U.S. Department of Transportation
Office of the Secretary of Transportation

DOT 1010.1B

PROCEDURES FOR THE ONEDOT SHARING NEUTRALS EQUAL EMPLOYMENT OPPORTUNITY and CIVIL RIGHTS ALTERNATIVE DISPUTE RESOLUTION PROGRAM

DISTRIBUTION: All Secretarial and Departmental Offices, and Operating Administrations

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Part I: Establishing an Alternative Dispute Resolution (ADR) Program for Equal Employment Opportunity (EEO) Matters

CHAPTER 1. GENERAL

1-1. PURPOSE. This part establishes the parameters for Secretarial Offices, Departmental Offices, and Operating Administrations (OA) to provide for a mediation/Alternative Dispute Resolution (ADR) program to resolve EEO workplace disputes at the U.S. Department of Transportation (DOT). For purposes of this Order only, the term "Operating Administration" includes the major subcomponents of DOT. They are: the Office of the Secretary (OST), Federal Aviation Administration, Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, Research and Innovative Technology Administration, National Highway Traffic Safety Administration, Pipeline and Hazardous Materials Safety Administration, St. Lawrence Seaway Development Corporation, Maritime Administration, Federal Motor Carrier Safety Administration, and the Office of Inspector General.

1-2. CANCELLATION. DOT Order 1010.1A, Procedures for the ONEDOT Sharing Neutrals Equal Employment Opportunity/Equal Opportunity Alternative Dispute Resolution Program, dated May 2, 2001.

1-3. SCOPE. The DOT's civil rights activities fall into two broad categories: internal civil rights programs affecting DOT employees, former employees, and applicants for employment, and external civil rights programs relating to the beneficiaries of the various transportation programs receiving Federal financial assistance through DOT and DOT-conducted activities. Part I of this Order, and the mediation process described therein, addresses internal civil rights complaints of discrimination filed by DOT employees, former employees, or applicants for employment. Part II revises DOT's policy to encourage ADR as an effective means to resolve external civil rights complaints.

The mediation process under this program addresses matters covered by Title VII of the Civil Rights Act (Title VII) (discrimination based on race, color, religion, sex, national origin, and reprisal), the Age Discrimination in Employment Act (ADEA) (discrimination on the basis of age, when the employee is at least 40 years old), the Rehabilitation Act (RA) (discrimination on the basis of physical or mental disabilities), the Equal Pay Act (EPA) (discrimination on the basis of payment of wages based on sex), Title II of the Genetic Information Nondiscrimination Act (GINA) (discrimination on the basis of genetic information), and complaints of discrimination based on sexual orientation.

Each OA must ensure that ADR is available for EEO matters at all stages of the EEO process. The OAs may enter into partnerships/agreements with other OAs or outside sources to meet their mediation needs. The ONEDOT Sharing Neutrals Program will continue to provide guidance and technical assistance for civil rights mediation activities. The OAs' programs may be tailored to specific needs, provided they are consistent with the requirements set forth in this Order. The Director of the Departmental Office of Civil Rights (DOCR) must review and approve the

procedures established. The DOCR will continue to administer the ONEDOT Sharing Neutrals Program to serve the needs of OST.

The procedures contained in this Order apply to all organizational components of DOT and requests for mediation made by, or on behalf of, DOT employees, former employees, and applicants for employment. Nothing herein limits the authority of OA Administrators, as delegated under 49 CFR 1.81(a)(1), (15), to resolve informal allegations of discrimination arising in or relating to their respective organizations through Equal Employment Opportunity counseling or the ADR process, and to develop and implement affirmative action and diversity plans within their respective organizations. The OA Administrators may issue such Orders as appropriate delegating authorities and responsibilities regarding ADR Programs and authority to resolve informal allegations of discrimination as appropriate, including but not limited to the authority to determine whether to agree to ADR and to approve a mediated resolution of a complaint.

1-4. OBJECTIVE. The objective of an ADR program for EEO matters is to resolve claims of workplace and employment discrimination and alleviate workplace conflicts at the earliest possible stage of the EEO process. Early resolution benefits DOT and its employees by supporting a positive workplace environment. Other benefits include reduction of time and the significant costs associated with processing formal EEO complaints.

1-5. BACKGROUND.

a. The Civil Rights Act (CRA) of 1991 (Public Law 102-166). The CRA encourages the use of ADR to resolve disputes arising out of discrimination and unlawful harassment in the workplace.

b. The Administrative Dispute Resolution Act (ADRA) of 1996 (Public Law 104-320). The ADRA gives Federal agencies the authority to utilize dispute resolution methods to resolve claims in controversy that relate to an administrative program, if the parties agree to such methods.

c. Title 29 of the Code of Federal Regulations (C.F.R.), Part 1614, Federal Sector Equal Employment Opportunity. These regulations issued by the U.S. Equal Employment Opportunity Commission (EEOC) require Agencies to establish or make available an ADR program at all stages of the EEO process.

d. EEOC Management Directive (MD) 110. Chapter 3 of this directive provides guidance to Federal agencies regarding the establishment of an ADR program for EEO cases, and explains the correlation between ADR and the EEO process.

1-6. U.S. DEPARTMENT OF TRANSPORTATION POLICY. The DOT strives to be a model Federal employer and is committed to the use of ADR to resolve disputes expeditiously and fairly whenever they occur. The ADR approaches include, but are not limited to: negotiation, facilitation, conciliation, mediation, early neutral evaluation, fact-finding, mini-trials, and arbitration. When determined appropriate, DOT may offer mediation during any stage

(i.e., pre-complaint or formal) of the EEO complaint process. The effective use of mediation has proven to be a highly valuable tool in resolving discrimination disputes in a timely, mutually acceptable, and cost-effective manner. This process is more commonly used in DOT, although it recognizes other approaches to ADR. Therefore, mediation is referred to in the majority of cases in this Order. Other ADR methods also may be used if deemed more appropriate in a given situation. To ensure the effectiveness and efficiency of ADR, DOT will provide continuous training opportunities for mediators and other involved individuals (e.g., supervisors and management officials) to enhance their understanding of the intent and practice of ADR.

1-7. DEFINITIONS.

a. Aggrieved Person. In accordance with 29 C.F.R. 1614.105 (a), an individual who has suffered an alleged harm or an individual who contacts an EEO Counselor in an attempt to informally resolve a claim of discrimination.

b. Alternative Dispute Resolution. A range of problem-solving approaches, including mediation, used for resolving conflict in lieu of more formal and/or adversarial processes, such as court litigation. The ADR approaches may be used to resolve a portion or entire claim in controversy. Such approaches usually involve the use of a neutral third party who works with the parties involved in the dispute to help them find mutually acceptable solutions. Mediation is the primary ADR approach used in EEO complaint matters.

c. Caucus. Private meeting between mediator(s) and one of the parties.

d. Center for Alternative Dispute Resolution (CADR). The CADR was established in the Office of General Counsel to increase the knowledge, quality, and use of alternative dispute resolution in the U.S. Department of Transportation. The CADR provides mediation and facilitation services to resolve disputes efficiently and effectively. In addition, CADR offers awareness and skill-based training workshops on topics including conflict management, basic and advanced mediation, interest-based problem solving, and representing clients in mediation.

e. Civil Rights Director (CRD). The management official responsible for civil rights programs within an OA, and the official duly authorized through this Order and its OA to determine whether ADR should be offered in EEO matters.

f. Civil Rights Office (CRO). The office responsible for providing consultative services on EEO matters and administering the EEO complaints process and the related ADR program, along with Title VI-related complaints, other civil rights functions, and responsibilities.

g. Co-mediation. Mediation conducted by more than one mediator working together as a team.

h. Complainant. An individual who has completed EEO counseling and filed a formal EEO complaint with DOCR.

i. Departmental Mediation Coordinator (DMC). The DOCR's representative who is responsible for coordinating mediation sessions for the OST, monitoring, and evaluating the effectiveness of the ONEDOT Sharing Neutrals Program and OAs' mediation programs.

j. Dispute Resolution Specialist. The departmental official responsible for implementing provisions of the ADRA of 1996 is the Career Deputy General Counsel.

k. EEO Complaint Process. The regulatory process set forth in 29 C.F.R. Part 1614 for raising claims of prohibited discrimination.

l. EEO Counselor. A neutral individual who advises aggrieved persons of their rights and responsibilities under the EEO complaint process (including an explanation of the ADR process including mediation), determines the basis(es) and claim(s) of a potential complaint, conducts a limited inquiry into the claim(s), seeks and documents resolution, issues aggrieved persons a Notice of Right to File a Formal Complaint, and prepares a report on counseling activities. The EEO Counselor is not a mediator and does not conduct mediations.

m. EEO Investigator. The authorized DOCR employee or contractor responsible for developing a thorough, impartial, and factual record upon which the claims raised in the written formal EEO complaint can be properly adjudicated.

n. Employee Representative. An individual designated by the aggrieved person/ complainant to accompany, advise, and/or represent the aggrieved person/complainant's interests (e.g., attorney, union representative, etc.).

o. Formal EEO Complaint Process. The regulatory process set forth in 29 C.F.R. Part 1614 that begins when a claim raised in EEO counseling remains unresolved and the aggrieved person pursues the matter through filing a formal complaint.

p. Mediation. An alternative method of resolving claims of discrimination, in which a neutral third party, referred to as a mediator, assists parties with communication to achieve understanding, identify interests, and potentially achieve a mutually beneficial resolution to the matters in dispute.

q. Mediator. A neutral third party trained in mediation techniques who facilitates an open discussion between parties in dispute, assists in identifying potential solutions, and assists in drafting a resolution agreement between the parties. A mediator has no authority to impose a decision or resolution on the parties.

r. Mediation Offer. For purposes of official EEO complaint data tracking and annual reporting to the EEOC on Form 462, the provision of information regarding the DOT ADR/Mediation program or a request for mediation by the aggrieved person/complainant is not an offer of mediation. It is only after a determination has been made that a pre-complaint is appropriate for mediation and an "Agreement to Mediate Form," signed by the CRD or another appropriate agency official, is provided to the aggrieved person/complainant that an offer of mediation is made.

s. Neutral. The ADRA defines a neutral as a permanent or temporary officer or employee of the Federal Government, or any other individual who is acceptable to the parties, who has no official, financial, or personal interest with respect to the claims in controversy. Any potential conflict of interest must be fully disclosed to all parties. The parties may agree that the disclosed potential conflict of interest is not material and that the neutral may serve as a mediator. The ADRA further defines a neutral as "an individual who, with respect to a claim in controversy, functions specifically to aid the parties in resolving the controversy." 5 U.S.C. § 571(9).

t. The OA's ADR Program Manager. The OA EEO Specialist, located within the OA CRO, is responsible for ADR case intake and ensuring that the procedures set forth in this Order are followed for processing mediation requests. In addition, the OA EEO Specialist is responsible for coordinating the terms of the Resolution Agreement with appropriate officials.

u. The OA Official. An individual who participates in mediation on behalf of his or her OA. The individual has the authority to grant or deny relief, or has access to those in authority who may grant or deny the requested relief. The OA official may be the responsible management official claimed by an aggrieved person/complainant to be directly involved in the matter that gave rise to the dispute, or another official designated by the OA to participate in the mediation.

v. The OA Representative. An individual (e.g., attorney) who represents the OA and advises the OA official regarding laws, regulations, and policies that govern resolution terms.

w. The ONEDOT Sharing Neutrals Program. The program that sets forth the process and guidelines for implementation of ADR approaches in DOT civil rights and EEO complaint matters.

x. Parties. The aggrieved person(s)/complainant(s) and the agency.

y. Pre-Complaint EEO Process. The initial problem-solving phase of the EEO complaint process as set forth in 29 C.F.R. Part 1614. This phase involves EEO counseling and, if elected, mediation.

z. Resolution Agreement. A formal written agreement that defines the terms that the parties have reached in order to resolve the claim(s) in dispute. A standardized template is provided in Appendix 1, Format 6.

aa. Responsible Management Official (RMO). The management official directly involved in the EEO matter giving rise to the pre-complaint or formal complaint. This individual may be a participant in the ADR process and may have the authority to grant or deny the requested relief, i.e., settlement authority. The OA also may be represented by an official other than the RMO in the mediation process.

1-8. FORMS. Appendix 1, Mediation Program Formats, contains copies of documents used in DOT's mediation process. The documents in the appendix are available for reproduction and use.

1-9. RELATED PUBLICATIONS. Appendix 2 provides additional information on the statutory, regulatory, and administrative authority for the DOT EEO ADR Program.

1-10. REQUEST FOR INFORMATION. Information on mediation may be obtained from the DOCR, the OAs' CRO, or the DOT Dispute Resolution Specialist. The OAs' CRO locations and telephone numbers are located at https://www.civilrights.dot.gov/page/eeo-counseling-coordinator-list. The DOCR and ONEDOT Sharing Neutrals Web site is available at https://www.civilrights.dot.gov/page/dot-directive-10101a.

CHAPTER 2. PROCEDURES FOR MEDIATION

2-1. INTRODUCTION. The EEO process begins when an aggrieved person contacts an EEO Counselor or a designated ADR Program Manager. The ADR Program Manager or appropriate individual will obtain the information necessary to coordinate mediation from the parties. For this limited purpose, the term EEO Counselor, as set forth in this section, also pertains to the ADR Program Manager/DMC or CRO when contacted directly by an aggrieved person. In accordance with 29 C.F.R. Part 1614, contact with an EEO Counselor must be made within 45 calendar days of the alleged act of discrimination, or the effective date of the alleged discriminatory personnel action. During the initial meeting, the EEO Counselor or ADR Program Manager will provide the aggrieved person the Notification of Rights and Responsibilities Form, a Request for Mediation Form, the Agreement to Mediate Form, and any other relevant internal publications appropriate to carry out the purposes of this Order.

2-2. REQUEST FOR MEDIATION.

a. Mediation Option.

Pre-complaint Stage. Mediation may be used at any stage of the EEO complaint process. During the initial discussion with the aggrieved person, the EEO Counselor will inform the aggrieved person of his or her rights and responsibilities in the EEO complaint process. This will include a description of the DOT or the OA's EEO ADR Program, the opportunity to participate in the program when the OA's CRD or the DOCR Director (for OST matters) agrees to offer ADR, and the right to file a formal complaint, if ADR does not result in a resolution. The EEO Counselor will provide the aggrieved person with a Request for Mediation Form (Appendix 1, Format 1). When the OA's CRD or the DOCR Director offers mediation and the aggrieved person elects mediation at the pre-complaint stage, the counseling period may be extended by an additional 60 days, but not to exceed 90 days.[1] When mediation does not result in a written resolution, the aggrieved person will be referred back to the EEO Counselor by the DMC or the ADR Program Manager. The Notice of Right to File a Formal EEO Complaint will be immediately provided to the aggrieved person.

[1] Per C.F.R 29 Part 1614, all time periods relating to this part are calendar days unless otherwise stated.

If an aggrieved person requests mediation, the EEO Counselor or ADR Program Manager will inform the OA's CRD or the DOCR Director (for OST matters) of the claims giving rise to the pre-complaint and provide the completed Request to Mediate and Mediation Intake Forms (Appendix 1, Format 4). If the complaint arises in OST, with the exception of claims involving DOCR, the forms will be provided to the DOCR Director. The OAs' CRD or the DOCR Director will recommend to the responsible Administrator (or second level manager) whether mediation should be offered.

The OA's CRD or the DOCR Director (for OST matters), in assessing the appropriateness for mediation will consult with the following officials: legal counsel; human resources (HR) directors; the alleged RMO; and a second-level supervisor or higher-level management officials, as appropriate. The OA's CRD or the DOCR Director (for OST matters) will provide management officials with information pertaining to the mediation process. If the case is determined to be appropriate for mediation, the OA's CRD or the DOCR Director will offer mediation to the aggrieved person/complainant by providing him or her with a signed Agreement to Mediate Form (Appendix 1, Format 5). At this time, the aggrieved person/complainant and his or her representative, if one has been designated, also will be advised of the name and title of the OA official(s) who will participate in the mediation, and whether the OA will be represented by legal counsel. The aggrieved person/complainant will have 5 calendar days, from the date of receipt of the signed Agreement to Mediate Form, to consider and elect mediation by signing and returning the form to the OA's CRD or the DOCR Director, as appropriate.

The aggrieved person/complainant may decline to participate in mediation. However, managers and supervisors are strongly encouraged to participate in mediation where an EEO matter arises in their area of influence and is deemed appropriate for mediation. Pursuant to EEOC's MD 110, Chapter 3, Section II, managers have a duty to cooperate in the ADR process once the Agency has determined that a matter is appropriate for mediation. When a matter has been deemed appropriate for mediation, and the RMO will not participate in the mediation, a different management official with settlement authority will be designated to participate in the mediation. The OA's CRD and the DOCR Director (where applicable) will work with management officials to determine the appropriate designated official. Management officials have a duty to cooperate in the process; however, there is no obligation to reach an agreement in any specific case.

It is anticipated that the majority of EEO matters will be appropriate for mediation. However, there may be cases where the Agency, acting through the CRD or DOCR Director (for OST matters) in consultation with legal counsel and the HR Director, determines that mediation is not appropriate. This decision may be based on one or more of the following factors:

(1) Precedent. The dispute involves significant legal or policy issues.

(2) Effect on Non Parties. The dispute significantly affects non parties and there is a need for uniform treatment. For example, the claim(s) may have a nationwide impact or there may be lawsuits pending on similar claims, and there is no legitimate reason to settle with only one party.

(3) Fraud, Waste, Abuse, or Criminal Conduct. There is an indication that either party engaged in fraud, waste, abuse, or criminal conduct. Included in this category are cases of egregious misconduct (e.g., threats of violence or alleged assault).

Related non-EEO Claims. Although the ONEDOT Sharing Neutrals Program is designed to address disputes arising under the jurisdiction of the EEO laws, statutes, and regulations, many workplace disputes brought to the process often include non-EEO claims. In accordance with the EEOC's MD 110, sufficient latitude may be given for the parties to raise and address both the EEO and non-EEO claims in the resolution of their disputes. However, if resolution of the matter is unsuccessful in ADR, non-EEO claims cannot be included in the formal EEO complaint. Similarly, EEO claims not brought to the attention of the EEO Counselor or the ADR Program Manager cannot be included in the formal complaint unless the claim is similar or related to claims raised during the EEO counseling stage.

b. Coordination with the Parties in Dispute. Once a determination has been made to offer mediation, and the aggrieved person/complainant has accepted the offer, all relevant forms and necessary information will be executed before the matter is scheduled for mediation. A letter containing the mediation location, time, date, mediators' names and their contact and any other relevant information, will be provided to the parties and their representatives prior to the mediation date.

c. No Offer of Mediation. If the Agency does not offer mediation, the appropriate EEO official (e.g., EEO Counselor, EEO Specialist) will be advised so the EEO process may continue in accordance with 29 C.F.R. Part 1614.

d. Representation. Parties to the EEO disputes have the right to be accompanied, represented, and advised by a representative of their choice. The OA's ADR Program Managers and the DMC will ascertain if either party will be represented, and provide the appropriate notification to the parties and mediators.

e. Funding Mediation. The Departmental Office or OA responding to claims of discrimination will be responsible for the cost of providing the mediator. The costs for representation of the parties are the sole responsibility of the parties. 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. The OAs and DOCR may utilize the DOT's Center for Alternate Dispute Resolution (CADR), collateral duty mediators, contract mediators, or mediators provided by the Federal Sharing Neutrals Program, the Federal Mediation and Conciliation Service, the Federal Executive Boards (FEB), or other appropriate sources of their choice. The OAs should share resources and information to the greatest extent possible.

f. The OAs' ADR Program. The OA where the EEO complaint arises will coordinate the ADR request in accordance with its established program. Each OA must ensure that ADR is available for EEO matters at all stages of the EEO process. The OAs may establish formal programs, or enter into partnerships or agreements with other OA components or outside

sources, to meet these needs. The OAs may design their programs to meet specific needs; however, they must be consistent with the framework and guidance described in this Order. Additionally, all OAs' programs, including changes thereto, must be reviewed and approved by the DOCR Director prior to implementation. The DOCR will administer the ONEDOT Sharing Neutrals Program and ensure OST's EEO ADR needs are met.

g. Requests for Mediation by OST Employees. Mediation requests within OST (with the exception of requests involving DOCR) will be coordinated through the DMC and ONEDOT Sharing Neutrals Program. The DOCR Director will establish a neutral process for handling mediation requests involving DOCR. The aggrieved person/complainant will be provided with all the necessary information regarding the established process, including all relevant points of contact and information.

Formal Complaint Stage. Mediation may be offered at any time during the formal stage of the EEO complaint process through the OAs' CRDs or the DOCR Director (for OST matters) in accordance with the procedures established for mediation offers during the pre-complaint stage. To make complainants aware of the availability of ADR at all stages of the complaint process, the DOCR Compliance Operations Division will include a copy of the Request for Mediation Form (Appendix 1, Format 1) with the Acceptance Letter to the complainant or his or her representative. Appropriate division staff will forward all Requests for Mediation obtained from complainants or their representatives to the appropriate OA's ADR Program Manager or the DMC for processing. The OA's ADR Program Manager or the DMC will contact the OA's CRD or the DOCR's Director (for OST matters), depending where the complaint arose, in accordance with the procedures to determine whether an offer of mediation will be made.

2-3. THE MEDIATION PROCESS.

a. Selection of Mediators.

(1) The OA's ADR Program Manager will coordinate OA offers, assign mediators, when necessary, and coordinate the mediation session.

(2) The DMC will coordinate all the ADR EEO matters for the OST.

b. Mediator Avoidance of Potential Conflict of Interest. The DMC or the OA ADR Program Manager will contact potential mediators and determine if any potential conflict of interest exists. The DMC or the OA's ADR Program Manager will inform the mediator(s) of the name of the aggrieved person/complainant, the name of the OA's official(s) that will take part in the mediation, the RMO, and a summary of the claim(s). The mediator will have the opportunity to decline if a conflict of interest or the appearance of conflict exists.

c. Parties' Acceptance of the Potential Mediator. The parties will be provided the names and resumes of potential mediators prior to the mediation. If no valid objections are raised, such as a conflict of interest, the DMC or the OA's ADR Program Manager will notify the mediators that the process may begin. If there are valid objections, the DMC or OA's ADR Program Manager will obtain another mediator.

d. Scheduling the Mediation. The DMC or the OA's ADR Program Manager, together with the mediators, will coordinate and schedule mediation time(s) and location(s) with the parties. Mediation will be conducted in a neutral location, as determined by the DMC or OA ADR Program Manager.

e. Pre-mediation Discussions. Prior to mediation, the DMC, the OA's ADR Program Manager, or the designated mediators may answer any questions and advise the aggrieved person/complainant or OA's officials regarding the mediation process.

f. Preparation. Parties should come to the mediation prepared to discuss the claim(s) in dispute and potential ways of resolving the dispute. Prior to extending an offer, the designated official should coordinate settlement option(s), with the OA's legal counsel, HR officials, or others to ensure the resolution options can be implemented within a reasonable timeframe and are in accordance with laws, regulations, appropriate collective bargaining agreements, and Departmental or OA policy.

g. Mediation Session. The mediators may call for separate caucuses with each party or a party may request a caucus with the mediators. Some disputes resolve in one mediation session, but additional sessions may be scheduled if progress is being made, but resolution has not been reached. If it is clear that a resolution is not possible, mediation will be terminated. Either party is free to withdraw from the mediation at any time.

h. Confidentiality. The mediators shall discuss confidentiality with the parties in accordance with the provisions of the ADRA and other applicable Federal laws.

i. Coordination of Resolution Terms. If the mediation results in a potential settlement, the mediator(s) will draft the terms and conditions agreed upon for review and concurrence. The OA management official, with the DMC or the OA's ADR Program Manager, will coordinate the terms of the Resolution Agreement with appropriate officials, including the OA's legal counsel and HR officials, to ensure they are in accordance with all laws, regulations, appropriate collective bargaining agreements, and OAs' policy and can be administratively completed within the agreed upon timeframe. If the resolution terms cannot be implemented as written, the DMC, mediators, or the OA ADR Program Manager will coordinate changes with the parties or arrange for another meeting between the parties and the mediator(s). Remedies available to resolve claims of discrimination will vary depending on the authority governing relief. The OAs' CRDs and the DOCR Director (for OST matters) are reminded to consult with their HR Directors to determine any labor relations obligations. The HR Offices are responsible for determining whether Resolution Agreements reached between their OAs and bargaining unit employees are consistent with the collective bargaining agreements.

j. Resolution. If a resolution is reached, a Resolution Agreement is prepared by the mediator (see standard template in Appendix 1, Format 6) and signed by the parties.

(1) If resolution is reached at the pre-complaint stage of the EEO complaint process, the Resolution Agreement will be signed and copies provided to the aggrieved person, the OA

official or legal counsel, and servicing CRO. Documents with original signatures are to be provided to DOCR's Compliance Operations Division. The OAs shall confer with their human resource and legal offices prior to signing Resolution Agreements.

(2) If resolution is reached at the formal stage of the EEO complaint process, the Resolution Agreement will be signed and copies provided to the complainant and the OA official. Documents with original signatures are to be provided to DOCR's Compliance Operations Division. A copy of the Resolution Agreement will be forwarded to the appropriate OA CRO. The OAs shall confer with their human resource and legal offices prior to signing Resolution Agreements.

k. No Resolution. If there is no successful resolution, the mediator(s) will notify the DMC or the OA's ADR Program Manager, who will take appropriate action to ensure that the claim(s) continues in the EEO complaint process in accordance with 29 C.F.R. Part 1614.

l. Evaluation. Upon completion of the mediation, the mediator will encourage the parties to complete an exit survey assessing the mediation process that will be forwarded to the DMC or the OA's ADR Program Manager. Feedback obtained from the exit survey will be considered in determining methods to improve the process and services to customers and stakeholders, as appropriate. If the parties prefer not to complete the evaluation at that time, the parties should be encouraged to complete and forward the evaluation at a later time to the DMC or the OA's ADR Program Manager.

2-4. POST-MEDIATION.

a. Execution of the Terms of the Resolution Agreement. The parties who sign the Resolution Agreement (i.e., the OA, through the designated OA official, and/or the aggrieved person/complainant) are responsible for executing its terms. Terms that require action by an office not present at the mediation will be coordinated with that office, prior to the Resolution Agreement being signed by the parties. It is strongly recommended that the OAs confer with their human resource and legal offices regarding terms of the Resolution Agreement under their purview.

b. Administration of the Resolution Agreement. The OA's CRD, the DOCR Director (for OST matters) or its Compliance Operations Division, as appropriate, will monitor compliance with Resolution Agreements reached as a result of mediation. It is in the purview of each OA to resolve cases. The EEOC and DOT recommend that we resolve cases early in the process. However, DOT, in accordance with 29 C.F.R. 1614.504 gives DOCR authority to determine whether a breach has occurred.

c. Breach of Resolution Agreements. If the aggrieved person/complainant believes that DOT has failed to comply with the terms of the Resolution Agreement, he or she shall notify the DOCR's Compliance Operations Division. Notice must be in writing and submitted within 30 days of the date when the aggrieved person/complainant knew, or should have known, of the alleged non-compliance. The aggrieved person/complainant may request that the terms of the Resolution Agreement be specifically implemented, or alternatively, that the claim(s) be

reinstated for further action from the point the complaint processing ceased. In the event the aggrieved person/complainant alleges non-compliance and chooses to reinstate his or her claims of discrimination, his or her requests for reinstatement restores the status quo, requiring that he or she returns in full to the OA or appropriate entity any relief that has been provided. The DOCR will issue the aggrieved person/complainant a decision regarding the breach within 30 calendar days of receipt.

d. Appeal Rights. If the DOCR does not respond, or if the aggrieved person/complainant is not satisfied with the OA's attempt to resolve the matter, he or she may appeal to the EEOC's Office of Federal Operations, for a determination as to whether the OA has complied with the terms of the Resolution Agreement. The aggrieved person/complainant may file such an appeal 35 days after he or she has served DOCR with the allegations of non-compliance, but must file an appeal within 30 days of his or her receipt of the DOCR's determination. The aggrieved person/complainant must serve a copy of the appeal to the OA and the DOCR.

2-5. REPORTING REQUIREMENTS. The OA's ADR Program Manager and the DMC are required to ensure that all documentation regarding the ADR case is timely and accurately entered into the DOCR automated EEO complaint tracking system.

CHAPTER 3. U.S. DEPARTMENT OF TRANSPORTATION EEO MEDIATORS

3-1. MEDIATORS. The DOT and the OAs' CRO will utilize the co-mediation model (lead mediator and co-mediator) for mediations scheduled and conducted for EEO matters to the greatest extent possible. However, if designation of a co-mediator may cause undue delay in scheduling mediation, or the use of a co-mediator is otherwise not appropriate in a particular matter, the mediation may proceed with the use of a lead mediator only. (See Section 3-4 (c))

3-2. MEDIATORS' SKILLS AND ABILITIES.

The DOT must use mediators who possess the following skills and abilities:

(1) Gathering information. Effectiveness in identifying and seeking out information relevant to the parties.

(2) Empathy. Conspicuous awareness and consideration of the needs of others.

(3) Impartiality. Maintaining equal respect for all parties, remaining neutral, and keeping an open mind.

(4) Generating options. Pursuit of collaborative solutions and generation of ideas and proposals consistent with case facts and workable for opposing parties.

(5) Generating agreement. Effectiveness in moving the parties toward finality and in "closing" and preparing an agreement.

(6) Managing the interaction. Effectiveness in developing strategy, managing the process, and coping with conflicts between parties and representatives.

3-3. 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 Resolution.

3-4. BASIC AND ADVANCED TRAINING REQUIREMENTS. The DOT's EEO mediators will be required to successfully complete 24 hours of formal classroom training to acquire basic mediation skills. The DMC or the appropriate OA's ADR Program Manager may identify appropriate training sources. The CADR offers training to meet these requirements at no charge. Other training procedures are also available. The training shall, at a minimum, include 24 hours of mediation/ADR principles that consist of the following:

(a) Basic Skills. Instruction will consist of basic mediation skills, to include the mediation process, conflict and resolution theories, mediator ethics, and role-playing exercises.

(b) Observation. Mediators will observe at least one complete mediation, which will be conducted by a senior mediator, or a mock mediation conducted by an experienced mediator/trainer.

(c) EEO Training (Federal Sector EEO complaint process, 4 hours). Mediators must be familiar with the entire EEO complaint process, pursuant to 29 C.F.R. Part 1614, including timeframes; the Civil Service Reform Act, the statutes that EEOC enforces (including Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Equal Pay Act of 1963, as amended, Title II of the Genetic Information Nondiscrimination Act of 2008, and Executive Order 11478, as amended by Executive Order 13087 on sexual orientation); the theories of discrimination (e.g., disparate treatment, adverse impact, harassment and reasonable accommodation); and remedies, including compensatory damages, costs, and attorney's fees.

3-5. MEDIATORS' FULL-PERFORMANCE LEVEL. The DOT's EEO mediators will participate in at least three supervised co-mediations of EEO cases before being considered to be at the full performance level. Mediators who do not have this level of experience are considered developmental and will be required to co-mediate with a full performance level mediator to gain the requisite experience to engage in unsupervised mediation. By the third co-mediation, the developmental mediator should conduct as much of the mediation as possible, under supervision of a senior mediator, and must obtain a satisfactory evaluation. Eligibility to mediate EEO cases will be determined by DOCR or the OA's CRD, in accordance with the applicable Federal, departmental, and OA directives.

3-6. ORGANIZATIONAL CONFLICT OF INTEREST. To avoid the appearance of an organizational conflict of interest, the OA mediators will not mediate or co-mediate cases within

their immediate office or where the aggrieved person/complainant is under the same supervision as the mediator. A mediation request by an employee in the Civil Rights Office mediating a claim of discrimination naming a manager in that office should be handled by another Civil Rights Office or contractor to avoid a perception of a conflict of interest. In addition, a mediator should not mediate a case where the mediator and the aggrieved person/complainant report to the same supervisor.

3-7. ROSTER OF ELIGIBLE MEDIATORS. The DMC and OA's ADR Program Manager will maintain a roster of mediators who are appropriately trained and possess the skills necessary to conduct mediations. The OA's ADR Program Manager will provide a list of mediators to the DMC annually. In addition, the DMC also will share information on available mediators and sources for mediators.

3-8. REMOVAL OF MEDIATORS. A DOT or non-DOT mediator, who has engaged in conduct that reflects adversely on his or her impartiality, or on the performance of his or her duties as a mediator, may not be permitted to participate as a mediator in DOT's ADR Program. This determination will be made by the DOCR or the OA's CRD, in accordance with the Model Standards of Conduct for Mediators (Appendix 4) and any applicable Federal, departmental, and OA directives.

CHAPTER 4. SOURCES OF MEDIATORS

4-1. THE CADR is housed within the Department's Office of General Counsel and provides free mediation services. The CADR can help identify mediators outside the Department as well.

4-2. FEDERAL EXECUTIVE BOARD (FEB) PROGRAMS. In 1961, President Kennedy established the FEB to increase the effectiveness and economy of Federal agencies located outside of the Washington, DC, area. The current FEBs have a number of initiatives in place to meet those goals, including the ADR programs. These programs share mediators among Federal agencies in close proximity to each other.

4-3. FEDERAL SHARED NEUTRALS. In Washington, DC, the Federal Sharing Neutrals Program, administered by the U.S. Department of Health and Human Services, is available. The program administers a cadre of experienced mediators who are Federal employees and are available for mediation services at no cost to DOT. The DOT mediators also may participate in the Federal Sharing Neutrals Program.

4-4. CONTRACT MEDIATORS. A number of companies provide mediation services for a fee. Government mediators or contract mediators may be used to conduct mediations, as appropriate.

4-5. NON-DOT MEDIATOR QUALIFICATIONS. For non-DOT mediators to mediate DOT EEO cases, the individual must be certified in accordance with the standards established by the State where they practice or meet the requirements specified in Chapter 3 as determined by the DOCR Director or the OA's CRD.

4-6. STANDARDS OF CONDUCT. Non-DOT mediators shall adhere to the *Model Standards of Conduct for Mediators* (Appendix 4) jointly published by the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

Part II: Encouraging Mediation to Resolve External Civil Rights Complaints

CHAPTER 1. GENERAL

1-1. PURPOSE. This part encourages OAs to provide for ADR to resolve external issues related to discrimination under Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, and other applicable statutes.

1-2. SCOPE. This part articulates DOT's policy that the ADR methods are an effective means to resolve external complaints involving claims that a DOT funding recipient has failed to comply with nondiscrimination requirements. In general, Federal law and DOT regulations prohibit discrimination based on: (1) such protected classifications as race, color, national origin, sex, age, disability, or genetic information, or (2) retaliation as a result of filing or participating in the resolution of a complaint. These protections apply to recipients of Federal financial assistance under various transportation programs or activities through DOT.

The OAs should apply the general principles of Part I of this Order when using mediation to resolve civil rights complaints filed against DOT funding recipients. Although Part I is specific to the EEO process, its guidance on such topics as procuring and selecting appropriately skilled mediators is relevant when using mediation to resolve external complaints. The OAs may decide to establish ADR procedures specific to their external programs consistent with these general guidelines. Additionally, all OAs' programs, including changes thereto, must be reviewed and approved by the DOCR Director prior to implementation. However, existing information on ADR in DOT Order 1000.18 on processing external complaints and the U.S. Department of Justice's Title VI Investigation Procedures Manual may prove sufficiently instructive. The Departmental Office or OA responding to the claims of discrimination may provide a mediator, but the costs for representation of the parties are the sole responsibility of the parties.

1-3. OBJECTIVE. The DOT's ADR Policy Statement expresses its commitment to advancing national transportation goals through ADR. As indicated in the statement, decision-making on incorporating ADR into dispute resolution processes and allocating resources rest with the individual OA. The DOT is committed to utilizing the ADR methods to resolve disputes affecting external programs. Early resolution of disputes benefits DOT, its beneficiaries, and recipients by reducing costs associated with processing such complaints through more formal forums.

1-4. ADR OPTION. If ADR is deemed appropriate according to the procedures outlined herein, the investigator should propose the possibility of using ADR with the complainant and recipient.

1-5. THE OAs' CIVIL RIGHTS OFFICES' ROLE IN ADR.
The role of the CRO includes the following:

(a) Informing the parties of the procedures, establishing a conciliatory tone, and encouraging the parties to work in good faith toward a mutually acceptable resolution.
(b) Maintaining an impartial approach and informing the parties that the terms of resolution are theirs to reach.

(c) Reviewing the allegations and making sure that the parties understand the claims that DOT has accepted for investigation.
(d) Presenting and providing explanations of the applicable requirements and how these requirements apply to the allegations.
(e) Facilitating a discussion between the parties regarding possible actions that the parties may consider in working toward a resolution.
(f) Offering assistance, as appropriate, with regard to reducing any resolution to writing. If an agreement is reached and meets legal sufficiency, informing the parties that DOT will issue a closure letter reflecting the voluntary resolution of the complaint by agreement of the parties.

If ADR is utilized, the OAs and the mediators are encouraged to strive to reach results that are acceptable to all parties whenever possible, including a partial resolution of a complaint. For example, if there are five points of contention, and only three can be resolved, the ADR process can be used to develop an agreement on the three issues, leaving the remaining two for the OA's investigation and determination.

1-6. ASSISTANCE BY DOCR. The DOCR's External Civil Rights Programs Division monitors external civil rights complaints and the OAs' complaint handling, tracks and reports on DOT's external civil rights complaints. The Division is the office within DOCR that provides assistance to the OAs in resolving external civil rights discrimination complaints and developing policy and training relating to external civil rights laws, Executive Orders, and principles. The Division will assist the OAs, as needed, in developing and implementing an effective ADR program for the resolution of external civil rights complaints.

1-7. COORDINATION. The DOCR and the OAs' CRO are encouraged to coordinate the use of ADR to resolve external issues related to discrimination under this part with the DOT Dispute Resolution Specialist, Deputy Dispute Resolution Specialist, and legal counsel, as appropriate. If ADR is contemplated for a complaint, the OAs' CRO will inform the DOCR who will assist in coordinating the process.

1-8. CONTACT INFORMATION FOR DOT ORDER 1010.1B. You may contact DOCR at 202-366-4648 or via relay service at 1-866-466-5221 regarding this Order. The OAs' Civil Rights Offices also can provide additional explanation/information, as appropriate.

U.S. Department of Transportation
Equal Employment Opportunity
Alternative Dispute Resolution

REQUEST FOR MEDIATION

I request that my 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 make an assessment of the complaint's appropriateness for mediation. If the Agency offers mediation, at that time, I will have five calendar days to make an election to participate in the mediation process. If however, I choose not to elect mediation, I may continue processing my EEO Complaint in accordance with 29 CFR, Part 1614.

_____

Aggrieved/Complainant **Date**

This request will be forwarded to the Operating Administration's EEO Designated Official or the Departmental Mediation Coordinator (DMC).

Memorandum

U.S. Department of Transportation
Office of the Secretary of Transportation

Subject: **ACTION:** Proposed Mediation with _____ (Complainant's Name)

Date:

From: Departmental Office of Civil Rights, S-30

Reply to Attn. of:

To:

In an effort to resolve Equal Employment Opportunity (EEO) complaints in an informal, less adversarial, and more expeditious manner, the Equal Employment Opportunity Commission (EEOC) requires agencies to make Alternative Dispute Resolution available to employees. The Department has established a Mediation Program to encourage parties who have a dispute to try to resolve it through mediation. Mediation provides an opportunity for the parties to discuss their issues directly with each other and explore whether their issues can be resolved in a way that is mutually satisfactory.

On _____ Mr./Ms. _____ requested mediation in an attempt to resolve an EEO complaint with your office. This memo serves to request your participation in mediation. As participation is voluntary, you have the right to choose not to enter mediation, in which case the complainant may choose to continue in the EEO process. I believe it is advantageous to attempt mediation now, at the early stage, before positions harden and before large expenditures of time and money have occurred.

Many EEO complaints are based on miscommunication between the parties. Mediation offers the opportunity to communicate directly and listen to each other's real concerns. Experience has shown that many of the EEO complaints submitted for mediation are resolved. Even when a case is not resolved, mediation may be helpful in clarifying issues.

The mediators are not advocates for either party or render any decisions. They will facilitate communication between both parties, help each side gain a clearer perspective of their situation, and assist both parties in developing mutually satisfactory options for resolving the issues. If the parties reach an agreement, it will be binding. If they do not reach an agreement, the complainant may continue in the EEO process. The EEOC is encouraging mediation in many of the cases before it, so you may be required to participate in mediation at a later date.

Appendix 1, Format 2

When deciding whether to elect mediation, you should consider the following:

- Consult your servicing legal office.
- Whatever you tell the mediator is confidential. The mediator does not keep any permanent record of your meetings and will not disclose any information you provide during the mediation unless you want it disclosed.
- Mediation is meant to avoid delay. Normally, mediation will succeed or end within one or two sessions.
- If you desire, you may bring someone to assist you with mediation.
- If a resolution is achieved, the terms will be put into a settlement agreement and reviewed by legal and HR before being signed. The agreement will not be binding until it is signed by all parties.

The initial mediation session will generally last about four hours and usually can be promptly arranged. To indicate whether you choose to participate, please complete the enclosed election form and return it to _____ or by fax at ( ) _____, within five calendar days of your receipt of this letter. My office will contact you to schedule the mediation.

Should you have any questions concerning the process or your role at the mediation, please contact ( ) _____. If you need additional information about the facts of this case or the EEO process, please call ( )_____.

I hope you will take advantage of this opportunity to try to resolve this dispute in a way that is faster, less formal, and that allows both parties to work together to reach an agreement.

cc:

Appendix 1, Format 3

MEDIATION OPTION FORM

Please use this form to indicate whether you are willing to participate in mediation. If you agree to participate, the ADR Program Manager will contact you to schedule the mediation. At that time, you will be given information about preparing for the mediation. In order to save time, please list below the days and times during the next three (3) weeks when you are available for at least 4 hours.

I, _____, ***(Please Print)***

( ) AGREE ( ) DO NOT AGREE *

to participate in mediation regarding the EEO complaint of _____.
I understand that the decision to participate in mediation is voluntary and that the process is confidential.

_____

Signature Date

_____

Title Agency (OA)

_____

Phone Number Fax Number

I am available for mediation at the following dates and times in the next 3 weeks.

_____

_____

* If you have elected NOT to participate in mediation, please indicate the reason(s) why:

a. The dispute involves significant legal or policy issues possibly requiring legal precedent.
b. The dispute significantly affects non-parties and there is a need for uniform treatment (e.g., the issue may have a wide impact, or similar suits are pending and there is no legitimate reason to settle with only one party).
c. The case is likely to settle through unassisted negotiations.
d. There is an indication that either party engaged in fraud, waste, abuse, or criminal conduct.
e. Inadequate knowledge of the mediation process.
f. Role of mediator and qualifications.
g. Concerns about confidentiality.
h. Insufficient personnel/other resources to accommodate mediation process (specify).
i. Other (specify)

Specify:_____

U.S. Department of Transportation
Departmental Office of Civil Rights

ONEDOT Sharing Neutrals Program
Mediation Intake Form

FAX TO: (202) 366-7717

Date of Request: _____

Requesting Operating Administration: _____

Name of Agency POC: _____ Telephone Number: _____

The following individual(s) request a mediation session in an attempt to resolve a dispute.

Name of Aggrieved/Complainant[1]: _____

Position Title & Grade: _____

Address: _____ Telephone: W-_____ H-_____

Location of Employment: _____

Best Time to Contact Requesting Party: _____

*Does the Party have other EEO Complaints filed at the informal or formal stage of the EEO Complaints process.

Yes_____ No _____

Name of Responding Party: _____Position Title & Grade: _____

Address: _____Telephone: W-_____ H-_____

Best Time to Contact Responding Party: _____

Basis: _____

Issue: _____ _____
(please use additional sheets, as necessary)
Nature of Dispute:

Date Contacted: Aggrieved: _____ Respondent: _____ Confirmed Date: _____
Date Contacted: Mediator: _____ Date Assigned: _____ Telephone # ( ) _____

Date Mediation Scheduled: _____Time: _____ Location: _____

Reasonable Accommodations: _____ No _____ Yes (Describe)
_____

[1] The term aggrieved refers to an individual filing a pre-complaint. The term complainant refers to an individual filing a formal complaint.

U.S. DEPARTMENT OF TRANSPORTATION
EQUAL EMPLOYMENT OPPORTUNITY
ALTERNATIVE DISPUTE RESOLUTION

AGREEMENT TO MEDIATE

This agreement is between

(Aggrieved Person/Complainant)

and

_____

(Affected DOT Office)

represented

_____

(Agency official)

The parties agree to enter into mediation with the intent of reaching a mutually agreeable resolution of the dispute:

Designation of Representative:

The aggrieved person designates her/his representative, if she/he desires a representative, for this mediation process.

_____

(employee representative's name) (phone number)

is hereby designated by the aggrieved person as her/his representative for the purpose of this mediation.

Confidentiality Clause for Representatives:

We, the undersigned, agree not to disclose confidential information, unless: (1) all parties agree in writing to disclose the information; (2) the information has already been made public; (3) the disclosure of the information is required by law; or (4) a court determines that disclosure of the information is necessary.

_____ _____ _____ _____

Employee Representative Date Agency Representative Date

Provisions of the Agreement and Signatures:

1. By signing this document, the parties agree that the pre-complaint process is extended by 60 calendar days. The total EEO counseling period may not exceed 90 calendar days from the date EEO counseling began.
2. Mediators are neutral third parties who will assist the parties to reach their own resolution. Mediators will not make judgments or impose a resolution.
3. Mediators do not offer advice nor do they provide legal counsel.
4. The parties have a right to have a representative of their choice accompany and advise them at anytime during the mediation process.
5. The confidentiality of the mediation process is established in the Administrative Dispute Resolution Act of 1996. A "plain English" summary of these confidentiality provisions is on the reverse side of this form.
6. While the parties intend to continue with mediation until a resolution is reached, it is understood that either or both parties may withdraw from mediation at any time. **If one or both parties determine to withdraw from the mediation, the parties should be encouraged to discuss their decision in the presence of the other party and the mediator(s)**.
7. If the mediator(s) determines that it is not possible to resolve the dispute through mediation, the mediator can terminate the process once it has been conveyed to the parties.
8. If a tentative agreement is reached, the mediator(s) will prepare a resolution agreement with the parties for their review. The tentative agreement will be reviewed by the OA's legal and HR offices before signature.
9. By entering into a resolution agreement, the aggrieved person agrees that the allegations/issues that were resolved and which formed a basis of the dispute are withdrawn and no longer serve as the basis of a complaint against the agency or its agents.
10. No agreement is final or enforceable until signed by all parties.
11. If there is no resolution, the aggrieved person will be referred back to the EEO Counselor to complete the pre-complaint process.

The parties have read, understand, and agree to the provisions of this agreement.

_____ _____ _____ _____

Aggrieved Person Date Agency Official Date

_____ _____ _____ _____

Mediator(1) Date Mediator (2) Date

DEPARTMENT OF TRANSPORTATION
EQUAL EMPLOYMENT OPPORTUNITY
ALTERNATIVE DISPUTE RESOLUTION

CONFIDENTIALITY PROVISIONS
PLAIN ENGLISH SUMMARY

The Administrative Dispute Resolution Act of 1996 (ADRA) provides for the confidentiality of the mediation process as follows:

a. Mediator. A mediator may not disclose confidential information, unless:
(1) all parties agree in writing to disclose the information;
(2) the information has already been made public;
(3) the disclosure of the information is required by law; or
(4) a court determines that disclosure of the information is necessary to:
(a) prevent manifest injustice;
(b) help establish violation of a law; or
(c) prevent serious harm to public health or safety.

b. Parties. A party to the mediation may not disclose confidential information, unless:

(1) the party prepared the information;
(2) all parties agree in writing to disclose of the information;
(3) the information has already been made public;
(4) the disclosure of the information is required by law;
(5) a court determines that disclosure of the information is necessary to:
(a) prevent manifest injustice;
(b) help establish violation of a law; or
(c) prevent serious harm to public health or safety;
(6) the disclosure of the information is relevant to finding, understanding, or enforcing a resolution agreement resulting from mediation; or
(7) except for information communicated by the mediator, the information was provided to, or available, to all parties.

c. Violations. Any confidential information disclosed in violation of the ADRA and this agreement shall not be admissible in any administrative (e.g. EEOC hearing) or judicial (e.g., suit in the U.S. District Court) proceeding related to the issues raised in mediation.

d. Alternative Confidentiality Agreement. The parties may agree to use different procedures for disclosure of confidential information by the mediator. In order to use different procedures, the parties must make changes to section "a," initial the changes, and inform the mediator of the changes before the mediation begins. Unless the parties inform the mediator of a different set of procedures, section, "a" will apply.

e. Discovery in a Judicial Proceeding. If the mediator is asked to disclose confidential information communicated during the mediation process as part of a judicial proceeding, the mediator will make reasonable efforts to notify the parties (and/or affected nonparty participant) of the request. The parties (and/or affected nonparty participant) have 15 calendar days to respond to the mediator and offer to defend the mediator's refusal to disclose the confidential information. If the parties (and/or affected nonparty participant) do not reply to the mediator within 15 calendar days, they have waived their right to object to disclosure of confidential information by the mediator.

f. Otherwise Discoverable Information. Information communicated in mediation is not protected from disclosure if it is otherwise discoverable.

g. Implementing a Resolution Agreement. Sections "a" and "b" will not apply where necessary to comply with a resolution agreement reached as a result of mediation or to document compliance with such agreement.

h. Research. Information about mediation may be gathered for research or educational purposes so long as the parties and specific issues mediated are not identifiable.

i. Dispute with the Mediator. Sections "a" and "b" do not prevent the use of an alternative dispute resolution process to resolve a dispute with the mediator provided that release of confidential information is only released to the extent necessary to resolve the conflict with the mediator.

j. The parties agree not to call on or subpoena the mediator in any investigation, action or proceeding.

The parties have read, understand, and agree to the provisions of this agreement.

Aggrieved Person	Date	Agency Official	Date
Mediator(1)	Date	Mediator (2)	Date

Resolution Agreement

1. This agreement is entered into between (Agency Name) and (Aggrieved/Complainant) to resolve the following dispute(s): EEO Complaint No. _____ or the matter(s) raised with the EEO Counselor on (date), as specified in this paragraph. (Aggrieved/Complainant) alleged that he/she was discriminated against when:

   a.

   b.

   c.

2. In full resolution of the claims, the Agency shall:

   a.

   b.

   c.

[Insert any agreements/promises of action, including the time by which the action is to be taken.]

3. Aggrieved/Complainant shall:

   a.

   b.

   c.

[Insert any agreements/promises of action, including the time by which the action is to be taken.]

4. (Aggrieved/Complainant) agrees that by signing this Settlement Agreement, his/her allegation(s) set forth in paragraph 1 above are withdrawn. [If there are allegation(s) not withdrawn, list them here, e.g. , "The Parties have not reached an agreement on the following allegation(s) set forth in paragraph 1 and they are not withdrawn:]

5. (Aggrieved/Complainant) agrees not to initiate a complaint(s), grievance(s), civil lawsuit(s) or claim(s) of any type with regard to the allegation(s) resolved in this agreement.

6. (Aggrieved/Complainant) affirms that this Settlement Agreement consists of mutual consideration and that he/she is entering into this Agreement freely, with full knowledge and understanding of its terms and conditions, and without any coercion or duress on the part of the Agency, its officers, representatives, or employees.

7. The Parties agree not to disclose this Settlement Agreement or any matters discussed during mediation, except to those who have a need to know in an official capacity.

8. The Parties agree that the terms and conditions set forth in this Settlement Agreement forms the complete and final basis for settlement.

9. The Parties agree this Settlement Agreement does not constitute an admission of discrimination, reprisal or wrongdoing on the part of the Agency, its officials, representatives, or employees. Rather, this Settlement Agreement reflects the Parties' interest in resolving the allegation(s) identified above.

10. The Parties agree this Settlement Agreement does not establish any precedent and may not be cited in any other proceeding, except a proceeding addressing the enforcement of this Agreement.

11. In accordance with 29 C.F.R., Part 1614.504, if the (Aggrieved/Complainant) believes that the Agency has failed to comply with the terms of the Settlement Agreement, he/she shall timely notify, in writing:

    Department of Transportation
    Director, Departmental Office of Civil Rights
    Attn: Compliance Operation Division (S-34)
    1200 New Jersey Avenue, S.E.
    Suite W78-316
    Washington, D.C. 20590

(Aggrieved/Complainant) (Agency Representative)

_____ _____

Date_____ Date _____

NOTE:

1. **ALL SETTLEMENT TERMS MUST BE COORDINATED WITH YOUR SERVICING LEGAL AND HR OFFICES BEFORE SIGNING.**

2. **IF SETTLEMENT CONTEMPLATES PAYMENT OF FUNDS OR IMPACTS ON EMPLOYEE BENEFITS, CONSULT WITH AGENCY COUNSEL AND HUMAN RESOURCES.**

3. **DOCR MUST CHECK ITS RECORDS TO ASCERTAIN WHETHER THE AGGRIEVED/COMPLAINANT HAS ANY FORMAL EEO COMPLAINTS PENDING AND, IF SO, CONTACT THE APPROPRIATE AGENCY COUNSEL'S OFFICE BEFORE BEGINNING MEDIATION.**

RESOLUTION AGREEMENT
FOR MATTERS RAISING ALLEGATIONS OF DISCRIMINATION UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT

1. This agreement is voluntarily entered into between (Agency Name) and (Aggrieved/Complainant to resolve the following dispute(s): EEO Complaint No. _____ or the matter(s) raised with the EEO Counselor on (date), as specified in this paragraph. (Aggrieved/Complainant) alleged that he/she was discriminated against when:
   a.

   b.

   c.

2. The Agency shall:
   a.

   b.

   c.

[Insert any agreements/promises of action, including the time by which the action is to be taken.]

3. (Aggrieved/Complainant) shall:

   a.

   b.

   c.

[Insert any agreements/promises of action, including the time by which the action is to be taken.]

4. (Aggrieved/Complainant) agrees that by signing this Settlement Agreement, his/her allegation(s) set forth in paragraph 1 above are withdrawn. [If there are allegation(s) not withdrawn, list them here, e.g., "The Parties have not reached an agreement on the following allegation(s) set forth in paragraph 1 and they are not withdrawn:]

5. (Aggrieved/Complainant) agrees not to initiate a complaint(s), grievance(s), civil lawsuit(s) or claim(s) of any type with regard to the allegation(s) resolved in this agreement.

6. (Aggrieved/Complainant) affirms that he/she is entering into this Agreement freely, with full knowledge and understanding of its terms and conditions, and without any coercion or duress on the part of the Agency, its officers, representatives, or employees.

7. The Parties agree not to disclose this Settlement Agreement or any matters discussed during mediation, except to those who have a need to know in an official capacity.

8. The Parties agree that the terms and conditions set forth in this Settlement Agreement form the complete and final basis for settlement.

9. This Settlement Agreement does not constitute an admission of discrimination, reprisal or wrongdoing on the part of the Agency, its officials, representatives, or employees. Rather, this Settlement Agreement reflects the Parties' interest in resolving the allegation(s) identified above.

10. This Settlement Agreement does not establish any precedent and may not be cited in any other proceeding, except a proceeding addressing the enforcement of this Agreement.

11. In accordance with 29 C.F.R. Part 1614.504, if the (Aggrieved/Complainant) believes that the Agency has failed to comply with the terms of the Settlement Agreement, he/she shall timely notify, in writing:

    Department of Transportation
    Director, Departmental Office of Civil Rights
    Attn: Compliance Operation Division (S-34)
    1200 New Jersey Avenue, S.E.
    Suite W78-316
    Washington, D.C. 20590

NOTE: FOR AGE DISCRIMINATION COMPLAINTS, STATUTE AND REGULATIONS REQUIRE THAT THE FOLLOWING CLAUSES BE INCLUDED IN THE SETTLEMENT AGREEMENT:

12. By signing this Agreement (Aggrieved/Complainant) understands that he/she is waiving any and all existing rights and claims he/she has raised under the Age Discrimination in Employment Act (ADEA), as amended, 29 U.S.C.§§621-634, and section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16, but is not waiving any future rights or claims under the ADEA or Title VII of Civil Rights Act for actions arising after the date he/she signs this Agreement.

13. The (Aggrieved/Complainant) is aware of his/her right to representation by an attorney and is advised to have an attorney review the Settlement Agreement before signing it.

14. The (Aggrieved/Complainant) agrees that he/she has been afforded ample opportunity to consult with an attorney concerning the terms and conditions of this Agreement.

15. The (Aggrieved/Complainant) acknowledges having been given a reasonable amount of time (no less than 21 days) to review the terms and conditions of this Settlement Agreement before signing it.

16. (Aggrieved/Complainant) has seven (7) days following the signing of this Settlement Agreement within which to revoke the Agreement by written rescission addressed to the undersigned counsel for the agency. This Settlement Agreement shall not become effective or enforceable until the revocation period has expired.

(Aggrieved/Complainant)	(Agency Representative)
_____	_____
Date_____	Date _____

NOTE:

1. **IF SETTLEMENT CONTEMPLATES PAYMENT OF FUNDS OR IMPACTS ON EMPLOYEE BENEFITS, CONSULT WITH AGENCY COUNSEL.**

2. **DOCR MUST CHECK ITS RECORDS TO ASCERTAIN WHETHER THE AGGRIEVED/COMPLAINANT HAS ANY FORMAL EEO COMPLAINTS PENDING AND, IF SO, CONTACT THE APPROPRIATE AGENCY COUNSEL'S OFFICE BEFORE BEGINNING MEDIATION.**

Appendix 1, Format 7

EXIT SURVEY FOR MEDIATION PARTICIPANTS

Name of Operating Administration:

Session location:

Mediator(s) Name:

PLEASE HELP US EVALUATE THIS PROGRAM BY ANSWERING THE FOLLOWING QUESTIONS ABOUT YOUR EXPERIENCE IN MEDIATION: Circle the number that best answers each question. If the question does not apply, do not circle anything.

1. **What was your role in the case?**

   (a) Complainant
   (b) Supervisor (respondent)
   (c) Representative for complainant
   (d) Representative for management (respondent)

2. **What is your grade level?** _____

3. **If you had a representative in the mediation, was your representative a...**

   (a) Fellow Employee
   (b) Attorney
   (c) Union Representative
   (d) Other please specify _____
   (e) Did not have representative

4. **What was the basis of the EEO complaint in this case? Circle all that apply.**

   (1) Race
   (2) Color
   (3) National origin
   (4) Sex
   (5) Sexual orientation
   (6) Disability
   (7) Religion
   (8) Age
   (9) Retaliation/reprisal

5. **On what date did the dispute begin?** _____

6. **Please circle or describe the cause of the action of the dispute.**

   (a) Promotion
   (b) Non-selection
   (c) Performance Rating
   (d) Disciplinary Action
   (e) Sexual Harassment
   (f) Other (please describe): _____

7. **Please describe the relief requested in the dispute prior to mediation**

   _____

   _____

Please answer the following questions about your last mediation session:

8. **How long was this mediation session?**

   _____**(number of hours)**

9. **During the mediation, did you learn about the other party's view?**

   (a) Yes
   (b) No

10. **During the mediation session, did the other party learn about your view?**

    (a) Yes
    (b) No

11. **Did the mediation result in a settlement?**

    (a) Yes – **Skip to question 13**
    (b) No
    (c) Partially

12. If the mediation failed to result in a settlement or resulted in a partial settlement, were there positive outcomes (such as, a better understanding of the issue or a better communications between the parties) that made it worthwhile?

(a) Yes
(b) No

If yes specify:

_____

_____

13. Thinking about your most recent mediation session, please assess the mediator's performance in the following areas as poor, fair, good, or excellent.

The mediator.....	**Poor**	**Fair**	**Good**	**Excellent**
a. demonstrated impartiality during inquiry into the allegation	1	2	3	4
b. understood issue(s) of the complaint	**1**	**2**	**3**	**4**
c. assisted the parties with generating realistic options	1	2	3	4
d. clarified the issue(s) of the complaint	**1**	**2**	**3**	**4**
e. gained the confidence and trust of the parties	1	2	3	4
f. handled emotional issues satisfactorily	**1**	**2**	**3**	**4**
g. maintained effective manner (calm, sensitive, empathic, flexible, purposeful)	1	2	3	4
h. inspired confidence in the mediation process	**1**	**2**	**3**	**4**
i. honored confidentiality	1	2	3	4

14. Thinking about your experience with mediation overall, please indicate if you strongly agree, somewhat agree, neither agree or disagree, somewhat disagree or strongly disagree with the following statements:

(Circle one on each line)

	Strongly Agree	**Somewhat Agree**	**Neither**	**Somewhat Disagree**	**Strongly Disagree**
a. You received sufficient information about mediation	1	2	3	4	5
b. You were comfortable with the session environment	**1**	**2**	**3**	**4**	**5**
c. The mediation was fair	1	2	3	4	5
d. Your level of participation in the mediation was sufficient	**1**	**2**	**3**	**4**	**5**
e. Your views were addressed satisfactorily	1	2	3	4	5
f. The mediator helped clarify our goals	**1**	**2**	**3**	**4**	**5**

15. Have you ever been through the EEO COMPLAINT PROCESS before?

(a) Yes
(b) No – **Skip to question 20**

16. How many times have you been through the EEO COMPLAINT PROCESS?

_____

17. Please circle the highest level of any of your prior complaints:

(a) Pre-complaint (Informal/Counseling)
(b) Formal Complaint
(c) EEO Hearing/Final Agency Decision
(d) Court Decision

18. Did mediation take much less, less, the same, more, or much more time than the usual EEO process? How did time in mediation relate to time in EEO process?

Mediation took:

(a) much less time
(b) less time
(c) the same amount of time
(e) more time
(f) much more time

19. Did the process save you resources when compared to pursuing the complaint through the conventional process?

(a) Yes
(b) No

20. Have you ever been through the ONE DOT mediation process before?

(a) Yes
(b) No

If yes, how many times? _____

21. Would you participate in mediation again?

(a) Yes
(b) No

22. Do you have additional comments or suggestions to improve the Program?

_____

_____

_____

_____

RELATED PUBLICATIONS

1. STATUTES.

(a) The Civil Rights Act of 1964, as amended, prohibits discrimination in employment on the basis of race, color, religion, sex (gender), national origin, or reprisal.

(b) The Age Discrimination in Employment Act of 1967 prohibits discrimination in employment based on age when the employee is at least 40 years old.

(c) The Equal Pay Act prohibits discrimination in payment of wages based on sex (gender).

(d) The Rehabilitation Act of 1973 prohibits discrimination in employment on the basis of physical or mental disability.

(e) The Administrative Dispute Resolution Act of 1996 (Public Law 104-320) reauthorizes Federal agencies to utilize dispute resolution to resolve an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

(f) Title 5 of the United States Code, Chapter 5, Subchapter IV, Alternative Means of Dispute Resolution in the Administrative Process, as amended, (see appendix 3).

(g) 49 U.S.C. 102, Department of Transportation, (Presidential Appointees).

2. REGULATIONS.

(1) 29 Code of Federal Regulations (CFR) Part 1614, Federal Sector Equal Employment Opportunity governs processing complaints of Federal employment discrimination.

(2) 49 CFR 1.23(a), Subtitle A - Office of the Secretary of Transportation Spheres of Primary Responsibility for the overall planning, direction and control of departmental affairs including civil rights, contract appeals, small and disadvantaged business participation in departmental programs, etc.

3. EXECUTIVE ORDERS.

Executive Order 11478, Equal Employment Opportunity in the Federal Government, as amended, prohibits discrimination in federal employment because of race, color, religion, sex, national origin, disability, age, or sexual orientation.

4. MANAGEMENT DIRECTIVES.

Equal Employment Opportunity Commission Equal Employment Opportunity Management Directive (MD) 110, Federal Sector Complaints Processing Manual provides guidance on processing complaints of Federal employment discrimination.

TITLE 5, U.S.C., CHAPTER 5, SUBCHAPTER IV, ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS

§571. Definitions

For the purpose of this subchapter, the term-

(1) "agency" has the same meaning as in section 551(1) of this title;

(2) "administrative program" includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule-making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter,

(3) "alternative means of dispute resolution" means any procedure that is used to resolve issues of controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, and use of ombuds, or any combination thereof,

(4) "award" means any decision by an arbitrator resolving the issues in controversy;

(5) "dispute resolution communication" means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(6) "dispute resolution proceeding" means any process in which an alternative means of dispute resolution is used to re-solve an issue in controversy in which a neutral is appointed and specified parties participate;

(7) "in confidence" means, with respect to information, that is provided-
   a. with the expressed intent of the source that is not to be disclosed; or
   b. under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

(8) "issue in controversy" means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement-

   a. between an agency and persons who would be substantially affected by the decision; or
   b. between persons who would be substantially affected by the decision;

(9) "neutral" means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(10) "party" means-

a. for a proceeding with named parties, the same as in section 551 (3) of this title; and
b. for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;

(11) "person" has the same meaning as in section 551-(2) of this title; and"

(12) roster" means a list of persons qualified to provide services as neutrals.

§ 572. General authority

(a) An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

(b) An agency shall consider not using a dispute resolution proceeding if-

(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 is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) the matter significantly affects persons or organizations who are not parties to the proceedings-,

(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.

(c) Alternative means of dispute resolution authorized under this subchapter are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.

§ 573. Neutrals

(a) A neutral may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

(b) A neutral who serves as a conciliator, facilitator, or a mediator serves at the will of the parties.

(c) The President shall designate an agency or designate or establish an interagency committee to facilitate and encourage agency use of dispute resolution under this subchapter. Such agency or interagency committee, in consultation with other appropriate Federal agencies and professional organizations experienced in matters concerning dispute resolution, shall-

(1) encourage and facilitate agency use of alternative means of dispute resolution; and

(2) develop procedures that permit agencies to obtain the services of neutrals on an expedited basis.

(d) An agency may use the services of one or more employees of other agencies to serve as neutrals in dispute resolution proceedings. The agencies may enter into an interagency agreement that provides for the reimbursement by the user agency or the parties of the full or partial cost of the services of such an employee.

(e) Any agency may enter into a contract with any person for services as a neutral, or for training in connection with alternative means of dispute resolution. The parties in a dispute resolution proceeding shall agree on compensation for the neutral that is fair and reasonable to the Government.

§ 574. Confidentiality

(a) Except as provided in subsections (d) and (e), a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral, unless-

(1) all parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;

(2) the dispute resolution communication has already been made public;

(3) the dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) a court determines that such testimony or disclosure is necessary to-

(A) prevent a manifest injustice;
(B) help establish a violation of law; or
(C) prevent harm to the public health or safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose nay dispute resolution communication unless-

(1) the communication was prepared by the party seeking disclosure;

(2) all parties to the dispute resolution proceeding consent in writing;

(3) the dispute resolution communication has already been made public;

(4) the dispute resolution communication is required by statute to be made public;

(5) a court determines that such testimony or disclosure is necessary to-

(A) prevent a manifest injustice;
(B) help establish a violation of law; or
(C) prevent harm to the public health and safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communication will remain confidential;

(6) the dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution communication or to the enforcement of such an agreement or award; or

(7) except for dispute resolution communications generated by the neutral, the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

(c) Any dispute resolution communication that is disclosed in violation of subsection (a) or (b), shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d) (1) The parties may agree to alternative confidential procedures for disclosures by a neutral. Upon such agreement, the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

(2) To qualify for the exemption established under subsection (j), an alternative confidential procedure under this subsection may not provide for less disclosure than the confidential procedures otherwise provided under this section.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

(f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Subsections (a) and (b) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

(i) Subsections (a) and (b) shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such a proceeding so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

(j) A dispute resolution communication which is between a neutral and a party and which may not be disclosed under this section shall also be exempt from disclosure under section 552(b)(3).

MODEL STANDARDS OF CONDUCT FOR MEDIATORS[2]

Introductory Note. The initiative for these standards came from three professional groups: The American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

The purpose of this initiative was to develop a set of standards to serve as a general framework for the practice of mediation. The effort is a step in the development of the field and a tool to assist practitioners in it—a beginning, not an end. The model standards are intended to apply to all types of mediation. It is recognized, however, that in some cases the application of these standards may be affected by laws or contractual agreements.

Preface. The model standards of conduct for mediators are intended to perform three major functions: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes. The standards draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice. They are offered in the hope that they will serve an educational function and provide assistance to individuals, organizations, and institutions involved in mediation.

I. Self-Determination: A Mediator shall Recognize that Mediation is Based on the Principle of Self-Determination by the Parties.

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

COMMENTS:

- The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.
- A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

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[2] The Model Standards of Conduct for Mediators were prepared from 1992 through 1994 by a joint committee composed of two delegates from the American Arbitration Association, John D. Feerick, Chair, and David Botwinik, two from the American Bar Association, James Alfini and Nancy Rogers, and two from the Society of Professionals in Dispute Resolution, Susan Dearborn and Lemoine Pierce. The Model Standards have been approved by the American Arbitration Association, the Litigation Section and the Dispute Resolution Section of the American Bar Association, and the Society of Professionals in Dispute Resolution.

Reporters: Bryant Garth and Kimberlee K. Kovach Staff Project Director: Frederick E. Woods

The views set out in this publication have not been considered by the American Bar Association House of Delegates and do not constitute the policy of the American Bar Association.

II. Impartiality: A Mediator shall Conduct the Mediation in an Impartial Manner.

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

COMMENTS:

- A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator.
- When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that mediators serve impartially.
- A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

III. Conflicts of Interest: A Mediator shall Disclose all Actual and Potential Conflicts of Interest Reasonably Known to the Mediator. After Disclosure, the Mediator shall Decline to Mediate unless all Parties Choose to Retain the Mediator. The Need to Protect Against Conflicts of Interest also Governs Conduct that Occurs During and After the Mediation.

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.

COMMENTS:

- A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations which maintain rosters of qualified professionals.
- Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should never influence the mediator to coerce parties to settle.

IV. Competence: A Mediator shall Mediate Only When the Mediator has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

COMMENTS:

- Mediators should have information available for the parties regarding their relevant training, education and experience.
- The requirements for appearing on the list of mediators must be made public and available to interested persons.
- When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

V. Confidentiality: A Mediator shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality.

The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy.

COMMENTS:

- The parties may make their own rules with respect to confidentiality, or other accepted practice of an individual mediator or institution may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.
- If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.
- In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.
- Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.
- Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access

to the statistical data and, with the permission of the parties, to individual case files, observations of live mediations, and interviews with participants.

VI. Quality of the Process: A Mediator shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

COMMENTS:

- A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.
- Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.
- The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process.
- The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should, therefore, refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other processes.
- A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial.
- A mediator shall withdraw from a mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.
- Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

VII. Advertising and Solicitation: A Mediator shall be Truthful in Advertising and Solicitation for Mediation

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

COMMENTS:

- It is imperative that communication with the public educate and instill confidence in the process.
- In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

VIII. Fees: A Mediator shall fully Disclose and Explain the Basis of Compensation, Fees, and Charges to the Parties.

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable, considering among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

COMMENTS:

- A mediator who withdraws from a mediation should return any unearned fee to the parties.
- A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
- Co-mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees.
- A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

IX. Obligations to the Mediation Process: Mediators have a Duty to Improve the Practice of Mediation.

COMMENT:

- Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

Copies of the Model Standards of Conduct for Mediators are available from the offices of the participating organizations. The addresses are listed below.

American Bar Association
Section on Dispute Resolution
740-15th Street Northwest
Washington, DC 20005-1009

Society of Professionals in Dispute Resolution
815-15th Street Northwest
Washington, DC 20005

Sharing Neutrals

Standards of Practice

Mediator Agreement

I have read the Sharing Neutrals Mediator Qualifications and Standards of Practice dated January 7, 2000. I agree to uphold the Standards of Practice. In addition, I have read and understand the confidentiality provisions of the Alternative Dispute Resolution Act of 1996.

I pledge to uphold these ethical principles as a Sharing Neutrals mediator.

_____
Signature

_____
Name (please print)

_____
Date

Please forward original to the DOCR EEO Mediation Coordinator. Thank you.

Department of Transportation
1200 New Jersey Avenue, S.E.
S-34, Suite W78-316
ATTN: Ms. Tami Wright
Washington, DC 20590