

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

March 23, 2000

SECRETARY'S MEMORANDUM 4710-1

USDA ALTERNATIVE DISPUTE RESOLUTION POLICY

1 PURPOSE

This Memorandum supersedes the Conflict Management Policy Statement (Secretary's Memorandum 4090-2) issued on December 21, 1998, and establishes the Department of Agriculture's (USDA) policy on the use of Alternative Dispute Resolution (ADR) to resolve workplace and program disputes within USDA. This Memorandum will be supplemented by a Departmental Regulation which will amplify these requirements.

2 AUTHORITY

The following authorities, among others, authorize this Memorandum: Administrative Dispute Resolution Act of 1996; Negotiated Rulemaking Act of 1996; Agricultural Credit Act of 1987, as amended by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (1994 Act); Equal Employment Opportunity Commission (EEOC) regulations on federal sector equal employment opportunity (EEO) complaint processing, 29 C.F.R. 1614; Executive Order 12871 on labor-management partnerships; and Contract Disputes Act of 1978, as amended.

3 BACKGROUND

ADR includes an array of techniques used to achieve consensual resolution of disputes, generally with the assistance of a neutral third party ("neutral"). Some ADR techniques are mediation, facilitation, neutral evaluation, conciliation, ombudsman, arbitration, fact finding, mini-trials, and negotiated rulemaking. The use of ADR can benefit USDA, its customers, and employees. These benefits include achieving effective and mutually satisfactory resolutions of disputes; decreasing time, cost, and other resources expended in resolving disputes; fostering a culture of respect and trust between USDA and its customers and employees; and increasing customer satisfaction and employee morale.

#### 4 POLICY

##### a Workplace Disputes

- (1) ADR -- including, at a minimum, mediation -- shall be available to all employees for the early resolution of workplace disputes, during the period before the filing of an informal EEO complaint or grievance.
- (2) Consistent with EEOC regulations, ADR shall also be offered to employees within both the informal (pre-complaint) and formal stages of the EEO complaint system.
- (3) The use of ADR within the administrative and negotiated grievance systems is encouraged.
- (4) All USDA employees are strongly encouraged to use mediation or other ADR processes to resolve workplace conflict at the earliest stage possible.
- (5) Whenever the use of ADR offers a reasonable opportunity for resolving a conflict and an employee requests their participation, USDA managerial and supervisory employees are expected to participate in mediation or other ADR processes.

##### b Program Disputes

- (1) USDA shall use ADR as a tool to prevent or minimize escalation of disputes with its customers, contractors, and other non-USDA individuals or entities, and to resolve such disputes at the earliest possible stage.
- (2) In States that have a USDA-certified State Agricultural Mediation Program, USDA agencies shall offer mediation to customers to whom they issue an adverse decision relating to one or more of the following program issues, in accordance with sections 275 and 282 of the 1994 Act:
  - (a) agricultural loans;
  - (b) wetlands determinations;
  - (c) compliance with farm programs, including conservation programs;
  - (d) agricultural credit;
  - (e) rural water loans;

- (f) grazing on National Forest System lands;
- (g) pesticides;
- (h) rural housing loans;
- (i) rural business loans;
- (j) crop insurance; and
- (k) other issues the Secretary may subsequently consider appropriate.

If the customer chooses to mediate, USDA agencies shall participate in good faith.

- (3) In States that do not have a USDA-certified State Agricultural Mediation Program, USDA agencies shall advise all customers to whom they issue an adverse decision relating to the program issues identified in b (2) of this Section that mediation may be an option. If the customer expresses interest in mediation, the agency shall use its best efforts to participate in good faith mediation, where appropriate.
- (4) USDA-certified State Agricultural Mediation Programs are authorized to mediate any dispute relating to the issues identified in b (2) of this Section. In States that do not have USDA-certified State Agricultural Mediation Programs, the services of any qualified mediators may be retained to mediate such disputes.

c General

- (1) USDA employees, especially supervisors and managers, will be trained in conflict management skills.
- (2) The use of ADR shall not adversely affect the rights of individuals to seek resolution of their issues through the established complaint, grievance, and appeal systems.
- (3) ADR may not be appropriate, and need not be offered, for every dispute.
- (4) All mediators and other ADR neutrals shall meet standards established by USDA.
- (5) No USDA employee shall commit, authorize, or condone any act of retaliation against any USDA employee or customer because of his or her pursuit of or participation in an ADR process.

## 5 ROLES AND RESPONSIBILITIES

## a Subcabinet Officials and Agency Administrators are responsible for:

- (1) Implementing this Policy and guidance and policy issued by the Conflict Prevention and Resolution Center (Center), including the Guidance issued to Agency Administrators on March 18, 1999.
- (2) Ensuring that all their employees are aware of, have access to, and are encouraged to use ADR programs and services before the filing of an informal EEO complaint or grievance, and during the informal stage of the EEO complaint process.
- (3) Developing guidance for the appropriate use of ADR in program disputes with USDA customers and other non-USDA individuals or entities.
- (4) Offering mediation to customers to whom they issue an adverse decision relating to one or more of the program issues listed in 4 b(2) of this policy, in accordance with sections 275 and 282 of the 1994 Act.
- (5) Complying with evaluation guidelines established by USDA relating to ADR programs and ADR neutrals.
- (6) Submitting quarterly and annual ADR program reports to the Center.

## b The Assistant Secretary for Administration, through the Director of the Center, is responsible for:

- (1) Issuing Department-wide policy, regulations, and guidance on the appropriate use of ADR, the design of ADR systems, and the evaluation of ADR programs.
- (2) Developing and issuing standards for qualifications, selection, and evaluation of mediators and other ADR neutrals utilized by USDA.
- (3) Coordinating ADR activities throughout USDA.
- (4) Monitoring Agency ADR programs and reporting at least annually to the Secretary on USDA's ADR activities.

- (5) And also through the Director of the Office of Civil Rights, providing ADR services to employees during the EEO complaint process.

c The General Counsel is responsible for:

- (1) Developing guidance for the use of ADR in administrative cases and other disputes handled by Office of the General Counsel (OGC) attorneys.
- (2) Ensuring that all OGC attorneys receive training in negotiation skills and awareness of ADR techniques.
- (3) Working with the Department of Justice attorneys and the Center in recommending and using ADR in appropriate administrative and litigation matters.

6 TERMINATION

This memorandum shall remain in effect for one year from the date of issuance, or until this policy is revised, canceled, or incorporated into a permanent USDA regulation.



SECRETARY OF AGRICULTURE

