

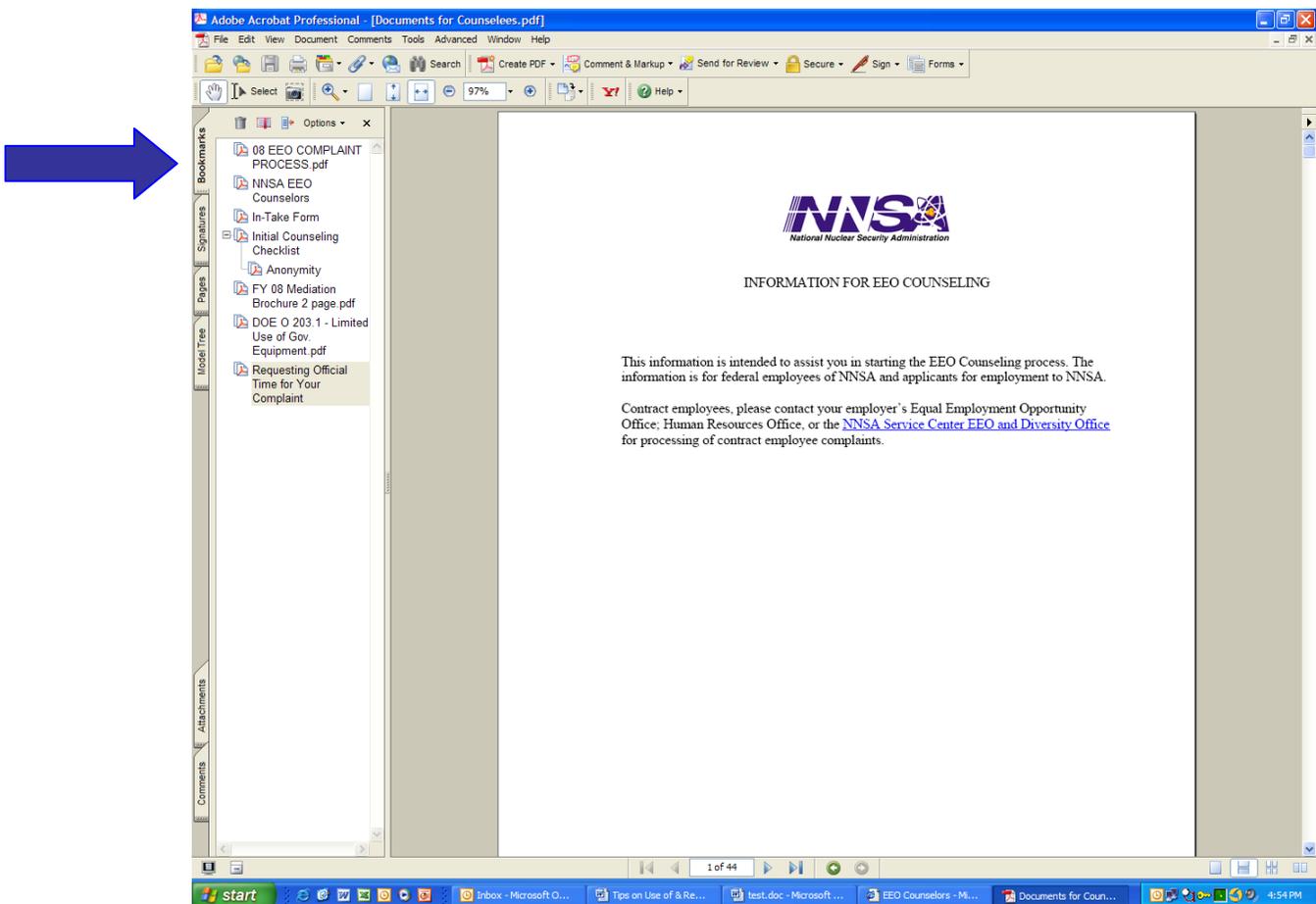


## INFORMATION FOR EEO COUNSELING

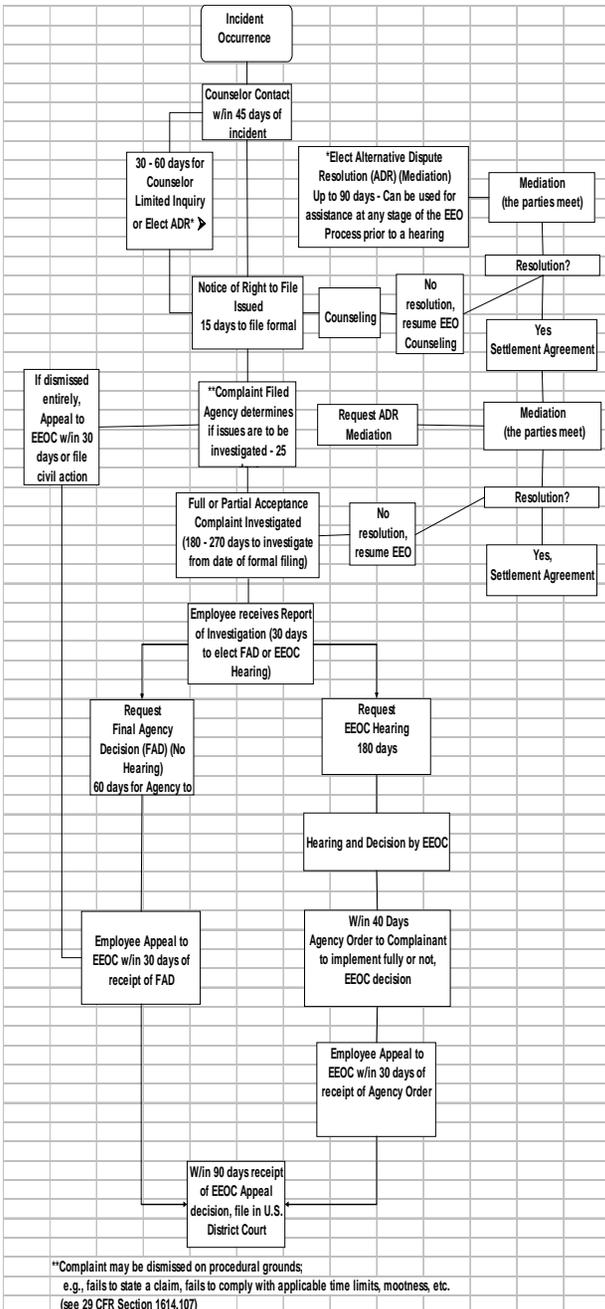
This information is intended to assist you in starting the EEO Counseling process. The information is for federal employees of NNSA and applicants for employment to NNSA.

Contract employees, please contact your employer's Equal Employment Opportunity Office; Human Resources Office, or the [NNSA Service Center EEO and Diversity Office](#) for processing of contract employee complaints.

Click on the "Bookmark" view to quickly tab to the documents you want to review:



# EEO PROCESS



\*Complaint may be dismissed on procedural grounds:  
e.g., fails to state a claim, fails to comply with applicable time limits, mootness, etc.  
(see 29 CFR Section 1614.107)

# EEO Policy

The Department of Energy does not discriminate on the basis of age, color, disability (physical or mental), national origin, race, religion, reprisal, sex (including sexual harassment), sexual orientation, or any other non-merit factor. We are committed to equal employment opportunity principles and practices in all of our management decisions and personnel practices.

The Department is committed to providing equal employment opportunity; eliminating discrimination in employment; and maintaining an environment that is free from any form of prohibited discrimination. The Department will provide a prompt, fair and impartial review, and adjudication of any allegation of discrimination.

*For additional information, contact:*

NNSA Service Center  
EEO & Diversity Office  
P.O. Box 5400  
Albuquerque, N.M. 87185  
Phone: (505) 845-5517  
Toll Free: (800) 825-5256  
(enter 845-5517 at voice prompt)  
TTY: Contact NM Relay at (800) 659-8331  
Fax: (505) 845-4963

*EEO And Diversity  
Collaborating For Mission Success*

# EEO & Diversity Office

# EEO Complaint Process

## EEO Complaint Process

An NNSA employee or applicant for Federal employment may institute an EEO complaint if that employee or applicant believes that he/she has been discriminated against based on one or more of these factors:

- AGE
- COLOR
- DISABILITY (PHYSICAL OR MENTAL)
- NATIONAL ORIGIN
- RACE
- RELIGION
- REPRISAL
- SEX (INCLUDING SEXUAL HARASSMENT)
- SEXUAL ORIENTATION\*

### Step One — Informal Complaint

If you believe that you have been the victim of discrimination in your work or through the employment process, you must contact an EEO counselor within **45 calendar days** of the occurrence of the alleged discrimination. A list of counselors is available at the EEO and Diversity Programs website <http://www.doeal.gov/eoo/counselors.html>

At the initial counseling session, the complainant must elect either traditional EEO Counseling or Mediation. If the employee elects Mediation, the election must be in writing. If the employee elects Mediation, the EEO Counselor will complete the intake functions of counseling which is obtaining the information needed to determine the basis(es), claim(s), and timeliness. If the dispute is resolved during the Mediation, it will be in writing (Settlement Agreement).

The EEO office will retain a copy of the Settlement Agreement and notify the EEO Counselor that an agreement has been reached.

If the EEO Complaint is not resolved within the 90 calendar day period authorized for Mediation, EEO will notify the EEO Counselor and the Counselor will issue the Notice of Right to File a Discrimination Complaint (Final Interview Letter) to the employee, and the EEO process will continue.

### Step Two — Formal Complaint

After completing the informal process, you may decide to file a formal complaint. You must file your complaint within **15 calendar days** of your receipt of the Notice of Final Interview. You may send your complaint to one of the individuals named in the Notice of Final Interview.

Your complaint must be specific, and limited only to those matters that you previously discussed with the EEO Counselor. You will receive written acknowledgment of receipt of your complaint. It will inform you of the date that your complaint was filed. This date will be used for calculating the processing times relevant to the formal process.

If your complaint is accepted for processing, an impartial investigation will be ordered. The NNSA Service Center will insure that it is a thorough and fair investigation and is completed within **180 days** from the date you filed your formal complaint.

After completing the investigation, the investigator submits a report to the Service Center. The Service Center furnishes a copy to the report to the complainant.

Within **30 days** of your receipt of these materials, you may request either an EEOC hearing or an immediate final agency decision from the Department. If you request a hearing, the EEOC's Administrative Judge will issue the final decision.

If you fail to respond or request an immediate final decision, the Department will issue a decision based on its review of the investigative report and complaint file. The Department will issue its decision within **60 days** of your request.

If you request a hearing from the EEOC, an Administrative Judge will conduct a hearing and issue a decision on your complaint. The Judge must complete this process within **180 days** from receipt of the agency's file.

The Department, within **40 days** of its receipt of the Administrative Judge's decision, must issue its final order. The order must state whether or not the Department will fully implement the decision. If the order states that the Department will not, the Department must file an appeal with EEOC at the same time it issues its final order. If the Department does not take any action, the Judge's findings and any ordered relief become the final decision.

If you requested the Department to issue a final decision without a hearing, you may appeal the Department's decision to the EEOC within **30 days** of receipt. You may file a civil action in U. S. District Court within **90 days** of your receipt of the final decision.

**National Nuclear Security Administration  
Service Center  
EEO & Diversity Office Staff  
Bldg. 384, 2<sup>nd</sup> Floor, North End**

**Yolanda Girón**

*EEO & Diversity Program Manager* (505) 845-4243

**Debra Parrish**

*EEO & Diversity Deputy Manager* (505) 845-6021

**Karen R. Harger**

*EEO & Diversity Specialist* (505) 845-6668

**Patty Padilla**

*EEO & Diversity Specialist* (505) 845-4976

**Denise Ramos**

*EEO & Diversity Specialist* (505) 845-5920

**Mae Harris**

*EEO & Diversity Assistant* (505) 845-5517

**Suzanne Sandoval**

*EEO & Diversity Specialist Student Trainee*  
(505) 845-6385

1-800-825-5256 enter 845-5517 at the prompt/TTY:

<http://www.doeal.gov/eo/>

*EEO and Diversity  
Collaborating for Mission Success*

October 2008, Version 1

*National Nuclear Security Administration  
Service Center*

**EEO & Diversity Office**

*Equal  
Employment  
Opportunity  
Counselors*



*The National Nuclear Security Administration (NNSA) Service Center is fully committed to equal employment opportunity and the implementation of a strong affirmative employment program.*

*It is the policy of the NNSA Service Center to provide equal opportunity in employment for all persons in its work force or being recruited for its work force and to prohibit discrimination in all aspects of its personnel policies, program practices and operations, and in all its working conditions and relationships with employees and applicants for employment.*

### **The Role of the EEO Counselor**

Serves as liaison between the employee and management in the informal complaint processing stage. The counselor is neither an advocate of management nor of the employee.

- Meets with complainant and handles informal alleged incident or personnel action.
- Advises employees of EEO rights under the law.
- Seeks out facts relevant to complaints to resolve issues.
- Reviews agency records to secure facts.
- Interviews parties to the complaint.
- Attempts a common ground resolution of the issue after talking with employees, their representatives, and management officials.

## **EEO Counselors National Nuclear Security Administration**

### **Service Center Counselors**

Yolanda Bolivar, OFS	(505) 845-5117
Yolanda Shannon, OFFM	(505) 845-4786
Pecolia Sharts-Meadows, OFFM	(505) 845-4128
Kathy Sumbry-Wilkins, OFS	(505) 845-6608
Edna White, OTS	(505) 845-4074
Sadie Wowianko, MOSD	(505) 845-4554

### **Site Office Counselors**

Connie Bayless, Y-12	(865) 241-3917
Edwin R. Deshong, III, Savannah River	(803) 208-0712
Nathan Gorn, Kansas City	(816) 997-4197
Richard Green, Y-12	(865) 576-4098
Laura Haverlock, Nevada	(702) 295-2339
Anita Martin, Livermore	(925) 422-1141
David M. Rast, Sandia	(505) 845-5349
Patricia Walsh, Pantex	(806) 477-3234
Keith Warwick, Livermore	(925) 423-5884
Bonni Wethington, Los Alamos	(505) 667-4667

### **Agent Operations Counselors**

John Carr, Amarillo FAF, CC	(806) 477-3022
Frank Fischer, NA-15	(505) 845-6952
Rico Galdean, Amarillo, FAF, CC	(806) 477-3010
Scott Gilbert, Oak Ridge, FAF, EC	(865) 207-8448
Jose Martinez, Albuquerque, NA-15	(505) 845-6612
Melinda Proctor, Amarillo FAF, CC	(806) 477-3010
Robert Parsons, Amarillo, FAF, CC	(806) 477-3010

## **In-Take Form**

The federal complaints process requires that 45 days from the date of the incident which you believe was discriminatory, you must contact an EEO Counselor. Refer to the EEO Counselor brochure for a list of current NNSA EEO Counselor's. You may contact any counselor listed on the brochure or at the Service Center EEO and Diversity Office [website](#).

The Counselor may not be able to meet with you immediately, however, you can complete the In-Take form on the form that follows this page and bring it with you to your initial meeting; mail, fax or email the In-Take form to the Counselor in the event your counseling will be conducted by telephone.

## EEO Pre-Complaint Counseling Intake Form

**Instructions:** This form is optional. If you cannot conduct the initial interview when first contacted, use as reference to document and schedule the first interview.

1. Today's Date:
2. Complainant's/Agent's Full Name/or desire to remain anonymous:
3. Complainant's Phone Number (include area code):
4. Office complainant believes discriminated against him/her, if other than #4:
5. Complainant: Job Title:  
Series:  
Grade:

Basis(es): Check and specify)					
Race (State Race):		Religion (State Religion):			
Color (State Color)		National Origin (state national origin):			
Sex    ( ) Female    ( ) Male		Disability    ( ) Mental    ( ) Physical			
Age (Give date of Birth):		Reprisal - State previous EEO-related activity and date(s):			
Sexual Orientation (prohibited by DOE Policy)					
Issue(s) Alleged: Check appropriate box(es)					
<input type="checkbox"/>	Non-selection	<input type="checkbox"/>	Awards	<input type="checkbox"/>	Retirement
<input type="checkbox"/>	Detail	<input type="checkbox"/>	Time and Attendance	<input type="checkbox"/>	Suspension
<input type="checkbox"/>	Reassignment	<input type="checkbox"/>	Separation/Termination	<input type="checkbox"/>	Duty Hours
<input type="checkbox"/>	Reprimand	<input type="checkbox"/>	Evaluation/Appraisal	<input type="checkbox"/>	Sexual Harassment
<input type="checkbox"/>	Assignment of Duties	<input type="checkbox"/>	Work Conditions	<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Training	<input type="checkbox"/>	Harassment	<input type="checkbox"/>	Other (Specify)
<input type="checkbox"/>	Promotion	<input type="checkbox"/>	Examination/Test	<input type="checkbox"/>	Reprisal
<input type="checkbox"/>	Pay - including overtime	<input type="checkbox"/>	Conversion to Full Time/Career Conditional	<input type="checkbox"/>	Reinstatement

Date set for initial full interview:

Initial full interview will be by phone: ( ) face-to-face: ( )

## **Insert Initial Counseling Checklist**

When your counselor sets up your first complete interview, they are required by the Equal Employment Opportunity Commission to cover the information on the following pages.

Please sign a copy of the “Initial Counseling Checklist” and return it to your Counselor. Your Counselor will also sign a “Initial Counseling Checklist” and provide a copy to you for your file.

## NNSA EEO Counselor Checklist

At the initial counseling session, Counselors must advise individuals in writing of their rights and responsibilities. At a minimum those rights include the following:

### Anonymity

- ❑ You have the right to remain anonymous during the EEO counseling stage. However, you must be aware that a request to remain anonymous may limit the counselor's ability to resolve the complaint informally. Please complete page 7 of this document to make your election.
- ❑ If you file a formal complaint, you will no longer be anonymous. 29 CFR §1614.106 (c).

### Right to Representation

- ❑ The right to representation throughout the complaint process including the counseling stage. The EEO Counselor should make clear to the aggrieved person that the EEO counselor is not an advocate for either the aggrieved person or the agency, but acts strictly as a neutral in the EEO process.
- ❑ Attorney fees can only be paid for services performed after the filing of a written complaint and after the complainant has notified the agency that he or she is represented by an attorney, except that fees are allowable for an attorney's time in reviewing the case and determining whether or not to represent the complainant.

### Process Selection

- ❑ The right to choose between the agency's Alternative Dispute Resolution (ADR) process or EEO counseling, where the agency agrees to offer ADR in the particular case, and information about each procedure.
  - ❑ Provide complainant a copy of the NNSA Mediation Brochure, which includes the formal Mediation Election Form.
- ❑ Where the aggrieved person agrees to participate in an established ADR program, the written notice terminating the counseling period will be issued upon completion of the dispute resolution process or **within ninety (90) calendar days** of the first contact with the EEO Counselor, whichever is earlier.

- The possible election requirement between a negotiated grievance procedure and the EEO complaint procedure. See Chapter 4, Section III of [EEOC Management Directive 110](http://www.eeoc.gov/federal/md110/chapter4.html) <http://www.eeoc.gov/federal/md110/chapter4.html> This is for those units covered by a **negotiated** grievance procedure.
- **Administrative Grievance process:** It is the Service Center EEO and Diversity Programs office policy where an employee has elected to pursue a grievance, to hold the EEO counseling in abeyance pending the outcome of the grievance. The abeyance period cannot exceed the 30-60 days (with a written extension in place) required to complete EEO pre-complaint counseling. Where an employee elects EEO first and then tries to file a grievance, the Human Capital Management group will not accept the grievance.
- The election requirement in the event that the claim at issue is appealable to the Merit Systems Protection Board (MSPB), *i.e.*, the dispute is a mixed case (discrimination based on Title VII basis and eligible to use MSPB, or non-discrimination claims within MSPB jurisdiction). Those eligible to use the MSPB include (1) competitive service employees not serving a probationary or trial period under an initial appointment; (2) career appointees to the Senior Executive Service; (3) non-competitive service veterans preference eligible employees with one or more years of current continuous service; and (4) non-preference eligible excepted service employees who have completed their probationary period or with two or more years of current continuous service. MSPB jurisdiction includes (1) reduction in grade or removal for unacceptable performance; (2) removal, reduction in grade or pay, suspension for more than fourteen (14) days, or furlough for thirty (30) days or less for cause that will promote the efficiency of the service; (3) separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction-in-force; (4) reduction-in-force action affecting a career appointee in the Senior Executive Service; (5) reconsideration decision sustaining a negative determination of competence for a general schedule employee; and (6) disqualification of an employee or applicant because of a suitability determination. See Appendix I for a more complete listing of appealable actions. See Chapter 4, Section II of [EEOC Management Directive 110](http://www.eeoc.gov/federal/md110/chapter4.html) <http://www.eeoc.gov/federal/md110/chapter4.html> for a complete reference.

### **Right to File a Complaint of Discrimination**

- Where counseling is selected, the right to receive in writing within 30 calendar days of the first counseling contact (unless the aggrieved person agrees in writing to an extension, which may not exceed an additional sixty(60) calendar days) a notice terminating counseling and informing the aggrieved of:

- (1) the right to file a formal individual or class complaint within 15 calendar days of receipt of the notice,
  - (2) the appropriate official with whom to file a formal complaint (EEO/Diversity Program Manager), and
  - (3) the complainant's duty to immediately inform the agency if the complainant retains counsel or a representative.
- The requirement that the aggrieved person file a complaint within 15 calendar days of receipt of the Counselor's notice of right to file a formal complaint in the event s/he wishes to file a formal complaint at the conclusion of counseling or ADR.

### **Class Complaints**

- The class complaint procedures and the responsibilities of a class agent, if the aggrieved person informs the EEO Counselor that s/he wishes to file a class complaint. See Chapter 8, Section II of [EEOC Management Directive 110](http://www.eeoc.gov/federal/md110/chapter8.html) <http://www.eeoc.gov/federal/md110/chapter8.html>

### **Age Complaints**

- For age complainants only. As an alternative to filing a complaint under 29 C.F.R. Part 1614, an aggrieved individual may file a civil action in a United States district court under the Age Discrimination in Employment Act of 1967, as amended, against the head of an alleged discriminating agency. You must give the EEOC not less than 30 days notice of the intent to file such an action. The head of the Department of Energy is the Secretary of Energy. Such notice must be filed in writing or by personal delivery or facsimile with the EEOC, P.O. Box 19848, Washington, DC 20036, within 180 days of the occurrence of the alleged unlawful practice.

Compensatory damages are not available under the Age Discrimination in Employment Act (ADEA), 29 USC §626(b). The 1991 Civil Rights Act amendments did not apply to the ADEA. The text of the ADEA explicitly provides for back pay, unpaid overtime compensation, and liquidated damages but not compensatory and punitive damages.

Complainants prevailing on claims under the Age Discrimination in Employment Act of 1967, as amended, and the Equal Pay Act of 1963, as amended, are not entitled to attorney's fees at the administrative level.

## **Reasonable Accommodation**

- If complainant believes reasonable accommodation is the issue, a summary of complainants' rights and responsibilities may be viewed by accessing the DOE Human Resources web page at <http://worklifecenter.doe.gov/docs/DisabilityDocs/DOE%20Reasonable%20Accommodation%20Procedures.doc>. For employees located at the NNSA Service Center, procedures specific to the Service Center are located on the [EEO and Diversity web page](#) at [www.doeal.gov/eeo/docs/requestreasonableaccom.pdf](http://www.doeal.gov/eeo/docs/requestreasonableaccom.pdf)

## **Equal Pay Act of 1963**

The right to go directly to a court of competent jurisdiction on claims of sex-based wage discrimination under the Equal Pay Act even though such claims are also cognizable under Title VII. A complainant may allege a violation of both Title VII and the Equal Pay Act and may have the complaint processed through the administrative process or alternatively file a suit in a United States district court. Complainants prevailing on claims under the Age Discrimination in Employment Act of 1967, as amended, and the Equal Pay Act of 1963, as amended, are not entitled to attorney's fees at the administrative level.<sup>1</sup>

## **Like or Related Issues**

- That only those claims raised at the counseling stage or claims that are like or related to those that were raised may be the subject of a formal complaint, and how to amend a complaint after it has been filed: Send written notice to the EEO/Diversity Program Manager, EEO and Diversity Office, P.O. Box 5400, Albuquerque, NM 87185.

## **Consolidation of Complaints**

- That the agency must consolidate two or more complaints filed by the same complainant after appropriate notice to the complainant. The EEO Counselor should advise the complainant that when a complaint has been consolidated with one or more earlier complaints, the agency shall complete its investigation within the earlier of 180 days after the filing of the last complaint

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<sup>1</sup> Sex-based claims of wage discrimination may also be raised under Title VII; individuals so aggrieved may thus claim violations of both statutes simultaneously. Equal Pay Act complaints may be processed administratively under Part 1614. In the alternative, a complainant in the EPA claim may go directly to a court of competent jurisdiction.

or 360 days of the filing of the first complaint and that the complainant may request a hearing before an EEOC Administrative Judge at any time after 180 days of the filing of the first complaint.

### **Right to Request a Hearing or Final Agency Decision**

- The right to request a hearing before an EEOC Administrative Judge, except in a mixed case, after 180 calendar days from the filing of a formal complaint or after completion of the investigation, whichever comes first.
  
- The NNSA Service Center EEO/Diversity Office will provide, in writing, the identity and address of the EEOC field office to which the complainant must request a hearing. Send a copy of the request for a hearing to the EEO/Diversity Program Manager, EEO and Diversity Office, P.O. Box 5400, Albuquerque, NM 87185.
  
- The EEO Counselor should advise the aggrieved person of his/her duty to certify to the Administrative Judge that s/he provided the agency with a copy of a request for a hearing. See also Chapter 7, Section I, of [EEOC Management Directive 110](http://www.eeoc.gov/federal/md110/chapter7.html)  
<http://www.eeoc.gov/federal/md110/chapter7.html>
  
- The right to an immediate final decision after an investigation by the agency.
  
- The right to go to U.S. District Court 180 calendar days after filing a formal complaint or 180 days after filing an appeal.
  
- The duty to mitigate damages, e.g., that interim earnings or amounts that could be earned by the individual with reasonable diligence generally must be deducted from an award of back pay.

### **Agency Offer of Final Resolution**

- That rejection of an agency's offer of resolution made may result in the limitation of the agency's payment of attorney's fees or costs. See Chapter 6, Section XIII, of [EEOC Management Directive 110](http://www.eeoc.gov/federal/md110/chapter6.html)  
<http://www.eeoc.gov/federal/md110/chapter6.html>

### Current Address

- The duty to keep the agency and EEOC informed of his/her current mailing address and to serve copies of appeal papers on the agency.

### Time Frames

- The time frames in the complaint process: Complainant has been provided with a copy of the EEO/Diversity Brochure. Additional copies are available on the [EEO/Diversity web page](http://www.doeal.gov/eeo/docs/ComplaintProcess.pdf) (<http://www.doeal.gov/eeo/docs/ComplaintProcess.pdf>)

### Limited Use of Government Property

- Complainant is advised about the limited use of government property in the processing of their complaint. Detailed information regarding the use of government equipment may be found by accessing the [DOE Directive web site](http://www.directives.doe.gov/pdfs/doe/doetext/neword/203/o2031.pdf) at <http://www.directives.doe.gov/pdfs/doe/doetext/neword/203/o2031.pdf> and also at the Equal Employment Opportunity Commission [web site](http://www.eeoc.gov/federal/md110/chapter6.html) on MD-110, Chapter 6 (see Official Time) <http://www.eeoc.gov/federal/md110/chapter6.html>

### Use of Official Time

- In [29 CFR Section 1614.605](#), the CFR, while allowing a reasonable amount of official time to prepare your complaint, specifically excludes change of schedule, overtime pay, and the payment of travel expenses to confer with a specific representative. Further, the [MD-110 Chapter 6, Section VIII C](#) supports a reasonable amount of official time stating, ***the complainant and the agency should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time.*** To request official time to process your EEO Complaint, contact your immediate supervisor.

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- 
- Complainant has been provided a copy of this checklist.

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EEO Counselor's Printed Name, Signature, and Date

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Complainant's Printed Name, Signature, and Date

**DEPARTMENT OF ENERGY  
NNSA INFORMAL EEO COUNSELING**

**Declaration of Anonymity**

**During the Informal Counseling (check appropriate boxes below):**

1.  *I give permission for my name to be used in the inquiry (waiver of anonymity).*
- I request anonymity during counseling.*
2.  *I do not have a representative at this time.*
- I have a representative who is a/an:*

*Attorney*     *Union Official*     *Other:* \_\_\_\_\_  
(specify)

*Their contact information is:*

*Name:* \_\_\_\_\_

*Address:* \_\_\_\_\_

*City, State, Zip Code:* \_\_\_\_\_

*Telephone No.:* \_\_\_\_\_

*Fax No.:* \_\_\_\_\_

*E-Mail Address:* \_\_\_\_\_

**Employees Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_      **Date** \_\_\_\_\_

**EEO Counselor: Attach to Your Counselor's Report**

Although mediation may not result in a written agreement resolving all of the issues, the process still can be useful. Mediation can help to eliminate points in a dispute, and parties generally come away with a better understanding of the issues and options for resolving them.

## IS IT CONFIDENTIAL?

NNSA will ensure that the Mediation Program maintains the highest level of confidentiality. This will include holding the contractor to the highest standards of integrity. Dispute resolution communications are confidential and may not be disclosed by the parties or by a neutral third party unless:

- All parties to the proceeding agree in writing.
- The communication has already been made public.
- The communication is required by statute to be made public.
- A court determines that such testimony or disclosure is necessary to judicial proceedings.
- The communication is prepared by the party seeking disclosure.
- The communication is relevant to determining the existence or meaning of an agreement/award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award.
- The communication is provided to, or is available to, all parties to the dispute resolution proceeding.

## OUR MEDIATOR

Mediation services are contracted with GenQuest, Inc., which was founded in 1995. GenQuest provides training, business management, and administrative and technical support to government agencies, Federal contractors, and private businesses. GenQuest designs customized services for each agency, contractor, or client through its professional evaluation of client needs and the application of business solutions.

Toll-Free: 1-888-246-2460

505-246-2829

Fax: 505-246-0193

[info@genquestinc.com](mailto:info@genquestinc.com)

More complete information on the mediation program is available at the Service Center EEO/Diversity, Mediation website:

<http://www.docal.gov/eo/mediation.html>



NNSA Service Center  
EEO/Diversity Office  
PO Box 5400  
Albuquerque NM 87185  
Phone (505) 845-5517  
Fax (505) 845-4963

*EEO and Diversity Collaborating for  
Mission Success*

October 2007, Issue #03

## NNSA Service Center Mediation Program

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*Conflict Resolution Solutions Now*



**Brought to you by:**

**Service Center  
EEO/Diversity Office**

**Mediate:** *To resolve or settle (differences) by working with all the conflicting parties; to bring about (a settlement, for example) by working with all the conflicting parties.*

## MEDIATION

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Mediation, also known as Alternative Dispute Resolution, is a process where a trained, impartial third party helps two or more parties negotiate to resolve their workplace dispute.

At the NNSA Service Center, mediation is a voluntary, informal process for all parties to attempt to resolve workplace disputes.

### HOW CAN MEDIATION HELP?

Individuals who reach agreement through mediation retain control of the dispute's outcome, and the result is more likely to meet their needs than a decision imposed from the outside. Mediation also gives individuals the opportunity to craft more creative solutions than might be available from an administrative law judge or other outside decision makers. Because those closest to the substance of the problem have designed their own settlement, the parties are far more likely to abide by it.

### MEDIATOR'S ROLE

- Does not decide who is right or wrong, does not act as a judge, does not take sides, and does not place blame.

- Does not condone violence or threats as means for solving problems.
- Works equally with both parties.
- Is trained in the mediation process and various communication techniques.

### WHEN TO USE MEDIATION

Use mediation where:

- Multiple workplace issues have to be resolved.
- There is no need to establish precedent, and there is no single "right" solution that is required.
- Tensions, emotions, or transaction costs are running high.
- Communication between the parties has broken down.
- Time is a major factor.
- Failure to agree does not clearly benefit one or more parties.
- Issues are complex and individual parties have an interest in maintaining confidentiality with respect to key issues.
- The parties want or need to maintain an ongoing working relationship.

### HOW TO GET STARTED

If an employee has an issue that they would like to have mediated, they may contact **GenQuest** at (505) 246-2829 using the following timeframes:

- If you are considering filing an EEO complaint, contact an EEO

Counselor within 45 calendar days of the alleged incident or action. At the initial counseling session, elect either traditional EEO Counseling or Mediation.

- If you are considering filing a grievance, the employee has 15 days to initiate the administrative grievance procedure from the date the event occurred. You will simultaneously contact Brenda Carroll, Human Resources Department, at (505) 845-4850 and GenQuest indicating a desire to mediate your grievance. Note: The EEO and grievance process is held in abeyance during mediation, and the employee may return to either forum if unsuccessful.
- If the conflict is not EEO or grievance based, but still a workplace conflict, contact GenQuest at anytime to initiate the mediation process.

### PHASES OF MEDIATION

**Introductory:** Mediator tries to develop an atmosphere of reasonableness and trust in the mediator. Ground rules are established and agreed to.

**Problem Solving:** Continue to build trust, educate participants about the dispute from the others' perspective, and generate and evaluate possible solutions.

**Closure:** If all parties reach agreement, the mediator may help draft a document spelling out terms.



# **MEDIATION PROGRAM**

## **(ALTERNATIVE DISPUTE RESOLUTION)**

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#### **NNSA SERVICE CENTER MEDIATION PROGRAM PROCESS**

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#### **ELECTION BETWEEN EEO COUNSELING AND MEDIATION**

AN EMPLOYEE MUST CONTACT THE EEO COUNSELOR WITHIN 45 CALENDAR DAYS FROM THE ALLEGED INCIDENT OR ACTION. AT THE INITIAL COUNSELING SESSION, THE COMPLAINANT MUST ELECT EITHER TRADITIONAL EEO COUNSELING OR MEDIATION.

IF THE EMPLOYEE ELECTS MEDIATION, THE ELECTION MUST BE IN WRITING ON THE ENCLOSED FORM (END OF THIS BOOKLET). THE FORM WILL BE ATTACHED TO THE EEO COUNSELOR'S REPORT IF THE EMPLOYEE'S COMPLAINT IS NOT RESOLVED DURING MEDIATION AND THE EMPLOYEE ELECTS TO FILE A FORMAL COMPLAINT WITHIN THE APPROPRIATE TIME FRAMES. THE EMPLOYEE WILL NOTIFY GENQUEST AND MEDIATION BEGINS. THE MEDIATION PROGRAM IS NOW DESIGNED AROUND THE TIME FRAMES OF THE EEO REGULATIONS. SECTION 1614.105(F) PROVIDES THAT WHERE AN AGENCY HAS AN ESTABLISHED ADR PROCEDURE AND THE COMPLAINANT AGREES TO PARTICIPATE IN THE PROCEDURE, THE PRE-COMPLAINT PROCESSING PERIOD SHALL BE 90 CALENDAR DAYS.

ONCE THE EMPLOYEE ELECTS MEDIATION, THE EEO COUNSELOR WILL COMPLETE THE INTAKE FUNCTIONS OF COUNSELING WHICH IS OBTAINING THE INFORMATION NEEDED TO DETERMINE THE BASIS(ES), CLAIM(S), AND

TIMELINESS. IF THE DISPUTE IS RESOLVED DURING THE MEDIATION, IT WILL BE IN WRITING (SETTLEMENT AGREEMENT). ALL APPROPRIATE PARTIES WILL SIGN THE AGREEMENT. THE OEO WILL RETAIN A COPY OF THE SETTLEMENT AGREEMENT AND NOTIFY THE EEO COUNSELOR THAT AN AGREEMENT HAS BEEN REACHED.

IF THE EEO COMPLAINT IS NOT RESOLVED WITHIN THE 90 CALENDAR DAY PERIOD AUTHORIZED FOR MEDIATION, NNSA SC'S MEDIATION COORDINATOR (OEO) WILL BE NOTIFIED BY GENQUEST. THE OEO WILL NOTIFY THE EEO COUNSELOR AND THE COUNSELOR WILL ISSUE THE NOTICE OF RIGHT TO FILE A DISCRIMINATION COMPLAINT (FINAL INTERVIEW LETTER) TO THE EMPLOYEE, AND THE EEO PROCESS WILL CONTINUE.

**REPRESENTATION OF THE PARTIES:** AGGRIEVED INDIVIDUALS HAVE THE RIGHT TO REPRESENTATION THROUGHOUT THE COMPLAINT PROCESS, INCLUDING DURING ANY MEDIATION. WHILE THE PURPOSE OF MEDIATION IS TO ALLOW THE PARTIES TO FASHION THEIR OWN RESOLUTION TO A DISPUTE, IT IS IMPORTANT THAT THE MEDIATION PROGRAM PROVIDES ALL PARTIES THE OPPORTUNITY TO BRING A REPRESENTATIVE TO THE MEDIATION IF THEY DESIRE TO DO SO.

**AN ELECTION FORM TO SELECT MEDIATION APPEARS AT THE END OF THIS BOOKLET.**

**FILING A GRIEVANCE**

**OTHER USES FOR THE MEDIATION PROGRAM**

**CONCLUSION**

**RETURN THIS COMPLETED, SIGNED FORM TO YOUR EEO COUNSELOR IF YOUR ISSUES ARE EEO RELATED.**

**EEO COUNSELOR: MAIL OR FAX THE COMPLETED PAGES TO GENQUEST:**

**TOLL-FREE: 1-888-246-2460 • PHONE: 505-246-2829 • FAX: 505-246-0193 E-MAIL: [INFO@GENQUESTINC.COM](mailto:INFO@GENQUESTINC.COM) 1805 RIO GRANDE BLVD. NW • SUITE 2 • ALBUQUERQUE, NM 87104**

**IF YOUR ISSUES ARE NOT EEO RELATED YOU MAY SEND THE REQUEST FOR MEDIATION FORM TO THE EEO AND DIVERSITY PROGRAMS OFFICE, FAX (505) 845-4976 OR TO GENQUEST AT (505) 246-0193.**

To All Employees:

The Equal Employment Opportunity Commission's revised regulations at 29 C.F.R. §1614.102 (b)(2) require agencies to establish or make available an alternative dispute resolution (ADR) program. The ADR program must be available during both the pre-complaint process and the formal complaint process. The National Nuclear Security Administration Service Center has an ADR process known as Mediation.

In May 1994, a formal Mediation Pilot Program was instituted, the first of its kind, in the Department. Because of its success the program became permanent and continues to be used to address issues that may interfere with employee morale, productivity, and work efficiency. People issues are unavoidable in the workplace, especially given the size and diversity of the NNSA work force. We believe the Mediation Program addresses employee issues in a trusting and expeditious way.

The Mediation Program puts high emphasis on ensuring objectivity and confidentiality in a communication process that would strive for "win-win" solutions to disputes. Therefore, we continue to contract out the Mediation Program.

Continued use of the Mediation Program helps us reach our strategic goals and operate within our core values.

## Managing Conflict with Mediation

An employee files a sex discrimination complaint against his/her supervisor.  
A disagreement arises with regard to a personnel policy or procedure.  
A supervisor and employee are having a conflict regarding the work environment.

Frustration, distrust, and anger are rising. Antagonistic positions are taken and summarily rejected. Negotiations break down, or worse, do not even begin due to internal confusion or dissension. Time and energy are diverted from agency priorities and productivity is lost.

These problems are familiar to organizations. One alternative to continued conflict is mediated negotiation or mediation. In mediation the parties resolve the dispute, instead of turning it over to formal court or agency proceedings with the concomitant cost, delay, and loss of control over the result.

### What Is Mediation?

In mediation, a trained, impartial third party helps two or more parties negotiate to resolve their dispute. Mediation emphasizes problem solving, rather than gearing up for protracted adversary proceedings. The mediator works to gain the trust of the disputing parties, has no stake in the outcome, is not a judge (unlike in arbitration or court proceedings), and has no power to make decisions. Mediators often use their persuasion skills to help the parties see negotiation and consensus-building processes and their knowledge of negotiating strategies will allow the parties to reach their respective objectives.

At the NNSA SC, mediation is a voluntary, informal process. **NNSA's managers must be aware that they have a duty to cooperate in an ADR process.** Rules of evidence do not apply. Testimony is not taken. Witnesses are neither sworn nor used to support or defend positions. Interrogatories, depositions, and transcripts are not required. Parties cannot be forced to reach an agreement.

### How Can Mediation Help?

Organizations benefit from mediation in several ways: they save money, they make more efficient use of their resources, and they preserve the integrity of ongoing work relationships. Because individuals who reach agreement through mediation retain control of the dispute's outcome, the result is more likely to meet their needs than would be a decision imposed from the outside. Mediation gives individuals the opportunity to craft more creative solutions than might be available from an administrative law judge or other outside decision makers. Because those closest to the substance of the problem have designed their own settlement, the parties are far more likely to abide by it.

The organization utilizing mediation can take charge of the process of resolving disputes. By planning and carrying out a settlement strategy, you can avoid having a dispute swept up in costly, time-consuming adjudication. Mediation provides a flexible structure to manage, negotiate, weigh technical data, and make decisions which often prevent a conflict from festering into something worse and having to resort to more structured procedures to resolve employee concerns.

True, some people tend to do the opposite. Invoking formal processes for sticky problems may sometimes appear to be the simplest or safest course for employees in some large organizations. It is; however, seldom the most cost-effective way to reach program decisions or resolve specific conflicts.

Also, it may be tempting to pass a dispute on to someone else. It is true that agency managers cannot always effect binding settlements wholly on their own authority. However, a manager can often generate an internal consensus for workable solutions before entering negotiations (perhaps using his or her own mediation skills), keeping superiors apprised as discussions proceed. Sometimes it may be preferable for the manager to delegate the negotiating task, while retaining ratification authority. In any case, an employee can, and should, address these kinds of issues in deciding how to deal with any problem.

## When to Use Mediation

Mediation is an option in any dispute where a negotiated solution is an acceptable outcome and may be especially effective in those situations where:

- ✂ Multiple issues have to be resolved.
- ✂ There is no need to establish precedent and there is no single "right" solution that is required.
- ✂ Tensions, emotions, or transaction costs are running high.
- ✂ Communication between the parties has broken down.
- ✂ Time is a major factor.
- ✂ Failure to agree does not clearly benefit one or more parties.
- ✂ Issues are complex and individual parties have an interest in maintaining confidentiality with respect to key issues.
- ✂ The parties want or need to maintain an ongoing relationship.

Mediation can obtain maximum results when it is used early in the dispute, before the positions of the parties have hardened.

## Phases of the Mediation Process

The mediation process includes several different phases. Generally, there are three: an introductory phase, a problem solving phase, and closure. These may be clear and distinct, but more often they overlap.

✂ **Introductory Phase.** During this phase the mediator tries to develop an atmosphere of reasonableness and to engender the parties' trust in the mediator and in their ability to work together. Ground rules for participation and behavior suggested by the mediator must be agreed to by the parties. These rules may range from simple matters of etiquette (e.g., ensuring that only one person speaks at a time) to, in some

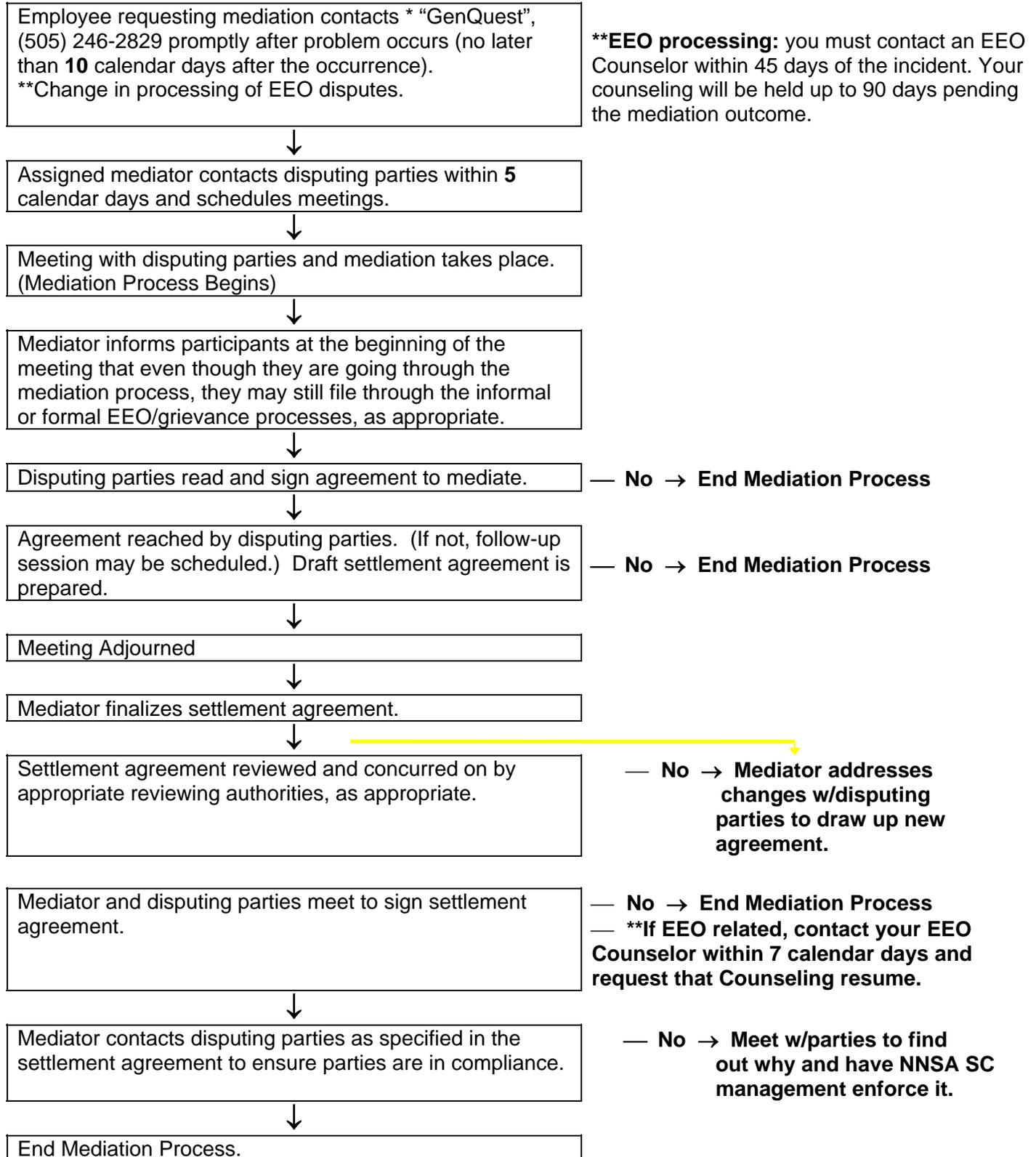
cases, detailed protocols about such matters as the scope, agenda, and order of the negotiation; the use and timing of private meetings; and the way in which the negotiating group will respond to media or other inquiries. This phase often begins with the parties agreeing to a general timetable for the mediation, and it includes a joint session in which the parties explain their views of the case and how they would like to see it resolved. A skilled mediator may use these sessions (and later ones) to allow parties to "let off steam" before moving on to more productive talks.

✂ **Problem Solving.** The primary goals of this phase are to continue to build trust, educate each participant about the dispute from the other party's perspective, and generate and evaluate possible solutions. During this phase, the mediator often explores hypothetical solutions separately with each side, helping the parties generate alternatives without revealing confidential information. He or she will seek to stimulate momentum to settle, build on areas of agreement, narrow differences, and to help parties explore in detail the most promising options.

✂ **Closure.** The primary objective of this phase, as its name implies, is to conclude the mediated negotiation. If all parties reach agreement, the mediator may help them draft a document spelling out its terms. The agreement might include provisions for its enforcement or settling any future related disputes. As needed, these agreements are reviewed and ratified by appropriate officials before being signed.

Even when mediation does not end in a written agreement resolving all of the issues, the process still can be useful. Mediation can help to eliminate points in a dispute, and parties generally come away with a better understanding of the issues and options for resolving them.

## NNSA SERVICE CENTER MEDIATION PROGRAM PROCESS



\*Upon acceptance of a "case", GenQuest shall attempt to mediate towards successful resolution within **15 CALENDAR DAYS** and no later than **90 CALENDAR DAYS** the mediation must be concluded, or the complainant provided their right to file a formal EEO Complaint.\*\* EEO related disputes must be brought to the attention of an EEO Counselor no

later than **45 calendar days** after incident or action. At the initial counseling stage the employee must elect either traditional EEO Counseling or Mediation.

## The Administrative Dispute Resolution Act

Public Law 101-552 [H.R. 2497] (November 15, 1990) established, and Public Law 104-320 [H.R. 4194] (October 19, 1996) re-authorized, the use of alternative means of resolving disputes involving government agencies. EEOC's revised regulations (11/9/99) at 29 C.F.R. § 1614.102(b)(2) require agencies to establish or make available an alternative dispute resolution program.

### Is Mediation Confidential?

Mediation can make it safe for parties to raise sensitive issues and creative ideas, but many of its benefits can be achieved only if communications are confidential.

NNSA will ensure that the Mediation Program maintains the highest level of confidentiality. This will include holding the contractor to the highest standards of integrity. Dispute resolution communications are confidential and may not be disclosed by the parties or by a neutral third party unless:

- ✂ All parties to the dispute resolution proceeding and the neutral third party agree in writing.
- ✂ The communication has already been made public.
- ✂ The communication is required by statute to be made public, or
- ✂ A court determines that such testimony or disclosure is necessary to:
  - ✂ Prevent a manifest injustice.
  - ✂ Help establish a violation of the law.
  - ✂ Prevent harm to the public health or safety. The harm or injustice must be 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. In addition, parties could disclose such a communication if:
    - ✂ The communication is prepared by the party seeking disclosure.
    - ✂ The communication is relevant to determining the existence or meaning of an agreement/award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award.
    - ✂ The communication is provided to or is available to all parties to the dispute resolution proceeding.

Although the Administrative Dispute Resolution (ADR) Act does not specifically exempt settlement communications from disclosure under the Freedom of Information Act (FOIA), the Department of Justice has stated its position that any document protected under the ADR Act is protected from disclosure under FOIA. The confidentiality provisions of the ADR Act do not affect the level of documentation that would ordinarily be prepared to justify a negotiated agreement.

## **The Mediator's Role**

The Mediator is the person in the "middle," the trained facilitator who encourages both parties to sit down in a non-threatening environment, remain objective, and talk about ways to reach an agreement.

- ✂ **Mediators do not decide who is right or wrong, do not act as a judge, do not take sides, and do not place blame.**
- ✂ **Mediators do not condone violence or threats as means for solving problems.**
- ✂ **Mediators work equally with both parties.**
- ✂ **Mediators are trained in the mediation process and various communication techniques.**

## **Scope of NNSA SC's Mediation Program**

NNSA SC and complainants have realized many advantages from utilizing Mediation. Mediation offers the parties the opportunity for an early, informal resolution of disputes in a mutually satisfactory fashion. ADR usually costs less and uses fewer resources than do traditional administrative or adjudicative processes, particularly processes that include a hearing or litigation. Early resolution of disputes through Mediation can make agency resources available for mission-related programs and activities. The agency can avoid costs such as court reporters and expert witnesses. In addition, employee morale can be enhanced when agency management is viewed as open-minded and cooperative in seeking to resolve disputes through Mediation.

Our goal is to provide an additional tool and avenue for all employees to utilize in an attempt to resolve disputes prior to initiating the grievance procedure or the EEO Discrimination Complaints process with a "win - win" situation as our ultimate goal.

## **How NNSA SC's Mediation Program Works**

There are clearly three situations that mediation will lend itself to. They include: EEO issues, administrative grievances, and other non-grievable personnel issues. Employees are encouraged to utilize the Mediation Program as the first step in an attempt to resolve these or any other disputes or disagreements. In doing so, employees are always encouraged to discuss issues with their immediate supervisor, with the understanding that they may pursue the administrative grievance process or the EEO Discrimination Complaints Process within the prescribed (applicable) time frames addressed below.

## **Procedures for Utilizing the Mediation Process**

If an employee has an issue that they would like to have mediated, they may contact **GenQuest** at (505) 246-2829 utilizing the following time frames:

## **Election between EEO Counseling and Mediation**

An employee must contact the EEO Counselor within 45 calendar days from the alleged incident or action. At the initial counseling session, the complainant must elect either traditional EEO Counseling or Mediation.

If the employee elects Mediation, the election must be in writing on the enclosed form (end of this booklet). The form will be attached to the EEO Counselor's Report if the employee's complaint is not resolved during mediation and the employee elects to file a Formal Complaint within the appropriate time frames. The employee will notify GenQuest and Mediation begins. The Mediation Program is now designed around the time frames of the EEO regulations. Section 1614.105(f) provides that where an agency has an established ADR procedure and the complainant agrees to participate in the procedure, the pre-complaint processing period shall be 90 calendar days.

Once the employee elects Mediation, the EEO Counselor will complete the intake functions of counseling which is obtaining the information needed to determine the basis(es), claim(s), and timeliness. If the dispute is resolved during the Mediation, it will be in writing (Settlement Agreement). All appropriate parties will sign the agreement. The OEO will retain a copy of the Settlement Agreement and notify the EEO Counselor that an agreement has been reached.

If the EEO Complaint is not resolved within the 90 calendar day period authorized for Mediation, NNSA SC's Mediation Coordinator (OEO) will be notified by GenQuest. The OEO will notify the EEO Counselor and the Counselor will issue the Notice of Right to File a Discrimination Complaint (Final Interview Letter) to the employee, and the EEO process will continue.

**Representation of the Parties:** Aggrieved individuals have the right to representation throughout the complaint process, including during any Mediation. While the purpose of Mediation is to allow the parties to fashion their own resolution to a dispute, it is important that the Mediation Program provides all parties the opportunity to bring a representative to the Mediation if they desire to do so.

**An election form to select Mediation appears at the end of this booklet.**

## **Filing a Grievance**

1. The employee has 15 days to initiate the administrative grievance procedure from the date the event occurred.

2. Additional information can be found by referring to the Order or by contacting a Personnel Management Specialist, Human Resources Department, at (505) 845-4850.

## **Other Uses for the Mediation Program**

A very significant aspect of NNSA SC's Mediation Program is that an employee does not have to have an administrative grievance or a complaint that would fall under the purview of EEO. An employee may seek mediation on ANY ISSUE that he/she believes is significant and is impacting him/her, whether it is a disagreement with a peer, supervisor, an employee, or other management official, and would like immediate attention given to the issue and/or problem by a neutral third party in hopes of a successful "win - win" resolution.

## **Conclusion**

Mediation is a tool that can help an organization expedite resolution of a dispute, narrow issues in dispute, resolve disputes at an early stage, promote "measured" advocacy, preserve relationships, and produce satisfying resolutions by expanding the range of possible solutions. By providing a structured, more positive environment in which to discuss differences, mediation helps increase mutual understanding of each other's concerns, interests, misconceptions, emotions, and unsatisfied expectations.

The ADR Act provides authority and encouragement for Federal agencies to join the private sector and the courts in using mediation to resolve disputes, improve operations, and better serve its constituents.

The NNSA SC Mediation Program responds to this need and benefits our organization.

**Formal Mediation Election Form**

**Instructions:** Please use this form to provide basic information about your complaint and mail or fax it to your EEO Counselor if your issues are EEO related. If not fax it to the EEO & Diversity Office, (505) 845-4963, or directly to the mediation provider, GenQuest at 505-246-0193. A copy of this document will be forwarded to the appropriate management officials to assist them in resolving your complaint.

**Are you interested in mediation of your complaint?** The decision to participate in mediation is voluntary, and the process is confidential. If you agree to participate, you will be contacted by GenQuest, Inc., to schedule mediation. In addition, GenQuest will provide you with information to assist you in preparing for mediation.

I, \_\_\_\_\_ hereby (check one):

- DO NOT AGREE to participate in mediation of my EEO complaint.
- I wish to participate in mediation of my issues, they **are not EEO** related.
- AGREE to participate in mediation of my EEO complaint.

I have not given up my right to participate in the EEO Complaint Process (right to file a formal complaint, right to investigation, or right to later request a hearing or a final agency decision) if mediation is not successful. If mediation is successful, a settlement agreement will be drawn up during the mediation, signed by the disputing parties, and concurred upon by the EEO/Diversity Program Manager at the NNSA Service Center.

I agree to notify the EEO/Diversity Program Manager, in writing, and **within 7 calendar days of the end of mediation**, if mediation was not successful in resolving the complaint. I understand that the EEO Counselor will then issue a Notice of Final Interview with information on my rights to file a formal complaint of discrimination.

My EEO Counselor is: \_\_\_\_\_  
(Printed Name of Counselor)

I first contacted my Counselor on: \_\_\_\_\_  
(Date of Contact)

Please provide three (3) specific dates and times during which you would be available to participate in mediation during the next month.

\_\_\_\_\_ (3 hour minimum block)

\_\_\_\_\_ (3 hour minimum block)

\_\_\_\_\_ (3 hour minimum block)





**REMINDERS:**

- You may want to keep a copy of this form for your records.
- **IF YOUR ISSUES ARE EEO RELATED:** You agree to notify the EEO/Diversity Program Manager, in writing, and **within 7 calendar days of the end of mediation**, of the outcome of mediation: DOE-NNSA, EEO and Diversity Program Manager, PO Box 5400, Albuquerque, NM 87185. If mediation was not successful in resolving the complaint The EEO Counselor will then issue a Notice of Final Interview with information on your rights to file a formal complaint of discrimination.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Org.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Work or Home Phone #\*

\_\_\_\_\_  
Title

\_\_\_\_\_  
Work or Home email\*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Fax #

*\*Best phone and email for the Mediator to contact you at.*

**Return this completed, signed form to your EEO Counselor if your issues are EEO related.\*\***

**EEO Counselor: mail or fax the completed pages to GenQuest:**

Toll-Free: 1-888-246-2460 • Phone: 505-246-2829 • Fax: 505-246-0193

E-Mail: [info@genquestinc.com](mailto:info@genquestinc.com)

1805 Rio Grande Blvd. NW • Suite 2 • Albuquerque, NM 87104

**\*\*If your issues are not EEO related, you may fax the form to the EEO and Diversity Programs Office, (505) 845-4963 OR fax directly to GenQuest at (505) 246-0193.**

**SUBJECT:** LIMITED PERSONAL USE OF GOVERNMENT OFFICE EQUIPMENT  
INCLUDING INFORMATION TECHNOLOGY

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1. OBJECTIVES.

- a. To establish requirements and assign responsibilities for employees' limited personal use of Government resources (office equipment and other resources including information technology) within the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA).
- b. To provide guidance on appropriate and inappropriate uses of Government resources.
- c. To create a more supportive work environment for DOE employees.

2. CANCELLATIONS. None.

3. APPLICABILITY.

- a. Primary DOE Organizations, Including National Nuclear Security Administration (NNSA) Organizations. Except for the exclusions in paragraph 3c, this Order applies to all DOE primary organizations, including NNSA primary organizations (see Attachment 1 for a complete list of Primary DOE (organizations)). This Order automatically applies to Primary DOE organizations created after it is issued.

The Administrator of NNSA shall assure that NNSA employees and contractors comply with their respective responsibilities under this Order.

- b. Site/Facility Management Contractors.

- (1) This Order does not contain a Contractor's Requirement Document. Contractors are required, however, to prepare Property Management System plans under the Government Property clause and must submit them to DOE for approval.
- (2) This Order specifically tasks officials designated as Heads of Primary DOE Organizations (see Attachment 1) with ensuring that unauthorized use of Government equipment and resources is addressed in the contractor's property management plan. (See paragraph 5c of this Order.) Additionally, the Government Property clause requires the contractor to control the use of Government property in its possession.

- c. Exclusions. In accordance with the responsibilities and authorities assigned by Executive Order (E.O.) 12344 as set forth in the Defense Authorization Act for

Fiscal Year 2000 [Public Law (P.L.) 106-65, Title 50 United States Code (U.S.C.) Section 2406], and to ensure consistency throughout the joint Navy/DOE organization of the Naval Nuclear Propulsion Program, the Director, Naval Nuclear Propulsion Program will implement and oversee all requirements and practices pertaining to this DOE Order for activities under the Director's cognizance.

#### 4. REQUIREMENTS.

- a. Limited Personal Use. This Order authorizes employees to make limited use of Government resources for personal purposes, in accordance with the provisions herein. This Order does not modify the requirements of the Standards of Ethical Conduct for Employees of the Executive Branch [Title 5 Code of Federal Regulations (CFR), 2635], including the employee's responsibility to protect and conserve Government property using it for authorized purposes only and use official time in an honest effort to perform official duties [5 CFR 2635.704(a) and (b)]. Nothing herein pertains to or restricts use of Government property by an employee to carry out his or her official duties and responsibilities in furtherance of the mission of the Department.
- (1) Employees may use Government resources for personal purposes, but only where such use—
    - (a) involves de minimis additional expense to the Government,
    - (b) does not interfere in anyway with the mission or operations of the Department, and
    - (c) is otherwise permissible under DOE Orders and applicable State and Federal laws and regulations.
  - (2) This Order does not grant to employees or create an inherent right to use Government resources, and one should not be inferred.
  - (3) Use of Government resources in support of or in connection with a private business with which an employee is associated is not considered a personal purpose under this Order and is not authorized by this Order.
  - (4) The privilege to use Government resources for personal purposes may be limited or revoked at any time by an appropriate Department official (e.g., a supervisor in the employee's organizational chain of command).
  - (5) Circumstances that may result in a supervisor's curtailing or halting an employee's personal use of Government resources include uses that—
    - (a) result in a loss of productivity,

- (b) interfere with official duties,
- (c) compromise the mission of the Department or organization,
- (d) exceed de minimis expense to the Government,
- (e) violate Department Policies and Orders or State and Federal laws and regulations, or
- (f) are inconsistent with the guidance contained in this Order.

b. Privacy.

- (1) DOE employees do not have a right to nor should they have an expectation of privacy while using Government resources at any time, including when they are accessing the Internet or using e-mail.

NOTE: Each employee's use of his or her Government computer is preceded by a security banner, which advises the employee that the user has no expectation of privacy; that all uses and files in the system may be intercepted, monitored, recorded, and disclosed. The employee agrees to these terms and conditions prior to being granted access. Further, the Department has its privacy policy available for persons accessing its website. The policy specifically covers Security, a General Disclaimer, a Privacy Notice, and Comments Sent by E-Mail. Employees who use these resources are deemed to waive any right to privacy pursuant to the published notices therein.

- (2) Employees who wish for their personal activities to be private should not conduct such activities using Government resources.
- (3) Employees who use Government resources implicitly consent to review and disclosure of their Internet, e-mail, or other information technology uses when deemed appropriate by DOE or as mandated by law.
- (4) The content of any files or information maintained in or on Government equipment or transmitted using Government equipment may be disclosed in response to a valid, authorized subpoena, warrant, court order, Freedom of Information Act (5 U.S.C. Section 552) request, or other direction (e.g., employee's supervisor, Inspector General investigator, etc.).
- (5) Using Government resources, including Internet access and e-mail, implies consent to monitoring with or without cause. Any use of Government resources is with the understanding that such use is generally not secure, private, or anonymous (18 U.S.C. Section 2511).

- (6) System managers may employ monitoring tools to detect improper use of electronic communications systems (18 U.S.C. Section 2511).
- c. Security. Personal use of Government resources is not authorized on computer systems or other office equipment that is designated for classified use.
- d. Misrepresentation. The Standards of Ethical Conduct for Employees of the executive branch states that an employee must not “use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities . . . .” [5 CFR 2635.702(b)].
- (1) It is the responsibility of each employee to ensure that one’s use of Government resources does not give the impression of acting in an official capacity while using Government resources for personal purposes.
- (2) If it is likely that an employee’s personal use of Government resources will create an appearance of official Government action, the employee must discontinue the activity or use a disclaimer such as the following:
- The contents of this message are mine personally and do not reflect the views or position of the U.S. Department of Energy or the Federal Government.*
- e. Appropriate Uses of Government Resources for Personal Purposes. The following is provided for employees and supervisors in determining acceptable personal uses of Government resources.
- (1) Personal use of Government resources is authorized only if it involves de minimis additional expense to the Government and does not interfere in any way with the mission or operations of the Department, and is otherwise permissible under DOE Orders and applicable State and Federal laws and regulations. Examples of appropriate personal uses may include—
- (a) checking credit union or Thrift Savings Plan accounts using information technology equipment;
- (b) retaining personal data in electronic files (e.g., C or O drives, LAN) with the understanding that data may be deleted without notice as a result of scheduled archiving;
- (c) accessing library books and equipment, public reading rooms and materials, and other publicly available data;

- (d) obtaining detailed information or conducting research (e.g., reading newspaper and magazine articles, comparing airline prices and schedules, browsing sales catalogs, or comparing prices of automobiles) on the Internet during non-work hours; and
  - (e) occasional personal use of laptop computers, personal data assistants (PDAs), pagers, and cellular phones (when such use will not incur additional charges) issued by the Department for official business.
- (2) Personal use of Government-provided long distance telephone service must be consistent with General Services Administration regulations.
  - (3) Other personal use of Government resources is authorized, but only if it results in minimal impact or normal wear and tear of the equipment, requires de minimis workday time for personal pursuits, and requires use of de minimis consumable items (paper, ink, toner, etc.), as determined by a reasonable person with knowledge of all the relevant facts.
- f. Inappropriate Uses of Government Resources. Employees are expected to conduct themselves professionally in the workplace and to refrain from using Government resources inappropriately. Examples of misuse of Government resources include, but are not limited to, the following:
- (1) modification of Government equipment, particularly information technology, by loading application software or making configuration changes not approved for use in the site's operating environment;
  - (2) seeking help from Government employees or contractor personnel (e.g., librarians, computer support staff, administrative assistants, or paralegals) in pursuit of personal projects;
  - (3) any frequent personal use that may cause congestion, delay, or disruption of service to any Government system or equipment, including greeting cards and streaming video and audio, etc.;
  - (4) any personal use (including e-mail and Internet service) that may impair the performance of the Department's entire network or of a unit, including—
    - (a) opening a program with large file attachments (e.g., music or graphic files) or
    - (b) extensive use of a program or Internet site that provides continuous data streams, e.g., continuous stock quotes, or headline news updates, etc.;

- (5) creating, copying, transmitting, or retransmitting chain letters or other mass mailings, regardless of the subject matter;
- (6) using Government resources for activities that are illegal, inappropriate, or offensive to a reasonable person with knowledge of all the relevant facts, including hate speech; material that ridicules others on the basis of race, creed, religion, color, sex, disability, national origin, or sexual orientation; and harassing or threatening activities;
- (7) creating, downloading, viewing, storing, copying, or transmitting sexually explicit or sexually oriented materials;
- (8) creating, downloading, viewing, storing, copying, or transmitting materials in the conduct or furtherance of any type of illegal activity;
- (9) unauthorized acquisition, use, reproduction, transmission, or distribution of controlled information (e.g., computer software and data; classified, business sensitive, or other nonpublic data; proprietary data; export controlled software or data; or any information in violation of the Privacy Act, copyright, trademark, or other intellectual property rights beyond fair use);
- (10) gaining unauthorized access to internal or external systems or networks using DOE or personal computer systems and technology;
- (11) fundraising other than the Combined Federal Campaign;
- (12) participating in any lobbying activity;
- (13) engaging in any prohibited political activity under the Hatch Act (See 5 CFR 734);
- (14) any personal use of Government resources that is misleading in that it creates the impression that the employee is acting in an official capacity;<sup>1</sup>
- (15) using Government resources for commercial pursuits, to support for-profit activities, or to benefit one's outside employment or business activities (e.g., receiving personal business calls on the office telephone, sending or receiving e-mail messages related to a part-time real estate or other business venture, or selling or trading business merchandise over the Internet);

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<sup>1</sup>This may occur when using the Internet to access a chat room or to obtain information. Many Web sites require registration prior to disclosing information or allowing access. Employees must be diligent to ensure that they do not appear to be acting in an official capacity. Employees should also check a Web site's privacy policy when supplying information over the Internet to determine whether a misrepresentation or other abuse may occur.

- (16) using Government resources (e.g., copying, printing, etc) for any non-official activity that results in greater than de minimis expense; and
  - (17) communicating Agency information to external news groups, bulletin boards, or other public forums without authority.
- g. Official Union Business. The privileges and limitations enumerated in this Order do not supersede the negotiated rights of exclusive representatives of bargaining unit employees in the conduct of their official business.
- h. Sanctions for Misuse. Unauthorized or improper use of Government resources may result in losing or having limitations placed on use of Government resources, disciplinary or adverse actions (up to and including separation from Federal service), criminal penalties, and/or financial liability for the cost of improper use.

5. RESPONSIBILITIES.

- a. DOE Employees.
- (1) Ensure that they are not giving the impression that they are acting in an official capacity when using Government resources for personal purposes.
  - (2) Use Government resources for personal purposes only as allowed in this Order and to the extent consistent with law.
  - (3) Consult their supervisors or other appropriate person if they have any questions concerning this Order or other related matters (paragraph 8, Contacts).
  - (4) Report instances of fraud, waste, and abuse of Government resources (including information technology) to the Office of Inspector General (OIG) in accordance with DOE O 221.1, *Reporting Fraud, Waste and Abuse to the Office of Inspector General*, dated 3-22-01.
- b. Supervisors.
- (1) Ensure that their employees are aware of this Order.
  - (2) Initiate appropriate action when employees disregard requirements set forth in this Order.
- c. Program Secretarial Officers. Verify that each site/facility management contractor's DOE-approved property management system provides some manner of guidance and limitations on personal use of Government resources.

- d. Director, Naval Nuclear Propulsion Program. Ensures consistent implementation of the requirements of this Order throughout the joint Navy/DOE Naval Nuclear Propulsion Program.

## 6. REFERENCES.

- a. Executive Order 13011, Federal Information Technology, dated 7-16-96, which integrates provisions of the Clinger-Cohen Act of 1996, the Paperwork Reduction Act of 1995, and the Government Performance and Results Act of 1993.
- b. Department of Energy Organization Act (P.L. 95-91), as amended, Sec. 644 (42 U.S.C. 7101 note).
- c. Standards of Conduct for Employees of the Executive Branch (5 CFR 2635).
- d. Office of Management and Budget Circular No. A-130, Appendix III, Security of Federal Automated Information Resources.
- e. Electronic Communications Privacy Act of 1986 (P.L. 99-508, 18 U.S.C. 2511).
- f. 5 CFR 734.102 (Regulations implementing the Hatch Act provisions on political activity).
- g. 10 CFR 1010.103 and DOE O 221.1 (Employee duty to report fraud, waste, and abuse to the Office of Inspector General).

## 7. DEFINITIONS.

- a. Government Resources. Personal computers and related peripheral equipment and software, library resources, paper, telephones, facsimile machines, photocopiers, and information technology. As used in this Order, the term Government resources does not include an employee's scheduled work time or the time of Department contractors.
- b. Information Technology. Equipment or interconnected systems or subsystems of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, including the Internet.
- c. Limited Personal Use of Government Resources. Use of Government resources for purposes other than performance of official duties. The personal uses allowed in this Order are authorized uses of DOE Government resources.
- d. De minimis Additional Expense. That cost which results when small amounts of electricity, ink, toner, or paper supplies are used for purposes other than performance of official duties. For example, the cost from a relatively small number of brief telephone calls, electronic mail messages, or internet sessions,

result in de minimis, if any, additional expense to the Government. In contrast, the cost associated with large copying or printing projects, downloading large files, such as a motion picture video, or the contents of an entire compact disc, or other files with large space requirements, would exceed de minimis additional expense.

- e. Non-work Hours. Limited to those periods for which an employee is not being compensated—lunch break, time before or after regular duty hours, and weekends or holidays—when the space is normally available and requires no special arrangements for entry, utilities (such as heat or air conditioning), or other services not usually provided at such times.
- f. Systems Manager. The designated person(s) responsible for operating and maintaining DOE's information technology systems in an enterprise architecture; ensures that the system and information/data processes are consistent with the system's purpose; and maintains security measures, appropriately applied for the protection of the information. The system manager monitors the system and the information in the system to ensure that it is appropriately used.

8. CONTACTS.

- a. Questions concerning this Order should be referred to the Office of the Chief Information Officer 202-586-0166.
- b. For Standards of Conduct or legal questions, Headquarters employees should contact the Office of the Assistant General Counsel for General Law on 202-586-1522, or at [standardsofconduct@hq.doe.gov](mailto:standardsofconduct@hq.doe.gov). Field employees should contact the Office of Chief Counsel that services their location.
- c. For questions on personal, labor relations, or management and administration issues, contact the local human resources office assigned to your office.
- d. To report fraud, waste, or abuse of Government resources or misuse of Government property, contact the Office of Inspector General, 202-586-2730.

BY ORDER OF THE SECRETARY OF ENERGY:



KYLE E. McSLARROW  
Deputy Secretary

**PRIMARY DOE ORGANIZATIONS TO WHICH DOE O 203.1,  
*Limited Personal Use of Government Office Equipment Including Information Technology,*  
IS APPLICABLE**

Office of the Secretary  
Departmental Representative to the Defense Nuclear Facilities Safety Board  
Energy Information Administration  
National Nuclear Security Administration  
Office of the Chief Information Officer  
Office of Civilian Radioactive Waste Management  
Office of Congressional and Intergovernmental Affairs  
Office of Counterintelligence  
Office of Economic Impact and Diversity  
Office of Electric Transmission and Distribution  
Office of Energy Assurance  
Office of Energy Efficiency and Renewable Energy  
Office of Environment, Safety and Health  
Office of Environmental Management  
Office of Fossil Energy  
Office of General Counsel  
Office of Hearings and Appeals  
Office of Independent Oversight and Performance Assurance  
Office of Inspector General  
Office of Intelligence  
Office of Legacy Management  
Office of Management, Budget and Evaluation/Chief Financial Officer  
Office of Nuclear Energy, Science and Technology  
Office of Policy and International Affairs  
Office of Public Affairs  
Office of Science  
Office of Security  
Office of Security and Safety Performance Assurance  
Secretary of Energy Advisory Board  
Bonneville Power Administration  
Southeastern Power Administration  
Southwestern Power Administration  
Western Area Power Administration

## **Tips on Use of Official Time and Tips on Requesting Official Time**

The EEO and Diversity [24/7 website](#) features information on the [complaints process](#), including timeframes and counselors' names and phone numbers. The website also contains information on the Mediation process and Special Emphasis Programs. Certainly, you are always encouraged to pick up the phone and call the EEO and Diversity Office for advisory service on any EEO or Diversity issues (505) 845-5517.

Did you know: [DOE Order 203.1](#) Limited Use of Government Property outlines the limited use of government property including official time, paper, use of government letterhead, envelopes and other supplies, computer use and more. Additionally, the Order outlines that there should be no expectation of privacy when choosing to use government property. Further, the Equal Employment Opportunity Commission (EEOC) [MD-110 Chapter 6](#), Section VIII, states that the complainant's or complainant's representative, if a federal employee, use of government property (copiers, telephones, word processors) must be authorized by the agency and must not cause undue disruption of agency operations.

Did you know: The [Code of Federal Regulations](#) (or type in [http://www.access.gpo.gov/nara/cfr/waisidx\\_03/29cfr1614\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/29cfr1614_03.html) and go Section 605) outlines the processing of complaints filed with the Equal Employment Opportunity Commission (EEOC). In 29 CFR Section 1614.605, the CFR, while allowing a reasonable amount of official time to prepare your complaint, specifically excludes change of schedule, overtime pay, and the payment of travel expenses to confer with a specific representative. Further, the MD-110 supports a reasonable amount of official time stating, ***the complainant and the agency should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time.*** To request official time to process your EEO Complaint, contact your immediate supervisor.