



Director of Administration and Management

ADMINISTRATIVE INSTRUCTION

NUMBER 106

January 30, 2014

Incorporating Change 2, Effective May 31, 2022

EEOD, WHS

SUBJECT: Alternative Dispute Resolution (ADR) Program

References: See Enclosure 1

1. PURPOSE. This administrative instruction (AI):

a. Reissues AI 106 (Reference (a)) in accordance with the authority in DoD Directive (DoDD) 5110.04 (Reference (b)) and DoD Instruction 5025.01 (Reference (c)) and pursuant to part 1, chapter 5, sections 571-584 of Title 5, United States Code (Reference (d)).

b. Implements the policy in Executive Order 12988; Presidential Memorandum of 1998; section 1614.102(b)(2) of Title 29, Code of Federal Regulations; DoD Instruction 5145.05; and Equal Employment Opportunity Commission Management Directive 110 (References (e) through (i)).

c. Assigns responsibilities and prescribes procedures for the implementation of the ADR Program. The ADR Program offers a number of processes designed to resolve workplace and equal employment opportunity (EEO) disputes at the lowest possible organizational level. The major services of the ADR Program include the ADR processes of mediation and facilitation and conflict management (CM) practices of group facilitation and climate surveys.

2. APPLICABILITY. This AI applies to:

a. OSD, the Military Departments, the Defense Agencies, and the DoD Field Activities in the National Capital Region that are serviced by Washington Headquarters Services (WHS) (referred to collectively in this AI as the "WHS-serviced Components").

b. All current and former civilian employees, members of the Military Services, and applicants for employment within the organizational entities of OSD.

3. POLICY. In accordance with DoD policy as established by Reference (h), it is OSD policy to:

a. Use and offer ADR services to WHS-serviced Components as an alternative to litigation or formal administrative procedures to the maximum extent possible.

b. Utilize the ADR Program as a resource for CM and ADR.

c. Resolve disputes and effectively manage conflict early on, at the lowest possible organizational level.

d. Offer ADR processes as an avenue to participants to enter voluntarily and in good faith, with the intention of working towards a successful outcome.

e. Allow participants to voluntarily opt-out of the ADR process at any point prior to resolution for any reason, to include pursuing formal avenues of redress, as is their right.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. The procedures at Enclosure 3 are applied and available through the ADR Program. Each situation has a unique blend of circumstances that would make one of these processes or procedures more appropriate than another. The ADR Program Manager will assess and determine which is most appropriate in each case for recommendation to the parties.

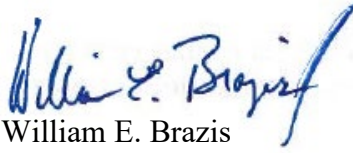
6. RELEASABILITY. **Cleared for public release.** This AI is available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

7. SUMMARY OF CHANGE 2. This change is administrative and, in accordance with the March 21, 2022 Washington Headquarters Services Memorandum (Reference (j)):

a. Reassigns the Director of Administration, Office of the Deputy Chief Management Officer of the Department of Defense responsibilities and duties to the Director of Administration and Management in accordance with Section 901 of Public Law 116-283 (Reference (k)), which eliminated the position of the Deputy Chief Management Officer of the Department of Defense effective January 1, 2021; and the January 11, 2021 Deputy Secretary of Defense Memorandums (References (l) and (m)), which implemented Reference (k) and reestablished the Director of Administration and Management.

b. Updates websites, organizational titles, and references for accuracy.

8. EFFECTIVE DATE. This AI is effective January 30, 2014.



William E. Brazis
Director, Washington Headquarters Services

Enclosures

1. References
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Glossary

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ENCLOSURE 1

REFERENCES

- (a) Administrative Instruction Number 106, “Collaborative Resolution Program (ADR),” October 31, 2005 (hereby cancelled)
- (b) DoD Directive 5110.04, “Washington Headquarters Services (WHS),” March 27, 2013
- (c) DoD Instruction 5025.01, “DoD Issuances Program,” August 1, 2016, as amended
- (d) Title 5, United States Code
- (e) Executive Order 12988, “Civil Justice Reform,” February 5, 1996
- (f) Presidential Memorandum, “Designation of Interagency Committees to Facilitate and Encourage Agency Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking,” May 1, 1998¹
- (g) Section 1614.102(b)(2) of Title 29, Code of Federal Regulations
- (h) DoD Instruction 5145.05, “Alternative Dispute Resolution (ADR) and Conflict Management,” May 27, 2016
- (i) Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 110, “Federal Sector Complaints Processing Manual,” November 9, 1999²
- (j) Washington Headquarters Services Memorandum, “Approval of Administrative Changes to Office of the Director of Administration and Management (ODA&M) DoD Issuances,” March 21, 2022
- (k) Public Law 116-283, “William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021,” January 1, 2021
- (l) Deputy Secretary of Defense Memorandum, “Disestablishment of the Chief Management Officer of the DoD and Realignment of Functions and Responsibilities,” January 11, 2021
- (m) Deputy Secretary of Defense Memorandum, “Re-establishment of the Assistant to the Secretary of Defense for Intelligence Oversight and the Director of Administration and Management,” January 11, 2021
- (n) Public Law 112-199, “Whistleblower Protection Enhancement Act of 2012,” November 27, 2012
- (o) U.S. Office of Special Counsel Memorandum for Executive Departments and Agencies, “The Whistleblower Protection Enhancement Act of 2012 and Non-Disclosure Policies, Forms, and Agreements,” undated³

¹ A copy of this reference may be found online at: <https://www.opm.gov/er/adrguide/Appendix-p2-3.asp>

² A copy of this reference may be found online at: <https://www.eeoc.gov/federal/directives/md110.cfm>

³ A copy of this reference may be found online at <https://energy.gov/sites/prod/files/2013/07/f2/OSC%20Memorandum%20on%20Whistleblower%20Law%20and%20Non%20Disclosure%20Agreements%2003%2014%2013.pdf>

ENCLOSURE 2

RESPONSIBILITIES

1. DIRECTOR, WHS. Under the authority, direction, and control of the Director of Administration, Office of the Deputy Chief Management Officer of the Department of Defense Director of Administration and Management and in addition to the responsibilities in section 3 of this enclosure, the Director, WHS:

- a. Exercises overall responsibility for managing the ADR Program within OSD and ADR oversight for all WHS and WHS-serviced Components.
- b. Advises and represents the Secretary of Defense on ADR matters affecting WHS-serviced Components.
- c. Monitors the progress of all ADR elements and seeks resolution of issues, concerns, and disputes in good faith.
- d. Supports and utilizes the ADR Program to the maximum extent possible and strongly encourages management participation.
- e. Provides sufficient administrative, personnel, and financial resources to support the ADR Program.
- f. Ensures that data reflecting the ADR Program for WHS-serviced Components is provided to the Office of the General Counsel (OGC) of the Department of Defense and the DoD ADR Coordinating Committee, as appropriate.

2. DIRECTOR, OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS (EEOP). Under the authority, direction, and control of the Director, WHS, the Director, EEOP:

- a. Assists the Director, WHS, by managing the ADR Program.
- b. Acquires and retains a fully qualified ADR Program Manager to provide guidance and assistance on ADR policy, procedures, and initiatives.
- c. Institutes a process that ensures WHS-serviced Components are made aware of the benefits to effectively managing conflict and resolving disputes early on, at the lowest possible organizational level.
- d. Ensures information regarding the ADR Program is publicized throughout WHS-serviced Components with sufficient frequency.

3. WHS-SERVICED COMPONENT HEADS. The WHS-serviced Component heads:
- a. Support and utilize the ADR Program to the maximum extent possible and strongly encourage management participation.
 - b. Seek resolution of issues, concerns, and disputes in good faith.
 - c. Encourage a positive dispute resolution climate and ensure that information about ADR services is disseminated widely and understood at all levels within their organization.
 - d. Promote voluntary use of the ADR Program without coercion or reprisal.
 - e. Encourage employees to address conflicts at the earliest point feasible and lowest possible organizational level.

ENCLOSURE 3

PROCEDURES

1. ADR PROGRAM MANAGER. The ADR Program Manager:

a. Assists the Director, EEOP, in managing the ADR Program by developing procedures, providing program oversight, serving as an agency neutral, and ensuring full implementation of this AI.

b. Serves as an OSD/WHS representative on the DoD ADR Coordinating Committee.

c. Provides quick, consistent, and responsive service to ADR inquiries:

(1) Responds within 5 calendar days of initial contact.

(2) Conducts an intake session with the participants to discuss the circumstances, issues, and desired outcomes.

(3) Gives thorough information and help participants assess their options and appropriate avenues for dispute resolution.

(4) Advises all participants of their rights and responsibilities in regards to voluntary participation, confidentiality (and limitations thereof), and other related items.

d. In appropriate situations, provides customized conflict resolution interventions to fit the unique needs of the WHS-serviced Components.

e. Assesses the appropriateness of the particular ADR process to the dispute ensuring that each participant is able to participate effectively within the context of ADR and willing to participate in good faith. ADR generally is not appropriate in cases when:

(1) A definitive or authoritative resolution of the matter is required;

(2) The matter involves or may bear upon significant questions of government policy that require additional procedures before a final resolution may be made; or

(3) A full public record of the proceeding is important.

f. If mediation or facilitation is the service to be provided, determines if the ADR Program Manager is suitable to serve as the neutral in the given case. Determines the number of neutrals appropriate to the circumstances of each case. When the ADR Program Manager is conflicted out of serving or otherwise opts not to serve, and when additional neutrals are required, acquires neutrals in a cost-effective manner such as, but not limited to, utilizing the DoD Roster of

Neutrals, the Health and Human Services Sharing Neutrals Program, and the DoD Investigations and Resolutions Mediation Program when appropriate.

g. When assisting participants:

- (1) Facilitates constructive dialogue between participants.
- (2) Serves as a feedback mechanism.
- (3) Assists employees seeking explanation on policies and procedures.
- (4) Explores options for resolving concerns.
- (5) Assists WHS-serviced Components with alternatives.

h. Preserves confidentiality to the extent permitted by law, regulation, and policy. Treats all participants equally and with dignity and respect. Strives for the highest level of ethical practice.

i. Coordinates all signed settlement agreements with the WHS OGC or the appropriate legal office.

j. Ensures that participants are given the opportunity to evaluate ADR neutrals.

k. Monitors neutral effectiveness and the ADR impact on the timely, efficient, and effective resolution of organizational conflict.

l. Conducts periodic information sessions and training programs related to the ADR Program.

m. Prepares and presents reports, briefings, and presentations to management officials and employees regarding the ADR Program and its effectiveness. Identifies issues and concerns regarding organizational dispute resolution matters, human relations, and climate.

n. Maintains a list of qualified individuals or groups that provide professional dispute resolution and conflict management services.

2. ADR SERVICES. The major services available through the ADR Program are:

a. Facilitation

(1) Facilitators use a variety of techniques to improve the flow of communication in a meeting, discussion, or debate.

(2) The purpose of group facilitation is to help participants clarify and achieve their specific group objectives.

(3) A facilitator does not become involved in the substantive issues, but rather focuses on the process of communication. Therefore, facilitators remain impartial to the topics and issues under discussion.

(4) In most situations, WHS-serviced Components could benefit from group facilitation when a collaborative group decision-making process is appropriate. Group facilitation may be used to foster more productive communication patterns within organized groups consisting of two or more participants.

(5) Facilitation is also an ADR method used to assist disputants seeking to reach a mutually agreeable resolution.

(a) Any WHS-serviced Component may request group facilitation by contacting the ADR Program Manager. However, the ADR Program Manager must discuss the possibility of facilitation with the appropriate organization management official.

(b) Information regarding the goals of the group facilitation and the organization's decision-making authority will be considered.

(c) A facilitator will be assigned only after the ADR Program Manager considers facilitation appropriate and the management official agrees to the process. Once these criteria are met, a facilitated meeting will be scheduled with the participants.

b. Mediation

(1) Mediation is one of the most popular processes utilized and has five basic stages:

(a) Stage 1 - Introduction

1. At the start of the session, the mediator(s) will make an opening statement to describe the mediation process and the mediator's role, and explain the rules and objectives of the mediation session, emphasizing neutrality, confidentiality, and voluntariness.

2. The mediator(s) will also explain how the session will proceed, which provides an opportunity for the participants to ask questions, seek clarification, and obtain additional information to ensure they understand the process and are comfortable moving forward.

3. Once participants have a clear understanding of the process and confirm their agreement with the ground rules for the session, the next phase of the process may begin.

(b) Stage 2 - Participants' Opening Statements

1. Each participant is given a reasonable amount of uninterrupted time to articulate a history of the dispute from their point of view and the issues or concerns they want to resolve during the mediation session.

2. The mediator(s) will summarize what has been heard, including feelings, facts, concerns, and issues, to confirm a correct understanding of the participants' perspectives, and ask clarification questions as appropriate.

(c) Stage 3 - Joint Discussion

1. The mediator(s) assist(s) the participants in identifying common ground and issues of concern, which will form the focus of the mediation.

2. The participants may discuss and address the opening statements; clarify issues, facts, and misunderstandings; ask questions; and express their feelings in an effort to understand and address each other's underlying concerns and interests.

3. The mediator(s) will facilitate constructive communication to assist the participants in addressing these interests. After gaining an understanding of the participants' issues and interests, the mediator(s) will assist the participants in generating possible options for a mutually acceptable resolution.

4. The participants will negotiate line items in an open session when possible, although the mediator(s) may utilize a combination of joint and caucus sessions to facilitate this process.

(d) Stage 4 – Caucus

1. As needed, the mediator(s) may hold one or more private meetings (usually in a nearby room) with each participant, to provide an opportunity to ask questions and to discuss any issues they may not want to raise in front of other participants to the session.

2. What is discussed in these meetings, or caucuses, will be kept confidential from the other participants, unless expressly authorized to reveal that information by the caucusing party.

3. Caucusing may be done before or after a joint discussion, more than once during the mediation session, or not at all, as circumstances dictate.

(e) Stage 5 – Closure

1. If a negotiated settlement agreement is reached, the mediator(s) will assist the participants in reducing the terms of the agreement to writing in a clear, understandable, and unambiguous manner.

2. Each participant will be given the opportunity to seek legal review. The participants will be asked to initial or sign the agreement, which will become binding after legal sufficiency review and acceptance by WHS OGC.

3. Oral agreements or a memorandum of understanding may be used in workplace disputes, but not in mediation sessions conducted as part of any stage of a formal process (i.e., EEO or grievance).

4. If no agreement is reached, the mediator(s) will conclude the mediation by summarizing the session and explaining post-mediation procedures.

(2) Participants must be informed in writing of the time, place, and process of the mediation. The letter specifies the rights, responsibilities, and expectations of all participants, including the mediator(s) (see Figure 1 for an example).

(3) The agreement to mediate (See Figure 2 for an example) specifies the process, the mediator's role, and the implications of potential settlements. The parties must sign this agreement before the process begins. Parties must know that the process is voluntary, confidential (including limitations thereof), includes their right to representation, and that signed agreements are binding.

Figure 1. Scheduling Letter

Dear Sir or Madam:

This letter is to confirm your participation in a mediation conference utilizing the Alternative Dispute Resolution (ADR) Program within the Office of Equal Employment Opportunity Programs (EEOP). The participants in this mediation conference will be ____ and _____ (hereinafter referred to as "the parties"). _____ and ____ will serve as mediators. The mediation conference is scheduled for ___ a.m. on _____ at:

The Mark Center
4800 Mark Center Drive, Suite 03G19
Alexandria, Virginia 22350-3400

The purpose of the mediation conference is to achieve an acceptable solution that satisfies all parties and negates any need for further action on anyone's behalf aside from those steps that may be agreed to as part of the settlement agreement. However, in the event a settlement agreement cannot be reached, parties retain the rights afforded to them in formal administrative processes where appropriate and allowed by policy or statute.

The participants, including the mediator(s), will abide by principles of confidentiality, as outlined in section 574 of the Administrative Dispute Resolution Act of 1996 (Pub. Law 104-320). Generally the Act provides that apart from statutory duties to report certain kinds of information, a mediator: must not disclose, directly or indirectly, to any participant to a mediation, information communicated to the mediator in confidence by any other participant unless that participant gives permission to do so; a mediator must limit information given to the referring agency (other than a participant) to the fact of whether or not a settlement was reached, and; a mediator cannot ensure the confidentiality of statements parties make to each other or of any documents or other tangible evidence shared during the mediation session. Confidentiality is waived in the instances of potential for imminent danger to anyone inside or outside the mediation; gross violations of waste, fraud, or abuse; and/or if a participant of the mediation has a complaint against the mediator. The specific information related to the complaint is then waived.

If the mediation conference results in settlement, a settlement agreement will be documented, signed by all parties, and made part of the official ADR case file. It should be understood by participants that by agency policy, the agreement will need the written approval of an agency official with appropriate authority. If the mediation conference does not result in a resolution, only the following information will be officially maintained: who participated in the conference; who the mediators were; the date and length of the meeting; and that an agreement was not reached.

Thank you for your willingness to attempt settlement of this situation through mediation. I am hopeful that the meeting will be of benefit to all participants. Please review the attached "Mediation Description" and "Agreement to Mediate" documents, the latter of which will be signed by all parties before the mediation session begins. You may contact me at (571) 372-0844 or the Office of EEOP main line at (571) 372-0832 if you have any questions or concerns.

Sincerely

ADR Program Manager

Attachments:
As stated

Figure 2. Agreement to Mediate

Agreement to Mediate

The undersigned parties have agreed to participate in mediation under Washington Headquarters Services' Alternative Dispute Resolution (ADR) Program with the intention of reaching a consensual settlement of their concerns. The parties understand the following provisions regarding the mediation process:

1. The mediator is a neutral facilitator who will assist the parties to reach their own resolution of issues. S/he will not make judgments or decisions about "right" or "wrong" or search for blame. The mediator will not tell the parties how to resolve their issues and cannot impose a settlement.
2. The participants, including the mediator(s), will abide by principles of confidentiality, as outlined in section 574 of the Administrative Dispute Resolution Act of 1996 (Pub. Law 104-320). Generally the Act provides that apart from statutory duties to report certain kinds of information, a mediator: must not disclose, directly or indirectly, to any participant to a mediation, information communicated to the mediator in confidence by any other participant unless that participant gives permission to do so; a mediator must limit information given to the referring agency (other than a participant) to the fact of whether or not a settlement was reached, and; a mediator cannot ensure the confidentiality of statements participants make to each other or of any documents or other tangible evidence shared during the mediation session. Confidentiality is waived in the instances of potential for imminent danger to anyone inside or outside the mediation; gross violations of waste, fraud, or abuse; and/or if a participant of the mediation has a complaint against the mediator. The specific information related to the complaint is then waived.
3. Confidentiality is waived in the instances of potential for imminent danger to anyone inside or outside the mediation; gross violations of waste, fraud, or abuse; and/or if a participant of the mediation has a complaint against the mediator. The specific information related to the complaint is then waived.
4. Parties are expected to participate in good faith and with open and honest communication, and therefore agree to provide full disclosure of all relevant and pertinent information.
5. The mediator does not offer legal advice during the mediation session, nor does s/he provide legal counsel. Each participant is encouraged to seek advice from his/her own attorney in order to be properly counseled about his/her legal interests, rights, and obligations.
6. It is understood that any participant and the mediator may terminate the mediation session at any time. It is agreed that if a participant decides to withdraw from mediation, best efforts will be made to discuss this decision with all participants. If the mediator determines that it is not possible to resolve the issues through mediation, the process can be terminated once this has been conveyed to the parties and confirmed in writing.
7. When an agreement is reached, the parties will prepare a settlement agreement with the assistance of the mediator. The employee, applicant or former employee is encouraged to review this with her/his own legal counsel before the agreement is finalized.
8. The agreement must be forwarded to the WHS Office of General Counsel (OGC) and reviewed by WHS General Counsel before it is finalized and signed.

Participant	Date	Participant	Date
Mediator	Date	Mediator	Date

c. Resolution. When a resolution is reached, the parties, with the assistance of the mediator, will prepare a settlement agreement as illustrated in Figure 3, as an example. The parties will be informed of their right to have the agreement reviewed by a representative of their choosing before the agreement is signed. Once WHS OGC and other appropriate officials (Parties' legal counsel, Settlement Authority, Director, EEOP, HRD, etc.) have reviewed and the parties have signed, the settlement agreement becomes a binding document.

d. Provisions

(1) Public Law 112-199 (Reference (n)), also known as the Whistleblower Protection Enhancement Act (WPEA), and the U.S. Office of Special Counsel Memorandum for Executive Departments and Agencies (Reference (o)) prohibits the implementation of any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to: (1) classified information; (2) communications to Congress; (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or substantial and specific danger to public health or safety; or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."

(2) Agencies may distinguish between a non-disclosure policy, form, or agreement and a confidentiality clause in a settlement agreement. A confidentiality clause in a settlement agreement is generally not covered by the WPEA's notice requirements. A confidentiality clause only restricts disclosure of the terms and conditions of the settlement, and does not otherwise restrict disclosure of any other information. If a confidentiality clause in a settlement agreement extends beyond the terms and conditions of the agreement, agencies must incorporate the WPEA's statement.

Figure 3. Settlement Agreement Sample

SETTLEMENT AGREEMENT
IN THE FORMAL EQUAL EMPLOYMENT OPPORTUNITY
DISCRIMINATION COMPLAINT OF _____
AGAINST _____, SECRETARY OF DEFENSE
AGENCY CASE NUMBER _____

Whereas Complainant, _____, and the Agency, Washington Headquarters Services, _____, Department of Defense, desire to resolve the action that is the subject of a formal/informal EEO complaint, Agency Case No. _____, without resort to further processing under any forum, the parties freely and voluntarily enter into this agreement in complete and final settlement of the above referenced action, as follows.

The Agency agrees to take the following action:

- 1.
- 2.

In consideration of the Agency's actions, as specified above, the Complainant agrees to take the following action:

3. The Complainant _____ hereby withdraws all formal/informal EEO matters, specifically, Agency Case No. _____, with prejudice.
4. The Complainant will not pursue any claims related to the matter giving rise to the informal/formal complaint in any forum, including the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Office of Special Counsel, or any other administrative agencies or court of law.

The parties acknowledge that they fully understand the terms of this settlement agreement and are under no duress, coercion or any mental impairment.

The parties acknowledged they have been afforded the right to seek advice from legal counsel before signing this agreement.

The parties understand that this settlement is not an admission of guilt or any wrongdoing by either participant. These terms do not establish precedent for future settlement discussions involving any third party. Neither participant shall make or permit representations to the contrary.

[the following bracketed language is to be added if the Complainant is 40 years of age or over]
[In accordance with the Older Worker's Benefit Protection Act (29 U.S.C. 626), the Complainant acknowledges that (s)he has carefully read and fully understands all of the provisions of the this settlement agreement; that (s)he has been advised to consult with an attorney of her own choosing and at her own expense before signing this agreement; that under this agreement she is waiving any claims she might have brought under the Age Discrimination in Employment Act in addition to other claims as set forth, above, arising up to and including the date of her signature on this agreement; that (s)he has seven days from the date this agreement is executed to revoke her execution of this agreement or be fully bound by it; that this agreement will not become effective until the revocation period has expired and that the 7-day period for revocation of this agreement is a reasonable time to consider whether or not to allow the agreement to become effective. The Complainant acknowledges that (s)he has received a Statement of Revocation attached as Exhibit A to this agreement and that (s)he has agreed to deliver the signed revocation to the WHS Office of Equal Employment Opportunity and Diversity within the 7-day period should she determine to revoke her consent to this agreement.

Figure 3. Settlement Agreement Sample, Continued

The Complainant acknowledges (s)he has 21 days from the date the agreement was executed to consider the agreement. Any decision on his/her part to sign this agreement before the expiration of the 21-day period is knowingly and voluntarily made. The Complainant's signature on this agreement stops the 21-day consideration period. The 7-day revocation period described in the preceding paragraph will commence on the date the Complainant signs this agreement.]

The parties agree that the terms of this agreement are confidential to the extent permitted by law and that they will not disclose such information to third parties except as necessary to carry out the terms of this agreement, and/or in accordance with the Privacy Act of 1974, 5 U.S.C. section 552a.

Both parties agree that they will make a good faith effort to implement this settlement agreement and to resolve any problems regarding this settlement agreement informally.

If, after attempting to resolve any problems regarding this settlement agreement informally, the Complainant believes that the Agency has failed to adhere to the terms of this settlement agreement, the Complainant will follow the procedures set forth in 29 C.F.R. §1614, "Subpart E-Remedies and Enforcement" or successor provisions. Subpart E states that the Complainant must notify the Agency's Equal Employment Opportunity Director, in writing, of the Agency's alleged noncompliance within 30 days of the date the Complainant knew or should have known of the alleged noncompliance. Such notice will be sent to the following:

Office of Equal Employment Opportunity Programs
Washington Headquarters Services
4800 Mark Center Drive, Suite 03G19
Alexandria, VA 22350

The parties agree there are no remaining disputes, obligations, or claims arising from the issues, facts, or circumstances which formed the basis for the informal/formal EEO complaint referenced herein.

Complainant

Date

Representative for Complainant Date

Agency Official

Date

Agency Representative

Date

Figure 3. Settlement Agreement Sample, Continued

[the following Exhibit is to be added if the Complainant is 40 years of age or over]

Exhibit A

STATEMENT OF REVOCATION

I hereby revoke and rescind my consent to that certain Settlement Agreement executed by the undersigned and the Washington Headquarters Services, _____, Department of Defense on or about _____, 201_, pursuant to my right to do so within seven (7) days of the execution thereof, under the Older Workers' Benefit Protection Act (29 U.S.C. § 626).

Dated: _____, 201_

Complainant

e. Climate Surveys

(1) Employees are given an opportunity to provide feedback on policies, practices, and procedures of the workplace and how issues affect their work environment.

(2) Surveys are created and given to employees with instructions to complete and return to the ADR Program Manager. The responses are kept confidential. Surveys are reviewed and, when necessary, follow-up interviews may be conducted to obtain additional information.

(3) Once all surveys and interviews have been conducted, an analysis report is completed for management that provides a compilation of the surveys, interviews, recommendations, and action plans for management's consideration and/or implementation.

(4) Climate surveys may be used to foster more productive communication patterns within a WHS-serviced Component unit.

(5) Any management official of a WHS-serviced Component may request a climate survey by contacting the Director, EEOP, or the ADR Program Manager.

(6) The ADR Program Manager contacts the requesting WHS-serviced Component to:

(a) Discuss the focus of the climate survey.

(b) Obtain specific information pertaining to issues to address.

(c) Discuss time frames for conducting the survey and private interviews.

(7) After preliminary issues are completed, the survey is compiled as follows:

(a) The ADR Program Manager, in collaboration with requesting management official, offers questions to be added to the survey.

(b) The management official coordinates with their component to provide information concerning the climate survey, obtain the cooperation of the employees, and stress the confidentiality of responses.

(c) The ADR Program Manager sends an introductory e-mail that includes the process and assessment tool and provides the survey along with a due date and delivery method (e.g., via e-mail to ADR Program Manager, fax machine, or appointment).

(8) Upon return of all surveys, the ADR Program Manager:

(a) Collects the documents, reviews the responses, and tallies the responses to the questions.

(b) Reviews write-in responses and lists them separately to capture additional concerns and record ideas for resolution.

(c) Requests in-person interviews with survey participants, when necessary, to gather additional information on the responses given on the survey, including write-in responses.

(d) Coordinates with the requesting WHS-serviced Component's point of contact to locate dates, times, and venue to conduct private interviews.

(e) Introduces him/herself to interviewees and specifically highlights the purpose of the survey.

(f) The participants are informed about the interview process and time constraints for each interview. Ground rules are discussed and the participants are:

1. Ensured of confidentiality except in the revelation of a crime (e.g., theft, threats to people or property).

2. Informed that the survey is not a tool or process to file a grievance or a complaint against the agency.

3. Advised that the interviewer does not have the authority to change organizational policy, but that the survey is a tool to assist in obtaining information about the issues or climate of the workplace.

(9) Completed survey statistics and private interviews are calculated and evaluated for preparation of the climate survey report. Common themes from interviews are grouped together and summarized in the report. The report includes recommendations to management on next steps.

(10) The climate survey report is submitted to management, along with recommendations and a follow-up meeting, if needed, to discuss the results.

3. ADR PROCEDURES FOR EEO COMPLAINTS

a. ADR services are available at any stage of the EEO process.

b. Aggrieved individuals (referred to as "the Aggrieved") who have initiated the pre-EEO complaint process have the option of proceeding with EEO counseling or electing ADR, but not both, during this informal stage. If the Aggrieved elects ADR, management is contacted to determine if the agency offers ADR. Should the parties elect an ADR process, most typically mediation, and their issues are not resolved, the Aggrieved retains the right to pursue his/her EEO complaint. Information pertaining to the circumstances surrounding the EEO complaint will be documented and processed to fulfill the requirements of Reference (g).

c. Where a WHS-serviced Component chooses to participate in an ADR process to resolve an EEO-related complaint, the pre-complaint processing period will extend from 30 to 90 calendar days. If the claim has not been resolved before the 90th day, a Notice of Right to File a Formal Complaint of Discrimination must be provided by the EEO counselor who conducted the initial intake session with the Aggrieved, who will subsequently be referred to as “Complainant” upon entering the formal complaint stage. The Notice of Right to File will inform the Complainant of:

(1) The right to file a discrimination complaint within 15 calendar days of receipt of the notice.

(2) The appropriate official with whom to file a complaint.

(3) The Complainant’s duty to assure that the agency is informed immediately if the Complainant retains counsel or a representative.

d. Aggrieved individuals that achieve resolution to an EEO complaint must sign a written settlement agreement. Parties must agree that there are no remaining issues, obligations, or claims to date and that the agreement constitutes a full and complete settlement between the parties as to the issues in controversy.

e. ADR is also available to the participants after a formal complaint has been filed, regardless of whether it was attempted during the informal stage. Electing ADR during the formal complaint stage will not delay the investigation into the EEO complaint.

4. ADR PROCEDURES FOR OTHER FORMAL PROCESSES. This AI and References (d) through (i)) encourage the use of dispute resolution processes as an alternative to formal processes. In addition, Reference (h) encourages agencies to remove any barriers that prevent the use of ADR. The ADR Program may be used as an appropriate alternative resource to other administrative processes of redress managed by WHS. In such instances, WHS-serviced Components should contact the ADR Program Manager when it is believed that facilitation, mediation, or a climate survey would be beneficial.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ADR	alternative dispute resolution
AI	administrative instruction
CM	conflict management
DoDD	DoD directive
EEO	equal employment opportunity
EEOP	Office of Equal Employment Opportunity Programs
OGC	Office of the General Counsel
WHS	Washington Headquarters Services
WPEA	Whistleblower Protection Enhancement Act

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this AI.

business day. Any regular workday excluding weekends and holidays.

calendar day. Any day in a month, including weekends and holidays.

climate survey. A proactive management tool used to evaluate the workplace from the perspective of the employee.

ADR Program. The vehicle for providing dispute resolution and conflict management services to WHS-serviced Components.

facilitator. An acceptable, impartial third party to a group or to parties in a dispute. The facilitator contributes process and structure to help improve the way the group identifies and solves problems and makes decisions or the way parties resolve their dispute.

mediation. A voluntary process that is managed by a qualified, impartial, and neutral third party that has no decision-making authority. It provides an equal and fair process that allows participants to reach an acceptable resolution of issues in dispute.

mediator. A qualified, impartial third party to individuals in a dispute that implements a structured, confidential process and a variety of techniques in order to help them achieve a mutually acceptable solution.

neutral. An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. The person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. This person must have professional training in the dispute resolution technique(s) outlined in this AI. A neutral will have no official, financial, or personal stake with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve. This person does not have a say in the specific issues or resolution options of a conflict resolution process. This person or group may include the ADR Program Manager, mediator, or other ADR professional.

participant or party. Any person or group that utilizes the ADR Program. This term replaces “complainants” and “respondents” because the responsibility of conflict resolution is shared with all parties in a perceived conflict.