

Administrative edit: June 2023

ALTERNATIVE DISPUTE RESOLUTION DURING THE EQUAL EMPLOYMENT OPPORTUNITY PROCESS

1. **PURPOSE**: This Directive establishes the United States Mint's policy on the use of Alternative Dispute Resolution (ADR), particularly mediation, during the Equal Employment Opportunity (EEO) process. It reiterates the Agency's commitment to appropriate use of ADR in the area of employment-related disputes that are, or could develop into, claims of discrimination or retaliation under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, as amended, and Title II of the Genetic Information Non-discrimination Act of 2008, to include the implementing regulations and Executive Orders (including 29 CFR Part 1614 and EEOC's Management Directives).
2. **SCOPE**: This Directive applies to current and former United States Mint employees and applicants for employment with the United States Mint participating in ADR during the pre-complaint (informal) and formal complaint stages of the EEO process.
3. **OUTCOME**: Make ADR available during the informal and formal complaint process to seek early and mutually acceptable resolution of discrimination complaints.
4. **POLICY**:
 - a. The United States Mint encourages the use of ADR, specifically mediation, to help resolve discrimination complaints as early as possible throughout the EEO process. Once the EEO Specialist determines the issues in an EEO complaint are appropriate for ADR and ADR has been offered and accepted by the complainant, responsible management officials must participate in the ADR session. All United States Mint managers and supervisors have a duty to cooperate in ADR during the EEO process.
 - b. The United States Mint ordinarily makes ADR available to the aggrieved/complainant on a voluntary basis for issues raised during both the informal and formal EEO complaint process. However, the Administrative Dispute Resolution Act of 1996 and the Equal Employment Opportunity Commission (EEOC) Management Directive (MD)-110 (revised August 2015) recognize that there are instances in which mediation may not be appropriate or feasible. The Appendix outlines situations in which ADR may not be appropriate.
 - c. The United States Mint is fully committed to providing and maintaining a work environment that is free from all forms of harassment and discrimination and to fostering a workplace that values and respects the principles of diversity. Employees, former employees and applicants for employment at the United

States Mint have the right to utilize the EEO complaint process, including a fair ADR process, without fear of reprisal/retaliation.

5. **DEFINITIONS:**

- a. Alternative Dispute Resolution (ADR). An alternative, non- adversarial process involving a neutral third party to resolve conflicts of disputes between employees. It includes a series of techniques that help people resolve their differences, with the assistance of a neutral third party. Some of these techniques include mediation, facilitation, arbitration, conciliation, or shuttle diplomacy. The United States Mint uses mediation to resolve EEO disputes.
- b. Good Faith. An effort to sincerely, honestly, and fully discuss problems or issues and to explore potential solutions. Example: Entering mediation with the genuine intention to try to resolve the matter.
- c. Mediation. A confidential and informal process whereby a neutral third party, the mediator, assists the parties in communicating and attempting to find a mutually agreeable resolution to their dispute.
- d. Mediator. A third party neutral, professionally trained to assist the disputing parties in resolving workplace discrimination disputes.
- e. Neutral. An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy.
- f. Aggrieved/Complainant. The individual who elects to participate in ADR after filing an informal/formal complaint. The individual has the right of representation (at her/his expense) at all stages of the process. As the EEO ADR process is voluntary for the Complainant/Aggrieved, the individual has a right to terminate the process at any time.
- g. Representative. An individual who participates in the mediation and represents the interests of either the complainant or the Agency.
- h. Responsible Management Official (RMO). Is any official who, according to the complainant's allegations, is responsible in their official capacity for the action/decision which the complainant believes is discriminatory.
- i. Settlement Authority (SA). Is any management official, at least one level above the Responsible Management Official, who has the authority to resolve the complaint during settlement and EEO ADR (mediation) proceedings.
- j. Settlement Agreement. A written document signed by the parties containing the terms and conditions of the final resolution of a dispute.
- k. Settlement Breach. The violation of any terms of a Settlement Agreement.

6. RESPONSIBILITIES:

- a. Director and Deputy Director of the United States Mint are responsible for:
 - (1) Ensuring the policy for ADR use in the EEO process is sufficiently communicated to all employees.
 - (2) Ensuring that United States Mint management officials participate fully in ADR during the EEO process.
- b. Associate Directors; Chief, Protection Department; and Plant Superintendents are responsible for: ensuring an official with delegated authority to enter into a binding settlement agreement is accessible while the ADR session is being conducted.
- c. Office of Equal Employment Opportunity (OEEO) is responsible for:
 - (1) Ensuring all Agency employees are aware of their rights and opportunities to engage the discrimination complaint process by contacting an EEO Counselor within 45 days of the date of an action which may be the basis of an EEO complaint. In addition to their responsibilities to counsel about civil rights laws, EEO Counselors also have the responsibility to inform complainants about the nature and benefits of ADR, the option to choose ADR, and the timetable and limits on use of ADR.
 - (2) Reviewing quarterly informal ADR participation rates and verifying to the Department of the Treasury's, Office of Civil Rights and Equal Employment Opportunity (OCRE) that the number of completed EEO counseling (informal process), ADR offers, and ADR participation rates are accurately reported for inclusion in the Department of the Treasury's internal EEO complaint management database site.
 - (3) Providing a copy of the Mint's revised ADR directive to the OCRE within 30 calendar days of its issuance.
 - (4) Distributing the ADR directive and/or revisions thereto to all Mint employees and posting the directive on the Mint's Intranet.
- d. EEO Officer works in consultation with the Office of Chief Counsel (Counsel's Office) to ensure compliance with civil rights laws, the Alternative Dispute Resolution Act, personnel laws and other legal requirements. When an employee is represented by an attorney in the ADR process, Counsel's Office may represent the Agency in ADR. OEEO consults with Counsel's Office and the Office of Human Capital Directorate (HCD) concerning the legal sufficiency of proposed settlements reached during the ADR process, when applicable. All settlement agreements ultimately must be reviewed by Counsel's Office or legal sufficiency.
- e. Equal Employment Opportunity Specialists are responsible for:
 - (1) Providing guidance and information to managers and employees on the benefits of ADR and their responsibilities when participating in ADR.

- (2) Ensuring the ADR policy is implemented and monitored.
 - (3) Recommending and/or providing training, as necessary, on the use of ADR during the EEO process.
 - (4) Arranging for a mediator, handling the logistical arrangements for mediation, and providing guidance and information throughout the ADR process.
- f. Equal Employment Opportunity Counselors are responsible for:
- (1) Advising the Complainant about the ADR process under 29 CFR Part 1614 and Management Directive 110.
 - (2) Providing the Complainant with an ADR Election Form when the Complainant has requested ADR.
 - (3) Providing the Complainant and Responsible Management Official with an ADR evaluation form.
- g. Representatives (including attorneys, union officials, and other resource individuals) for parties in mediation are responsible for:
- (1) Cooperating fully throughout the ADR process to attempt resolution of the discrimination complaint.
 - (2) Participating in good faith during mediation.
- h. Mediators are responsible for:
- (1) Serving as an impartial third party with no vested interest in the outcome of the mediation session.
 - (2) Preserving the integrity of the mediation by maintaining confidentiality and impartiality.
 - (3) Performing the administrative duties of the mediator which may include distributing and collecting ADR evaluation forms, and preparing draft settlement agreements per the parties' terms for review.
- i. A Complainant is responsible for:
- (1) Cooperating fully throughout the ADR process to attempt resolution of the discrimination complaint.
 - (2) Participating in good faith during the mediation.
 - (3) Complying with the terms of any binding settlement agreement reached in mediation.
- j. The Settlement Authority (SA) is responsible for:
- (1) Cooperating fully throughout the ADR process to attempt resolution of the discrimination complaint.
 - (2) Ensuring that he or she has the authority to commit to a resolution prior to entering mediation.
 - (3) Participating in good faith during the mediation.
 - (4) Complying with the terms of any binding settlement agreement reached in mediation.

- k. Supervisors and managers are responsible for: granting a reasonable amount of official time, accommodating shift changes, or adjusting work schedules as appropriate for parties involved in an ADR session. Typically these sessions may take up to four hours; however, the actual session may require slightly more or less time.

7. CRITICAL REQUIREMENTS AND PROCEDURES:

a. General Provisions.

- (1) While most disputes can benefit from ADR, the Agency always retains discretion to determine whether a particular dispute is appropriate or inappropriate for ADR. Pursuant to 5 USC § 581(b), the Agency decision to use or not use ADR is discretionary and not subject to review in court.
- (2) The determination to use or not to use ADR is made by the OEEEO, who may consult with management employing the aggrieved employee and Counsel's office.
- (3) The following are some of the circumstances favoring the use of ADR. This is not an exhaustive list:
 - (a) There will be a continuing relationship between the parties.
 - (b) The parties are interested in seeking resolution but there are barriers to communication due to personality difficulties, past history, etc.
 - (c) A thorough exchange of information or perspectives will improve the quality of the outcome.
 - (d) There are underlying issues which are not formally part of the complaint and may not be resolvable by relief available in litigation, but which are the catalyst for the dispute.
 - (e) There is a need for joint problem-solving, development of creative alternatives, or flexibility in shaping relief.
 - (f) Settlement possibilities may be enhanced by the neutral's ability to facilitate private meetings with the parties, to conduct frank discussions.
- (4) The United States Mint will offer ADR for appropriate EEO issues during both the informal and formal EEO complaint process to resolve discrimination complaints. The only EEO issues that will not be offered ADR are sexual harassment claims and probationary terminations.
- (5) When OEEEO determines that ADR is appropriate in the EEO process and the complainant agrees to participate in ADR to resolve the issues that initiated the complaint, management officials are **required** to participate in mediation.
- (6) Any EEO ADR (mediation) proceeding must have a management official at least one level above the RMO present or immediately accessible; if that management official is unavailable, he/she may designate another management official to act for him/her during all settlement discussions and all EEO ADR (mediation) proceedings, provided the designee also is at least one level above the RMO. The RMO may also be called upon to participate in inappropriate settlement discussions or EEO ADR (mediation) proceedings.

- (7) When ADR is elected during the informal process, mediation must be completed within 90 calendar days of the date the complainant initiated an informal complaint. If resolution is not achieved, the counselor will issue the written notice of right to file a formal discrimination complaint.
- (8) The mediation session will be scheduled for a date and time that works for all parties. Participants in mediation should set aside at least four hours for the session.
- (9) Mediation sessions will be conducted by a trained/certified mediator. Internal and external mediators are available. External mediators may be obtained through Shared Neutrals Program, Federal Executive Board, or other sources that provide certified mediators.
- (10) All participants in ADR sessions are expected to participate in good faith. As such, parties to the process should participate openly and in earnest with the intention to fully resolve the matter at hand.
- (11) A management official with settlement authority to fully resolve a matter (the SA) must be present or be immediately accessible to the agency representative during all settlement discussions and at all EEO ADR (mediation) proceedings. **The management official with settlement authority (the SA) should not be the RMO or an agency official directly involved in the case.**
- (12) Both parties to mediation may choose to have a designated representative, but it is not required. Representatives may be available to parties by telephone or in person during a mediation session. The mediator has the right to exclude from the mediation anyone whose behavior undermines the integrity of a fair mediation process, or anyone who has not been designated as a representative.
- (13) If resolution is achieved through ADR, the terms of the proposed settlement agreement must be reviewed by the OEEEO and the Office of the Chief Counsel before it can be signed by the parties and become effective. Proposed settlement agreements that are not legally sufficient, or that do not comply with applicable laws, regulations, and bureau personnel and EEO policies, must be revised accordingly. Any settlement agreement knowingly and voluntarily agreed to by the parties shall be binding on both parties. Parties shall act on the terms of the agreement within the timeframes provided.
- (14) The United States Mint shall cover the administrative costs associated with mediation, i.e., travel expenses for mediators; however, legal and attorney fees are not considered administrative costs. When the United States Mint offers ADR to former employees and applicants for employment, the bureau is not responsible for their travel costs.
- (15) The United States Mint shall provide training as necessary, to educate the workforce in using ADR during the EEO process.

b. Confidentiality.

- (1) The process of ADR is meant to be confidential; parties are encouraged to speak frankly and participate freely in developing options. Confidentiality is controlled by provisions of the Alternative Dispute Resolution Act of 1996

(see 5 USC §571(5), (6) & (7), and 574) as well as EEOC regulations, directives and guidance. The mediator or other ADR service provider and the parties will be asked to commit to confidentiality and to sign an agreement to mediate which includes provisions on confidentiality.

- (2) When a case is not resolved in ADR, the mediator or other ADR service provider will immediately return the case to OEEEO, noting only that the case was not resolved. Everything related to the case with the exception of "claims to harm", remains confidential.
- (3) Unless compelled by a court order or subpoena that has been reviewed by the Office of Chief Counsel, information shared during the ADR session will be kept confidential by the mediator, except for issues involving waste, fraud, abuse, threats of violence, and/or criminal activity, which must be reported to the Treasury Office of the Inspector General.

- c. Evaluation. Evaluation of the use and benefits of ADR during the EEO process will be ongoing. Participants in the ADR process are strongly encouraged to complete ADR evaluation forms.

8. **AUTHORITIES**:

- a. Administrative Dispute Resolution Act of 1996 (October 19, 1996), 5 United States Code (USC) § 571 et seq.
- b. 29 CFR Part 1614, to include Section 1614.603.
- c. Equal Employment Opportunity Commission (EEOC) Management Directive (MD)-110 (November 1999), Chapter 3, Alternative Dispute Resolution.
- d. EEOC MD-715, Section I. Efficiency.
- e. Department of the Treasury, Office of Civil Rights & Diversity, CRD- 007 (January 23, 2018).

9. **CANCELLATION**: MD 3003.01 dated September 2017 has been replaced with this revised version dated January 2021.

10. **DOCUMENT REVIEW DATE**: June 2028.

11. **RESPONSIBLE OFFICE**: Office of Equal Employment Opportunity.

APPENDIX

The United States Mint may determine that ADR is not appropriate in individual cases. For instance, ADR may not be appropriate for resolving cases in which-

- A definitive or authoritative resolution of the matter is required to establish a precedent or maintain consistency in outcomes;
- The matter involves or may raise significant questions about United States Mint or other Government policies that require additional procedures before a final resolution may be made;
- The matter involves or may raise significant questions about the United States Mint or other Government policies' formation and ADR could be counterproductive to those policies' fair and orderly development;
- The matter involves an issue involving established policy and maintaining that established policy and avoiding variations in its implementation is of special importance;
- The matter significantly affects persons who are not parties to the ADR process;
- The United States Mint must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in light of changed circumstances, and ADR would interfere with the bureau's ability to fulfill that requirement.
- The matter includes, involves, or is related to allegations of the following:
 - Criminal activity
 - Suitability determinations,
 - Security clearances,
 - Workers' Compensation issues under the Department of Labor's determination authority,
 - Tort Claims,
 - Civilian and Military Personnel Claims,
 - Waiver of claims for Overpayments, or
 - Procurement Disputes.