

**MPR 2010.1  
REVISION D**

**EFFECTIVE DATE: February 23, 2010  
EXPIRATION DATE: February 23, 2015**

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# **MARSHALL PROCEDURAL REQUIREMENTS**

**OS01**

## **ALTERNATIVE DISPUTE RESOLUTION PROCESS**

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### DOCUMENT HISTORY LOG

Status (Baseline/ Revision/ Canceled)	Document Revision	Effective Date	Description
Baseline		3/27/00	
Revision	A	9/15/2004	Changed MPG to NPR and “Marshall Procedures and Guidelines” to “Marshall Procedural Requirements” throughout document, revised text in sections 2.0 – 4.0 to use “shall” to state requirements, updated font.
Revision	B	3/24/2008	Revised 2. Applicability statement to reflect transition of MAF from GOCO to GOGO.
Revision	C	2/9/2009	Replaced Draft Settlement Agreement and removed paragraph 7 from Sample Older Workers’ Benefits Protection Act Settlement Agreement Form; added paragraphs to comply with requirement of no more than one shall per paragraph.
Revision	D	2/23/2010	Corrected office name referenced in Settlement Agreement; revised Evaluation section at 3.9 to include data entry into iComplaints tracking; at Section P.4, added NPD 2010.2, Alternative Dispute Resolution and NPR 3713.2, Alternative Dispute Resolution for Discrimination Complaints; changed EO Officer to EO Director; added reference to Title II of the Genetic Information Nondiscrimination Act of 2008; added EO in front of ADR throughout; updated records section; deleted Appendix E Flowchart.

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## PREFACE

### **P.1 PURPOSE**

- a. The Administrative Dispute Resolution Act of 1996; Pub. Law 104-320, states that each agency shall adopt a policy that addresses the use of alternative means of dispute resolution and case management. The purpose of this Marshall Procedural Requirements (MPR) is to prescribe the procedures for Marshall Space Flight Center's (MSFC's) Alternative Dispute Resolution (ADR) Program for the informal (pre-complaint) stage of the Equal Opportunity (EO) discrimination complaint process.
  
- b. The MSFC EO ADR Program is a mediation process designed to resolve allegations of workplace discrimination through the facilitation of a neutral third party. It provides an impartial and independent forum for the parties to discuss the dispute and develop a realistic assessment of their own as well as the other party's position and alternatives. MSFC's EO ADR process is designed to ensure fairness for all parties, enforceability of agreements, and adherence to the Equal Employment Opportunity Commission (EEOC) core principles as outlined in EEOC Management Directive (MD) 110.
  
- c. The overall objectives of the EO ADR Program are to promote open communication between disputing parties, reduce costs, and resolve allegation at the lowest possible organizational level at the earliest opportunity.

### **P.2 APPLICABILITY**

- a. This MPR applies to Center personnel, programs, projects, and activities, including contractors and resident agencies to the extent specified in their respective contracts or agreements. ("Contractors," for purposes of this paragraph, include contractors, grantees, Cooperative Agreement recipients, Space Act Agreement partners, or other agreement parties.")
  
- b. This MPR applies to the Michoud Assembly Facility.

### **P.3 AUTHORITY**

- a. 29 CFR Part 1614, Federal Sector Equal Employment Opportunity
  
- b. Administrative Dispute Resolution Act of 1996
  
- c. The Civil Rights Act of 1964, as amended

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#### **P.4 APPLICABLE DOCUMENTS**

- a. Title VII of the Civil Rights Act of 1964, as amended
- b. Age Discrimination in Employment Act of 1967, as amended
- c. Rehabilitation Act of 1973, as amended
- d. Equal Pay Act of 1963, as amended
- e. Title II of the Genetic Information Nondiscrimination Act of 2008
- f. EEOC Management Directive 110
- g. NPD 2010.2, “Alternative Dispute Resolution”
- h. NPD 3713.6, “Delegation of Authority to Act in Matters Pertaining to Discrimination Complaints Under 29 C.F.R. Part 1614”
- i. NPR 1441.1D, “NASA Records Retention Schedules (NRRS)”
- j. NPR 3713.2, “Alternative Dispute Resolution for Discrimination Complaints”

#### **P.5 REFERENCES**

None.

#### **P.6 CANCELLATION**

MPR 2010.1C, dated February 9, 2009.

*Original signed by*

Robert M. Lightfoot  
Director

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## DOCUMENT CONTENT

### 1. DEFINITIONS

1.1 Alternative Dispute Resolution. A process designed to resolve disputes in a manner that avoids the cost, delay, and unpredictability of the traditional adjudicatory process.

1.2 Mediation. A dispute resolution process in which a trained, impartial third party helps two or more parties negotiate a consensual and informed resolution to disputes based on allegations of discrimination. Mediation emphasizes problem solving rather than a determination of fault or adversarial procedures.

### 2. RESPONSIBILITIES

2.1 EO Counselors. The EO Counselors shall advise aggrieved persons (the individual alleging discrimination) that, where the Center agrees to offer ADR in a particular case, they may elect to participate in the Center's ADR program or continue in the traditional EO counseling process.

2.2 EO Director. In accordance with NPR 3713.2, Section 1.5, the EO Director shall be responsible for management and administration of the EO ADR Program including monitoring the process to ensure compliance with established policies, timeframes, and that terms of settlement agreements are implemented in a timely manner. It is also the responsibility of the EO Director to keep the Assistant Administrator for Diversity and Equal Opportunity fully and currently informed of significant actions, problems, and other matters pertaining to discrimination complaints. (See NPD 3713.6P, Section 5, paragraph d) and to inform the Chief Counsel of the receipt of a complaint. (See NPD 2010.2C, Section 5, paragraph a(1)(b).)

2.3 Mediator. The mediator is a trained neutral third party and shall provide guidance and assistance to disputing parties in reaching a resolution agreement that is acceptable, fair, and reasonable.

2.3.1 The primary source of MSFC neutrals shall be the General Services Administration (GSA) government-wide equal opportunity services contract.

2.4 Management Representative. The Management Representative is a senior management official who has been delegated authority by the Center Director to enter into settlement agreements that are binding on the Center/Agency. As such, the Management Representative shall ensure that settlements are fair and reasonable as revealed by the facts developed during the mediation process and agreed to by the disputing parties.

2.4.1 Management officials with direct involvement in the dispute shall not serve as the person with settlement authority.

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### **3. PROCEDURES**

3.1 This EO ADR process addresses disputes covered by Title VII of the Civil Rights Act of 1964, as amended (race, color, sex, religion, national origin, and reprisal); the Age Discrimination in Employment Act (age over 40); the Rehabilitation Act (physical or mental handicap); the Equal Pay Act (discrimination on the basis of wages based on sex); and Title II of the Genetic Information Nondiscrimination Act of 2008.

3.2 The process is voluntary for both the aggrieved individuals and the Center, and settlements are voluntary with no finding of fault on the part of either party.

Note: The aggrieved individual is entitled to have a representative during the mediation process.

3.3 During the pre-complaint counseling stage of the process, the EO Counselor shall inform the aggrieved individual of MSFC's voluntary EO ADR Program and offer the option to participate.

3.3.1 If the aggrieved individual elects to participate in the mediation process and the Center agrees, the individual shall sign the election and agreement forms to mediate (Appendices A and B).

3.3.2 The total time allocated for both counseling and ADR shall not exceed 90 calendar days. Either party may terminate the ADR procedure at any time and return to the EEO process.

3.4 If the aggrieved individual and the Center agree to mediation, the EO Director shall assign a mediator who is acceptable to both parties and designate a management representative who is not directly involved in the case.

3.4.1 The mediator shall be provided a letter of authority to mediate all aspects of the complaint.

3.4.2 The management representative shall be provided a letter of authority granting ultimate authority to resolve the complaint.

3.4.3 The EO Director or Counselor shall brief the management representative on the particulars of the allegations prior to mediation.

3.5 If a settlement is reached during the mediation, the Office of Diversity and Equal Opportunity in conjunction with the Office of Chief Counsel shall reduce the terms of the settlement to writing (samples, Appendices C and D).

3.5.1 The settlement agreement shall be signed by the aggrieved individual; his/her representative; the Director, Office of Human Capital; and other parties as deemed necessary.

3.5.2 In considering resolutions, the Management Representative shall adhere to appropriate laws, regulations, and Agency/Center policies.

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3.5.3 The Management Representative shall consult with the EO Director, Chief Counsel, Human Resources, or other officials as appropriate during the course of the settlement negotiations. Agreements reached through EO ADR and signed by the appropriate parties are binding on the Agency and enforceable under current EEOC regulations.

3.6 All settlement agreements involving age discrimination shall contain the appropriate settlement provisions required by the Older Workers Benefit Protection Act.

3.7 In the event that the parties are unable to reach a resolution, the aggrieved individual shall be referred back to counseling.

3.7.1 The EO Counselor shall issue a notice of final interview and right to file a formal complaint to the aggrieved individual in accordance with 29 CFR Part 1614.

3.7.2 Nothing said or done during attempts to resolve a complaint through EO ADR shall be made the subject of an EEO complaint.

3.7.3 Likewise, an Agency decision not to engage in EO ADR, or not to make EO ADR available for a particular case, or an agency failure to provide a neutral party, shall not be made the subject of an EEO complaint.

3.8 Confidentiality. The mediation proceedings shall be kept “in confidence” except where such disclosure would be permitted or required by law (see NPD 2010.2, Section 1.f, “Alternative Dispute Resolution”).

3.9 Criteria for Case Selection. The Center shall consider requests for mediation on a case-by-case basis.

3.10 The Center shall consider not using EO ADR in the following circumstances:

- 3.10.1 Need for precedent or certainty
- 3.10.2 Anticipation of bad faith
- 3.10.3 When one party mainly seeks delay
- 3.10.4 Public policy development – openness/record needed
- 3.10.5 Options are dictated or limited by law
- 3.10.6 Serious power imbalances exist
- 3.10.7 Linkage to existing litigation
- 3.10.8 If outcome has significant effect on individuals not directly involved in the dispute
- 3.10.9 ADR is an improper substitute for other required action
- 3.10.10 Cases involving allegations of criminal activity
- 3.10.11 Repeat filers unless all active cases are presented for settlement

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3.11 Evaluation. At the conclusion of the mediation initiative, the parties to the mediation shall be requested to complete an evaluation form to assist the Center in evaluating the overall effectiveness of the EO ADR Program. Pursuant to NPR 3713.2, P.5, data regarding the mediation (i.e., dates, and results) is entered into the iComplaints data tracking system.

#### **4. RECORDS**

4.1 Records generated during the EO ADR process such as the Agreement to Mediate or any resulting Settlement Agreement shall be made part of the official complaint file.

4.2 Records shall be maintained by the Office of Diversity and Equal Opportunity Discrimination Complaints Manager in accordance with NRRS 3/2.5/PASR/E/1; destroy 4 years after resolution of case.

4.3 If the mediator deems it necessary to take informal notes during the mediation, those notes shall be maintained by the mediator and destroyed after the mediation process is complete per the Agreement to Mediate (Reference Appendix B).

#### **5. FLOW DIAGRAM**

None.

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## APPENDIX A

### MSFC'S DISPUTE RESOLUTION PROCESS ELECTION FORM

Dear Aggrieved Individual:

Your written consent is required for participation in the voluntary Alternative Dispute Resolution Process (ADRP). The ADRP is limited to sixty (60) days. If your complaint is not resolved through this process, it shall be processed in accordance with the provisions of Title 29 CFR Part 1614.

- The MSFC Alternative Dispute Process has been fully explained to me.
- Yes, I want to participate in the Alternative Dispute Resolution Process.

I understand that by participating in this program, I am not waiving any rights for further processing of my complaint under Title 29 CFR Part 1614.

- No, I do not want to participate in the Alternative Dispute Resolution Process.

\_\_\_\_\_  
Aggrieved Individual's Signature

\_\_\_\_\_  
Date



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## APPENDIX C

### DRAFT SETTLEMENT AGREEMENT

IN THE MATTER OF \_\_\_\_\_  
Case Number \_\_\_\_\_

1. This Settlement Agreement (hereinafter "Agreement") is entered into by and between \_\_\_\_\_ and the National Aeronautics and Space Administration (hereinafter "Agency" or "NASA") to make full and final settlement of matters arising from his/her Equal Employment Opportunity complaint against the Agency.
  
2. In order to resolve the matters in dispute without further administrative processes, litigation, expense, and delay, \_\_\_\_\_ and the Agency agree as follows:
  - a. (LIST SPECIFIC SETTLEMENT STIPULATIONS)
  
  - b. (LIST SPECIFIC SETTLEMENT STIPULATIONS)
  
  - c. While legally obligated regardless of this settlement agreement, the Agency shall not engage in any act, nor will it approve of or sanction any action, which constitutes retaliation or reprisal against \_\_\_\_\_ resulting from his/her involvement in the EEO process.
  
  - d. By executing this Agreement, \_\_\_\_\_ hereby withdraws his/her complaint, EEOC No. \_\_\_\_\_, identified as NASA Agency No. \_\_\_\_\_, and any and all other pending complaints involving his/her employment with NASA. In addition, he/she shall not litigate in or appeal to in any administrative or judicial forum, to include the Equal Employment Opportunity Commission, the Merit Systems Protection Board, and the negotiated grievance process, any claims arising from the facts that formed the basis of his/her complaint of discrimination or other rights of action that are pending or could be brought as of the date he/she signs this agreement.
  
  - e. \_\_\_\_\_ shall not be entitled to damages, back pay, attorney's fees, or any other additional compensation or adjustment.
  
3. This Agreement shall not constitute an admission of liability or fault on the part of NASA or its officers or employees.
  
4. This Agreement may be used as evidence in a subsequent proceeding in which either of the parties alleges a material breach of this Agreement.

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5. \_\_\_\_\_ is hereby advised that he/she has the right to consult with an attorney prior to executing this Agreement. \_\_\_\_\_ acknowledges that he/she has had the opportunity to consult with an attorney or other representative of his/her choosing and that the Agency has provided sufficient time for this purpose.
6. By executing this Agreement, \_\_\_\_\_ acknowledges that he/she has knowingly and voluntarily waived rights or claims under various Federal laws, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, et seq., in exchange for consideration in addition to anything of value to which she is already entitled.
7. By executing this Agreement, \_\_\_\_\_ acknowledges that he/she has entered into this Agreement voluntarily and that the Agency has not imposed any undue hardship, duress, or coercion in connection with the execution of this document.
8. This Agreement represents and expresses the entire agreement between NASA and \_\_\_\_\_ resolving all matters arising from EEO complaints against the Agency and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter hereof. If other promises, oral or written, have been made, they are not binding. This document cannot be altered, modified, withdrawn, rescinded, or supplemented in any manner after the date on which it becomes effective pursuant to the terms contained in Paragraph 2 of this Agreement, unless mutually agreed in writing by all parties.
9. This Agreement shall be binding upon \_\_\_\_\_ as well as his/her heirs, assigns, representatives, proxies, guardians, or any other person or entity acting on behalf of, or at the behest of, his/her heirs, assigns, representatives, proxies, or guardians.
10. \_\_\_\_\_ expressly agrees not to use this Agreement and not to permit any other person to use this Agreement in any judicial or administrative proceeding as evidence of or to attempt to prove the existence of, discrimination/reprisal or other adverse action or prohibited personnel practice.
11. The parties agree that any signatures affixed to this Agreement via photocopy or facsimile are valid and enforceable as substitutes for original signatures.
12. If \_\_\_\_\_ believes that NASA has not complied with the terms of this Agreement, he/she may request that the terms be specifically implemented, or alternatively, that the complaint be reinstated for further processing at the point processing closed, in accordance with the procedures set forth in 29 C.F.R. § 1614.504. Any such request must be made within thirty (30) calendar days of the date he/she knew or should have known of the noncompliance and must be forwarded to the ASSISTANT ADMINISTRATOR FOR THE OFFICE OF DIVERSITY AND EQUAL

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OPPORTUNITY, NASA HEADQUARTERS, WASHINGTON, D.C. 20546, with an explanation as to why he/she believes that the Agreement has not been carried out.

In witness whereof, \_\_\_\_\_ hereby executes this Agreement, acknowledging that its terms and conditions have been fully understood, that an adequate period of time has been afforded to allow consideration of said terms and conditions, and that he/she has had the opportunity to consult with his/her legal counsel before signing this agreement.

\_\_\_\_\_  
Complainant

\_\_\_\_\_  
Date

For the Agency:

\_\_\_\_\_  
Agency Official

\_\_\_\_\_  
Date

I do hereby declare and affirm that the signatures contained above are true and accurate.

\_\_\_\_\_  
NOTARY

\_\_\_\_\_  
Date

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## APPENDIX D

### SAMPLE OLDER WORKERS' BENEFITS PROTECTION ACT (OWBPA) SETTLEMENT AGREEMENT FORM

COMPLAINANT'S NAME

v.

ADMINISTRATOR, NASA,  
RESPONDENT

*Complainant*, \_\_\_\_\_ and *Respondent*, National Aeronautics and Space Administration, (hereinafter NASA, or the Agency) do hereby enter into this agreement to settle the above-captioned complaint. The parties to this Settlement Agreement recognize that this agreement settles claims of discriminatory treatment. The terms and conditions that constitute this agreement are set forth below as follows:

1. The Agency agrees to \_\_\_\_\_ and/or to provide to the Complainant \_\_\_\_\_ by or before the expiration of \_\_\_\_\_ calendar days following the execution of this Settlement Agreement.
2. The Agency further agrees that it shall not engage in any act, nor approve of or sanction any act, which constitutes retaliation or reprisal against Complainant resulting from Complainant's involvement in this process.
3. In exchange for this representation, Complainant agrees to the following:
  - (a) By signing this Settlement Agreement, Complainant hereby dismisses and withdraws, with prejudice, this Complaint and all pending complaints against this Agency, regardless of the nature of the complaint including, but not limited to, complaints filed by Complainant on \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.
  - (b) Complainant shall execute any other document necessary to implement and effectuate the provisions of this Settlement Agreement, including but not limited to a written withdrawal with prejudice of this Complaint, and any other complaint withdrawn pursuant to this agreement.
  - (c) Complainant agrees that none of the events set forth in the above-cited Complaint, and any other complaint withdrawn pursuant to this agreement, shall be used by Complainant as the basis for any subsequent action against the United States, or any of its agencies, officers, employees, or agents, including without limitation, any individual referenced in the complaint and the record thereof, in any administrative, judicial, or other forum.

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(d) Complainant agrees to settle, release, and forever discharge the United States, NASA, its officers, and employees, both past and present, in their individual, personal, and official capacities, directly and indirectly from all claims, complaints, appeals, demands, debts, damages, attorney fees and costs, and any causes of action whatsoever arising out of the events set forth in the above-cited Complaint, and any other complaint withdrawn pursuant to this agreement.

(e) Complainant acknowledges that by virtue of this Settlement Agreement, Complainant is waiving rights and claims under various Federal laws, including but not limited to Title VII of the Civil Rights Act, 42 U.S.C. 2000e, *et seq.*; the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 *et seq.*; the Older Workers Benefit Protection Act, 29 U.S.C. 626 *et seq.*; and the Rehabilitation Act, 29 U.S.C. 791 *et seq.*

4. This Settlement Agreement shall be binding upon Complainant as well as Complainant's heirs, assigns, representatives, proxies, guardians or any other person or entity acting on behalf of, or at the behest of Complainant.

5. This document represents and expresses the entire agreement between Complainant and NASA resolving the above-cited Complaint. No other promises oral or written have been made or if made, are not binding. This document cannot be altered, modified, withdrawn, rescinded or supplemented in any manner after the date upon which it becomes effective pursuant to the terms contained in Paragraph 11 of this Agreement, unless mutually agreed in writing by the parties.

6. If Complainant believes that for whatever reason, the Agency has not specifically complied with the terms of this Settlement Agreement, Complainant may request that said terms be specifically implemented, or alternatively, that the Complaint be reinstated for further processing at the point processing closed, in accordance with procedures found in 29 C.F.R. 1614.504. Any such request must be made within 30 calendar days of the date the Complainant knows or reasonably should know of the noncompliance. The request must be forwarded to the ASSISTANT ADMINISTRATOR for OFFICE OF DIVERSITY AND EQUAL OPPORTUNITY, NASA HEADQUARTERS, WASHINGTON, DC 20546. The request shall include the specific factual grounds supporting Complainant's belief and relevant documents and witness statements, if available.

7. Complainant is hereby advised to consult with an attorney prior to signing this agreement. In the event that Complainant has already retained an attorney, Complainant acknowledges that the attorney has reviewed and explained the provisions of this Settlement Agreement.

8. Complainant hereby acknowledges that the Agency has provided Complainant a period of time not less than 21 days, to consider the terms and conditions contained in this agreement prior to final execution if Complainant so requires.

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9. Nothing in this agreement shall be construed as an admission by the Agency of liability or of the allegations underlying the complaint. The Agency neither admits nor finds employment discrimination or any violation of applicable civil service laws or any statute or regulation on the part of its officers or employees, past and present.

10. Complainant acknowledges that Complainant has read and understood all of the provisions of this Settlement Agreement and that Complainant enters into it voluntarily with full knowledge of its effects, conditions, and requirements, and not under any undue hardship, duress, or coercion.

11. Complainant is hereby notified that the terms and conditions contained herein shall become binding and enforceable seven (7) calendar days following the date of execution. At any time prior to the expiration of this seven calendar day period, Complainant may revoke this Settlement Agreement for any reason.

*In Witness Whereof*, Complainant hereby executes this document, acknowledging its terms and conditions, that they have been fully understood, that an adequate period of time has been afforded to allow for consideration of said terms and conditions, and that an opportunity has been afforded to seek legal counsel, and counsel has either been sought or knowingly declined by the undersigned.

\_\_\_\_\_  
COMPLAINANT

\_\_\_\_\_  
DATE

\_\_\_\_\_  
AGENCY OFFICIAL

\_\_\_\_\_  
DATE

I do hereby declare and affirm that the signatures contained above are true and accurate.

\_\_\_\_\_  
NOTARY

\_\_\_\_\_  
DATE

NOTE: If there are any other rights, particularly ADEA rights conferred upon the Complainant which are being waived pursuant to this agreement, those rights must be specifically set forth in the agreement.