

CEEO

Regulation
No. 690-1-693

23 July 1997

Civilian Personnel
U.S. ARMY CORPS OF ENGINEERS EARLY RESOLUTION PROGRAM
(CEERP)

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This regulation supersedes EC-690-1-693, 30 April 1995.

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, D.C. 20324-1000

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U.S. ARMY CORPS OF ENGINEERS EARLY RESOLUTION PROGRAM
(CEERP)

1. Purpose. This regulation prescribes policies and procedures, and establishes responsibilities for the implementation of the Corps of Engineers Early Resolution Program (CEERP) in EEO precomplaint cases.
2. Applicability. This regulation applies to all USACE elements, including HQUSACE, major subordinate commands, districts, centers, laboratories and field operating activities (FOA). This regulation applies to current and former employees of the Corps of Engineers.
3. References.
 - a. Title 29, Code of Federal Regulations, Subpart 1614.
 - b. Civil Rights Act of 1964, as amended.
 - c. Civil Rights Act of 1991.
 - d. Rehabilitation Act of 1973, as amended.
 - e. Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act (OWBPA), 29 U.S.C. Section 626(f), 16 October 1990.
 - f. Equal Pay Act of 1963, as amended.
 - g. Americans with Disabilities Act of 1990 (ADA).
 - h. Administrative Dispute Resolution Act of 1996.
 - i. Memorandum, HQDA SFMR-RBE, 25 March 1993, subject: Implementing Instructions for 29 CFR 1614 Regulations.

This regulation supersedes EC-690-1-693, 30 April 1995.

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j. Memorandum, HQDA SFMR-RBE, 26 October 1995, subject: Changes to Interim Army Regulation (AR) 690-600.

4. Distribution. This document is approved for public release, distribution is unlimited.

5. Exclusions. Class complaint allegations, allegations raised by non-Corps applicants for employment, and allegations which have been decided by the Department of the Army, the EEO Commission or a U. S. Court, are excluded from the CEERP. Additionally, CEERP mediation may not be appropriate where aggrieved persons are geographically removed from the organization where the allegations arose.

6. Policy. It is the policy of the Corps of Engineers to resolve employee/management problems quickly and at the lowest organizational level possible. To this end, Commanders, managers and supervisors are expected to use CEERP as a tool to achieve this policy objective.

7. Objectives. CEERP is designed to:

a. Allow the EEO Officer to resolve matters through conciliation before assignment to an EEO Counselor.

b. Permit impartial third party intervention by means of mediation after counseling.

c. Provide a nonadversarial process whereby involved parties are afforded the opportunity to resolve precomplaint problems/matters themselves.

d. Provide an environment which facilitates open communications.

e. Reduce costs of lengthy discrimination complaint administration and litigation.

8. ADR Process.

a. The ADR processes used in CEERP are conciliation and mediation as described in this regulation. The USACE leadership corporately volunteers to participate in these processes except as described elsewhere in this regulation. Participation in conciliation and mediation, when offered, is voluntary for an aggrieved person.

b. Conciliation is the initial effort by the EEO officer, or designee, to quickly resolve matters raised by employees. These matters may or may not involve allegations of prohibited discrimination. Regardless of the nature of the matters, the EEO Officer may conduct conciliation

or refer the employee to another office for assistance. The use of conciliation is optional and at the discretion of the EEO Officer. When used, conciliation must be completed prior to assignment of an EEO Counselor.

c. Mediation involves the intervention of a neutral and impartial third party into the dispute. The mediator assists in clarifying issues, identifying underlying causes, and arriving at appropriate remedies to resolve the dispute. The mediator cannot impose a resolution on the parties and will protect the confidentiality of the process. To avoid the appearance of a conflict of interest, no person may mediate a precomplaint if previously involved in the matter at issue or in processing actions or the technical review of the precomplaint.

d. Each activity will have an ADR Team chaired by the EEO Officer. The ADR Team will have the Labor Counselor, and a Civilian Personnel Advisory Center (CPAC) representative as team members. The Director, CPAC will designate the CPAC representative.

9. Responsibilities. In addition to the functions and responsibilities set forth in reference 3(i), the roles and responsibilities for the participants in CEERP are described below:

a. Commander/Director.

(1) Champions CEERP.

(2) Acts as the resolution official or appoints a resolution official with full authority to resolve the precomplaint. The appointment will be in writing in accordance with HQUSACE F-Ltr 3, Appointment of Resolution Official (Appendix A).

(3) Provides necessary resources to support CEERP.

b. EEO Officer.

(1) Administers CEERP and serves as chair of the ADR Team.

(2) Assures that CEERP awareness training is provided for employees, managers, and supervisors.

(3) Provides commander's briefing on the CEERP process.

(4) Briefs senior leaders, managers, and supervisors on the CEERP process.

(5) Conducts conciliation, as appropriate, to resolve matters.

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(6) Schedules and conducts ADR Team meetings and initiates ADR Team consultation.

(7) Offers mediation to aggrieved persons.

(8) Notifies participants of their rights and responsibilities.

(9) Recommends designation of the resolution official to the commander, coordinates resolution official appointment, and provides CEERP orientation of roles and responsibilities to the resolution official.

(10) Arranges for mediator participation and provides administrative support for the mediation process to include timely preparation or availability of all mediation documents.

(11) Coordinates and finalizes settlement agreements with ADR Team members.

(12) Provides Notice of Right to File a Discrimination Complaint, as appropriate.

c. EEO Counselor. In addition to the functions and responsibilities set forth in references 3(a) and 3(i), the counselor is responsible for explaining the CEERP process to aggrieved persons and providing them with a copy of the CEERP pamphlet.

d. CPAC Official.

(1) Participates in ADR Team meetings.

(2) Provides personnel guidance to ADR Team, resolution official, and mediator.

(3) Reviews settlement proposals.

e. Labor Counselor.

(1) Participates in ADR Team meetings.

(2) Provides legal advice to the ADR Team, resolution official, and mediator,

(3) Reviews settlement proposals.

f. Mediator.

(1) Reviews background materials including the EEO Counselor's report.

(2) Describes mediation process to participants.

(3) Conducts mediation.

(4) Briefs EEO Officer unproposed resolution, oral alternatively, notifies EEO Officer if no resolution is reached, and terminates mediation process.

(5) Drafts and coordinates signing of settlement agreements with participating parties.

g. Resolution Official.

(1) Participates in mediation in good faith.

(2) Cooperates in resolution efforts and signs settlement agreement.

h. Aggrieved Person.

(1) Participates in mediation in good faith.

(2) Cooperates in resolution efforts and signs settlements agreement

i. Principal Agency Witness (PAW),

(1) Participates in mediation in good faith.

(2) Cooperates in resolution efforts.

j. ADR Team.

(1) Consults on the offer of mediation.

(2) Consults on appointment of resolution official.

(3) Advises the resolution official, mediator and other participating parties on the sufficiency of settlement agreement terms.

10. CEERP Schedule (Appendix B).

a. Conciliation. The use of conciliation is optional and at the discretion of the EEO Officer. Conciliation must be completed within three days from the date a matter is brought to the EEO

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Officer. If conciliation is considered, and:

(1) there is no allegation of discrimination or reprisal raised during conciliation a memorandum, subject: Conciliation Without an Allegation of Discrimination (HQUSACE F-Ltr 6) will be prepared to document the outcome of the conciliation effort. The memorandum should be signed by both the aggrieved person and the EEO Officer.

(2) there is an allegation of discrimination, the contact is reportable and will be entered into the Defense Civilian Personnel Data System - Complaints, Appeals Tracking System (DCPDS-CATS) system within three days of the contact as an EEO precomplaint. The assigned DCPDS-CATS Docket number will be identified on all official documents relating to processing the action at both the precomplaint and complaint levels. The following procedures are to be used:

(a) if the matter is resolved in conciliation, a settlement agreement will be prepared and signed by the aggrieved person and the commander or designee.

(b) if the matter is unresolved, conciliation will be terminated and a memorandum (HQUSACE F-Ltr 4) will be prepared. The memorandum should be signed by the aggrieved person and EEO Officer. The matter will be assigned to an EEO counselor to complete precomplaint processing. Should the aggrieved person decline counseling or choose not to pursue the matter further, the EEO Officer will issue a Notice of Right to File a Discrimination Complaint and prepare an ENG Form 5068-R EEO Conciliation Report, (Appendix C) to document the conciliation effort. The report must document all of the information required to enter the action in DCPDS-CATS.

b. Counseling. The EEO Counselor must have completed the precomplaint inquiry, attempted resolution, briefed the EEO Officer on the inquiry results and provided a counselor's report to the EEO Officer on or before the 24th calendar day following initiation of the counseling process.

c. Pre-mediation procedures. When a precomplaint is not resolved through EEO counseling, the following procedures will be used:

(1) After review of the counselor's report, the EEO Officer will provide copies of the report to the other ADR Team members, who will meet or consult.

(2) On or before the 26th calendar day following the counselor's initial interview with the aggrieved person the ADR Team will meet or consult regarding the allegations raised, the underlying causes of the dispute and the requested relief. Based on the advice of the other ADR Team members and the facts of the case, the EEO Officer will determine if mediation is to be

offered. The EEO Officer and other ADR Team members will consider offering mediation in all precomplaint matters unless:

(a) the precomplaint concerns an allegation of class discrimination;

(b) the aggrieved person is a non-Corps applicant for employment with the U.S. Army Corps of Engineers; or

(c) the precomplaint concerns a matter which has been decided by the Department of Army, the EEO Commission, or a U.S. Court.

(3) When a precomplaint matter does not meet the criteria for mediation and an offer of mediation is not made, the EEO Officer will record the reasons on ENG Form 5048-R, Pre complaint Matters Not Subject to CEERP Mediation. A copy of the completed form will be retained in the EEO office.

(4) When mediation is not offered or if an offer of mediation is declined, the aggrieved person will be provided a Notice of Right to File a Discrimination Complaint. Receipt of the Notice of Right to File a Discrimination Complaint, must be acknowledged in writing or the notice must be mailed by certified mail, return receipt requested.

(5) If the precomplaint matter meets the criteria for mediation, and is not otherwise excluded from mediation, the EEO Officer will offer mediation on or before the 27th calendar day from the date of the EEO Counselor's initial interview with the aggrieved person. The EEO Officer will provide the aggrieved person a written offer to participate in mediation NLT two calendar days after the ADR Team meets or consults. The aggrieved person will accept or decline the offer to participate in mediation by completing ENG Form 5049- 1-R, Agreement to Extend Counseling/ CEERP Mediation Agreement. The form must be returned to the EEO Officer no later than the 29th calendar day from initiation of the counseling process.

(6) On or before the 30th calendar day, if mediation is offered and not accepted, the EEO Officer will assure that the aggrieved person is provided a Notice of Right to File a Discrimination Complaint.

(7) When the offer of mediation is accepted, the EEO Officer will select a mediator(s) within seven calendar days. The mediator will be selected from the official Corps of Engineers list published by the HQUSACE, CEEO. Exceptions to this policy, i.e., request to use mediators from sources other than the official list, must be approved by the next higher headquarters EEO

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Officer. The EEO Officer will provide the mediator copies of the counselor's report and related documents. The EEO Officer and the mediator will schedule the mediation NLT 30 days of the signing of Agreement to Extend Counseling /CEERP Mediation Agreement, ENG Form 5049-1-R. In all cases, the mediator must conclude mediation within 60 calendar days of the date counseling was extended.

(8) EEO Officer recommends a resolution official to the commander, after consultation with the ADR Team and insures that HQUSACE F-Ltr 3, Appointment of Resolution Official is completed.

d. Mediation.

(1) The mediator will proceed expeditiously to conduct mediation. The mediator will explain how the session will be conducted, including procedures and schedules. The mediator should normally conduct the mediation in one or two calendar days. The mediator has full authority to conduct the mediation session. This includes deciding who will participate and establishing the meeting schedule. Participants will include the aggrieved person and a management official. The mediator may allow others to participate (e.g., aggrieved person's representative, the resolution official) if necessary.

(2) All participants, including the ADR Team, will provide assistance to the mediator to enable mediation to proceed. The mediator manages all aspects of mediation sessions, and may meet with the parties together or separately during the process.

(3) The aggrieved person may be represented during the mediation by a representative, selected by the aggrieved person, at no cost to the government. However, the aggrieved person should do the talking during the mediation session.

(4) Mediation requires the voluntary participation of the aggrieved person. Therefore, the mediation process may be terminated at any time by the aggrieved person.

(5) The mediator will brief the EEO Officer on the results of the mediation, including proposed settlement terms and other remedial actions. The mediator will not keep private records or transcripts of the mediation.

(6) Mediation is concluded when:

(a) a written settlement agreement is entered into;

(b) the aggrieved person submits a written withdrawal statement; or

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(c) for unresolved issues, the aggrieved person and mediator complete ENG Form 5049-2-R, Unresolved Issues After CEERP Mediation. The EEO Officer will issue a Notice of Right to File a Discrimination Complaint to the aggrieved person.

(d) the aggrieved person or the mediator terminates mediation.

11. CEERP Evaluation and Reporting. Major subordinate commands, laboratories, centers and field operating activities will collect documentation regarding CEERP implementation from subordinate activities in their areas of responsibility and submit consolidated CEERP reports to HQUSACE, ATTN: CEEO, NLT the 10th day following the end of each quarter. The CEERP report format and instructions will be provided by the USACE EEO Officer.

FOR THE COMMANDER:

3 Appendices
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