II. Discussion

Section 17A(b)(3)(F) of the Act [5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with EMCC's obligations under Section 17A(b)(3)(F) because it should reduce the number of settlement payments and the size of delivery obligations among EMCC netting members and therefore should increase the speed and accuracy of the settlement process with regard to those members. In addition, the Commission believes that the arrangements for EMCC's netting services have been designed so that they help EMCC to assure the safeguarding of securities and funds that are under EMCC's control or for which it is responsible.

III. Conslusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–98–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12931 Filed 5–20–99; 8:45 am]

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[5] 15 U.S.C. 78q–1(b)(3)(D).

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Policy Statement on the Use of Alternative Dispute Resolution and Case Selection Criteria for Alternative Dispute Resolution

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This notice publishes the Alternative Dispute Resolution Policy Statement of the U.S. Small Business Administration and sets forth criteria for identifying cases as potentially suitable for dispute resolution. SBA is publishing this notice to make clear its firm commitment to the greater use of alternative dispute resolution techniques. Nothing in this notice or these guidelines, however, creates any right or benefit by a party against the United States. No person or entity should construe this notice as requiring or suggesting that any employee act in a manner contrary to law.

ADDRESSES: Submit Comments to Eric S. Benderson, Associate General Counsel for Litigation, Office of General Counsel, U.S. Small Business Administration, 409 3rd St., SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Eric S. Benderson, (202) 205–6643.

Throughout the past decade, the litigation caseload, both in the courts and before administrative tribunals, which the Small Business Administration (''SBA'') and its participant lenders have carried has placed an increasing strain on SBA's resources, both in terms of personnel and expense. Other federal agencies have also faced this growing problem. To address these problems, the 101st Congress enacted the Administrative Dispute Resolution Act of 1990, Pub. L. 101–552, 104 Stat. 2736–37. This legislation with some modifications was permanently reenacted as the Administrative Dispute Act and Negotiated Rulemaking Act of 1996, Pub. L. 104–320, 110 Stat. 3870 (1996). This Act, as amended, codified at 5 U.S.C. 571 *et seq.*, authorizes federal agencies to use various dispute resolution techniques outside of litigation to resolve controversies related to administrative programs if the disputing parties agree to such a proceeding. 5 U.S.C. 572. Under the Act, a dispute resolution proceeding can include any process involving the disputants in which a neutral party participates. *See* 5 U.S.C. 571.

The National Performance Review, chaired by Vice President Gore, recommended in 1993 that all federal agencies establish methods for Alternative Dispute Resolution (''ADR'') and encourage the use of ADR when enforcing regulations. More recently, in 1996, President Clinton issued Executive Order 12988 dealing with Civil Justice Reform. This Order directed federal agencies to consider whether alternate methods might resolve a civil dispute both before suit is filed and again after litigation is instituted. The Order further authorized the Department of Justice to issue model guidelines for the use of ADR. The Justice Department published these guidelines at 61 FR. 36906 (July 15, 1996).

The SBA recognizes the inherent value of using various formal and informal dispute resolution techniques. ADR techniques may be appropriate to resolve a variety of disputes which regularly involve SBA. Several programmatic areas and activities at SBA afford fertile ground for the adoption of ADR techniques. These include proceedings before the Office of Hearings and Appeals, EEO proceedings, personnel actions, government contract disputes, and disputes with participating lenders and surety companies.

SBA routinely undertakes informal negotiations to settle delinquent loan accounts and other types of disputes before and after suit is initiated. At the same time, however, the Agency recognizes the need to do still more to promote the fair and efficient resolution of disputes arising in all areas of operations. Often, the use of ADR will be a more cost effective and efficient means of achieving a satisfactory resolution of a dispute than litigation or administrative procedures. To that end, SBA has adopted the guidelines outlined below.

The ADR Coordinator, the Associate General Counsel for Litigation, will work with program heads in implementing these ADR policies to develop specific procedures with respect to their particular programs to the greatest extent possible. This notice identifies factors which increase the value of ADR and other factors which diminish its benefit. The criteria below, however, are by no means exclusive, and are not intended to remove discretion from the employees of SBA. The determination of whether a particular case, claim or issue is appropriate for an ADR proceeding is often very fact specific. ADR will not be an appropriate means of resolving every dispute, but in this era of reduced resources, a commitment to the use of ADR procedures will allow SBA to maximize the resources devoted to dispute resolution.

Definitions

Alternative Dispute Resolution—An umbrella term that encompasses many different processes and procedures for dispute resolution. Those processes and procedures include, but are not limited to, arbitration, early neutral evaluation, facilitation, mediation, mini-trials and summary jury trials.

Arbitration—A non-judicial proceeding in which the disputants select a neutral person or panel of persons to act as arbiters of a dispute. The arbitrator hears evidence and, in many respects, acts like a judge. The

arbitrator's decision may be binding or non-binding, depending on the agreement of the parties. The use of binding arbitration by SBA must comply with the requirements of 5 U.S.C. 575.

Early Neutral Evaluation—A method of dispute resolution using a forum in which attorneys present the core of the dispute to a neutral evaluator in the presence of the parties. Disputants typically use this method after a lawsuit commences but before conducting discovery. The evaluator gives the parties a candid assessment of the strengths and weaknesses of their positions. If the parties do not reach a settlement, the evaluator helps the parties narrow the dispute and suggests guidelines for managing discovery.

Facilitation—A voluntary arrangement (or process) agreed to by disputants to seek more immediate resolution of the issues (conflict). This process is similar to counseling by agency employees of Equal Employment Opportunity complainants, but involves senior level agency managers as neutrals.

Mediation—A non-judicial process in which a neutral party facilitates an interest-based negotiation between the disputants, who then fashion their own resolution of the dispute. The resolution may be binding or non-binding, depending upon the agreement of the parties.

Mini-trial—A truncated form of litigation which assists in the structuring of a case for settlement. This procedure generally involves a non-binding information exchange conducted before one or more neutral parties who, in many cases, are experts in the field in controversy. There is no testimony from witnesses. Instead, each party's counsel is given an allotted period of time to state what the testimony would be and argue the legal consequences flowing from the facts. Those with settlement authority then meet to negotiate a resolution. If the parties fail to reach such a resolution, the neutral party or parties can render a decision. The decision may be binding or non-binding, depending upon the agreement of the parties.

Summary jury trial—This process is similar to a mini-trial, except that counsel presents the case to a jury instead of a neutral third party. A judge charges the jury as in ordinary litigation. After deliberation, the jurors return a non-binding ''advisory'' verdict. The parties then meet to resume settlement negotiations.

Guidelines for Reviewing Disputes for Resolution by ADR

SBA officials with delegated authority to resolve disputes within their program areas, other than the Office of Hearings and Appeals, in consultation with the Associate General Counsel, shall review each dispute which arises and determine whether, in light of the factors set forth below, use of ADR would be appropriate. These officials should consult with SBA counsel in determining whether to use ADR in a particular matter and which method of ADR to use.

If SBA determines that the matter is appropriate for ADR, an SBA official should send a letter to the opposing party or parties to determine their willingness to use ADR. If counsel represents the opposing party or parties, SBA counsel should prepare this letter and deal with opposing counsel in close consultation with program officials. If the other party or parties agree to use ADR, SBA and the other parties must enter a written agreement. This agreement, at a minimum, should include the following terms:

1. Agreement on the method of ADR and whether the procedure will be binding or non-binding (use of binding arbitration requires concurrence of AGC for litigation and must conform to the requirements for the Administrative Dispute Resolution Act. 5 U.S.C. 551, et. seq.);

2. Agreement on the potential neutrals likely available to resolve the dispute and how the final decision of which neutral to use will be made;

3. Agreement as to the allocation of the costs of ADR among the parties;

4. Agreement as to the time limits and scope of discovery;

5. Agreement on any necessary confidentiality provisions to govern the exchange of information in accordance with the Administrative Dispute Resolution Act and various privileges; and

6. Agreement on a tentative schedule for the resolution of the dispute through ADR.

When SBA officials determine that the use of ADR is inappropriate to resolve a particular case, issue or dispute, SBA officials should continue to review unresolved matters deemed inappropriate for ADR to determine if ADR would be beneficial at some subsequent time.

General Factors To Consider in Determining Whether a Matter Is Appropriate for ADR

In order to operate successfully, the chosen ADR technique must be specifically tailored to the particular dispute. Alternative Dispute Resolution is often appropriate in cases where litigation will produce an unsatisfactory result regardless of outcome or where litigation is too slow or cumbersome. Alternative Dispute Resolution also permits the parties to exercise more direct control over the dispute resolution remedy. ADR techniques have proven successful in many categories of cases where the cases are routine (not precedent setting), such as routine automobile torts, slip and fall, and employment rights cases, or where confidential communication with a neutral third party will help to clarify issues. Alternative Dispute Resolution techniques also allow the parties to craft individualized, nontraditional remedies. The following are some general suggestions to consider when determining whether to undertake ADR in a given case.

The criteria listed below are by no means exclusive, and are not intended to remove discretion from the employees of SBA. The determination of whether a particular case, claim or issue is appropriate for ADR is often very fact dependent.

Alternative Dispute Resolution is not meant to replace traditional negotiation in every case. Rather, it may serve to provide agency employees with additional tools to facilitate negotiation where traditional two-party negotiation has not produced an acceptable resolution or where the presence of a neutral may cause negotiations to proceed more efficiently.

The following, by way of example but not limitation, are factors you may consider when determining whether to use ADR and when determining which ADR technique will be most suitable in a given case: These factors are neutral in that whether they weigh in favor of or against the use of ADR depends upon the specific facts and circumstances of the case at issue.

1. Does the dispute indicate that the parties have an agenda separate and apart from the specific issues of the case?

2. What is the history of the dispute?

3. What is the anticipated outcome of the dispute, and is either party likely to appeal?

4. Have all the facts necessary to settle the case been discovered?

5. Has settlement authority been obtained or is more information needed to obtain settlement authority?

6. Who is in charge of handling the dispute for each of the parties?

7. Are there significant factual or legal disputes or do the parties generally

agree upon the most relevant facts or applicable legal precedent?

8. Is the opposing party an individual, a corporation or another governmental entity? How does that effect the ability of the opposing party to participate in the ADR process?

9. How credible are the witnesses for each party? How credible would such witnesses appear to a court? How would the credibility of the witnesses affect the outcome of the dispute?

10. Are there non-party individuals or entities with interests in the outcome of the dispute?

11. If applicable, what is the position of the case on the court's docket?

12. What are the likely expenses of litigation as opposed to the likely expenses of ADR?

13. Does the dispute involve policy implications?

14. What is the anticipated time-frame for resolving the dispute by means of litigation and by means of ADR?

Factors Counseling in Favor of ADR

A. Factors regarding the parties involved in the dispute:

1. There is now or is likely to be a continuing relationship between the parties.

2. There may be benefits to either party hearing directly from the opposing side.

3. Either party likely would be influenced by the opinion of a neutral third party.

4. The opposing party does not have a realistic view of the case.

5. The parties have indicated a desire to settle.

6. Either party needs a swift resolution of the dispute.

B. Factors regarding the nature of the case or dispute:

1. The facts of the dispute are complex or of a complicated technical nature not well-suited to litigation.

2. If the case proceeds to court, it is likely that SBA would face a hostile forum or decisionmaker.

3. The parties desire to maintain flexibility in the relief they seek.

4. Trial preparation will be difficult, costly and/or time-consuming, and these costs would outweigh any benefit which SBA is likely to receive if the matter proceeds to trial.

5. There is no need for a legal precedent in the matter.

6. There is a need to avoid an adverse legal precedent in the matter.

7. The Agency is a defendant and, if found liable, would face a great deal of legal exposure.

8. Serious questions exist as to whether SBA could actually recover significant sums in executing on a judgment.

9. There is a reasonable probability of an unfavorable determination of factual issues.

10. ADR could significantly narrow the issues in controversy even if it is unlikely to lead to a complete resolution of the matter.

Factors Counseling Against the Use of ADR

1. There is a need for precedent on the issue in dispute.

2. A need exists for a public proceeding to resolve the issue or case.

3. There is a need for a public sanction.

4. The matter is likely to settle soon without assistance.

5. The matter is likely to be resolved by motion in SBA's favor.

6. Either the opposing party or counsel representing the opposing party is not trustworthy.

7. A settlement would likely establish a precedent which would trigger additional claims and/or litigation.

8. An individual is sued in his or her personal capacity as a Government employee.

9. There is reason to believe that the opposing party is engaging in fraudulent or criminal activity or will not act in good faith.

10. One or more of the parties is unable to negotiate effectively, with or without the assistance of counsel.

11. Injunctive relief is sought and no compromise or other relief is available or acceptable.

12. The only relief sought is foreclosure on real property.

Factors To Be Considered in Deciding What Type of ADR Method(s) Should Be Used

When choosing an ADR method, SBA officials should consider how swiftly a particular method of ADR is likely to resolve the dispute. For example, proceedings under mediation or early neutral evaluation may take much less time than proceedings under other methods, such as arbitration.

A. Factors Favoring Mediation

1. There is a continuing relationship among the parties.

2. The disputed or key facts are not so technical as to require subject matter expertise.

3. There are multiple defendants and the United States has the greatest exposure.

4. There exists a risk of unfavorable precedent.

5. There is likely to be an excessive delay from the time a suit is filed until the time that recovery is actually achieved.

6. Either side is likely to benefit from hearing directly from the other party.

7. The opposing party needs to obtain a realistic view of the case.

8. The parties desire to maintain flexibility in the relief they seek.

B. Factors Favoring Early Neutral Case Evaluator/Expert

1. The parties know from the start that the case can be settled.

2. The parties disagree on the amount of damages.

3. Factual issues requiring expert testimony may be dispositive of liability or damage issues and the use of a neutral expert is cost effective.

4. A resolution of the factual issue(s) will assist in settlement.

5. One or more of the parties to the dispute needs to obtain a realistic view of the case, including a prediction of the likely outcome.

C. Factors Favoring Arbitration

1. The parties disagree on the amount of damages.

2. Arbitrators in the area are well-respected.

3. There are no complex factual issues involving areas of expertise and the parties disagree on the facts.

D. Factors Favoring Mini-Trials or Summary Jury Trials

1. There is likely to be an excessive delay from the time a suit is filed until the time there is any recovery.

2. Simple factual issues exist which while not necessarily requiring expert testimony would take an excessive amount of time to present in a traditional forum.

3. There are complex factual issues which are generally explained with expert testimony.

4. The attorneys can fairly summarize the facts to the fact-finder without the necessity of lengthy cross-examination.

Factors To Consider in Selecting ADR Providers

1. Does the provider meet the requirements of the relevant federal or state court rules for neutrals?

2. Is the ADR provider unbiased and not seeking to advance his or her own interests?

3. Will the ADR provider deal fairly with the parties and be reasonably available to the parties?

4. Does the ADR provider know any of the parties or counsel involved in the matter? If so, what is the nature and context of the provider's relationship with the parties or counsel and would this present a conflict of interest?

5. What kind and extent of training has the ADR provider received for the particular ADR process to be used?

6. Has the ADR provider received such training from a well-reputed program?

7. What kind of experience does the ADR provider have with the particular ADR process to be used in terms of the years of experience with the process, the number of disputes resolved, the amount in controversy and the complexity of the issues involved?

8. Is the ADR provider an attorney? If so, what kind of experience does the provider have in terms of type of practice, years of experience, complexity of cases and issues and litigation involving governmental entities?

9. Does the ADR provider have expertise in the issues or facts in controversy?

10. When the parties are paying for the services of an ADR provider, are the rates fair and reasonable for resolving a governmental dispute?

Training

SBA is committed to educating its personnel regarding the benefits and potential uses of ADR. To that end, SBA has begun ADR training. It expects to add ADR training to existing Agency training programs and to develop additional training devoted primarily to ADR. SBA also intends to work in partnership with other federal agencies to take full and efficient advantage of training which these agencies already have developed. SBA has already trained a number of its personnel throughout the United States to serve as mediators in disputes involving federal agencies. For example, the administrative judges in the Office of Hearings and Appeals have completed mediation training. SBA will explore additional training in this area.

Michael D. Schattman,

General Counsel.

[FR Doc. 99–12875 Filed 5–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3181]

State of Kansas; Amendment #1

In accordance with a notice received from the Federal Emergency Management Agency dated May 11, 1999, the above-numbered Declaration is hereby amended to include Reno and Sumner Counties in the State of Kansas as a disaster area as a result of damages caused by severe storms and tornadoes beginning on May 3, 1999 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Harper, McPherson, Pratt, Rice, and Stafford in the State of Kansas may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 2, 1999, and for economic injury the deadline is February 4, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 12, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–12876 Filed 5–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3174]

State of Missouri; Amendment #1

In accordance with notices received from the Federal Emergency Management Agency dated April 14 and May 5, 1999, the above-numbered Declaration is hereby amended to include Andrew, Iron, Macon, and Osage Counties in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding. This Declaration is further amended to establish the incident period for this disaster as beginning on April 3 and continuing through April 14, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Adair, Buchanan, Callaway, Chariton, Cole, Crawford, DeKalb, Dent, Gasconade, Gentry, Holt, Knox, Linn, Maries, Miller, Monroe, Montgomery, Nodaway, Randolph, Reynolds, Shelby, Sullivan, and Washington Counties in Missouri, and Doniphan County, Kansas.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 18, 1999, and for economic injury the deadline is January 20, 2000.

The economic injury number for Kansas is 9C8000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 12, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–12878 Filed 5–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3180]

State of Oklahoma; Amendment #1

In accordance with notices received from the Federal Emergency Management Agency dated May 7, 1999, the above-numbered Declaration is hereby amended to include damages caused by flooding in this disaster, in addition to damages resulting from severe storms and tornadoes. This Declaration is further amended to include Canadian, Craig, LeFlore, Ottowa, and Noble Counties in Oklahoma as a disaster area, and to establish the incident period for this disaster as beginning on May 3 and continuing through May 5, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Delaware, Grant, Haskell, Kay, Latimer, Mayes, McCurtain, Nowata, Pushmataha, and Sequoyah in Oklahoma; Cherokee and Labette Counties in Kansas; McDonald and Newton Counties in Missouri; and Polk, Scott, and Sebastian Counties in Arkansas.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 2, 1999, and for economic injury the deadline is February 4, 2000.

The economic injury numbers for Kansas, Missouri, and Arkansas are 9C8100, 9C8200, and 9C8300, respectively.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 12, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–12877 Filed 5–20–99; 8:45 am]

BILLING CODE 8025–01–P