



## DCSA INSTRUCTION 08-13

### ALTERNATIVE DISPUTE RESOLUTION (ADR)

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<b>Originating Component:</b>	Diversity and Equal Opportunity Office
<b>Effective:</b>	March 23, 2022
<b>Releasability:</b>	Cleared for public release. Available on DCSA policy library.
<b>Reissues and Cancels:</b>	DSS Regulation 08-13, "Alternative Dispute Regulation (ADR) for Equal Employment Opportunity (EEO) Complaints," May 9, 2002
<b>Approved by:</b>	Daniel J. Lecce, Deputy Director

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- **Purpose:** This instruction establishes policy, assigns responsibilities, and prescribes procedures for the ADR program. It provides DCSA management officials, supervisors, and employees an overview of the ADR program, including information on the informal process, which includes EEO counseling and ADR; and the formal complaint process, which may include an investigation, hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ), or the issuance of a Final Agency Decision. This instruction does not establish or expand any rights to administrative or judicial review or establish a remedy for any DCSA employee, applicant, contract employee, or other person separate from existing rights under applicable Federal law and EEOC guidance.
- This instruction implements the relevant provisions of 29 CFR, Part 1614, effective July 1, 2017, which prohibit discrimination on the bases of age (40 or older), disability (physical or mental), race, color, sex (including pregnancy, gender identity, and sexual orientation), religion, national origin, and genetic information.
- This instruction implements EEOC regulatory requirements included in Management Directive (MD) 110 and DCSA Policy Memorandum 22-002, "Alternative Dispute Resolution."
- Additional information about the DCSA administrative discrimination complaint process, including ADR, should be directed to the Diversity and Equal Opportunity (DEO) Office, EEO complaints manager, at 571-305-6734 or DEO's email address: [dcsa.quantico.dcsa-hq.mbx.eeo@mail.mil](mailto:dcsa.quantico.dcsa-hq.mbx.eeo@mail.mil).

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## SECTION 1: GENERAL ISSUANCE INFORMATION

**1.1. APPLICABILITY.** This instruction applies to civilian employees in all organizational entities within DCSA for matters arising under the jurisdiction of the Equal Employment Opportunity Commission.

### 1.2. POLICY.

a. DCSA will provide equal opportunity in Federal employment and prohibit discrimination in employment based on age (40 or older), disability (physical or mental), race, color, sex (including pregnancy, gender identity, and sexual orientation), religion, national origin, and genetic information according to Title VII of Public Law 88-38, otherwise known as the Civil Rights Act of 1964; Public Law 110-233, otherwise known as the Genetic Information Act of 2008; Public Law 93-112, otherwise known as the Rehabilitation Act of 1973; Public Law 90-202, otherwise known as the Age Discrimination in Employment Act of 1967; and Public Law 110-325, otherwise known as the Americans with Disabilities Act Amendments Act of 2008.

b. DCSA promotes EEO for all individuals and will not tolerate any form of unlawful discrimination in the workplace. DCSA takes seriously its responsibility to prevent discrimination by removing any barriers that may limit opportunities. Every effort must be made by supervisors to ensure that this commitment is reflected in all of the actions and policies of the organization. If DCSA employees, former DCSA employees, or applicants for employment with DCSA believe that this commitment is not being met, they may seek guidance and assistance through the EEO complaint process without fear of retaliation.

c. During mobilization, procedures in this instruction may be modified to support policy changes as necessary.

**1.3. INFORMATION COLLECTIONS.** Data collected in order to compile the internal and external ADR reports in accordance with DoDI 1020.04 requirements, referred to in Section 2 and 3 do not require licensing with a report control symbol in accordance with Paragraph 1.b (8) and (13) of DoDM 8910.01, Vol. 1.

## SECTION 2: RESPONSIBILITIES

### 2.1. DIRECTOR, DCSA. The Director, DCSA:

- a. Exercises oversight for the implementation of this policy.
- b. Is committed to fostering a workplace environment free from discrimination and, to reinforce expectations of all DCSA personnel, issues an annual policy memorandum regarding ADR.

### 2.2. CHIEF, DEO. The DEO Chief:

- a. Develops and administers an effective and efficient discrimination complaint program and ADR procedures regarding EEO matters in accordance with Federal EEO laws, regulations, and guidance.
- b. Oversees the informal “pre-complaint” stage of the discrimination complaint process and has direct responsibility for the formal complaint process.
- c. Provides oversight of the day-to-day operations of the Agency EEO ADR Program, and as the EEO ADR program manager, oversees ADR in the formal stage of the EEO complaint process, so in this regard:
  - (1) Consults and coordinates with regional EEO program managers regarding the determination of whether to offer mediation at the formal stage of the EEO Complaints process.
  - (2) When applicable, in collaboration with regional EEO program managers, arranges for ADR at the formal stage of the EEO complaints process, including identifying the neutral, identifying and resolving potential or actual conflicts of interest, and assisting in the coordination of the ADR session.
  - (3) In consultation with the regional EEO program managers, the neutral, and the Office of General Counsel (OGC), advises on whether ADR should be terminated, when there is unreasonable delay or other evidence of lack of good faith on the part of either party.
  - (4) Provides ADR training for DCSA managers and supervisors, as well as training for employees in accordance with EEOC’s MD 110.
- d. Establishes an EEO ADR process within each region and exercises oversight over Agency and regional EEO ADR procedures.
- e. Incorporates the EEO ADR core principles into the Agency’s EEO ADR Program.

- f. Provides EEO ADR training for DCSA managers and supervisors, as well as training for employees in accordance with EEOC's MD 110.
- g. Develops and disseminates marketing and promotional information material pertaining to EEO ADR Agency-wide.
- h. Prepares EEO ADR reports when required by external oversight agencies (e.g., EEOC, Congress, DoD).
- i. In collaboration with regional EEO program managers, conducts a periodic review of the Agency and regional EEO ADR Program to determine effectiveness, challenges, best practices, and barriers to increase utilization of EEO ADR across DCSA.
- j. Maintains EEO ADR information in the appropriate system of record.

**2.4. GENERAL COUNSEL.** The General Counsel:

- a. Collaborates with and advises management officials serving as settlement authorities to identify available resolution options that are legally enforceable.
- b. Identifies cases that are suitable for global settlement.
- c. Represents the Agency in ADR proceedings, when applicable.
- d. Drafts and reviews all EEO settlement agreements prior to signature by the settlement authority, and advises Agency managers as to whether proposed settlement terms are legally and practically enforceable.
- e. Provides a copy of the signed settlement agreement to the DEO Chief.
- f. Serves as the Agency representative in formal and informal (i.e., pre-complaint) EEO complaint processes; determines, and advises on, whether participation in ADR is appropriate for managers and supervisors.

## SECTION 3: ALTERNATIVE DISPUTE RESOLUTION PROGRAM

### 3.1. OVERVIEW.

a. In accordance with EEOC's MD-110 and Executive Order 12988, DCSA employees are encouraged, with very narrow, mission-specific exceptions, to use ADR in resolving EEO disputes. ADR involves a variety of approaches to resolve EEO disputes rather than traditional adjudicatory methods or traditionally adversarial methods such as litigation, hearings, and Agency administrative processing and appeals.

b. The EEO ADR program will be available during the pre-complaint process and the formal complaint process. In accordance with Chapter 3, Section III.F of EEOC's MD-110, the counseling period is extended when EEO ADR is used. In the Federal EEO process, the "parties" are the Agency and the aggrieved individual or complainant.

c. Once EEO ADR is offered by the Agency, the responding manager or supervisor must cooperate, like any witness, as needed in the EEO ADR process, but may not serve as the Agency official designated to negotiate or settle any complaint.

d. DCSA and aggrieved individuals or complainants have realized many advantages from utilizing EEO ADR. EEO ADR offers the parties the opportunity for an early, informal resolution of disputes in a mutually satisfactory fashion. EEO ADR usually costs less and uses fewer resources than traditional administrative or adjudicative processes, particularly processes that include a hearing or litigation. Early resolution of disputes through EEO ADR can make Agency resources available for mission-related programs and activities. The Agency can avoid costs such as court reporters and expert witnesses. In addition, employee morale can be enhanced when Agency management is viewed as open-minded and cooperative in seeking to resolve disputes through EEO ADR.

e. EEO ADR:

(1) Facilitates creative, efficient, legal, and achievable commitments and outcomes in EEO disputes.

(2) Helps prevent future EEO workplace disputes among the parties, effectively resolve conflicts when they arise, and foster positive and creative ways for DCSA's workforce to deal with workplace challenges.

(3) May be offered at both the informal and formal stages of the EEO complaint process in appropriate cases.

(4) With the concurrence of the General Counsel or designated OGC attorney, may be utilized for cases at the EEOC hearing stage as well as before and after submission of cases to the EEOC Office of Federal Operations (OFO).

**3.2. CORE PRINCIPLES OF EEO ADR.** DCSA has the flexibility to design the EEO ADR Program to fit the environment and workforce, provided the program conforms to the core principles, in accordance with EEOC guidance in MD-110 and adopted by DCSA. These core principles are vital for the successful execution of a robust and effective EEO ADR Program.

**a. Fairness.** Fairness should be manifested throughout the ADR process by providing, at a minimum, as much information about the EEO ADR proceeding to the parties as soon as possible; the right to be represented throughout the EEO ADR proceeding; and an opportunity to obtain legal or technical assistance during the proceeding to any party who is not represented. Fairness also requires:

**(1) Voluntariness.**

(a) Parties must knowingly and voluntarily enter into an EEO ADR proceeding. An EEO ADR resolution can never be viewed as fair if it is involuntary. Unless the parties have reached a resolution willingly and voluntarily, the dissatisfaction of one party could lead to conflicts within the workplace or even to charges that the resolution was coerced or reached under duress.

(b) Aggrieved parties are free to end the EEO ADR process at any time and retain the right to proceed with the administrative EEO process if they prefer that process to EEO ADR and resolution has not been reached. Parties must not be forced into resolution by Agency management, EEO officials, or any neutral third party. Finally, parties are more likely to approach a resolution voluntarily when they know of their right to representation at any time.

(c) When the Agency determines it to be appropriate to offer EEO ADR to an individual, there is no conflict with voluntariness when the Agency requires the responsible management official (RMO) to participate as they are not a party and are not the Agency official with settlement authority. When the Agency offers an individual EEO ADR and the individual agrees to participate, the parties have voluntarily entered into the EEO ADR process.

**(2) Neutrality.**

(a) An EEO ADR proceeding must be impartial and independent of any control by either party, in both perception and reality. Using a neutral third party (hereafter referred to as a “neutral”) ensures this impartiality.

(b) A neutral must not have any official, financial, or personal conflict of interest with respect to the issues or parties in dispute, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve. To ensure neutrality, independence, and objectivity, DEO may acquire certified neutrals from the Federal Mediation and Conciliation Services (FMCS) to facilitate mediation sessions. The neutral is expected to be impartial and honest, to act in good faith, and must act consistently with Public Law 104-320, hereafter known as the Alternative Dispute Resolution Act of 1996 (ADRA) and strive to ensure that:

1. Proceedings are consistent with EEO law and 29 CFR Part 1614, including time frames, and are fair and consistent with the core principles, particularly providing the

parties the opportunity to be represented by any eligible person of their choosing throughout the proceeding.

2. Participation and accessibility of the Agency representative in EEO ADR.

3. Any agreement between the parties is enforceable as the neutral assists the parties in preparation of the written settlement agreement, which will include the signatures of the appropriate Agency representative and aggrieved person; and the neutral informs the parties of the review process the Agency uses to ensure the terms of the agreement are enforceable.

4. Confidentiality, including destroying all written notes taken during the EEO ADR proceeding or in preparation for the proceeding.

5. Trust, as trust fosters open and frank communication between the parties, which is an essential factor in reaching a fair resolution of an EEO complaint. The neutral can develop the parties' trust by:

a. Providing full information about the EEO ADR proceeding as soon as possible, including information on its impartiality, the relative merits of EEO ADR as compared with the traditional form of complaint processing, and the confidentiality of the EEO ADR process.

b. Giving the parties the opportunity to request and obtain relevant information from one another, so they have sufficient information to make informed decisions.

c. Explaining the safeguards in place to protect parties from pressures to resolve the complaint.

### (3) Confidentiality.

(a) In accordance with ADRA and Public Law 89-487, otherwise known as the Freedom of Information Act, qualifying dispute resolution communications are specifically exempt from disclosure. Parties who know that their statements and information are kept confidential when participating in EEO ADR are more likely to be candid and forthcoming during the proceeding, without fear that such information may later be used against them. To maintain that degree of confidentiality, there must be explicit limits placed on the dissemination of EEO ADR information. For implementation and reporting purposes, the details of a resolution can only be disseminated to offices with a legitimate need to know. However, parties are not required by policy or law to agree that a settlement must be confidential.

(b) Confidentiality must be maintained by the parties, by Agency employees involved in the EEO ADR proceeding and in the implementation of an EEO ADR resolution, and by any neutral third party involved in the proceeding. The DEO Office will issue clear, written guidance protecting the confidentiality of what is said and done during an EEO ADR proceeding in accordance with 5 U.S.C. § 574.

(4) **Enforceability.** In accordance with 29 CFR Part 1614.504, any settlement agreement knowingly and voluntarily agreed to in writing by the parties, reached at any stage of the



complaint process, is binding on both parties. Enforcement of settlement agreements is left to the parties, subject to appropriate third-party proceedings.

**b. Flexibility.** There must be flexibility in the implementation of the EEO ADR program to support the culture and respond to the variety of situations within DCSA. This flexibility will allow DCSA to adapt to changing circumstances that could not have been anticipated or predicted at the time the program was initially implemented.

**c. Training.** When requested or required, DEO will provide appropriate training and education on EEO ADR to employees, leadership, supervisors, and other persons protected under the applicable law. All managers and supervisors will receive EEO ADR training within 1 year of assignment to supervisory duties. EEO ADR training will, at a minimum, focus on:

(1) The ADRA and its amendments, with emphasis on the Federal Government's interest in encouraging mutual resolution of disputes and the benefits associated with utilizing ADR.

(2) EEOC's regulations and policy guidance with respect to EEO ADR: 29 C.F.R. §§ 1614.102(b)(2), 1614.105(f), 1614.108(b), and 1614.603.

(3) The operation of the EEO ADR method or methods employed by DCSA.

(4) Exposure to other EEO ADR methods, including interest-based mediation.

(5) Drafting a settlement agreement including situations where the aggrieved party believes the Agency failed to comply with the terms of the settlement agreement and any other legally required notices pursuant to 29 C.F.R. § 1614.504.

**d. Evaluation.** Evaluations help determine whether the EEO ADR program has achieved its goals and should provide feedback on how the program might be made more efficient and achieve better results. Participants and mediators will be provided, and are encouraged to complete, a survey and evaluation at the conclusion of EEO ADR to provide feedback about their experience in the process.

### **3.6. EEO ADR TECHNIQUES.**

a. When considering applicability of ADR for an employment dispute, the nature of the case, relationship of the parties, size, and complexity of the case and relief sought by the charging parties are considered. DCSA has the discretion to determine appropriateness of ADR and ensure that remedies can be provided, and to ensure it is not precedent-setting. Mediation is the ADR technique utilized by DCSA for EEO matters, and facilitation is conducted for non-EEO employee relations disputes. DCSA has an inter-agency agreement with FMCS to render ADR services.

b. Mediation, facilitation, and settlement conferences are common ADR techniques used by DCSA for EEO ADR. Techniques may be combined to provide advantageous aspects of more than one method. DCSA is not limited to using only one method or technique in the EEO ADR

program. Various methods in combination may be useful to yield fruitful results and be very effective in reaching resolution.

**3.3. EEO ADR PROCESS.** ADR provides a forum for discussion of employment disputes and the opportunity to enter into an agreement that satisfies the interests of all parties. The EEO ADR program will not diminish an individual's right to pursue their claim in accordance with 29 CFR Part 1614 if EEO ADR not resolve the dispute. The EEO ADR program does not require an employee to waive, as a prerequisite to participation, their right to an investigation, to a hearing, or to appeal the final decision to the EEOC.

**a. ADR Throughout the EEO Process.** When appropriate, on a case-by-case basis and in an effort to resolve complaints of employment discrimination as early in the process as possible, EEO ADR must be offered during the EEO process.

(1) EEO ADR program managers will inform the aggrieved individual (informal stage) or complainant (formal stage) of the opportunity and benefits of participating in ADR. At a minimum, the aggrieved individual or complainant will be informed of the various steps in the EEO complaint process they are in (informal or formal) including EEO ADR, the benefits of resolving the dispute through the EEO ADR process, and what the effect of choosing to engage in EEO ADR will have on the processing of their claims. EEO ADR will be utilized to the maximum extent practicable and at the earliest opportunity. Accordingly, once the Agency decides to offer EEO ADR, the RMO has a duty to cooperate.

(2) EEO ADR may be productive at any time during the course of an EEO dispute. EEO ADR should generally be attempted as soon as reasonably possible after the alleged discriminatory event, once an EEO counselor has been contacted, and an election is made to participate in EEO ADR.

(3) DEO staff and EEO counselors must ensure aggrieved individuals or complainants and RMOs knowingly and voluntarily choose to engage in ADR and may choose to decline to participate in or withdraw from ADR at any time without prejudicing the outcome of the information complaint process. The intent and purpose of ADR relies upon both parties, act in good faith, to reach a mutually acceptable resolution.

(4) If ADR is agreed upon, a management official will be selected by the Director, DCSA or their designee where ADR is used in a particular case. The management official will:

(a) Obtain settlement authority prior to ADR, or have immediate access to the Settlement authority while participating in ADR. The Management Representative and the Settlement Authority may be the same individual.

(b) Negotiate in good faith on behalf of management with the option of discontinuing ADR after consultation with the appropriate officials (i.e., settlement authority if the management official does not have authority to enter into agreement, and any other persons appropriate for consultation by the settlement authority) if the management representative has determined there is no resolution acceptable to the parties.

(c) RMOs or Agency officials directly involved in the case or having been identified as allegedly being responsible for the matters raised by the aggrieved individual or complainant cannot serve as the person with settlement authority (i.e., where the RMO is serving as the management representative, they cannot serve as the settlement authority).

(d) Where the aggrieved individual or complainant so requests, the management representative should not be the RMO.

(e) Unless an aggrieved individual or complainant is directly against these individuals, the Management Representative cannot be a representative of DCSA's DEO, HCMO, or OGC.

(5) When EEO ADR is not offered, a written statement to that effect must be included in the case record by the DEO representative. Generally, EEO ADR is unavailable to non-DCSA employees; however, DEO in consultation with OGC, may offer ADR in EEO cases involving DCSA applicants for employment, if deemed Federal employees for purposes of EEO.

(6) While it is primarily the responsibility of affected parties to be aware of applicable filing deadlines and procedures, the ADR program manager or regional EEO PM will take reasonable steps to alert aggrieved individuals to the possibility of such time limits. Participating in ADR does not toll those time limits.

(7) To ensure the ADR process is impartial and independent of any control by either party, the ADR program manager or regional EEO PMs may obtain the services of a certified neutral from the FMCS, will provide the neutral with all pertinent documents needed to conduct ADR, and will provide the neutral with the names of the parties to determine whether the neutral has a potential or actual conflict of interest. The ADR program manager will make every effort to ensure there is no perceived or actual conflict of interest between the parties and the neutral selected.

(8) The ADR program manager or regional EEO PMs will contact all the parties to the ADR and provide them with the name and contact information of the neutral(s). The parties may request another neutral if they believe there is a potential or actual conflict of interest. Justification should be included with the request. The ADR program manager will review the request and justification and make a decision regarding whether to process the request;

(9) The neutral will contact the ADR program manager or regional EEO PMs to assist in coordinating the ADR session(s), as the ADR program manager or regional EEO PMs will serve as the neutral's point of contact for onsite resources and support, such as logistical arrangements and access to the Agency.

(10) The ADR program manager or regional EEO PMs must coordinate with the Disability program manager (DPM) to ensure that any party to EEO ADR with a disability is provided a reasonable accommodation, if requested.

(11) The ADR program manager must keep the DEO Chief and DEO Deputy Chief apprised as to the status of the ADR. The ADR program manager will, in consultation with the DEO Chief, OGC, the neutral, and management determine whether the ADR should be

terminated for reasons such as, but not limited to, unreasonable delays or other evidence of lack of good faith by either party. The aggrieved individual or complainant may also terminate the ADR and return to the EEO process at any time.

(12) Obtaining settlement:

(a) Through ADR, the negotiated settlement agreement will be in writing and clearly state all the terms of the agreement, which must be legal, achievable, enforceable, quantifiable, measurable and specific. If the aggrieved individual or complainant has more than one case or cases pending before the EEOC, the designated Agency Representative and OGC will draft the agreed upon terms of the negotiated settlement agreement. The agreement will be reviewed and signed by both parties, aggrieved or complainant, and Settlement Official, to verify they have the same understanding of the draft terms of the resolution. Any agreement knowingly and voluntarily agreed upon by the parties is binding upon both parties. Complainants will be permitted full opportunity to consult with a representative of their choice, at their own expense, prior to execution of any settlement agreement. Agency officials will not execute settlement agreements without prior consultation with an attorney assigned to the DCSA Office of General Counsel.

(b) Where the complainant does not have a complaint before the EEOC, the ADR program manager or regional EEO Program Managers, in consultation with OGC, must draft or review the agreement for concurrence prior to obtaining all necessary signatures. At a minimum, the following signatures are required for all settlement agreements reached during EEO ADR to be considered agreed by DCSA: the aggrieved or complainant, General Counsel or designee, and Settlement Official.

(c) Aggrieved or complainant or their representative, if applicable, must be afforded a reasonable opportunity to review the draft terms of agreement and consult with legal or other representative(s) prior to finalizing the agreement. Regional EEO Programs Managers must send a finalized copy of the settlement agreement to the ADR program manager and OGC within three business days of the execution of the settlement agreement. Regional EEO PMs must maintain the original copy of the settlement agreement. If the complaint contains an allegation of age discrimination or if the complainant is 40 years old or older even when individual has not raised an age claim, or seeks to waive any future claim of discrimination based on age, the settlement agreement must contain the appropriate settlement provisions required by the Older Workers Benefits Protection Act.

(d) Regional EEO program managers must provide a finalized copy of the settlement agreement to the ADR program manager and OGC within five business days of the execution of the settlement agreement. Regional EEO PMs must maintain the original copy of the settlement agreement. Once the settlement agreement is signed by all parties, DEO must issue a notice closing the complaint to the complainant.

(13) If the attempt at resolution is not successful, the neutral, in consultation with the parties, will conclude the EEO ADR and notify the ADR program manager, who will advise the DEO Chief. The aggrieved individual or complainant will be referred back to the EEO Counselor for a final interview and issuance of the notice of a right to file a formal EEO

complaint, or if in a formal complaint, their complaint will be resumed at the point where the processing ceased.

**c. EEO ADR After a Formal Complaint is Filed.**

(1) During the acceptance or dismissal stage of the complaint process, or at any point in the process thereafter, the ADR program manager must coordinate with the DEO Chief regarding an offer for ADR throughout the formal stage of the complaint process. The ADR program manager, in consultation with the DEO Chief and OGC, must determine whether the formal complaint is appropriate for EEO ADR. If ADR is considered appropriate, the process will continue as normal.

(2) There may be time limits imposed by external processes (i.e., EEO formal complaint filing, appeals to the Merit Systems Protection Board, Office of Special Counsel, negotiated and administrative grievance processes). While it is primarily the responsibility of affected parties to be aware of applicable filing deadlines and procedures, the ADR program manager must take reasonable steps to alert the complainant to the possibility of such limits. **Participating in ADR does not toll those time limits.** Case processing will resume at the point where it ceased prior to EEO ADR commencing, unless complainant elects to withdraw the complaint.

**d. EEO ADR at the Hearing and Appellate Stages.**

(1) The EEOC encourages EEO ADR attempts by EEOC's AJs prior to arranging a hearing. However, the parties may also pursue EEO ADR through the Agency's EEO ADR program. To do so, the parties must notify the hearing office prior to utilizing the Agency's EEO ADR program.

(2) Similarly, EEO ADR may be beneficial at the appellate stage of the administrative process. At this stage, the parties should notify the OFO of their interest in EEO ADR. They may utilize the Agency's EEO ADR program, or request a neutral from OFO.

(3) Furthermore, there are instances when the EEOC recommends ADR and sends the request to both parties via FedSEP for acceptance or declination. DCSA OGC will review the request and make a determination on behalf of the Agency to participate or decline participation in ADR at the hearing and appellate stages.

**3.4. MATTERS INAPPROPRIATE FOR EEO ADR.** EEO ADR may not be appropriate for all circumstances. DCSA may decline to offer EEO ADR for particular issues related to the Agency's mission, such as security clearance adjudications. DCSA has discretion to determine whether a given dispute is appropriate for EEO ADR. Cases with a bases in race, color, religion, sex (gender identity, sexual orientation), national origin, age, disability, genetic information, or retaliation will not be excluded from the offer of EEO ADR.

**3.5. DEALING WITH NON-EEO ISSUES.** Although the purpose of the EEO ADR program is to address disputes arising under according to the Civil Rights Act of 1964, the Genetic Information Act of 2008, the Rehabilitation Act of 1973, the Age Discrimination in Employment

Act of 1967, and the Americans with Disabilities Act Amendments Act of 2008. Civil Rights Act of 1964 and the Genetic Information Act of 2008, DCSA has found that many workplace disputes brought to the process often include non-EEO issues. In designing the EEO ADR program, DCSA provides sufficient latitude for the parties to raise and address both EEO and non-EEO issues (that is, issues that do not fall under the jurisdiction of EEO laws, statutes, and regulations) in the resolution of their disputes. The DCSA ADR program also covers mediation requests for contract disputes, non-EEO employment disputes, internal facilitation, etc., and is coordinated by the DEO office.

**3.7. TIME FRAMES OF THE EEO ADR PROCESS.** If the parties agree to participate in the EEO ADR process, the pre-complaint processing period may be extended not to exceed 90 days. This time frame must be met to be consistent with this instruction. If the dispute is not resolved in this time frame, the DEO office will advise the aggrieved person not later than the 90th day after the EEO Counselor contact of their right to file a formal complaint. However, resolution efforts may continue so long as the parties and the neutral agree. Similarly, if an individual enters into an EEO ADR procedure after a formal complaint is filed, the time period for processing the complaint may be extended by agreement for not more than 90 days. If the dispute is not resolved, the complaint must be processed within the extended time period.

**3.8. TIME FRAMES OF THE NON-EEO ADR PROCESS.** DCSA makes the ADR process available to employees to address non-EEO related employment disputes. ADR in non-EEO disputes is not covered in this Instruction. Employees can request to utilize facilitation to resolve non-EEO employment concerns. To participate, employees must contact Human Capital Management Office Employee Relations within 15 days following the act or occurrence, or within 15 days following the date the employee became aware of the act or occurrence, or anytime if grievance concerns a continuing practice or condition as long as the practice or condition is continuing at the time the grievance is filed.

**3.9. REPRESENTATION OF THE PARTIES.** Aggrieved persons have the right to representation throughout the complaint process, including during the EEO ADR process. While the purpose of EEO ADR is to help both parties achieve a mutually agreeable resolution to a dispute, it is important that DCSA ADR procedures provide all parties seeking relief through the EEO process opportunity to consult with a representative of their choosing, at their own expense, during the EEO ADR process. EEO officials are not eligible to represent aggrieved individuals or complainants in the EEO ADR process, and are not permitted to serve as neutrals during the ADR process in DCSA cases.

**3.10. SPIN-OFF COMPLAINTS.** Nothing said or done during attempts to resolve the complaint through EEO ADR can be made the subject of an EEO complaint except where established by law or determined by a court of jurisdiction. Additionally, the decision not to offer EEO ADR for a particular case cannot be made the subject of an EEO complaint.

**3.11. RECORDKEEPING.** In accordance with EEOC's authority set forth in 29 C.F.R. § 1614.602(a) to collect federal complaints processing data and pursuant to DCSA's obligation to report EEO activity to the EEOC, the EEOC requires agencies to maintain a record of EEO ADR activity for annual reporting to the EEOC no later than October 31 of each year. This information will be consolidated by the EEO Complaints Manager and provided to the EEOC on the Form 462 by the DEO office.

## GLOSSARY

### G.1. ACRONYMS.

ADR	alternative dispute resolution
ADRA	Alternative Dispute Resolution of 1996 Act
AJ	Administrative Judge
DEO	diversity and equal opportunity
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
FMCS	Federal Mediation and Conciliation Services
MD	Management Directive
OFO	Office of Federal Operations
OGC	Office of General Counsel
RMO	responsible management official

### G.2. DEFINITIONS.

These terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
<b>aggrieved individual</b>	An individual who alleges a harm with respect to a term, condition, or privilege of employment at the informal stage of the EEO process.
<b>ADR</b>	Any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, use of ombudspersons, or any combination thereof. However, except as specified by grievance procedures set forth in 5 U.S.C. §7121, the use of binding arbitration requires authorization by the DCSA OGC.
<b>combination of techniques</b>	The combining of techniques, such as fact-finding settlement and conference, to provide advantageous aspects of more than one method.



<b>TERM</b>	<b>DEFINITION</b>
<b>complainant</b>	An individual who has filed a formal EEO complaint.
<b>complainant's representative</b>	The individual who represents aggrieved individual's or complainant's interests and advises aggrieved individual or complainant during the processing of his or her complaint or during EEO ADR.
<b>facilitation</b>	The process in which a neutral assists the parties in finding a resolution to their issue and involves the use of techniques to improve the flow of information in a meeting between parties to a dispute. The techniques may also be applied to decision-making meetings where a specific outcome is desired (for example, resolution of a conflict or dispute). The term "facilitator" is often used interchangeably with the term "mediator," but a facilitator does not typically become as involved as the mediator in the substantive issues. The facilitator focuses more on the communication processes involved in resolving a matter.
<b>fact-finding</b>	The use of an impartial expert selected by the parties in order to determine the facts that are in dispute.
<b>formal complaint process</b>	A regulatory procedure for addressing allegations of discrimination, which consists of: the filing of an EEO complaint, the acceptance or dismissal of a complaint, the investigation of the accepted claim(s), and the election of either an EEOC hearing or an Agency FAD.
<b>iComplaints</b>	DCSA's electronic EEO complaints recording, tracking, and management system. Access is limited to EEO staff responsible for complaints processing and management.
<b>informal or pre-complaint process</b>	A regulatory procedure for addressing allegations of discrimination prior to the filing of a formal EEO complaint.
<b>mediation</b>	A voluntary and confidential process where a third-party neutral, who is not a decision maker, facilitates discussion between the parties to help them reach a mutually acceptable resolution. In a mediation, the neutral guides the process and determines when to meet with both parties in a joint session or individually, establishes the tone to help parties engage in meaningful discussion, and creates a conducive environment for meaningful discussion.

<b>TERM</b>	<b>DEFINITION</b>
<b>mediator</b>	A neutral third party who facilitates discussions between parties to a dispute in an effort to reach a mutually acceptable resolution.
<b>neutral</b>	An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. According to EEOC's MD 110, a "neutral" refers to a third party who has no stake in the outcome of the proceeding whose function is to assist the parties in resolving the matters at hand.
<b>neutral evaluation</b>	A process in which a neutral is used to provide an objective evaluation, of the strengths and weaknesses of a case.
<b>ombudsperson</b>	An individual, if appointed, that informs individuals of appropriate avenues of redress for disputes and also aids in resolving conflicts early and informally.
<b>RMO</b>	An Agency official who has been identified as allegedly being responsible for the matters raised by the complainant.
<b>settlement conference</b>	Another type of ADR. A meeting which is typically conducted by a settlement judge or referee and is designed to bring formal adversarial proceedings to a satisfactory close between the disputing parties, their representatives, and a judge or referee. The role of a settlement judge is similar to that of a mediator in that they assist the parties procedurally in negotiating an agreement.
<b>shared neutral program</b>	An interagency mediation program whereby mediators are provided to participating Federal agencies at no cost.

## **REFERENCES**

Code of Federal Regulations, Title 29, Chapter 14, Part 1614, “Federal Sector Equal Employment Opportunity,” as amended  
Code of Federal Regulations, Title 29, Section 1614.203, “Rehabilitation Act of 1973”  
DCSA Policy Memorandum, “Alternative Dispute Resolution,” current edition  
DCSA Policy Memorandum, “Equal Employment Opportunity,” current edition  
Equal Employment Opportunity Management Directive 110, as revised August 5, 2015  
Public Law 88-352, Title VII, “Title VII of the Civil Rights Act of 1964,” as amended  
Public Law 90-202, “Age Discrimination in Employment Act (ADEA) of 1967,” as amended  
Public Law 104-320, “Administrative Dispute Resolution Act (ADRA) of 1996,” as amended  
Public Law 110-233, “Genetic Information Nondiscrimination Act of 2008,” May 2, 2008  
United States Code, Title 5, Section 7121, “Grievance Procedures”