

FACT SHEET

The Census Bureau's ADR Program Guide for the Aggrieved

This fact sheet is provided as a quick reference guide for the aggrieved involved in an EEO Complaint who is seeking to participate in the Alternative Dispute Resolution Program. This document is an overview and does not address all questions or situations. For specific information not covered herein, please contact the Office of Equal Employment Opportunity and Diversity & Inclusion at dir.adr.coordinator@census.gov

Background

On January 1, 2000, the U.S. Equal Employment Opportunity Commission (EEOC) required all federal agencies to establish or make available an Alternative Dispute Resolution (ADR) program during the pre-complaint and formal complaint stages of the EEO process. See, 29 C.F.R. § 1614.102(b)(2). In accordance with the EEOC's directive, the Census Bureau established an ADR program to offer an alternative to try and resolve allegations of discrimination at the lowest level.

What is Alternative Dispute Resolution (ADR)?

ADR is a process that is offered in the traditional Complaint process in which the aggrieved and the Resolving official sit down with a third-party neutral who will assist the disputants in the EEO Complaint Process to reach an amicable resolution. There are several ADR techniques including mediation, facilitation, fact finding, settlement conferences and early neutral evaluation. The type of ADR used at the Census Bureau is Mediation.

What is Mediation?

Mediation is an informal and confidential way for people to resolve disputes with the help of a neutral mediator who is trained to help people discuss their differences. The mediator does not decide who is right or wrong or issue a decision. Instead, the mediator helps the parties work out their own solutions to problems.

*ADR is unsuitable for harassment of any kind, applicants, Decennial employees and terminations.

What are the benefits of Mediation?

Benefits of mediation includes: (1) Mediation is free; (2) Mediation is fair and neutral; (3) Mediation saves time and money; (4) Mediation is confidential;(5) Mediation avoids litigation; (6) Mediation fosters cooperation; (7) Mediation improves communication; (8) Mediation helps to discover the real issues in the workplace; (9) Mediation allows parties to design their own resolution.

How is mediation elected during the EEO Pre-complaint stage?

At the initial counseling session, when appropriate*, the EEO Counselor will offer the aggrieved mediation. The aggrieved has the right to choose either traditional counseling or elect to use mediation which is a shorter process. If the aggrieved chooses ADR he/she is referred to the ADR Coordinator. Note that an employee has a right to representation of their choice. If representation is elected by the aggrieved, the Agency will provide representation from the Agency for the Resolving Management Official.

Once Mediation is elected, what is the role of the Agency in providing a Resolving Management Official?

Although mediation is voluntary for the aggrieved, the Agency is required to assign a Resolving Management Official (RMO) who has the authority to negotiate a settlement agreement in the mediation. Terms in the Settlement Agreement must be approved by the Office of General Counsel prior to the mediation concluding.

What is the role of the Resolving Management Official (RMO)?

The RMO is responsible for negotiating a settlement agreement with the aggrieved, with the guidance of the mediator. The RMO will reach out to the Office of General Counsel who is on stand-by to review the terms of the agreement prior to the mediation concluding.

What is the role of the ADR Coordinator?

After consulting with the Aggrieved and Resolving Management Official, the ADR Coordinator will request mediators through the Shared Neutrals Program with Federal Mediation and Conciliation Services (FMCS). FMCS assigns two Shared Neutrals mediators who will arrive on the chosen date. Once the mediation has concluded and if a resolution is reached, the ADR Coordinator receives the terms of the agreement to forward it to the Office of General Counsel (OGC) to draw up the agreement.

What is the role of a Mediator?

Mediators are neutral and impartial and do not serve as judges or advocates for either side. They provide structure and guidance for meaningful discussion between the parties, while also providing a safe environment for the discussion.

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Generally, what is the time commitment for a mediation?

Timeframe for a mediation is 3-4 hours. However, this may vary depending on the allegations outlined in the complaint.

How should I conduct myself at a mediation?

Aggrieved should 1. mediate in good faith, 2. be willing to listen to and share any pertinent information; 3. keep an open mind; 4. be willing to negotiate without holding to a fixed position; 5. be courteous; and 6. listen to the other party's point of view.

What happens if the parties reach a resolution during mediation?

A Settlement Agreement will be drafted and sent to the Office of General Counsel for review and approval. Once the Office of General Counsel approves the terms the Settlement Agreement is sent back and routed for all appropriate signatures. The agreement will be sent to EEO, HRD, and any other appropriate offices for final approval. It usually takes 30 days before the Settlement Agreement is finalized.

What happens if the parties do not reach a resolution during mediation?

The Aggrieved will return to the Traditional Counseling Process where they will be issued their Notice of Right to File a formal EEO Complaint.

Can a complaint return to traditional counseling if a resolution is not reached?

No. The Aggrieved will have the right to enter the Formal Complaint process.

References/Resources:

[https://uscensus.sharepoint.com/sites/EEODI/SitePages/Alternative-Dispute-Resolution-\(ADR\).aspx](https://uscensus.sharepoint.com/sites/EEODI/SitePages/Alternative-Dispute-Resolution-(ADR).aspx)

<https://www.eeoc.gov/federal-sector/management-directive/chapter-3-alternative-dispute-resolution-eeo-matters>