduct themselves in the future. Therefore, a Settlement Agreement should be comprehensive and specific.

In the case of an Equal Employment Opportunity (EEO) complaint, informal or formal, the Settlement Agreement reflects the resolution of the EEO complaint. When no settlement occurs during a mediation for an EEO complaint, the outcome is documented, and the Aggrieved Party or Complainant has the right to continue with the EEO process.

Appendix 7, Format 7

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF DEPARTMENTAL EQUAL EMPLOYMENT OPPORTUNITY
ALTERNATIVE DISPUTE RESOLUTION PROGRAM**

ALTERNATIVE DISPUTE RESOLUTION PROGRAM EVALUATION

Upon completion of your Mediation, we ask that you complete this voluntary evaluation form. The information you provide will assist the Equal Employment Opportunity Division in evaluating the Alternative Dispute Resolution (ADR) Program (ADRP). Please check the box on each line that best reflects your experience. Feel free to provide additional comments at the end of the form. Thank you for your assistance!

OVERALL

	Strongly Agree	Agree	Disagree	Strongly Disagree
The ADR Process was an effective means of addressing my issues.				
The Mediator maintained a position of neutrality and always acted in a professional manner.				
The ADRC demonstrated knowledge of the process.				

ADRC

	Strongly Agree	Agree	Disagree	Strongly Disagree	Not Applicable
The ADRC explained the process to my satisfaction.					
The ADRC acted in a professional manner always.					
The ADRC maintained a position of neutrality during the entire process.					
The ADRC answered all my questions regarding the process.					
The ADRC inquired about any special needs and was responsive in addressing them.					

MEDIATOR

	Strongly Agree	Agree	Disagree	Strongly Disagree	Not Applicable
The Mediator explained the process to my satisfaction.					
The Mediator created realistic expectations regarding settling the dispute.					
The Mediator encouraged open expression.					
The Mediator helped me understand the other party's concerns.					
The Mediator listened carefully to my concerns.					
The Mediator was impartial.					

-PLEASE COMPLETE PAGE 2 OF EVALUATION FORM-

PROCESS

	Strongly Agree	Agree	Disagree	Strongly Disagree	Not Applicable
The ADR process encouraged open and positive expression.					
An adequate amount of time was allocated for the mediation session.					
The ADR process was impartial.					
I trusted the ADR process and I would recommend it to co-workers as a useful tool to settle disputes.					

FACILITIES

	Strongly Agree	Agree	Disagree	Strongly Disagree	Not Applicable
The mediation location was an appropriate size and location for the mediation session.					
The mediation location was clean and was maintained at a comfortable temperature.					
The mediation location technology and equipment functioned properly.					

We welcome any additional comments you may wish to share:

DATE:

NAME (Optional):

PROGRAM AREA:

Appendix 8, Format 8

SETTLEMENT AGREEMENT

In the Matter of: :

NAME : :

Complainant_ : HUD Case Number: **HUD-CASE NUMBER-J.**

v. :

_____, Secretary :

U.S. Department of Housing : :

and Urban Development, Department : :

Settlement Agreement and General Release

This Settlement Agreement and General Release is entered into between **NAME** (hereinafter the *Aggrieved Party/Complainant*) and the Office of **NAME of Program Office** (hereinafter the Agency) of the U.S. Department of Housing and Urban Development (hereinafter the Department), for the purpose of resolving the *informal/formal* EEO complaint brought pursuant to[*insert legal provision*], as amended, Executive Orders, and implementing regulations at 29 CFR 1614, as identified under EEO Case Number **HUD-CASE NUMBER-202_**.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, the Parties agree as follows:

First: This Settlement Agreement and General Release is entered into solely for resolving without further proceedings all disputes relating to the facts and circumstances which gave rise to the *Aggrieved Party/Complainant's Informal/Formal* EEO complaint, and any pending grievances as of the date of signature of this Agreement. Neither party concedes the validity of the positions of the other in connection with these disputes. Nothing contained herein shall constitute evidence, an admission by the Agency of any violation of [*insert legal provision*], as amended, or an adjudication with respect to any allegation made by either party, or an admission to any allegation of wrongdoing, misconduct, or liability on the part of the Agency, or its employees. In addition, this Agreement does not constitute any admission by the Agency of any discriminatory employment practice or violation of regulations or laws. Further, this Agreement establishes no precedent for any other matter at the Agency.

Second: (a) The Aggrieved Party/Complainant's signature on this agreement constitutes withdrawal, with prejudice, of the above-identified EEO complaint (Agency No. HUD-000XX-20XX, and any pending grievances as of the date of the signature of this Agreement, and all other complaints, grievances, appeals, lawsuits, and other causes of action that they have or may have against its officials, or employees, both present and former, both personally and in their official capacities, relating to the facts and circumstances which gave rise to the *Informal/Formal* EEO complaint and any pending grievances. However, the *Aggrieved Party/Complainant* retains the right to reinstate their EEO complaint of discrimination should the Agency or Department fail to fulfill the terms of the Agreement in accordance with 29 C.F.R. § 1614.504. **The withdrawal shall become effective upon signature of the Agreement by the parties below.**

(b) The Aggrieved Party/Complainant will refrain from instituting or pursuing administrative or judicial action in any forum concerning the issues, claims, or facts contained in the *Informal/Formal* complaint, and hereby agrees that they will not be made the subject of future litigation. This provision precludes initiation of any administrative or judicial action against the Agency or its current or former employees, in their official or individual capacities, regarding the matters in the complaint, including but not limited to, filing appeals, grievances, or petitions for review to the Merit Systems Protection Board (MSPB), Equal Employment Opportunity Commission (EEOC), Office of Personnel Management (OPM), Office of Special Counsel (OSC), Federal Labor Relations Authority (FLRA), and lawsuits in federal or state court. This provision, however, does not preclude the Aggrieved Party/Complainant from taking action before the EEOC to enforce the terms of this Settlement Agreement.

(c) The *Aggrieved Party/Complainant* waives any right to file or maintain an appeal, claim, complaint or grievance in any forum for any matters accruing up to the date this Settlement Agreement is executed, about which *Aggrieved Party/Complainant* knew or reasonably should have known, regardless of whether such claims have been filed, counseled, or brought to the Agency's attention at the time this Settlement Agreement is executed.

[IF ANY TYPE OF MONETARY TERM IS INVOLVED]

(d) That *Aggrieved Party/Complainant* understands that the payments specified in paragraph "Third", below, will be reported to the United States Internal Revenue Service ("IRS"), and that the question of tax liability, if any, as a result of such payments is a matter to be resolved between *Aggrieved Party/Complainant*, *Aggrieved Party/Complainant's* attorney and the IRS and any other relevant lawful governmental taxing authority.

Third: (Enter Terms)

Fourth: If the *Aggrieved Party/Complainant* alleges that subsequent acts of discrimination or reprisal occur, the *Aggrieved Party/Complainant* will follow the procedures as outlined in 29 C.F.R. § 1614.105, *et seq.* The Department will process the new allegations as a separate complaint.

Fifth: Should any provision of this Settlement Agreement and General Release be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be part of this Settlement Agreement and General Release.

Sixth: This Settlement Agreement and General Release sets forth the entire Agreement between the Parties thereto, and fully supersedes any, and all prior Agreements or understanding between the Parties hereto pertaining to the subject matter hereof.

Seventh: This Settlement Agreement and General Release is not binding on the Department until it is signed by the appropriate Resolving Management Official or designee and receives final review and approval by the Office of the Chief Human Capital Officer (or Designee) and the Office of General Counsel (or Designee).

Eighth: Pursuant to EEO regulations at 29 C.F.R. § 1614.504(a), if Aggrieved Party/Complainant believes that the Agency has failed to comply with the terms of this Settlement Agreement, they shall notify the Office of Departmental Equal Employment Opportunity (ODEEO), by email at eeo@hud.gov or by written correspondence to the Office of Departmental Equal Employment Opportunity, U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Room 2102, Washington, DC 20410, explaining the alleged noncompliance of the Agreement.

The notice of the alleged noncompliance shall be made in writing, within thirty (30) calendar days of the date *Aggrieved Party/Complainant* knew, or should have known, of the alleged noncompliance. The *Aggrieved Party/Complainant* may request that the terms of the Agreement be

specifically implemented or, alternatively, that the complaint be reinstated for further processing, from the point processing ceased.

If the EEOC determines that the Agency is not in compliance, and the noncompliance is not attributable to acts or conduct of the **Aggrieved Party/Complainant**, it may order compliance, or it may order that the complaint be reinstated for further processing from the point processing ceased.

Ninth: Both Parties agree that the original Settlement Agreement will be retained by the Department's Office of Departmental Equal Employment Opportunity. The **Aggrieved Party/Complainant** will receive a copy of the fully executed Settlement Agreement.

Tenth: The **Aggrieved Party/Complainant** hereby acknowledges that they have reviewed this Agreement and has been given ample time and opportunity to consider the terms and to seek advice. The **Aggrieved Party/Complainant** enters this Agreement knowingly and voluntarily, and not because of any coercion, intimidation, or improper inducement of any kind.

ADD IF APPLICABLE TO THE OLDER WORKER BENEFIT PROTECTION ACT

Eleventh: By entering into this Agreement, the **Aggrieved Party/Complainant** acknowledges that s/he/they has not knowingly and voluntarily waived rights or claims under the Age Discrimination in Employment Act (ADEA), in exchange for consideration in addition to anything of value to which the individual already is entitled. The **Aggrieved Party/Complainant** acknowledges that they were advised to consult with an attorney and were given a period of twenty-one (21) calendar days within which to consider this Settlement Agreement. The Parties acknowledge that the **Aggrieved Party/Complainant** has not waived rights or claims under the ADEA that may arise after the date this Agreement is executed. The Parties acknowledge that for a period of seven (7) calendar days following the execution of this Agreement, the **Aggrieved Party/Complainant** may revoke the Agreement, and the Agreement shall not become effective or enforceable until the revocation period has expired.

By signature, we ("Complainant" and "Department") acknowledge that we have read, understand, and voluntarily agree to all the terms contained in this Settlement Agreement and General Release, in its entirety. We further acknowledge that we were in no way coerced.

NAME of Aggrieved Party/Complainant),

Date

NAME,
(Title) Name of Program Office

Date

Appendix 9, Format 9

Settlement Agreement Concurrence Request Correspondence

Dear Ms./Mr. _____,

Mediation in the EEO complaint of _____, HUD-_____-2018, recently resulted in a draft Settlement Agreement. Before the Settlement Agreement is executed, ODEEO requests a legal sufficiency review by the Office of General Counsel (OGC) and a policy review by the Office of the Chief Human Capital Officer within five (5) business days.

A response to this request should be submitted to the ADRC, _____, via email at (ADRC Email Address). Thank you very much for your attention to this matter.

Sincerely,
