

SUPPORTING STATEMENT  
(PART A AND B)

INFORMATION COLLECTION REQUEST

for the

Evaluation of Mediation Services  
(Agreement Seeking Processes)  
(Control Number 3320-0004, Expiring 12/31/2011)

The U.S. Institute for Environmental Conflict Resolution

November 14, 2011

## TABLE OF CONTENTS

A. Justification .....	3
1. Circumstances that Make the Collection of Information Necessary .....	3
2. How, by Whom, and for What Purpose the Information is to Be Used .....	4
3. Collection Technology .....	5
4. Duplication.....	5
5. Impact on Small Businesses or Other Small Entities.....	5
6. Consequences of Not Conducting Collection .....	5
8. Federal Register Notice.....	6
9. Payment/Gifts to Respondents .....	7
10. Confidentiality Protocols .....	7
11. Justification of Questions of a Sensitive Nature .....	7
12. Hours Burden of the Collection of Information.....	7
13. Estimate of Total Annual Cost Burden .....	9
14. Annualized Costs to the Federal Government .....	9
14a. Total Capital and Start-Up Costs .....	9
14b. Total Operational and Maintenance and Purchase of Services Component....	10
15. Reasons for Program Changes/Adjustments.....	10
16. Plans for Tabulation and Publication.....	10
17. Display of Expiration Date for OMB Approval .....	11
18. Explanations to "Certification for Paperwork Reduction Act Submissions" .....	11
B. Collections of Information Employing Statistical Methods.....	11
1. Respondent Universe and Sample Size/Selection Methods.....	11
2. Procedures for the Collection of Information .....	12
2a. Statistical Methodology for Stratification and Sample Selection .....	12
2b. Estimation Procedure .....	12
2c. Degree of Accuracy Needed for the Purpose Described in the Justification.....	12
2d. Unusual Problems Requiring Specialized Sampling Procedures .....	12
2e. Periodic Data Collection to Reduce Burden.....	12
3. Testing Procedures.....	12
4. Statistical Consultants.....	12
Appendix A. Statutes and Regulations Authorizing the Collection of Information.....	14
Appendix B. Mediation Evaluation Design Overview .....	25
Appendix C. Public Comments in Response to the First Federal Register Notice.....	32

## **A. Justification**

### **1. Circumstances that Make the Collection of Information Necessary**

The U.S. Institute for Environmental Conflict Resolution (the U.S. Institute) is a federal program established by the U. S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The U.S. Institute was created by the Environmental Policy and Conflict Resolution Act of 1998 (P.L. 105-156) and is part of the Morris K. Udall and Stewart L. Udall Foundation, an independent federal agency of the executive branch overseen by a board of trustees appointed by the President (A copy of P.L. 105-106 is included in Appendix A1). The U.S. Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in such conflicts, regardless of who initiates or pays for assistance. The U.S. Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict. In addition, the U.S. Institute maintains a roster of qualified facilitators and mediators with substantial experience in environmental conflict resolution, and can help parties in selecting an appropriate neutral. (See [www.ecr.gov](http://www.ecr.gov) for more information about the U.S. Institute.)

Program evaluation is necessary for the achievement of the U.S. Institute's goals – to resolve federal environmental disputes in a timely and constructive manner; to increase the appropriate use of environmental conflict resolution (ECR); to improve the ability of federal agencies and other interested parties to engage in ECR effectively; and to promote collaborative problem solving and consensus building during the design and implementation of federal environmental policies so as to prevent and reduce the incidence of future environmental disputes. Effective program evaluation will provide information on how well these functions are performed, and will stimulate improvement in performance as needed. Furthermore, the Government Performance and Reporting Act (GPRA) requires all Federal agencies to report annually on their performance by, in essence, answering the following questions: What is your program or organization trying to achieve? How will its effectiveness be measured? How well is it meeting its objectives? (A copy of the relevant part of GPRA is included in Appendix A2).

The U.S. Institute began the program evaluation process by articulating its mission in terms of desired outcomes for its programs. Standards are being established for each outcome, and information will be collected and interpreted to measure performance in relation to the standards. Achievement of the standards can then be tied to activities and staff responsibilities. This is the framework envisioned by GPRA for all federal agencies. Properly designed and implemented, program evaluation will assist the U.S. Institute in continually improving the delivery of its services and products.

Information will be collected from a variety of sources for use in judging the degree to which the outcomes are achieved. Key sources of information are users of the U.S.

Institute's services and others involved in U.S. Institute projects. Gathering information on observations and experiences of these people and their satisfaction with the U.S. Institute's services is accomplished by administering questionnaires. Some information about the U.S. Institute's programs can be obtained without administering questionnaires (e.g., the number of assessments handled by the U.S. Institute). However, to evaluate the quality of the U.S. Institute's services and the many aspects of success in building consensus or resolving disputes (reaching agreements being but one), administering questionnaires is essential.

The U.S. Institute has partnered with several agencies to allow the benefits of the program evaluation system to be realized more broadly. In 2008, the Department of Interior, Office of Collaborative Action and Dispute Resolution (CADR) was granted the approval of the Office of Management and Budget (OMB) to act as a named administrator of the U.S. Institute's currently approved information collections for evaluation. The CPRC, CADR, and the U.S. Institute are seeking approval as part of this proposed collection to continue this evaluation partnership. In addition, the U.S. Institute is seeking to add the United States Army Corps of Engineers, Conflict Resolution and Public Participation Center (CPC) as a third named administrator under this proposed collection. Other agencies have approached the U.S. Institute seeking (a) evaluation services and (b) assistance in establishing their own internal evaluation systems. Therefore, the U.S. Institute is requesting OMB approval to administer the evaluation questionnaires on behalf of other agencies. The U.S. Institute is seeking approval to make minor conforming revisions to questionnaires to allow for the broader application of the instruments (e.g., change return address on cover).

The burden estimates in this information collection request (ICR) take into consideration the multi-agency usage of the evaluation instruments. The broad interest in the U.S. Institute's evaluation system has fostered an evaluation collaborative among several state and federal agencies. The sharing of evaluation resources and expertise is advantageous on several fronts: (a) design and development efforts are not duplicated across agencies; (b) common methods for evaluating collaborative processes are established; (c) knowledge, expertise and resources are shared, realizing cost-efficiencies for the collaborating agencies; and (d) learning and improvement on a broader scale will be facilitated through the sharing of comparable multi-agency findings.

## 2. How, by Whom, and for What Purpose the Information is to Be Used

As part of the evaluation process for mediation services, two questionnaires will be administered. The questionnaires will go to: (1) the mediator (third-party neutral) who mediated the collaborative process at the conclusion of the process (once), and (2) participants (stakeholders) participating in a collaborative process at the conclusion of the process (once). The agency evaluation coordinator or the agency evaluation consultant will administer the questionnaires.

The mediators are asked to assess their assignment and several aspects of the consensus building or conflict resolution process, and lessons learned. The

participants (stakeholders) are asked questions at the end of the process about their satisfaction with the process, the mediator and the agreement, and a few questions about the relative costs and speed in reaching an agreement.

The information collected by the U.S. Institute to-date has been used to comply with the Government Performance and Results Act. The U.S. Institute is required to produce an *Annual Performance Plan (Performance Budget)*, linked directly to the goals and objectives outlined in the U.S. Institute's five-year *Strategic Plan*. The U.S. Institute is also required to produce an *Annual Performance and Accountability Report*, evaluating progress toward achieving its performance commitments. Results of evaluating each of the U.S. Institute's program areas have and will be included in its *Annual Performance Reports*. Simple summaries and tabulations of information will be used. In addition, the evaluation results have and will continue to be made available to wide audiences of program administrators, users, practitioners, and researchers who are interested in learning about performance and what factors most influence successful outcomes in specific situations. The U.S. Institute's evaluation partners will make similar use of the evaluation information collected.

Design details of the program evaluation system are contained in Attachment B.

### 3. Collection Technology

The questionnaires will be administered by mail initially, however, administration via the Internet is anticipated whenever appropriate. To-date administration by Internet has not been practical since some participants in collaborative processes do not have Internet access or would be less likely to respond via electronic means. Electronic administration would modestly reduce respondent burden.

### 4. Duplication

No other source currently exists that can be used to obtain information on the quality of mediation programs.

### 5. Impact on Small Businesses or Other Small Entities

Although some of the participants involved in mediation cases will be small entities, most will be government agencies and individuals. Moreover, the total number of expected responses per year is estimated to be relatively small – approximately 1,975 per year – and the financial burden to be modest – less than \$15 per respondent.

### 6. Consequences of Not Conducting Collection

Evaluation of the mediation services would not be possible without the information that can be obtained only by administering questionnaires to users and participants in the collaborative processes. Only descriptive information is available from other

sources (e.g., the number of cases and the number of agreements). Such information cannot be used as a surrogate for program/service quality, and cannot substitute for information obtained through surveys of users and participants.

With respect to the frequency of information collection, the information will be collected only once for each event.

## 7. Special Circumstances of Information Collection

This ICR does not require respondents to:

- report information to the Agency more often than quarterly,
- prepare a written response to a collection of information in fewer than 30 days after receipt of a request,
- submit more than an original and two copies of any document, or
- retain records, other than health, medical, government contract, grant-in-aid or tax records, for more than three years.

Nor will information be collected in a manner:

- connected with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study,
- requiring use of a statistical data classification that has not been reviewed and approved by OMB,
- requiring a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use, or
- requiring proprietary, trade secret or other confidential information unless the Agency can demonstrate that it has procedures to protect the information's confidentiality to the extent permitted by law.

## 8. Federal Register Notice

A comprehensive Federal Register Notice was published at the end of July 2011. It opened a 60-day public comment period. The notice described in detail the need for and use of the information. The notice also provided access to copies of the proposed questionnaires via the Institute's website:

<http://ecr.gov/Resources/EvaluationProgram.aspx>

In mid-October 2011, a second Federal Register Notice was published to announce that the U.S. Institute forwarded seven information collection requests to OMB. The second notice opened a 30-day public comment period.

One comment was received in response to the 60-day public comment notice. This comment expressed concern about the funding of the Morris K. Udall Foundation and

the U.S. Institute generally (Appendix C). This comment did not provide any specific feedback on the evaluation instruments or the burden estimates pertaining to the instruments.

#### 9. Payment/Gifts to Respondents

The collection of information does not provide any payment or gift to respondents, other than enumeration of contractors or grantees.

#### 10. Confidentiality Protocols

It is U.S. Institute policy to disclose information collected from the process participants only in summary fashion (e.g., project-level reports); neither individual respondents nor their answers to questions will be identified. Social Security numbers and company tax identifiers will not be requested as part of the evaluation.

It is U.S. Institute policy to disclose project-level evaluation information provided by and pertaining to project contractors (e.g. mediators). The information will be reported without directly identifying the name of the contractor(s). However, project participants and others familiar with a particular project will know the identity of the contractors to whom the evaluation information pertains. To this end, the U.S. Institute does not perceive project-level indirect identification of contracted mediators/facilitators neutrals as an unwarranted invasion of the personal privacy of individuals.

In the event of a Freedom of Information Act (FOIA) request, the U.S. Institute takes the general position that names and other information that could lead to identification of project participants, or the invasion of the personal privacy of individuals about whom evaluation information is collected, are exempt from disclosure under the personal privacy exemption (5. U.S.C. 552(b)(6)). The use of the personal privacy exception is subject to passing a balancing test to determine if the public interest in disclosure outweighs the personal privacy interest. FOIA requests will be evaluated on a case-by-case basis.

#### 11. Justification of Questions of a Sensitive Nature

This information collection request (ICR) does not involve collecting any information of a sensitive nature or any information commonly considered private.

#### 12. Hours Burden of the Collection of Information

Burden means the total time and financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This section focuses on the time to read instructions and answer questions on the appropriate questionnaire. Hour burdens are then monetized using fully burdened labor rates for appropriate occupations derived from Bureau of Labor Statistics tables

(U.S. Department of Labor, Bureau of Labor Statistics, “Employer Costs for Employee Compensation”, Table 2: *Civilian Workers, by Occupational and Industry Group* – March, 2011. <http://www.bls.gov/news.release/ecec.t02.htm>).

The following table is based on several assumptions:

- 100 mediation cases will be evaluated each year on average.
- Each case will involve an average of 19 participants.
- Each case will be mediated by 1 practitioner
- The total number of responses will average 1,975 per year
- The average cost per response is less than \$15.

The time estimates to complete each questionnaire are based on experience with prior information collection authorized under OMB control number 3320-0004 (Expiring 12/31/11).

Respondent Burden and Cost (Annualized)								
<b>ECR and Collaborative Problem-Solving Mediation Services (3320-0004)</b>								
Agency	Annual Number of Cases	Average Number of Respondents per Case	Annual Number of Responses	Average Minutes per Response	Annual Number of Minutes	Annual Number of Hours	Labor Rate Per Hour (\$)	Annual Cost (\$)
<b>U.S. Institute for Environmental Conflict Resolution</b>								
Participant - end of process	25	19	475	18	8,550	143	47	6,697
Facilitator		1	25	20	500	8	47	392
<b>U.S. EPA Conflict Prevention and Resolution Center</b>								
Participant - end of process	25	19	475	18	8,550	143	47	6,697
Facilitator		n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>U.S. DOI Office of Collaborative Action and Dispute Resolution</b>								
Participant - end of process	25	19	475	18	8,550	143	47	6,697
Facilitator		1	25	20	500	8	47	392
<b>U.S. Army Corps of Engineers, Conflict Resolution and Public Participation Center</b>								
Participant - end of process	25	19	475	18	8,550	143	47	6,697
Mediator/ Facilitator		1	25	20	500	8	47	392
<b>Total</b>	<b>100</b>		<b>1,975</b>			<b>596.00</b>		<b>27,964</b>



13. Estimate of Total Annual Cost Burden

There are no capital or start-up costs.

14. Annualized Costs to the Federal Government

*14a. Total Capital and Start-Up Costs*

Evaluation of the Facilitations Agency Cost - Start-up (One-Time Costs)				
Position	Activity	Total Hours	Labor Rate per Hour	Cost
Management	Oversight	5	\$75	\$375
Program Coordinator	Design and Management	20	\$42.50	\$850
Administrative Staff	Administrative support	6	\$32.50	\$195
<b>TOTAL</b>		<b>31</b>		<b>\$1,420</b>

The costs above reflect total start-up costs for the U.S. Institute and its evaluation partners (i.e., agencies acting as named administrators of the U.S. Institute's evaluation instruments and agencies contracting with the U.S. Institute for evaluation services).

14b. Total Operational and Maintenance and Purchase of Services Component

<b>Evaluation of the Mediation Processes - Agency Cost (Annualized)</b>					
Questionnaire/Activity	Minutes per Questionnaire	Number of Questionnaires	Total Hours	Labor Rate per Hour	Cost
<i>Administer Questionnaires</i>					
Participants End of Process	6	1,900	190	\$32.50	\$6,175
Mediator End of Process	12	75	15	\$32.50	488
<i>Data Entry Verification and Data Cleaning</i>					
Participants End of Process	6	1,900	190	\$32.50	\$6,175
Mediator End of Process	12	75	15	\$32.50	\$488
<i>Analysis and Reporting</i>					
Case-level Reporting	N/A	N/A	100	\$32.50	\$3,250
Program-level Reporting			10	\$62.50	\$625
<i>Oversight</i>					
Program Manager			50	\$62.50	\$3,125
Management	N/A	N/A	8	\$75	\$600
<i>Supplies</i>					
TOTAL					\$21,426

The costs in the table above are average annual operational and maintenance costs for the next three years once the evaluation system is operational. The estimate includes costs for the U.S. Institute and its evaluation partners (i.e., agencies acting as named administrators of the U.S. Institute's evaluation instruments or agencies contracting with the U.S. Institute for evaluation services).

15. Reasons for Program Changes/Adjustments

Reduced Burden - The mediation evaluation instruments have been streamlined from the earlier versions approved under OMB control number 3320-0004 (expiring 12/31/2011).

16. Plans for Tabulation and Publication

To comply with the Government Performance and Results Act, agencies are required to produce an *Annual Performance Plan (Performance Budget)*, linked directly to the goals and objectives outlined in the agencies five-year *Strategic Plan*. The agencies are also required to produce an *Annual Performance and Accountability Report*, evaluating progress toward achieving its performance commitments. Results of

evaluating program areas, such as mediations, will be included in the agencies *Annual Performance and Accountability Report*. Simple summaries and tabulations of information will be used.

The U.S. Institute in collaboration with its evaluation partners will also evaluate and report on the performance of a large set of cases provided by a number of conflict resolution organizations. The multi-agency project will provide a solid benchmark to gauge performance, and will also provide insights on what contributes to achieving desired outcomes, and how performance can be improved.

#### 17. Display of Expiration Date for OMB Approval

The OMB approval number and expiration date will be displayed on the evaluation questionnaires.

#### 18. Explanations to "Certification for Paperwork Reduction Act Submissions"

This collection of information is in full compliance with the provisions of the "Certification for Paperwork Reduction Act Submissions".

### **B. Collections of Information Employing Statistical Methods**

#### 1. Respondent Universe and Sample Size/Selection Methods

All mediation services provided with the assistance of the U.S. Institute will be evaluated. Since all (100%) of the U.S. Institute mediation services will be evaluated, sample selection methods are not applicable. With respect to other agencies acting as a named administrator of the U.S. Institute's information collections (e.g., the EPA's Conflict Prevention and Resolution Center), no attempt will be made to generalize the initial evaluation results. The evaluation efforts in these agencies are in an early stage of development.

Professor Don Dillman's "Total Tailored Design Method"<sup>1</sup> will be used to maximize response rates. The U.S. Institute anticipates an average overall response rate over 50%. The U.S. Institute has developed operating rules to enhance the accuracy and reliability of the information reported. While we strive for as high a response rate as possible, results are flagged as possibly unrepresentative if the following conditions are not present:

- Cases with 3 or fewer participants do not have a 100% response rate; and
- Cases with more than 3 participants do not have an overall response rate of at least 50%, and do not have at least one respondent from each affiliation category identified by the mediator/facilitator (neutral practitioner).

---

<sup>1</sup> Don A. Dillman, *Mail and Internet Surveys: The Tailored Design Method (2<sup>nd</sup> Edition)*, John Wiley & Sons, Inc., NY, 2000.

2. Procedures for the Collection of Information

*2a. Statistical Methodology for Stratification and Sample Selection*

*2b. Estimation Procedure*

*2c. Degree of Accuracy Needed for the Purpose Described in the Justification*

*2d. Unusual Problems Requiring Specialized Sampling Procedures*

*2e. Periodic Data Collection to Reduce Burden*

This section is not applicable as detailed in Section B(1) above.

3. Testing Procedures

Experience with the previously approved collection (3320-0004 expiry 12/31/2011) provided the opportunity to extensively assess and improve on the previous version of the evaluation design, instruments, administration, data entry and data processing procedures.

Review of a similar program evaluation system for Oregon's Public Policy Dispute Resolution Program has all helped assess the validity of the overall system design. Oregon's pilot test of questionnaires was administered to participants and mediators in late 2004 and early 2005. Feedback from the Oregon pilot study has been used to refine the U.S. Institute's instruments.

4. Statistical Consultants

Agency Contact:

Patricia Orr

Director of Policy, Planning, and Budget

U.S. Institute for Environmental Conflict Resolution

130 South Scott Avenue

Tucson, Arizona 85701

520-901-8548

## **LIST OF APPENDICES**

Appendix A. Statutes and Regulations Authorizing the Collection of Information

Appendix B. Mediation Program Evaluation Design Overview

Appendix C. Public Comments in Response to the First Federal Register Notice

## **Appendix A. Statutes and Regulations Authorizing the Collection of Information**

**1. Environmental Policy and Conflict Resolution Act**

**2. Government Performance and Reporting Act**

ENVIRONMENTAL POLICY AND CONFLICT RESOLUTION ACT OF 1998

Public Law 105-156  
105th Congress

An Act

To amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to establish

the United States Institute for Environmental Conflict Resolution to conduct environmental conflict resolution and training, and for other purposes. <<NOTE: Feb. 11, 1998 - [H.R. 3042]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress <<NOTE: Environmental Policy and Conflict Resolution Act of 1998.>> assembled,

SECTION 1. SHORT <<NOTE: 20 USC 5601 note.>> TITLE.

This Act may be cited as the ``Environmental Policy and Conflict Resolution Act of 1998''.

SEC. 2. DEFINITIONS.

Section 4 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5602) is amended--

(1) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (9), (7), and (8), respectively;

(2) by inserting after paragraph (3) the following:

``(4) the term `environmental dispute' means a dispute or conflict relating to the environment, public lands, or natural resources;'';

(3) by inserting after paragraph (5) (as redesignated by paragraph (1)) the following:

``(6) the term `Institute' means the United States

Institute

for Environmental Conflict Resolution established pursuant to section 7(a)(1)(D);'';

(4) in paragraph (7) (as redesignated by paragraph (1)), by striking ``and' at the end;

(5) in paragraph (8) (as redesignated by paragraph (1)), by striking the period at the end and inserting ``; and''; and

(6) in paragraph (9) (as redesignated by paragraph (1))--

(A) by striking ``fund' and inserting ``Trust Fund''; and

(B) by striking the semicolon at the end and

inserting a period.

SEC. 3. BOARD OF TRUSTEES.

Section 5(b) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20

U.S.C. 5603(b)) is amended--

(1) in the matter preceding paragraph (1) of the second sentence, by striking ``twelve'' and inserting ``thirteen''; and

(2) by adding at the end the following:

[[Page 112 STAT. 10]]

``(7) The chairperson of the President's Council on Environmental Quality, who shall serve as a nonvoting, ex officio member and shall not be eligible to serve as chairperson.''.

SEC. 4. PURPOSE.

Section 6 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20

U.S.C. 5604) is amended--

(1) in paragraph (4), by striking ``an Environmental Conflict Resolution'' and inserting ``Environmental Conflict Resolution and Training'';

(2) in paragraph (6), by striking ``and'' at the end;

(3) in paragraph (7), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

``(8) establish as part of the Foundation the United States Institute for Environmental Conflict Resolution to assist the Federal Government in implementing section 101 of the National Environmental Policy Act of 1969 (42 U.S.C. 4331) by providing assessment, mediation, and other related services to resolve environmental disputes involving agencies and instrumentalities of the United States; and

``(9) complement the direction established by the President in Executive Order No. 12988 (61 Fed. Reg. 4729; relating to civil justice reform).''.

SEC. 5. AUTHORITY.

Section 7(a) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20

U.S.C. 5605(a)) is amended--

(1) in paragraph (1), by adding at the end the following:

``(D) Institute for environmental conflict resolution.--

``(i) In general.--The Foundation shall--

``(I) establish the United States Institute for Environmental Conflict Resolution as part of the Foundation;



and  
``(II) identify and conduct such  
programs, activities, and services as  
the Foundation determines appropriate

to

permit the Foundation to provide  
assessment, mediation, training, and  
other related services to resolve  
environmental disputes.

``(ii) Geographic proximity of conflict  
resolution provision.--In providing assessment,  
mediation, training, and other related services  
under clause (i)(II) to resolve environmental  
disputes, the Foundation shall consider, to the  
maximum extent practicable, conflict resolution  
providers within the geographic proximity of the  
conflict.''; and

(2) in paragraph (7), by inserting ``and Training '' after  
``Conflict Resolution''.

#### SEC. 6. ENVIRONMENTAL DISPUTE RESOLUTION FUND.

(a) Redesignation.--Sections 10 and 11 of the Morris K. Udall  
Scholarship and Excellence in National Environmental and Native  
American  
Public Policy Act of 1992 (20 U.S.C. 5608, 5609) are redesignated as  
sections 12 and 13 of the Act, respectively.

[[Page 112 STAT. 11]]

(b) Environmental Dispute Resolution Fund.--The Morris K. Udall  
Scholarship and Excellence in National Environmental and Native  
American  
Public Policy Act of 1992 (20 U.S.C. 5601 et seq.) (as amended by  
subsection (a)) is amended by inserting after section 9 the following:

``SEC. 10. ENVIRONMENTAL DISPUTE RESOLUTION <<NOTE: 20 USC 5608a.>>  
FUND.

``(a) Establishment.--There is established in the Treasury of the  
United States an Environmental Dispute Resolution Fund to be  
administered by the Foundation. The Fund shall consist of amounts  
appropriated to the Fund under section 13(b) and amounts paid into the  
Fund under section 11.

``(b) Expenditures.--The Foundation shall expend from the Fund such  
sums as the Board determines are necessary to establish and operate the  
Institute, including such amounts as are necessary for salaries,  
administration, the provision of mediation and other services, and such  
other expenses as the Board determines are necessary.

``(c) Distinction From Trust Fund.--The Fund shall be maintained  
separately from the Trust Fund established under section 8.

``(d) Investment of Amounts.--

``(1) In general.--The Secretary of the Treasury shall  
invest such portion of the Fund as is not, in the judgment of  
the Secretary, required to meet current withdrawals.

``(2) Interest-bearing obligations.--Investments may be

made

only in interest-bearing obligations of the United States.

``(3) Acquisition of obligations.--For the purpose of investments under paragraph (1), obligations may be acquired--

``(A) on original issue at the issue price; or

``(B) by purchase of outstanding obligations at the market price.

``(4) Sale of obligations.--Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

``(5) Credits to fund.--The interest on, and the proceeds from the sale or redemption of, any obligations held in the

Fund

shall be credited to and form a part of the Fund.''.

#### SEC. 7. USE OF THE INSTITUTE BY A FEDERAL AGENCY.

The Morris K. Udall Scholarship and Excellence in National Environmental and Native American Policy Act of 1992 (20 U.S.C. 5601 et seq.) (as amended by section 6) is amended by inserting after section 10

the following:

``SEC. 11. USE OF THE INSTITUTE BY A FEDERAL <<NOTE: 20 USC 5608b.>> AGENCY.

``(a) Authorization.--A Federal agency may use the Foundation and the Institute to provide assessment, mediation, or other related services in connection with a dispute or conflict related to the environment, public lands, or natural resources.

``(b) Payment.--

``(1) In general.--A Federal agency may enter into a contract and expend funds to obtain the services of the Institute.

``(2) Payment into environmental dispute resolution fund.--

A

payment from an executive agency on a contract entered into under paragraph (1) shall be paid into the Environmental

Dispute

Resolution Fund established under section 10.

``(c) Notification and Concurrence.--

[[Page 112 STAT. 12]]

``(1) Notification.--An agency or instrumentality of the Federal Government shall notify the chairperson of the President's Council on Environmental Quality when using the Foundation or the Institute to provide the services described

in

subsection (a).

``(2) Notification descriptions.--In a matter involving two or more agencies or instrumentalities of the Federal

Government,

notification under paragraph (1) shall include a written description of--

``(A) the issues and parties involved;

``(B) prior efforts, if any, undertaken by the

agency to resolve or address the issue or issues;  
 `` (C) all Federal agencies or instrumentalities

with  
 a direct interest or involvement in the matter and a  
 statement that all Federal agencies or  
 instrumentalities  
 agree to dispute resolution; and  
 `` (D) other relevant information.

`` (3) Concurrence.--  
 `` (A) In general.--In a matter that involves two or  
 more agencies or instrumentalities of the Federal  
 Government (including branches or divisions of a single  
 agency or instrumentality), the agencies or  
 instrumentalities of the Federal Government shall

obtain  
 the concurrence of the chairperson of the President's  
 Council on Environmental Quality before using the  
 Foundation or Institute to provide the services  
 described in subsection (a).  
 `` (B) Indication of concurrence or nonconcurrence.--

-  
 The chairperson of the President's Council on  
 Environmental Quality shall indicate concurrence or  
 nonconcurrence under subparagraph (A) not later than 20  
 days after receiving notice under paragraph (2).

`` (d) Exceptions.--  
 `` (1) Legal issues and enforcement.--  
 `` (A) In general.--A dispute or conflict involving  
 agencies or instrumentalities of the Federal Government  
 (including branches or divisions of a single agency or  
 instrumentality) that concern purely legal issues or  
 matters, interpretation or determination of law, or  
 enforcement of law by one agency against another agency  
 shall not be submitted to the Foundation or Institute.  
 `` (B) Applicability.--Subparagraph (A) does not  
 apply to a dispute or conflict concerning--  
 `` (i) agency implementation of a program or  
 project;  
 `` (ii) a matter involving two or more

agencies  
 with parallel authority requiring facilitation  
 and  
 coordination of the various Government agencies;  
 or  
 `` (iii) a nonlegal policy or decisionmaking  
 matter that involves two or more agencies that

are  
 jointly operating a project.

`` (2) Other mandated mechanisms or avenues.--A dispute or  
 conflict involving agencies or instrumentalities of the Federal  
 Government (including branches or divisions of a single agency  
 or instrumentality) for which Congress by law has mandated  
 another dispute resolution mechanism or avenue to address or  
 resolve shall not be submitted to the Foundation or  
 Institute.''

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.--Section 13 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (as redesignated by section 6(a)) is amended--

(1) by striking ``There are authorized to be appropriated to the Fund'' and inserting the following:

``(a) Trust Fund.--There is authorized to be appropriated to the Trust Fund''; and

(2) by adding at the end the following:

``(b) Environmental Dispute Resolution Fund.--There are authorized to be appropriated to the Environmental Dispute Resolution Fund established under section 10--

``(1) \$4,250,000 for fiscal year 1998, of which--

``(A) \$3,000,000 shall be for capitalization; and

``(B) \$1,250,000 shall be for operation costs; and

``(2) \$1,250,000 for each of the fiscal years 1999 through 2002 for operation costs.''.

SEC. 9. CONFORMING AMENDMENTS.

(a) The second sentence of section 8(a) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5606) is amended--

(1) by striking ``fund'' and inserting ``Trust Fund''; and

(2) by striking ``section 11'' and inserting ``section 13(a)''.

(b) Sections 7(a)(6), 8(b), and 9(a) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5605(a)(6), 5606(b), and 5607(a)) are each amended by striking ``Fund'' and inserting ``Trust Fund'' each place it appears.

Approved February 11, 1998.

LEGISLATIVE HISTORY--H.R. 3042 (S. 399):

-----

CONGRESSIONAL RECORD:

(1997):	Vol. 143
	Nov. 13, considered and passed House.
(1998):	Vol. 144
	Jan. 29, considered and passed Senate.

<all>

# Government Performance and Reporting Act

## (Relevant Portions)

- [United States Code](#)
  - [TITLE 31 - MONEY AND FINANCE](#)
    - [SUBTITLE II - THE BUDGET PROCESS](#)
      - [CHAPTER 11 - THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION](#)

*U.S. Code as of: 01/05/99*

### Section 1115. Performance plans

(a) In carrying out the provisions of section 1105(a)(29), (FOOTNOTE 1) the Director of the Office of Management and Budget shall require each agency to prepare an annual performance plan covering each program activity set forth in the budget of such agency. Such plan shall -

(FOOTNOTE 1) See References in Text note below.

- (1) establish performance goals to define the level of performance to be achieved by a program activity;
- (2) express such goals in an objective, quantifiable, and measurable form unless authorized to be in an alternative form under subsection (b);
- (3) briefly describe the operational processes, skills and technology, and the human, capital, information, or other resources required to meet the performance goals;
- (4) establish performance indicators to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity;
- (5) provide a basis for comparing actual program results with the established performance goals; and
- (6) describe the means to be used to verify and validate measured values.

(b) If an agency, in consultation with the Director of the Office of Management and Budget, determines that it is not feasible to express the performance goals for a particular program activity in an objective, quantifiable, and measurable form, the Director of the Office of Management and Budget may authorize an alternative form. Such alternative form shall -

(1) include separate descriptive statements of -

- (A)(i) a minimally effective program, and
- (ii) a successful program, or

(B) such alternative as authorized by the Director of the Office of Management and Budget,

with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program activity's performance meets the criteria of the description; or

(2) state why it is infeasible or impractical to express a performance goal in any form for the program activity.

(c) For the purpose of complying with this section, an agency may

aggregate, disaggregate, or consolidate program activities, except that any aggregation or consolidation may not omit or minimize the significance of any program activity constituting a major function or operation for the agency.

(d) An agency may submit with its annual performance plan an appendix covering any portion of the plan that -

(1) is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(2) is properly classified pursuant to such Executive order.

(e) The functions and activities of this section shall be considered to be inherently Governmental functions. The drafting of performance plans under this section shall be performed only by Federal employees.

(f) For purposes of this section and sections 1116 through 1119, and sections 9703 (FOOTNOTE 2) and 9704 the term -

(FOOTNOTE 2) See References in Text note below.

(1) 'agency' has the same meaning as such term is defined under section 306(f) of title 5;

(2) 'outcome measure' means an assessment of the results of a program activity compared to its intended purpose;

(3) 'output measure' means the tabulation, calculation, or recording of activity or effort and can be expressed in a quantitative or qualitative manner;

(4) 'performance goal' means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate;

(5) 'performance indicator' means a particular value or characteristic used to measure output or outcome;

(6) 'program activity' means a specific activity or project as listed in the program and financing schedules of the annual budget of the United States Government; and

(7) 'program evaluation' means an assessment, through objective measurement and systematic analysis, of the manner and extent to which Federal programs achieve intended objectives.

*U.S. Code as of: 01/05/99*

## **Section 1116. Program performance reports**

(a) No later than March 31, 2000, and no later than March 31 of each year thereafter, the head of each agency shall prepare and submit to the President and the Congress, a report on program performance for the previous fiscal year.

(b)(1) Each program performance report shall set forth the performance indicators established in the agency performance plan under section 1115, along with the actual program performance achieved compared with the performance goals expressed in the plan for that fiscal year.

(2) If performance goals are specified in an alternative form under section 1115(b), the results of such program shall be described in relation to such specifications, including whether the performance failed to meet the criteria of a minimally effective or successful program.

(c) The report for fiscal year 2000 shall include actual results

for the preceding fiscal year, the report for fiscal year 2001 shall include actual results for the two preceding fiscal years, and the report for fiscal year 2002 and all subsequent reports shall include actual results for the three preceding fiscal years.

(d) Each report shall -

(1) review the success of achieving the performance goals of the fiscal year;

(2) evaluate the performance plan for the current fiscal year relative to the performance achieved toward the performance goals in the fiscal year covered by the report;

(3) explain and describe, where a performance goal has not been met (including when a program activity's performance is determined not to have met the criteria of a successful program activity under section 1115(b)(1)(A)(ii) or a corresponding level of achievement if another alternative form is used) -

(A) why the goal was not met;

(B) those plans and schedules for achieving the established performance goal; and

(C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended;

(4) describe the use and assess the effectiveness in achieving performance goals of any waiver under section 9703 (FOOTNOTE 1) of this title; and

(FOOTNOTE 1) See References in Text note below.

(5) include the summary findings of those program evaluations completed during the fiscal year covered by the report.

(e) An agency head may include all program performance information required annually under this section in an annual financial statement required under section 3515 if any such statement is submitted to the Congress no later than March 31 of the applicable fiscal year.

(f) The functions and activities of this section shall be considered to be inherently Governmental functions. The drafting of program performance reports under this section shall be performed only by Federal employees.



## **Appendix B. Mediation Evaluation Design Overview**

## **Evaluating Mediations: Design Overview**

A variety of non-adversarial, participatory processes are available as adjuncts or alternatives to conventional forums for solving environmental problems or resolving environmental conflicts. Such collaborative processes range broadly depending on the nature of the issue and the parties involved as well as their context (for example, early on in policy development, planning processes, when seeking administrative relief, or during litigation). Under the right circumstances, a well-designed collaborative process facilitated or mediated by the appropriate mediator/facilitator (neutral practitioner) can effectively assist parties in reaching agreement on plans, proposals, procedures, and recommendations to address their issue or resolve their conflict. Collaborative processes can also result in benefits such as improvement in relationships among the parties, and increased capacity among the parties to manage and resolve the issue or dispute. The following survey instruments have been designed for use across the broad range of collaborative processes, be it a process to reach agreement on a plan or a set of recommendations or environmental mediation to resolve a dispute.

The U.S. Institute for Environmental Conflict Resolution (U.S. Institute), in partnership with several federal and state agencies, has created a system to evaluate environmental conflict resolution and collaborative problem solving processes (e.g. mediations). The evaluation system facilitates (a) performance measurement and reporting, (b) diagnosis of what factors influence success (i.e., the achievement of desired outcomes and impacts), and (c) continual learning and improvement when evaluation information is gathered, analyzed, and shared with practitioners, program managers/administrators, users, and

other appropriate audiences.

## **Background**

In 1999, the U.S. Institute, in cooperation with the Policy Consensus Initiative<sup>2</sup> and state alternative dispute resolution programs, began the task of designing a program evaluation system. After extensively piloting the evaluation instruments staff from the U.S. Institute, PCI, Oregon Dispute Resolution Commission, Oregon Department of Justice, Florida Conflict Resolution Consortium, Environmental Protection Agency - Conflict Prevention and Resolution Center (CPRC), and the Department of Interior - Center for Alternative Dispute Resolution (CADR), joined forces to collaboratively revise the evaluation instruments. The collaboratively developed evaluation system has also benefited from in-depth input from over 40 practitioners, program administrators, evaluators, researchers and trainers. Evaluation consultants Dr. Kathy McKnight and Dr. Lee Sechrest, the University of Arizona, assisted with this effort. Evaluation consultant Dr. Andy Rowe, GHK International, guided the earlier evaluation design. Throughout this effort, the William and Flora Hewlett Foundation has provided financial assistance.

Evaluation information will be collected from members of the public who are participants in, and users of, these services. Before such information can be collected by a federal agency, the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) requires approval from the Office of Management and Budget (OMB). The U.S. Institute's current collection authorization expires on December 31, 2011. The U.S. Institute is hoping to receive approval to use a revised set of instruments prior to the expiration of the current collection authorization.

---

<sup>2</sup> PCI is a national, nonpartisan organization that works with state leaders – governors, legislators, attorneys general, and state courts – to promote the use of consensus-building and conflict resolution practices to address difficult policy issues and achieve more effective governance.

In 2003, the CPRC was granted the approval of OMB to act as a named administrator of the U.S. Institute's currently approved information collections for evaluation. The Department of Interior, Office of Collaborative Action and Dispute Resolution (CADR) was granted similar status in 2008. The CPRC, CADR and the U.S. Institute will seek approval as part of this proposed collection to continue this evaluation partnership. The U.S. Army Corps of Engineers, Conflict Resolution and Public Participation Center is seeking approval to join this partnership. Other agencies have approached the U.S. Institute seeking (a) evaluation services and (b) assistance in establishing their own internal evaluation systems. Therefore, the U.S. Institute will request OMB approval to administer the evaluation questionnaires on behalf of other agencies.

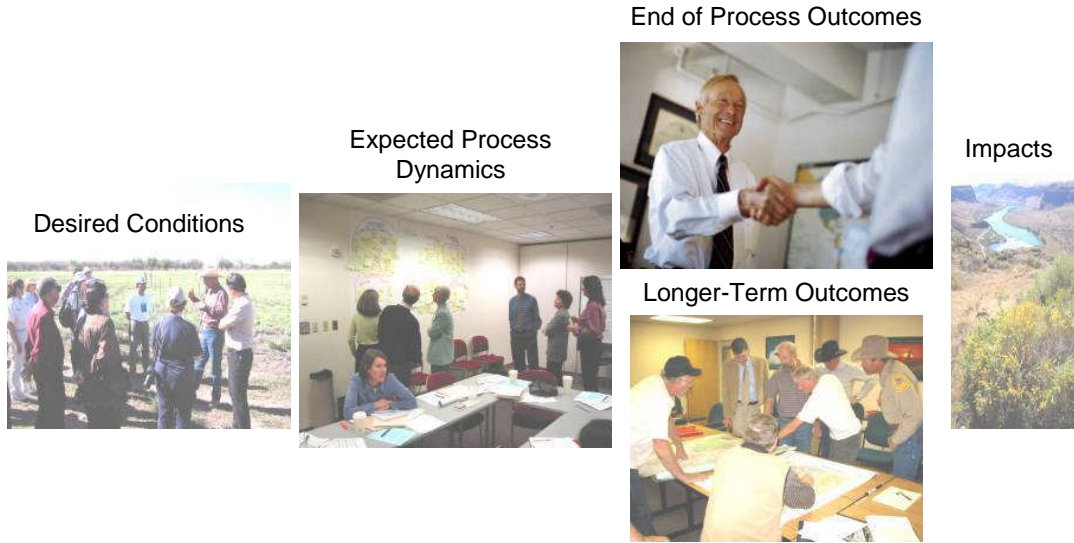
### **Design Elements and Data Collection**

The evaluation system designed draws from environmental conflict resolution operating assumptions and program theory. The U.S. Institute developed a conceptual model (i.e., logic model) to visually represent the major components and stages of a collaborative process (Figure 1). The conceptual model was then used to structure and guide the design of a comprehensive evaluation system.

The logic model is divided into four components (a) desired conditions, (b) expected process dynamics, (c) end of process and longer-term outcomes, and (d) impacts. The logic model helps visually depict the expected dynamics between basic conditions (e.g., key inputs), expected process dynamics, desired outcomes, and impacts of collaborative processes. Once the major components were specified, key elements subsumed under each component were identified, and criteria to measure the achievement of these elements were developed. Over 300 evaluation criteria were identified in the

environmental conflict resolution literature to help inform this process.

**The Environmental Conflict Resolution and Collaborative Problem Solving Logic Model:  
A Visual Way to Depict Program Theory**



**Environmental Conflict Resolution and Collaborative Problem Solving Evaluation Model**

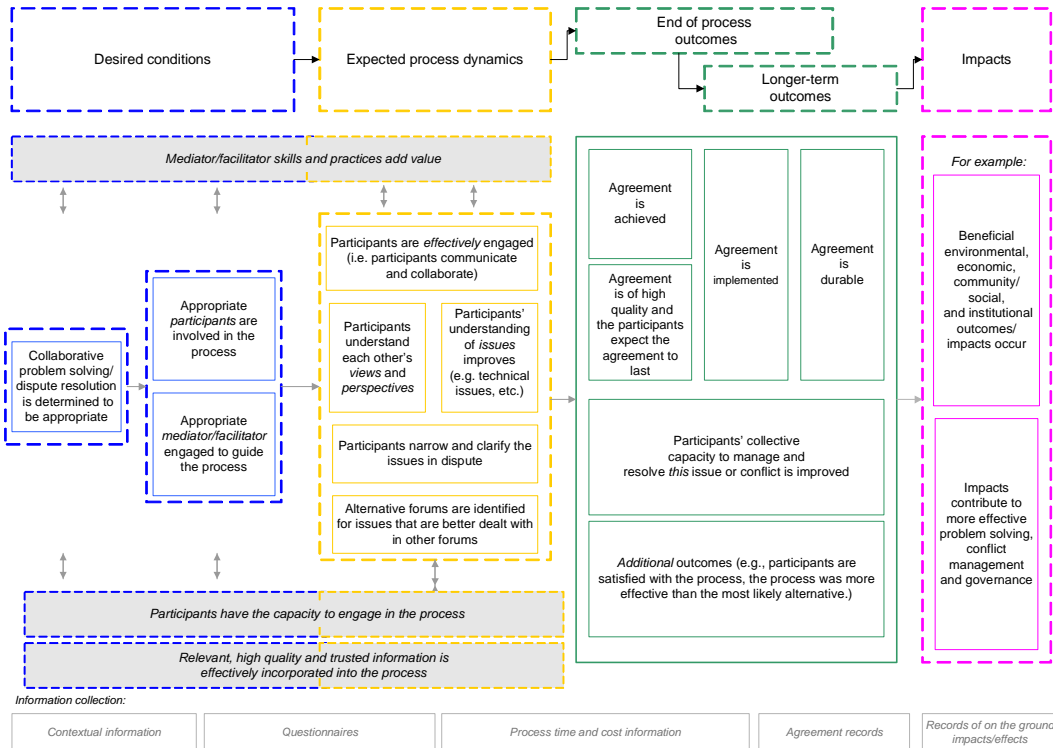


Figure 1. Environmental Conflict Resolution and Collaborative Problem Solving Conceptual Model (Logic Model)

In designing the evaluation system, emphasis was placed on feedback solicited from participants. In addition, evaluation feedback is also solicited from the process mediator/facilitator.

Following conclusion of a mediation process, the participants that have been involved will be surveyed once, via questionnaire, to determine their views on a variety of issues. Topics to be investigated include: were the appropriate participants effectively engaged; did the participants have the capacity to engage in the process; was the mediator/facilitator that guided the process appropriate; and did all participants have access to relevant information? The voluntary questionnaire contains 18 questions requiring respondents to provide fill-in-the blank and open-ended responses. Information from the questionnaire will provide the opportunity to evaluate if the intended outcomes were achieved, and if so or not, why. *Affected Entities*: Entities potentially affected by this action are parties to the collaborative processes.

Immediately following conclusion of a mediation process, the mediator(s)/facilitator(s) will be surveyed once, via questionnaire, to determine their views on a variety of issues. In most cases, it will be specified in the mediator/facilitator contracts that they are required to complete the questionnaire. The mediator/facilitator questionnaire contains 19 questions. Information from this questionnaire will provide the opportunity to evaluate if the intended mediation outcomes/impacts were achieved, and if so or not, why. *Affected Entities*: Entities potentially affected by this action are mediators/facilitators are federal agency staff or contracted non-federal professional.

### **Data Use and Audiences**

Information from the questionnaires will facilitate the (a) measurement and reporting of performance for case/project level mediations, (b) measurement and reporting of program performance when the data are aggregated across all evaluated mediation cases or projects, (c) broad-based evaluations of mediation processes when cases/project evaluations are aggregated across multiple agencies sharing the same evaluation system, and (d) learning and improvement when feedback is used to design and execute future mediations. The evaluation audiences include the process participants, mediators, program managers/administrators, and the Office of Management and Budget.

**For more information contact:**

Patricia Orr, Director of Policy, Planning, and Budget  
The U.S. Institute for Environmental Conflict Resolution  
130 South Scott Avenue  
Tucson, Arizona 85701  
Telephone (520) 901-8548 or Fax (520) 670-5530

**Appendix C. Public Comments in Response to the First Federal Register Notice**

IT IS TIME TO DOWNSIZE GOVT. I THINK IT IS TIME TO SUNSET THIS BUDGET OF THIS FOUNDATION, ETC. TO ZERO. IT SEEMS LIKE A HUGE BUREAUCRACY THAT IS NTO NEEDED. THIS IS A 1950 CREATION, THIS IS 2011. IT NEEDS TO BE SUNSET.

JEANPUBLIC ADDRESS IF REQUIRED

>Subject: PUBLIC COMMENT ON FEDERAL REGISTER W: cut budget of udall bureaucracy to zero