

ALTERNATIVE DISPUTE RESOLUTION

1. REASON FOR ISSUE: This directive revises Department policy concerning alternative dispute resolution (ADR) by identifying the areas under which a refusal to offer ADR in an equal employment opportunity (EEO) complaint is appropriate.

2. SUMMARY OF CONTENTS/MAJOR CHANGES: This directive:

- a. Revises Department policy 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;
- b. Designates the Assistant Secretary for Human Resources and Administration as the Dispute Resolution Specialist (DRS) under the Administrative Dispute Resolution Act;
- c. Designates the Deputy Assistant Secretary for Resolution Management as the Deputy DRS for Workplace ADR;
- d. Designates the Director, Office of Asset Enterprise Management to manage the Department's Environmental Conflict Resolution (ECR) Program;
- e. Designates the Deputy Assistant Secretary for Acquisition and Logistics (DAS OA&L) as the Deputy DRS for Procurement ADR;
- f. Establishes the VA ADR Council;
- g. Establishes ADR data tracking requirements;
- h. Allows the Office of Resolution Management (ORM) to offer ADR in every EEO complaint as a matter of practice and on behalf of the Secretary;
- i. Establishes 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.

3. RESPONSIBLE OFFICE: Office of the Assistant Secretary for Human Resources and Administration (006).

4. RELATED DIRECTIVES/HANDBOOKS: VA Directive 7433.3 and VA Handbook 7433.3, Alternative Means of Dispute Resolution (ADR) Program for Acquisition.

5. RESCISSIONS: VA Directive 5978 August 31, 2011 and VA Directive 5978/1 April 19, 2012.

CERTIFIED BY:

/s/
Roger W. Baker
Assistant Secretary for Information and
Technology

BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:

/s/
Rafael A. Torres
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ALTERNATIVE DISPUTE RESOLUTION

1. PURPOSE: This directive revises Department of Veterans Affairs (VA) policy concerning alternative dispute resolution (ADR) by identifying the areas under which a refusal to offer ADR in an Equal Employment Opportunity (EEO) complaint may be appropriate.

2. POLICY

a. With the Administrative Dispute Resolution Act of 1996 (ADRA), the Federal Government adopted a policy to encourage Federal agencies to use ADR as a faster, less expensive and less contentious means of resolving issues in controversy than more costly formal administrative proceedings. In VA, mediation is the most frequently used ADR process; however, other types of ADR such as facilitation, group facilitation, conflict coaching, arbitration, peer review, fact-finding, and early neutral evaluation may also be used to resolve conflicts or disputes between employees, the agency and employees, labor and management, agency organizations, or other parties to a dispute or conflict.

b. VA supports the effective use of any ADR process to the maximum extent practicable and at the earliest possible stage to: (1) prevent, minimize, and resolve disputes between or among the Department, its employees and other parties in a mutually acceptable and cost-effective manner; and (2) accomplish business efficiently, economically, and productively. VA administrations, staff offices, and facilities, should use ADR in lieu of formal administrative proceedings or litigation whenever appropriate to address workplace and other disputes. National and local unions are encouraged to use ADR in resolving workplace disputes.

c. Use of ADR to solve disputes is subject to the mutual consent of management and the employee's union if the affected employee is in a collective bargaining unit.

d. If the affected employee wishes to pursue ADR to resolve the issues of an EEO complaint, management must participate if the issues do not pertain 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.

e. If the EEO complaint is deemed inappropriate for ADR, VA Form 0889c must be completed; signed by the appropriate manager, supervisor, or key staff official and routed through the appropriate channels (as shown on the form) then uploaded into VA's ADRTTracker by the ADR/EEO Program Manager within five (5) working days following the refusal or the determination that the matter is inappropriate for ADR. **NOTE:** VA Form 0889c can be accessed at the following intranet address: <http://vaww4.va.gov/vaforms/>. This is an internal Website and is unavailable to the public.

f. ADR program design must be undertaken in collaboration with VA's labor partners. In developing effective ADR programs, VA administrations and staff offices and unions shall identify and eliminate barriers to the use of ADR to ensure that, to the maximum extent feasible, each VA employee or other parties to a dispute with or within the Department shall have access to timely and unbiased ADR programs and resources.

g. VA will support and increase the use of ADR by promoting education and training, sharing best ADR practices, and widely marketing efficient and effective approaches to resolving disputes.

h. VA will actively encourage the use of ADR to ensure a work environment that is conducive to delivering high quality services to our Nation's Veterans and beneficiaries.

3. RESPONSIBILITIES

a. The Assistant Secretary for Human Resources and Administration shall:

- (1) Be designated as the Department's Dispute Resolution Specialist (DRS) under ADRA, and
- (2) Exercise authority under that law for the development and implementation of all Department-wide VA ADR policy, including but not limited to:
 - (a) Promoting the appropriate use of ADR throughout VA;
 - (b) Ensuring oversight responsibility for the development and recommendation of appropriate ADR training for VA employees, including supervisors and other managers in collaboration with VA Learning University;
 - (c) Maintaining oversight responsibility for ensuring VA Administrations and staff offices develop and implement effective ADR policies and programs;
 - (d) Maintaining oversight responsibility for the development, collection and assessment of data concerning the use and effectiveness of ADR throughout VA, including Administrations and staff offices;
 - (e) Ensuring oversight responsibility for the offering of ADR in every EEO complaint as a matter of practice and on behalf of the Secretary;
 - (f) Ensuring a Notice of Refusal to Offer ADR is submitted by management in instances that are not appropriate for ADR because the allegations involve 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, and
 - (g) Reporting annually to the Secretary and Deputy Secretary on VA's ADR activity.

b. The Deputy Assistant Secretary for Resolution Management (DAS ORM) shall:

- (1) Be designated the Deputy DRS for Workplace ADR; and

(2) Be responsible for Workplace and other ADR, except as otherwise provided herein, under the supervision and direction of the Assistant Secretary for Human Resources and Administration, including but not limited to:

(a) Developing Department-wide Workplace ADR policy in collaboration with VA Administrations and staff offices and national unions;

(b) Providing oversight and support to the implementation of Workplace ADR and other ADR programs;

(c) Administering the Workplace ADR program for VA Central Office;

(d) Ensuring that the EEO specialists offer employees, applicants for employment, and former employees an opportunity to participate in ADR during the EEO complaint process;

(e) Managing the VA neutrals certification program, including but not limited to:

1. Establishing categories and criteria for certification, evaluation, and recertification of neutrals, including mediators, facilitators, group facilitators, and mentors; and

2. Establishing criteria and procedures for the suspension or decertification of neutrals.

(f) Tracking and reporting ADR activity Department-wide to:

1. Measure the use of ADR;

2. Evaluate the effectiveness of ADR; and

3. Recommend ADR program improvements;

(g) Providing oversight and support to Workplace ADR outreach, marketing, and training efforts; and

(h) Ensuring that all databases, information systems, and instruments that are developed in connection with ADR are consistent with Federal law and applicable Federal and VA regulations, policy and procedures.

c. The Director, Office of Asset Enterprise Management (OAEM) shall:

(1) Be responsible for VA's Environmental Conflict Resolution (ECR) Program; and

(2) Assure participation of VA staff offices and Administrations in developing and implementing VA's ECR program, to include:

(a) Promoting the use of ECR where appropriate; and

(b) Tracking and reporting on the use of ECR within VA.

d. The Deputy Assistant Secretary for Acquisition and Logistics (DAS OA&L) shall:

- (1) Be designated the Deputy DRS for Procurement ADR; and
 - (2) Be responsible for procurement ADR, related to the Contract Disputes Act and Federal and VA procurement regulations, to include:
 - (a) Developing and implementing Department-wide procurement ADR policy; and
 - (b) Tracking and reporting procurement ADR activity Department-wide to:
 1. Measure the use of ADR;
 2. Evaluate the effectiveness of ADR; and
 3. Recommend ADR program improvements.
- e. Under Secretaries, Assistant Secretaries, and Other Key Officials at all organizational levels shall:**
- (1) Develop and implement ADR policies and procedures;
 - (2) Develop and implement ADR programs;
 - (3) Designate an ADR program manager with primary responsibility for daily operations of the organization's ADR program;
 - (4) Ensure that management officials participate in ADR if an employee, applicant for employment, or former employee initiates an EEO complaint and wishes to pursue ADR. If the allegations of the EEO complaint involve 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, VA Form 0889c, Notice of Refusal to Offer ADR, must be completed and submitted to record the reasons ADR was not offered in the referenced EEO complaint;
 - (5) Ensure that informed decisions can be made by all VA employees on ADR, that all VA employees have access to appropriate information and instruction that will provide a basic understanding of ADR and ADR programs available at their facility; and that each employee has access to timely, unbiased, and effective ADR processes;
 - (6) Encourage and train all VA employees to timely use conflict management, early dispute resolution, and other ADR techniques to help resolve workplace and other disputes;
 - (7) Collect and analyze information, as necessary for Agency and organizational needs, in a uniform manner to enable the measurement, evaluation, and improvement of VA ADR programs; and
 - (8) Manage Workplace ADR outreach, marketing, and training efforts.

f. ADR/EEO Program Manager shall: Ensure ADR sessions are scheduled in a timely manner and in accordance to policy regulations. If the allegations of the EEO complaint involve 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, VA Form 0889c must be completed. This form must be signed by the appropriate manager, supervisor, or key staff official and routed through the appropriate channels (as shown on the form). This form must be uploaded into VA's ADRTTracker within five (5) working days following the refusal or the determination that the allegation is inappropriate for ADR.

g. VA employees shall: Be encouraged to voluntarily participate in ADR programs and processes as neutrals, parties, or non-party participants in workplace or other disputes.

h. VA ADR Council shall:

(1) Be established and chaired by the DRS, Deputy DRS for Workplace ADR, or their designee;

(2) Be composed of designated representatives of Administration, staff, regional, and field offices and union officials;

(3) Develop, review, and evaluate Federal and Department ADR initiatives and provide advice in executing those plans;

(4) Share information and resources to accomplish the Department's ADR initiatives; and

(5) Advise Administration and staff offices concerning ADR goals, initiatives, and strategies.

4. REFERENCES

a. ADRA, as amended, codified at, 5 U.S.C. §§ 571 to 584.

b. Presidential Memorandum of May 1, 1998 directing each federal agency to take steps to "promote greater use of mediation, arbitration, early neutral evaluation, agency ombudsman, and other alternative dispute resolution techniques" at www.npr.gov/direct/memos/dispute.html.

c. Memorandum to the Deputy Secretary from General Counsel dated June 26, 2006, entitled "Recommendation on Reassignment of VA's Dispute Resolution Specialist (DRS) Function" approved July 14, 2006.

5. DEFINITIONS

a. ADR Program Managers(s). An individual whose duties include facilitating the day to day operations of the organization's ADR program and interfacing with various ADR elements throughout the organization and Department. ADR Program Managers should have clearly defined goals, duties, and responsibilities associated with ADR activities that should be identified, developed, and contained in position descriptions.

b. Alternative Dispute Resolution. Any process used to resolve disputes and issues in controversy, including, but not limited to conflict assessment, mediation, conflict coaching,

settlement negotiations involving third parties, conciliation, consensus building, facilitation, fact-finding, ombudsman, minitrials, arbitration, or any combination thereof.

c. Dispute Resolution Specialist. Appointed pursuant to the ADRA, the Department's DRS is the senior official within the Agency responsible for the development and implementation of the Department's ADR program.

d. Mediation. An ADR process in which a trained neutral third party or mediator assists two or more parties find a mutually acceptable solution to their dispute without deciding or imposing a solution upon the parties.

e. Notice of Refusal to Offer ADR Form - VA Form 0889c. Provides a written explanation for refusing to offer ADR.

f. VA ADR Council. A group representing VA Administrations, regional, facility, and staff offices and national collective bargaining organizations whose employees or members are affected by the development and use of ADR programs and policies. Members of the VA ADR Council and their designees are primarily responsible for advocating and facilitating ADR, particularly mediation, use throughout the Department; and facilitating the exchange of ADR information and resources among various VA components.

g. Investigation other than in an EEO Forum. An investigation for a criminal act committed by the affected employee, a pending Administrative Investigation Board (AIB), an active investigation by the Inspector General or the Office of Special Counsel.

APPENDIX A

 Department of Veterans Affairs	NOTICE OF REFUSAL TO OFFER ALTERNATIVE DISPUTE RESOLUTION									
This Notice indicates that _____ <i>(Name of Manager/Supervisor/Key Staff Official)</i> declined to offer Alternative Dispute Resolution (ADR) for EEO complaint number: _____ <i>(ADR Case Number)</i> filed by _____ <i>(Name of Aggrieved Person/Complainant)</i> The above named individual has been advised of VA's policy to offer ADR for all EEO related issues regardless of the stage of the complaint process. Please indicate a reason for the refusal to offer ADR in the above-referenced complaint by checking one of the following boxes. This form must be completed and routed for approval and then uploaded into VA's ADRTTracker by the ADR/EEO Program Manager within 5-calendar days following the refusal. ☐ An indication of fraud, waste or abuse ☐ An allegation of patient abuse ☐ An allegation of criminal activity ☐ An investigation is being conducted in another forum other than EEO Additional Comments if needed _____										
<table style="width: 100%;"><tr><td style="width: 15%;">Signed by:</td><td style="width: 55%; border-bottom: 1px solid black;">Manager/Supervisor/Key Staff Official</td><td style="width: 30%; border-bottom: 1px solid black;">(Date)</td></tr><tr><td>Approved by:</td><td style="border-bottom: 1px solid black;">Manager/Supervisor/Key Official's Immediate Supervisor</td><td style="border-bottom: 1px solid black;">(Date)</td></tr><tr><td>Submitted by:</td><td style="border-bottom: 1px solid black;">ADR/EEO Program Manager</td><td style="border-bottom: 1px solid black;">(Date)</td></tr></table>		Signed by:	Manager/Supervisor/Key Staff Official	(Date)	Approved by:	Manager/Supervisor/Key Official's Immediate Supervisor	(Date)	Submitted by:	ADR/EEO Program Manager	(Date)
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VA FORM 0889c
AUG 2012