

INDIAN AFFAIRS MANUAL

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Chapter 4

Regulatory Affairs and Collaborative Action
Collaborative Action and Dispute Resolution

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1.1 Purpose. This chapter provides policy and guidance regarding Indian Affairs' (IA) role in the Department of the Interior's (DOI) Collaborative Action and Dispute Resolution (CADR) program. The purpose of CADR is to promote cooperative dispute resolution and to implement a comprehensive program that provides an alternative to adversarial dispute resolution processes (i.e., litigation, Equal Employment Opportunity (EEO), and Human Resources (HR) administrative processes). Dispute resolution alternatives can achieve acceptable solutions to disputes more effectively than either litigation or administrative adjudication.

The IA Office of Regulatory Affairs and Collaborative Action (RACA) provides coordination and oversight to ensure IA's compliance with the DOI CADR program, which includes alternative dispute resolution (ADR), training, Environmental Conflict Resolution (ECR), and the CORE PLUS program.

1.2 Scope. This policy applies to employees under the authority of the Assistant Secretary-Indian Affairs (AS-IA), including the offices under the AS-IA, the Bureau of Indian Affairs (BIA), and the Bureau of Indian Education (BIE).

1.3 Policy. It is IA's policy to encourage constructive conflict management and resolution of workplace conflict through cooperative problem-solving in order to improve productivity and IA's quality of work life. All employees (non-supervisory, supervisory, managerial, and senior executives) are free to seek CADR assistance and services without restraint, coercion, interference, discrimination, or reprisal of any kind. Participation in CADR is by mutual consent of the disputants.

1.4 Authority.

A. Statutes and Regulations.

- 1) 5 U.S.C. §§ 571-584, Administrative Dispute Resolution Act of 1996
- 2) 20 U.S.C. §§ 5601-5609, Morris K. Udall Scholarship and Excellence in National Environmental Policy Amendments Act of 2009
- 3) 28 U.S.C. §§ 651-658, Alternative Dispute Resolution Act of 1998
- 4) 29 CFR Part 1614, Federal Sector Equal Employment Opportunity (EEO)

B. Guidance.

- 1) Executive Order 12988, Civil Justice Reform, February 5, 1996

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- 2) Presidential Memorandum, Designation of Interagency Committee to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking, May 1, 1998
- 3) Part 8 Indian Affairs Manual (IAM), Equal Opportunity Programs
- 4) 112 Departmental Manual (DM) 21, Office of Collaborative Action and Dispute Resolution
- 5) 370 DM 752.2, Conflict Resolution Plus Program
- 6) 370 DM 771, Administrative Grievance Procedures
- 7) 373 DM 5, Equal Opportunity Complaints Program
- 8) 373 DM 7, Procedures for Processing Complaints of Discrimination
- 9) 373 DM 8, Procedures for Processing Complaints under Executive Order 13160

Additional guidance on the Department's Conflict Resolution Program and the Administrative Grievance Procedures can be found in 370 DM 752.2 and 370 DM 771, respectively. RACA's intranet website also contains additional guidance for IA employees: <https://www.bia.gov/as-ia/raca/conflict-resolution-core-plus-program>.

1.5 Responsibilities.

A. AS-IA and Deputy Assistant Secretaries are responsible for:

- 1) ensuring implementation of the Department's CORE PLUS program;
- 2) providing adequate resources for IA participation in the program;
- 3) assigning accountability for the operation of the CORE PLUS program to bureau dispute resolution specialists (BDRS), and supporting the program by notifying all managers, supervisors, and employees of the assistance available;
- 4) encouraging managers/supervisors to support the CORE PLUS program and participate in good faith in CORE PLUS processes; and
- 5) ensuring that conflict management and ADR training, approved by the DOI Office of CADR, is provided for managers/supervisors and employees whenever possible.

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B. Deputy Bureau Directors, Directors, BIA and BIE; and Managers/Supervisors are responsible for:

- 1) maintaining open and consistent communication on work issues/concerns with employees, clarifying misunderstandings, making reasonable adjustments to address work problems and relationships, and actively seeking resolution of workplace issues/concerns at the earliest opportunity;
- 2) when appropriate, attempting to directly resolve issues/concerns with employees prior to using a third party neutral. As needed, seeking advice and support from a BDRS;
- 3) providing employees with communication, education, and access to information regarding the CORE PLUS program;
- 4) supporting and participating in approved CORE PLUS training;
- 5) ensuring that management's representative in a dispute resolution process has authority to settle and participate in good faith in mediation or other dispute resolution efforts;
- 6) protecting the confidentiality of the process used to resolve issues/concerns, consistent with legal and policy requirements; and
- 7) when necessary, providing funds to cover travel for the CORE PLUS Neutral or costs of acquiring an external ADR Practitioner or third party neutral services.

C. BDRS are located within the Office of RACA, and are responsible for:

- 1) collaborating with appropriate Department and bureau officials to oversee, monitor, and coordinate implementation of the CORE PLUS program and the delivery of training to support CORE PLUS;
- 2) ensuring that IA employees, managers, supervisors, and senior executives receive appropriate conflict resolution advice and assistance consistent with the requirements of CORE PLUS;
- 3) monitoring and evaluating implementation of the IA CORE PLUS program using the tracking, monitoring, and evaluation system developed by the DOI CADR office, and submitting data and/or reports on IA CORE PLUS;
- 4) managing the application process identifying IA employees seeking certification as CORE PLUS Neutrals (consistent with DOI requirements and standards for certification);
- 5) recommending CORE PLUS Neutrals qualified to perform the functions, and ensuring they maintain certification. Services provided by CORE PLUS Neutrals, such as mediation, may also be provided by a contractor or other qualified person from outside DOI, when appropriate and agreed to by the parties;

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- 6) identifying other sources of qualified neutral third party assistance available to IA employees, either in lieu of or in addition to CORE PLUS Neutrals, such as contractors or other qualified person from outside DOI, when appropriate and agreed to by the parties; and
- 7) ensuring that IA employees serving as a collateral duty CORE PLUS Neutral or having other CORE PLUS program responsibilities do not also have advocacy duties that would or could create an actual or perceived conflict of interest or position (e.g., representing management or employees in disciplinary proceedings, grievances, EEO cases).

D. Bureau HR Officers are responsible for:

- 1) providing information on the CORE PLUS program to servicing HR offices, and ensuring that HR staff receive training on CORE PLUS, HR's conflict management role, and providing advice, assistance, and guidance to supervisors and managers on dispute resolution options. HR Officers or HR staff may also refer employees and/or managers to the CORE PLUS program for additional assistance as appropriate; and
- 2) providing technical advice or assistance to CORE PLUS Neutrals as needed, and providing technical review of proposed agreements as appropriate.

E. Bureau EEO Officers are responsible for:

- 1) providing information on CORE PLUS to IA EEO Specialists and Counselors; and providing technical advice or assistance on EEO discrimination complaint cases to CORE PLUS Neutrals, reviewing draft settlement agreements to ensure accuracy regarding regulatory and legal requirements, and retaining the settlement agreements of EEO complaints to assure compliance requirements are met. The EEO Director, EEO Specialists, or EEO Counselors may also refer employees and/or managers to the CORE PLUS program for additional assistance as appropriate;
- 2) ensuring that EEO Counselors receive training on CORE PLUS and their conflict management role, including providing advice, assistance, and guidance to employees, supervisors, and managers on the EEO complaint process and ADR options;
- 3) providing training on the use of CORE PLUS in the EEO complaints process as part of EEO training for managers, supervisors, and employees; and
- 4) ensuring that dispute resolution alternatives are offered to employees at pre-complaint and formal stages of the EEO complaint process and the sexual orientation complaint process, as appropriate.

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F. **Director, RACA** is responsible for providing leadership, oversight, and coordination to ensure effective implementation of the Department's CADR/CORE PLUS program as documented in 370 DM 752.2, by establishing policy, implementation guidance, and standard operating procedures for the management of the IA program. Specific responsibilities include:

- 1) coordinating implementation efforts with the DOI Director, Office of HR and the DOI Director, Office of Civil Rights to ensure consistency with all related laws, regulations, Departmental policies, and performance goals; and providing standard program information to employees, managers, and supervisors;
- 2) coordinating and planning with the DOI CADR office and with other bureaus, BDRS, HR offices, etc. involved in CORE PLUS processes, as appropriate;
- 3) encouraging IA leadership, managers, and supervisors to receive basic conflict management training provided or approved by the DOI CADR Office;
- 4) ensuring that all IA personnel responsible for providing advice and assistance on HR and EEO matters are educated about the CORE PLUS program and can make appropriate referrals for ADR assistance;
- 5) ensuring development of education and training to support the implementation of the program, and disseminating standard marketing materials for use in educating employees about the program;
- 6) ensuring that the designated BDRS, CORE PLUS managers, and coordinators satisfy all training requirements established by CADR;
- 7) ensuring that all individuals recommended for certification as CORE PLUS Neutrals satisfy the education and training requirements, including annual refresher training; maintaining a roster of certified CORE PLUS Neutrals available to IA employees requesting or inquiring about CORE PLUS services; and ensuring access to qualified sources of external ADR Practitioners or third party neutrals (the minimum qualifications, education, training, and experience required for certification as a CORE PLUS Neutral are in the DOI CORE PLUS Implementation Handbook); and
- 8) developing reporting requirements to support the management of the program, and coordinating administrative support for the program to maximize efficiencies and support IA.

G. **CORE PLUS Neutrals** are responsible for:

- 1) meeting certification standards and annual requirements to maintain certification; and complying with Interagency Guidance and ethical standards for federal mediators;

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- 2) providing information and education to employees and management about the CORE PLUS program;
- 3) keeping supervisors apprised of time spent on CORE PLUS Neutral duties;
- 4) completing intake forms and assisting employees in clarifying and recording their issues/concerns;
- 5) advising employees and management participants of procedures, time frames, and/or special procedures that may be applicable to the issues/concerns; and clarifying that contact with a CORE PLUS Neutral does not satisfy any requirements for contacting HR or EEO personnel;
- 6) providing early conflict resolution assistance, which may include coaching, training, joint problem solving, conciliation, facilitation, or mediation; discussing and explaining approaches that might be appropriate to each situation; arranging and/or conducting ADR or other form of neutral assistance as acceptable to the parties; and maintaining a competent, impartial, and trustworthy image;
- 7) subject to the agreement of the parties, acting as third party neutrals to assist in resolving workplace issues/concerns; assisting parties in securing services of an external third party neutral if the parties agree that they would prefer an outside neutral to assist them in resolving their issues/concerns;
- 8) offering coaching and advice, when appropriate, to encourage parties in conflict to communicate in an attempt to resolve matters without third party assistance;
- 9) protecting the confidentiality of the CORE PLUS process, consistent with legal and policy requirements;
- 10) drafting agreements reached by parties, and ensuring appropriate technical and legal review is obtained before the parties sign the agreement;
- 11) ensuring parties in any CORE PLUS process are encouraged to complete an appropriate evaluation form;
- 12) entering accurate data into the CORE PLUS tracking system in a timely manner; and
- 13) issuing written Notice of Results and Options to parties on any other avenues of redress available when CORE PLUS efforts do not resolve all issues or concerns.

H. Employees are responsible for:

- 1) maintaining open and consistent communication on work issues/concerns with supervisor(s) and other employees;

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- 2) raising issues/concerns as early as possible and attempting to resolve with other employees or supervisors prior to using a third party neutral. As needed, seek advice and support from a CORE PLUS Neutral;
- 3) participating in good faith in mediation or other agreed-upon processes or efforts;
- 4) protecting the confidentiality of the dispute resolution process consistent with legal and policy requirements; and
- 5) seeking information and complying with established time frames and other requirements for alternative complaint processes.

1.6 Definitions.

- A. Agreement** is a resolution agreed to by the parties. Agreements must be in writing.
- B. Alternative Dispute Resolution (ADR)** is an inclusive term used to describe a variety of problem-solving processes used in lieu of litigation or administrative adjudication to resolve issues in controversy, such as settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini trials, and arbitration, or any combination thereof.
- C. Conciliation** is an informal ADR method in which a neutral third party assists to build a positive relationship between the parties to a dispute; intended to help establish trust and openness.
- D. Confidentiality** is integral to an effective CADR program, and to maintain credibility and facilitate success, any third party neutral (including CORE PLUS Neutrals or external ADR practitioners) must, to the maximum extent permissible by law, keep information given to them confidential unless given permission by all parties to use the information for specific purposes. The limitations placed on parties and mediators relating to confidentiality must be explained to the parties involved in mediation or other ADR process before it begins.
- E. Conflict** is the tension or struggle that arises when individuals have differing wants, needs, ideas, beliefs, values, or goals. Conflict may result in dissatisfaction, disagreement, or frustration over unmet expectations or misunderstandings in the workplace.
- F. Conflict Management** is the ability to recognize conflict and respond appropriately to resolve the underlying concerns before adversarial positions are hardened.
- G. CORE PLUS** is an integrated conflict management system that emphasizes early cooperative problem-solving and constructive conflict management in addition to ADR processes. CORE PLUS replaces two workplace ADR programs: CORE, originally an

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HR program; and EEO PLUS, originally an EEO program. CORE PLUS is broader than an ADR program because it crosses bureau and office boundaries and involves a coordinated effort across functional areas, including HR, EEO, the Office of the Solicitor, Human Capital, CADR, and even external training centers.

- H. Dispute** means when someone makes a claim, demand, or request of another (employee, supervisor, or manager) and it is denied, rejected, or not acted upon.
- I. Dispute resolution communication** is any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes, or work product of the neutral, parties, or nonparty participants. A written agreement to enter into a dispute resolution proceeding, or a final written agreement or arbitration award reached as a result of a dispute resolution proceeding, is not dispute resolution communication.
- J. Dispute resolution proceeding** is any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate.
- K. Environmental Conflict Resolution (ECR)** includes the use of ADR or any consensual method to resolve environmental conflicts or disputes which frequently are complex and may involve multiple parties. ECR has also been defined as third party assisted conflict resolution in the context of environmental, public lands, or natural resources issues (OMB/CEQ ECR Memorandum, 2005).
- L. Facilitation** is the assistance of a third party who is impartial toward the issues under discussion, and who works with all participants in a whole group session to provide procedural directions on how the group can effectively move through the problem-solving steps of the meeting and arrive at the jointly agreed upon goal.
- M. Fact-finding** is the use of neutrals acceptable to all parties to determine disputed facts. This can be particularly useful where disagreements about the need for or the meaning of data are impeding resolution of a dispute, or where the disputed facts are highly technical and would be better resolved by experts. Fact-finding usually involves an informal presentation of its case by each party. The neutral(s) then provides an advisory opinion on the disputed facts which can be used by the parties as a basis for further negotiation.
- N. Mediation** is the intervention of an impartial and neutral third party into a dispute, who has no decision-making authority, but who will procedurally assist the parties to voluntarily reach an acceptable settlement of issues in dispute.

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- O. Negotiation** is a bargaining relationship between two or more parties who have either perceived or actual conflicts of interest. The participants join voluntarily in a temporary relationship to educate each other about their needs and interests, and exchange specific resources or promises that will resolve one or more issues.
- P. Neutral** means qualified ADR practitioners and conflict management experts who have no official, financial, or personal conflict of interest with respect to the dispute, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve. The position can be full-time, part-time, or as a collateral duty. Neutrals provide or arrange for various types of assistance appropriate to each circumstance and acceptable to the parties involved. Assistance may include, and is not limited to, providing information (including personnel policies, and time frame information on administrative, EEO, or other forms of redress), referring employees to other appropriate sources of assistance (such as the employee's supervisor or the Employee Assistance Program), helping define issues or specific concerns, suggesting effective communication and conflict resolution strategies and techniques or training, coaching parties in their attempts to resolve conflicts on their own, facilitating meetings, gathering information relevant to a particular conflict (when needed to enhance resolution efforts), mediating (when it is appropriate and the parties are willing to participate), or securing the services of other ADR practitioners acceptable to the parties.
- Q. Ombudsman** is a person designated to address selected categories of disputes by investigating the circumstances that gave rise to the matter, and based upon the investigative findings, recommending corrective action, as appropriate.

1.7 Overview of CADR/CORE PLUS.

Currently, conflict resolution assistance for IA is provided primarily through the DOI CORE PLUS framework. CORE PLUS is more comprehensive than a typical ADR program as it includes mediation, individual and/or group consultation, conciliation, conflict coaching, leadership coaching, training, and team-building. The CORE PLUS framework involves coordination with HR, the Office of Civil Rights, the DOI's Office of CADR, the Office of the Solicitor, and training centers. The program's goal is to create an environment where concerns can be expressed and heard respectfully, and problems can be approached collectively to reach effective and agreeable solutions. When appropriate, neutral conflict resolution assistance may also be utilized to address employee and management concerns.

CORE PLUS assistance is available at any time to address any issue/concern raised by any Department employee. For example, any employee who seeks EEO counseling or files a complaint has the option to request ADR through the CORE PLUS program to attempt

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informal resolution of issues underlying the complaint. Additionally, any employee who seeks support through the Administrative Grievance Process may also request ADR or other assistance through the CORE PLUS program at the same time.

A. CORE PLUS **does**:

- 1) Provide all employees with fair, equitable, and effective means for constructively resolving workplace conflicts or disputes at:
 - a. the earliest opportunity;
 - b. the lowest organizational level; and
 - c. to the mutual satisfaction of all parties.
- 2) Rely on a coordinated network of information and resources to help all employees promptly address issues and concerns in the workplace and reduce destructive disputes.

B. CORE PLUS **does not**:

- 1) **Replace any legal or administrative avenues of redress available to employees or provide any *extension* of time frames in which to seek redress under any formal administrative processes unless otherwise provided for within a specific administrative process (e.g., EEO complaint process or Administrative Grievance Procedures).**
- 2) Delay any pending disciplinary action unless management decides or concurs that the action can be held in abeyance based on the particular circumstances of the case.

1.8 Standards and Requirements.

A. Standards.

- 1) The DOI CADR policies, procedures, timelines, and other requirements apply equally to all IA employees.
- 2) The CORE PLUS program covers *all* employees, regardless of type and tenure of appointment. However, for bargaining unit employees to have access to the CORE PLUS program, there must be specific authorization in the collective bargaining agreement, a Memorandum of Understanding (MOU), or other written agreement between the union and local management.

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- 3) Some matters have specific administrative processes and time frames that an employee must follow when filing a formal complaint. These matters include but are not limited to: EEO complaints, sexual orientation discrimination claims, administrative grievances, whistleblower complaints, and prohibited personnel practices. If an employee seeking assistance from the CORE PLUS program has raised an issue/concern in one of these areas, the CORE PLUS Neutral will inform the employee of other available avenues appropriate to the circumstances and refer the employee to other sources of relevant information.

B. Requirements.

1) Each bureau/office must:

- a. Ensure compliance with the federal labor relations statute (5 U.S.C. Chapter 71) and collective bargaining agreements when bargaining unit employees seek assistance through CORE PLUS (specific authority must be provided in the collective bargaining agreement or by MOU.)
- b. Allow employees to bring any issue/concern to the CORE PLUS program without time constraints. However, this provision does not change or extend time limits in formal avenues of redress (such as EEO complaints, administrative grievances, or negotiated grievances) unless provisions allowing for the extension of timeframes exist in the applicable administrative procedure.
- c. Inform each employee seeking CORE PLUS assistance that if he/she is interested in using the EEO discrimination complaints process, he/she must raise any issue that involves an allegation of discrimination or harassment with the EEO Office or an EEO Counselor within 45 days of the incident that gave rise to the issue/concern or the effective date of the personnel action. This information will be contained in a document that must be signed by the CORE PLUS Neutral and the employee, and a copy provided to the bureau EEO Officer.
- d. Inform each employee seeking CORE PLUS assistance that he/she must present a grievance in writing, within 15 days of the date of the challenged action or inaction, or the date he/she became aware of it, in order to retain the right to file a formal grievance (although the deadline for filing an informal grievance may be extended by the grievance official in some circumstances (see 370 DM 771, Section 1.10 A). This information will be contained in a document that must be signed by the CORE PLUS Neutral and the employee, and a copy provided to the bureau HR Director. The time frames required for presentation of a grievance under a negotiated grievance procedure may be different, and employees are responsible for complying with the applicable time frames.

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2) Each CORE PLUS Neutral must:

- a. Complete the CORE PLUS Intake Form and transfer intake data to the CORE PLUS tracking system.
- b. Within 15 days of the initial contact (as documented on the CORE PLUS Intake Form), informally gather relevant information, and discuss and recommend an appropriate method to address the issues/concerns presented by the employee.
- c. If mediation is deemed appropriate by the CORE PLUS Neutral and agreed to by the parties, provide the parties with scheduling information and ask them to sign an "Agreement to Mediate" covering confidentiality and other aspects of the process.
- d. Extend the time frame beyond the first 15 days of the initial visit, in no more than two 15-day increments, if the parties agree to continue an attempt to resolve the issue/concern within the CORE PLUS program. The dispute resolution process may continue beyond this time frame only if the parties involved jointly agree to an extension, and in the judgment of the CORE PLUS Neutral they are making progress toward a resolution. In EEO discrimination complaint cases, the dispute resolution process may be invoked at any time. While the informal complaint process may not exceed 90 days when ADR is invoked, the ADR process may continue beyond that time if agreed to by the employee(s)(see 29 C.F.R. § 1614.105 (e) and (f)). In other words, dispute resolution may voluntarily continue even after a Notice of Final Interview has been issued signifying that informal, pre-complaint counseling has ended.
- e. Provide a Notice of Results and Options to the parties upon determining that the issue/concern is likely to remain unresolved or the time frame expires, and, in the CORE PLUS Neutral's judgment, the parties are not close to resolution.
- f. Inform an employee that, upon receipt of a Notice of Results and Options, or at any time during the CORE PLUS process, an employee may:
 - i. Take no further action; or
 - ii. As appropriate, take action under any other applicable formal avenue of redress.
- g. Complete the process evaluation form and encourage the parties to do the same.

1.9 Exceptions. IA will consider **not** using CORE PLUS if:

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- A. A definitive or authoritative resolution of the matter is required for precedential value, and an ADR process is not likely to be accepted as an authoritative precedent.
- B. The matter significantly affects persons or organizations who are not parties to the proceeding.
- C. A public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record.
- D. IA must maintain continuing jurisdiction over the matter with authority to alter the disposition in light of changed circumstances, and a dispute resolution proceeding would interfere with that requirement.

1.10 Confidentiality Guidelines. Confidentiality is integral to an effective CADR program. In order to maintain credibility and facilitate success, any third party neutral (including CORE PLUS Neutrals or external ADR practitioners) must, to the maximum extent permissible by law, keep information given to them confidential unless given permission by all parties to use the information for specific purposes. The limitations placed on parties and mediators relating to confidentiality must be explained to the parties involved in mediation or other ADR process before it begins.

IA follows the Department's Confidentiality Policy for CORE PLUS and the use of ADR to resolve workplace conflicts or disputes based on the Administrative Dispute Resolution Act of 1996 (ADRA). The mediation process requires confidentiality in accordance with 5 U.S.C. § 574. Specific guidance must be provided to neutrals and parties that engage in the use of CORE PLUS, including the DOI Confidentiality Policy and Agreement to Mediate Form. These documents can be found in the DOI CORE PLUS Handbook.

Approval



John Tahsuda
Principal Deputy Assistant Secretary—Indian Affairs

AUG 16 2019

Date