

Fiscal Year 2021

Alternative Dispute Resolution in the Federal Sector



U.S. Equal Employment Opportunity Commission
Research, Evaluation, & Applied Data Division | Office of Federal Operations

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Executive Summary

The U.S. Equal Employment Opportunity Commission's (EEOC) Office of Federal Operations (OFO) presents this report of its research on Alternative Dispute Resolution (ADR) programs at Federal agencies. This report provides comprehensive information and data on the effectiveness of Federal ADR programs and their practices in fiscal year (FY) 2019. Since each agency may conduct ADR programs differently, the EEOC sought to better understand agencies' ADR policies, practices, and complaint activity.

To produce this report, the EEOC reviewed information from current agency ADR programs, specifically ADR policies, MD-715 program deficiencies, and relevant Form 462 complaint data. The EEOC also conducted focus groups with 24 selected agencies and administered a survey to Equal Employment Opportunity (EEO) Directors and ADR Program Managers.

Findings

In our sample of 24 agencies, approximately 40% of agencies' ADR policies were incomplete. Failing to state the timeline involved in the ADR process was the most common policy deficiency discovered during a review of agencies' policies. Analysis of technical assistance visits from the EEOC's Agency Oversight Division (AOD) showed that only 4.3% of agencies AOD visited had an ADR program deficiency in FY 2019.

Across the 24 Federal agencies sampled in FY 2019, there were approximately 30,029 completed counselings, with the vast majority (27,492) offering ADR. Data varied:

- During the formal complaint phase, which begins with the filing of an official complaint of harassment or discrimination, the average offer rate at large agencies (35.4%) was more than double the offer rate at small (12.5%) and midsize (8.7%) agencies. This difference may reflect the fact that larger agencies tend to have more resources available.
- The settlement rate in the formal phase (37.9%) was more than double the rate in the informal counseling phase (16.1%). This suggests that agencies were less willing to negotiate without a formal complaint being filed.
- The average withdrawal rate was 24.6% during the counseling phase, compared to 6.7% during the formal phase. This may suggest that complainants hardened their resolve to follow through on their complaints.
- Small agencies, on average, had a withdrawal rate of zero during the formal complaint phase.

Survey results showed that agencies typically updated their ADR policies and procedures every three years. A third of agencies did not conduct regular self-assessments of their program's effectiveness. Nearly a quarter of agencies did not annually evaluate their programs at all.

Focus groups revealed that little information existed on the relationship between participation in ADR and employee retention rates. Agencies had not tracked the turnover of complainants following their participation in ADR.

Agencies often did not offer ADR in these instances:

- The survey found that about 60% of agencies did not provide ADR in sexual harassment complaints and roughly 80% of agencies did not offer ADR for other reasons, which included complaints regarding selections, criminal history, and medical and security clearance issues.
- Both the survey and focus groups discussions revealed that ADR is generally not offered when the complaint came from a non-employee (e.g., applicant or contractor).

Furthermore, certain agency actions may delegitimize the ADR program in the eyes of complainants:

- Nearly 19% of agencies allowed the manager accused in the complaint to be the settlement authority.
- Nearly a quarter of agencies did not require managers and management officials to participate in ADR.
- A majority of agencies, about 80%, did not routinely provide annual, agency-wide ADR training and approximately 70% of agencies did not provide annual ADR training to agency leaders.

One positive finding is that the vast majority of agencies (95%) stated that they ensured that the settlement authority was available during active ADR sessions.

Recommendations

To address the issues found in this analysis, the EEOC researchers recommend that agencies:

- Update their ADR policies every three years at a minimum.
- Hold regular (e.g., quarterly) ADR status briefings with senior agency leaders to discuss successes and concerns.
- Review and share, on a quarterly basis, agency-wide aggregate ADR data, such as acceptance, participation, and declination rates.
- Improve collaboration between EEO and ADR programs.

The EEOC researchers also recommend ADR training for agency managers, staff, and mediators:

- Develop a required annual training course for ADR program administration.
- Provide frequent (e.g., quarterly) ADR awareness training.
- Train settlement officials on roles and responsibilities.

- Ensure that shared neutrals have completed basic meditation skills training.
- Ensure that all EEO Collateral Duty Counselors are certified mediators.

Lastly, OFO should consider additional research to better understand differences between the formal and informal phases and among agency sizes. EEOC researchers recommend that technical assistance visits place greater emphasis on ADR program effectiveness. The AOD should forward deficiencies to the EEOC's Special Operations Division (SOD) for action.

This analysis revealed that Federal agencies often lack the means to self-assess their ADR programs and collect feedback from complainants. To meet these needs, the EEOC researchers developed two tools:

- ADR Barrier Analysis Tool for agency self-assessment (Appendix E).
- Sample survey for complainants that participate in ADR (Appendix F).

Introduction

The U.S. Equal Employment Opportunity Commission (EEOC), through its Office of Federal Operations (OFO), provides guidance and assistance to Federal agencies on all aspects of their equal employment opportunity (EEO) programs. Specifically, OFO ensures that all employees—without regard to their age, race, color, ethnicity, national origin, sex, gender, sexual orientation, disability status, or genetic information—have an equal opportunity to pursue meaningful careers in the Federal government, free from harassment and discrimination.

Alternative Dispute Resolution (ADR) is often a component of EEO programs. ADR refers to the various “agreement-oriented alternative procedures to litigation” that have experienced significant growth in popularity in the past four decades (Schormair & Gerlach, 2019, p. 3). Alternative procedures include:

- Negotiation (parties resolve conflict directly without facilitation)
- Mediation (a neutral third-party guides the participants to a mutually agreeable resolution)
- And arbitration (a formal arbitrator makes a final, binding decision).

Background

Arbitration techniques like negotiation, mediation, and arbitration have been in practice since the days of the ancient Roman and early English legal systems (Grenig, 2016). These techniques can offer flexible, fast, and cost-effective ways of resolving workplace disputes. In the United States, the Federal Arbitration Act (FAA) passed in 1925 solidified the enforceability of commercial arbitration contracts and continues to govern employment-based claims today (Grenig, 2016). The U.S. Supreme Court has repeatedly deferred to the FAA. However, informal arbitration systems can produce issues of their own, including the potential for due process violations, the depoliticization of pressing issues of discrimination, and power imbalances between complainants and employers (Edelman et al., 1993).

ADR proceedings became increasingly prevalent in the Federal sector at the close of the twentieth century. The ADR Act of 1990 was the first piece of legislation to explicitly endorse the use of ADR techniques in Federal agencies (Nabatchi, 2007). This Act made ADR “a fixed feature of the Federal administrative landscape” (Senger, 2000, p. 3). In 1999, Management Directive 110 (MD-110) required all Federal agencies to offer ADR programs for the resolution of EEO complaints (Nabatchi & Stanger, 2013). Under MD-110, ADR participation remains strictly voluntary, but Federal agencies must inform complainants about ADR at three distinct stages in the complaint process (Nabatchi & Stanger, 2013). Although lacking appropriate data to draw causal conclusions, Nabatchi & Stanger (2013) found a strong correlation between the implementation of MD-110 and improvements in EEO complaint processing. This serves as a strong indicator of the efficacy of ADR techniques.

In 2003, the EEOC adopted Management Directive 715 (MD-715) to reinforce agencies' commitment to ADR and encourage further data collection on "best practices" during conflict resolution (Nabatchi & Stanger, 2013). Under MD-715, agencies must "ensure that there are effective systems for evaluating the impact and effectiveness of the agency's EEO programs" and provide "an efficient and fair dispute resolution process" (U.S. Equal Employment Opportunity Commission, n.d.). Agencies must also make available ADR programs during both the pre-complaint and formal stages of the dispute resolution process and collect data annually to evaluate agencies' compliance with these EEO guidelines. To help enforce this directive, the EEOC's Office of Federal Operations (OFO) uses Form 462 to prepare their *Annual Report on the Federal Workforce*, which analyzes how each agency handles Federal EEO complaints and uses ADR procedures. In the annual report, the OFO identifies trends that distinguish the most successful agencies from their counterparts, pushing each agency to implement these "best practices" and become model EEO employers.

Following the rise of ADR in the Federal sector, several researchers have documented the clear benefits of these techniques. Based on the average processing times of EEO complaints in both the formal and informal stages of dispute resolution, Nabatchi and Stanger (2013) demonstrated the increased efficiency of ADR procedures when compared to traditional EEO processes. O'Leary and Raines (2001) found similarly promising results in their study of ADR programs at the U.S. Environmental Protection Agency (EPA), concluding that ADR facilitated a unique problem-solving environment to help sustain working relationships after the proceedings had ended.

Mediation specifically was recognized in several pieces for its capacity to avoid expensive, time-consuming litigation processes and achieve equitable resolutions that serve the interests of both parties. Donlon (2017) underscored the flexibility and confidentiality offered under mediation, while Benz (2020) emphasized the utility of early mediation strategies in mitigating the strains imposed upon the legal system during the COVID-19 pandemic. These studies show ADR's potential to serve as a powerful tool in reducing the EEOC's case backlog, providing swift and fair resolution to an increasing number of claims.

Despite these potential advantages, the literature also offers significant criticisms of ADR systems that must be addressed in future research and reform efforts. Brinn (2019) argues that the confidentiality norms and claim-suppression effects of extrajudicial dispute resolution undermine the enforcement of employment discrimination laws, reducing employer accountability for violations of these statutes. Building upon these assertions, Edelman et al. (1993) found that many internal dispute resolution (IDR) systems prioritize smooth organizational operations and employers' business interests over the legal rights of the complainant—undercutting the proceedings' potential to engender further social change. By "managerializing" these issues of discrimination as personal relations problems (Edelman et al., 2011), many of these IDR structures disregarded the due process standards used in more formal proceedings and failed to communicate a meaningful standard of discrimination for future cases.

Edelman et al. (2011) concluded that the mere presence of institutionalized employment structures, such as grievance or complaint processing systems, led many judges to infer non-discrimination with little further review.

Several other studies supplied strong evidence of the power imbalance that persists between employers and complainants in ADR proceedings. Larger employers who had repeatedly engaged in the ADR process had a systematic advantage over complainants in terms of arbitrator selection and case outcome (Colvin & Gough, 2015). Resource inequities often exacerbated these issues (Gazal-Ayal & Perry, 2014). In addition, Schormair (2020) studied corporate remediation and found that ADR's agreement-based structure often marginalized the interests of the victim in favor of compromise, failing to create long-term solutions to remedy violations. Lastly, Saundry and Wibberley (2018) found that employers' mediation efforts were largely driven by concerns of productivity and efficiency rather than equity and justice. This undermined mediation's potential to reduce discrimination across the organization.

Dispute resolution literature has proffered a number of solutions in response to these flaws. Some solutions seek to improve the ADR framework, while others discard that framework altogether. Focusing on the former approach, Gazal-Ayal and Perry (2014) showed that increasing the formality of ADR proceedings reduced the power imbalance between complainants and employers. This suggests that ADR structures should emulate the formal legal system whenever possible. Several other studies advocated for further data collection to assess the impact of ADR programs (Nabatchi, 2007; O'Leary & Raines, 2001), an objective that this analysis seeks to realize. Another study promoted the development of a standardized procedure to determine when the use of ADR is appropriate (O'Leary & Raines, 2001). Finally, Nabatchi (2007) claimed that external and institutional pressures may motivate the adoption of ADR techniques. Based on these findings, MD-110 holds great potential to increase the institutional pressure placed on Federal agencies to use ADR programs (Nabatchi, 2007).

Employee satisfaction with dispute resolution systems (DRS) also plays a critical role when evaluating ADR programs. Eigen and Litwin (2014) found that the use of DRS in the workplace increased perceptions of interactional justice and legal compliance, while employees' perceptions of procedural justice decreased. In this context, interactional justice focuses on whether decision makers treat employees with dignity and respect, whereas procedural justice focuses on the fairness of dispute resolution processes (Cloutier et al., 2018). These findings indicate the widespread perception that employers cared more about protecting their own legal interests than eradicating discrimination.

The OFO has the charge to help make the Federal government a model employer, via oversight and enforcement of MD-715. To this end, the OFO conducted research on the efficacy of ADR techniques and carefully analyze deficiencies in Federal ADR programs. This can help OFO find remedies that represent the interests of the employees ADR programs were created to protect. Through annual analysis of Form 462 data and additional focus groups and surveys, the OFO can continue to identify innovative "best practices" to help Federal agencies become model EEO

employers. The following findings and discussion represent the EEOC’s most recent efforts to accomplish this goal.

About this Study

This EEOC research report focuses on ADR practices and their effectiveness at Federal agencies in fiscal year (FY) 2019. The report offers recommendations and tools to potentially help agencies reduce complaint activity and improve the experiences of employees who participate in ADR during the complaint process.

The EEOC researchers sought insights on ADR usage during the complaint process, complaint activity, program similarities among different agencies, and promising practices. Through the stages of development of this report, EEOC researchers focused on the following questions:

- What is the frequency of ADR usage?
- How does ADR relate to complaint activity?
- How does ADR relate to employee perceptions of their agencies?
- How do agencies conduct and manage the ADR process?
- Do employees leave the agency following ADR?
- What are some of the ADR best practices?

To conduct the analysis, EEOC researchers selected a stratified sample of 24 Federal agencies. Only agencies that submitted both MD-715 and Form 462 reports for FY 2019 were included. Researchers further categorized agencies based on size, cabinet level, and mission (e.g., law enforcement, policy, service, etc.). The table below lists all 24 agencies in the sample by size.

Table 1: Federal agencies included in the study’s sample by agency size

Small agencies	Midsize agencies	Large agencies
American Battle Monuments Commission	Department of Energy	Defense Logistics Agency
Commodity Futures Trading Commission	Department of Housing and Urban Development	Department of Agriculture
Millennium Challenge Corporation	Environmental Protection Agency	Department of Commerce
U.S. Commission on Civil Rights	Office of Personnel Management	Department of Health and Human Services
		Department of Homeland Security
		Department of Justice
		Department of Labor
		Department of State
		Department of the Interior

	Tennessee Valley Authority	Department of the Treasury Department of Transportation Department of Veterans Affairs National Aeronautics and Space Administration Social Security Administration U.S. Postal Service
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Source: U.S. Equal Employment Opportunity Commission.

Overview of Federal ADR Programs

The ADR process occurs within the larger complaint process. Federal employees who have been victims of harassment or discrimination may file a complaint with their agency’s EEO office. During the informal stage of the complaint process, when employees receive counseling to advise them of their rights and responsibilities, ADR can provide quick relief from the harassment or discrimination. The formal stage offers a second opportunity to participate in ADR. During the formal stage, the employee files an actual complaint that details the bases and issues involved.

To understand how Federal agencies conduct ADR during both the informal and formal complaint stages, EEOC researchers thoroughly reviewed agencies’ existing policies, program deficiencies, and complaint data. Additionally, researchers analyzed agencies’ EEO complaint activity for FY 2019 with respect to ADR.

Agency ADR Policies

EEOC researchers examined the ADR policies for a sample 24 Federal agencies. First, researchers searched through each agency’s website to determine whether their full ADR policies were publicly available. This review revealed that 15 of the 24 agencies (or 62.5%) published their full ADR policies on their public websites. In addition, 4 agencies (or 16.7%) published partial information about their ADR policies, referring to the fact they had such programs without providing the actual policies. Lastly, 5 agencies’ websites (or 20.8%) made no mention of their ADR policies or programs.

Next, EEOC researchers reviewed the content of the available ADR policies. Although every agency’s policy is specific to their organization, MD-110 stipulates that agencies must establish written procedures detailing the operation of its ADR program. Written procedures should include, at a minimum, the following information¹:

1. ADR resources and techniques that the agency offers.
2. Stages of the EEO process when ADR will be offered and the appropriate agency

¹ <https://www.eeoc.gov/Federal-sector/management-directive/chapter-3-alternative-dispute-resolution-eeo-matters>

official(s) who will determine whether to offer ADR on behalf of the agency. Note that the management official responsible for the alleged discrimination is not the proper agency official for this decision.

3. Time frames involved in the administrative process and the ADR process.
4. Source(s) of neutral parties.
5. Criteria the agency uses to determine when an issue is appropriate for ADR.
6. Assurance to the aggrieved party that ADR is voluntary, and participation may be ended at any time. If ended during the informal EEO process, the party will be issued a *Notice of Right to File a Formal Complaint*. If ended during the formal EEO process, the party will return to the place where processing ceased.
7. Assurance that the aggrieved party has the right to representation and that the agency's ADR program is fair.
8. An explanation to the aggrieved party of the ADR program's confidentiality, neutrality, and enforceability.
9. Assurance that the agency will make accessible an individual with settlement authority, and that no responsible management official or agency official directly involved in the case will serve as the person with settlement authority.²

Findings

EEOC researchers determined that only 14 of the 24 (or 58%) of agencies' policies and procedures contain all necessary information, resulting in thorough guidance. The remaining 10 agencies' policies (or 42%) lacked some or most of the information needed to fully convey the written procedures of their ADR program. One small agency lacked all necessary information.

Small agencies tended to have policy deficiencies, such as: failure to publish the policy; failure to upload the policy in FedSEP, the online platform agencies use to submit reports and other documents to OFO, under supporting documentation; and failure to provide the timeframes involved in the administrative and ADR processes. Small agencies also tended to lack information on the criteria used to determine when an issue is appropriate for ADR and an assurance that the agency will make accessible an individual with settlement authority, who is not the responsible management official (RMO) or any other agency official directly involved in the case.

In addition to having the same deficiencies as the small agencies, midsize agencies tended to have policy deficiencies related to the source(s) of neutrals. By comparison, large agencies often failed to assure the aggrieved party that the ADR process is voluntary and could be terminated at any time. This would return participants to the informal EEO process, where they will be issued

² This list is from <https://www.eeoc.gov/Federal-sector/management-directive/chapter-3-alternative-dispute-resolution-eeo-matters>. Section III, Developing an ADR program, A. Written procedures.

a Notice of Right to File a Formal Complaint. If ADR is ended during the formal EEO process, they would return to the place where processing had ceased.

The most common deficiency across all three sizes of agencies was not adequately describing the timeframes involved in the administrative process and the ADR process within the policy and/or procedures.

MD-715: ADR Program Deficiencies

Management Directive 715 (or MD-715) requires annual agency reports on workforce composition and Model Employer activities. It also collects information on agency anti-harassment programs, EEO organizational reporting structure, and diversity and inclusion action plans.

The EEOC’s authority to issue MD-715 is pursuant to Section 717 of the Civil Rights Act of 1964, as amended; Reorganization Plan No. 1 of 1978; Executive Order 11748; and Section 501 of the Rehabilitation Act of 1973, as amended. MD-715 describes the critical elements of an agency’s ADR program. The Agency Oversight Division (AOD) examines this information and uses it in Technical Assistance Visits (TAV) with individual agencies. The list of potential ADR program deficiencies is presented in the table below.

Table 2: List of potential ADR program deficiencies

Essential element	ADR deficiency
E.3	Has the agency established and encouraged the widespread use of a fair ADR program?
E.3.a	Has the agency established an ADR program for use during both the pre-complaint and formal complaint stages of the EEO process? [see 29 CFR §1614.102(b)(2)]
E.3.b	Does the agency require managers and supervisors to participate in ADR once it has been offered? [see MD-715, II(A)(1)]
E.3.c	Does the agency encourage all employees to use ADR, when ADR is appropriate? [See MD-110, Ch.3(IV)(C)]
E.3.d	Does the agency ensure a management official with settlement authority is accessible during the dispute resolution process? [see MD-110, Ch. 3(III)(A)(9)]
E.3.e	Does the agency prohibit the responsible management official named in the dispute from having settlement authority? [see MD-110, Ch. 3(I)]
E.3.f	Does the agency annually evaluate the effectiveness of its ADR program? [see MD-110, Ch. 3(II)(D)]

Source: U.S. Equal Employment Opportunity Commission.

Each essential element is located in MD-715's Part G, sections E.3 thru E.3.f. These elements measure an agency's efficiency in establishing, encouraging and evaluating the widespread use of a fair ADR program. During self-assessments, agencies answer each question by checking "Yes," "No," or "Not Applicable." If an agency has checked either "No" or "Not Applicable," then they must provide a detailed explanation as to why the deficiency exists and what concrete actions will be taken to correct the issue. The above list was used to review the sample agencies ADR programs for deficiencies.

ADR Program Deficiency Data

In order to obtain a full understanding of the nature of ADR program deficiencies, a search of the internal Agency Oversight Division (AOD) program deficiency tracker for FY 2019 was performed. The deficiencies were identified during Technical Assistance Visits (TAV). While the agencies included in TAVs do not correspond to those included in our sample, the nature of their deficiencies is still informative.

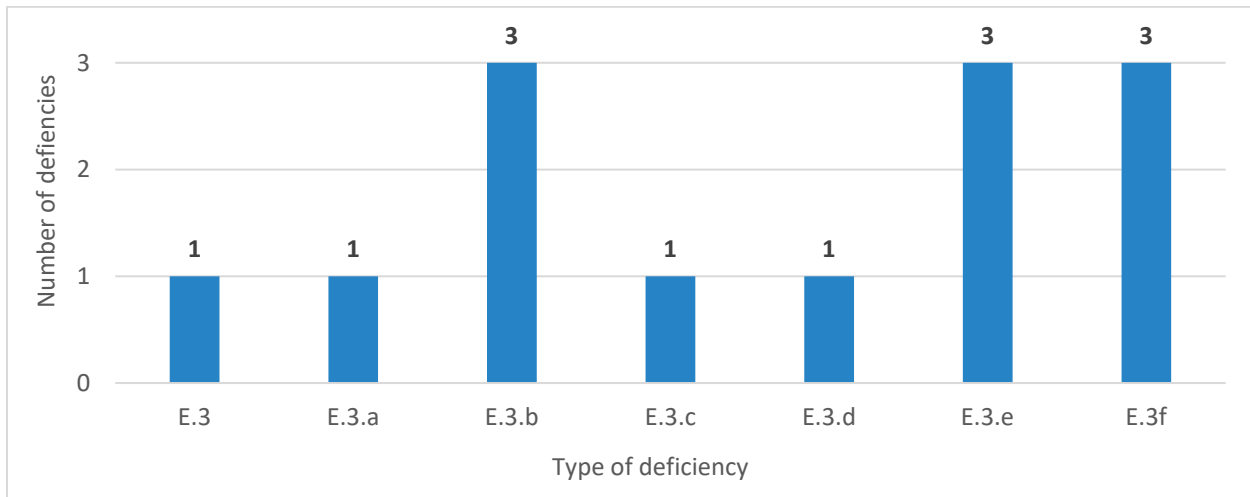
In FY 2019, AOD TAV found only 4 out of 93 Federal agencies (or 4.3%) had deficiencies related to their ADR programs. Two agencies had a single deficiency reported, while the other two agencies had two deficiencies each. The deficiencies discovered were:

- Low ADR participation rates during the pre-complaint process or informal stages.
- Managers and supervisors not being trained on the ADR process.
- Managers and supervisors not being required to participate in the ADR process.
- Settlement authority issues where either the Responsible Management Official (RMO) was given the settlement authority during ADR or the settlement authority was not available during ADR.

EEOC researchers performed a separate manual review of MD-715 Part G submissions to verify the presence or absence of deficiencies in the ADR programs of the 24 sampled agencies. This manual review found additional deficiencies: 3 agencies failed to file MD-715 reports for FY 2019, 2 agencies did not file a report, and 1 filed a report but did not include an ADR policy.

Thus, there were 21 agencies with an ADR policy available for analysis. Of those 21 agencies, 15 agencies (or 71.4%) did not have any deficiencies, while six different agencies (or 28.5%) had at least one program deficiency in FY 2019. Four of those 21 agencies (or 19.0%) had one program deficiency, while two agencies (or 9.5%) had two or more deficiencies each. One agency had deficiencies in all seven areas.

Figure 1: ADR deficiencies at Federal agencies, FY 2019



Source: U.S. Equal Employment Opportunity Commission.

The three most commonly occurring deficiencies were:

- Agency does not require managers and supervisors to participate in ADR once it has been offered (E.3.b).
- Agency does not prohibit the responsible management official named in the dispute from having settlement authority (E.3.d).
- And the agency does not annually evaluate the effectiveness of its ADR program (E.3.f).

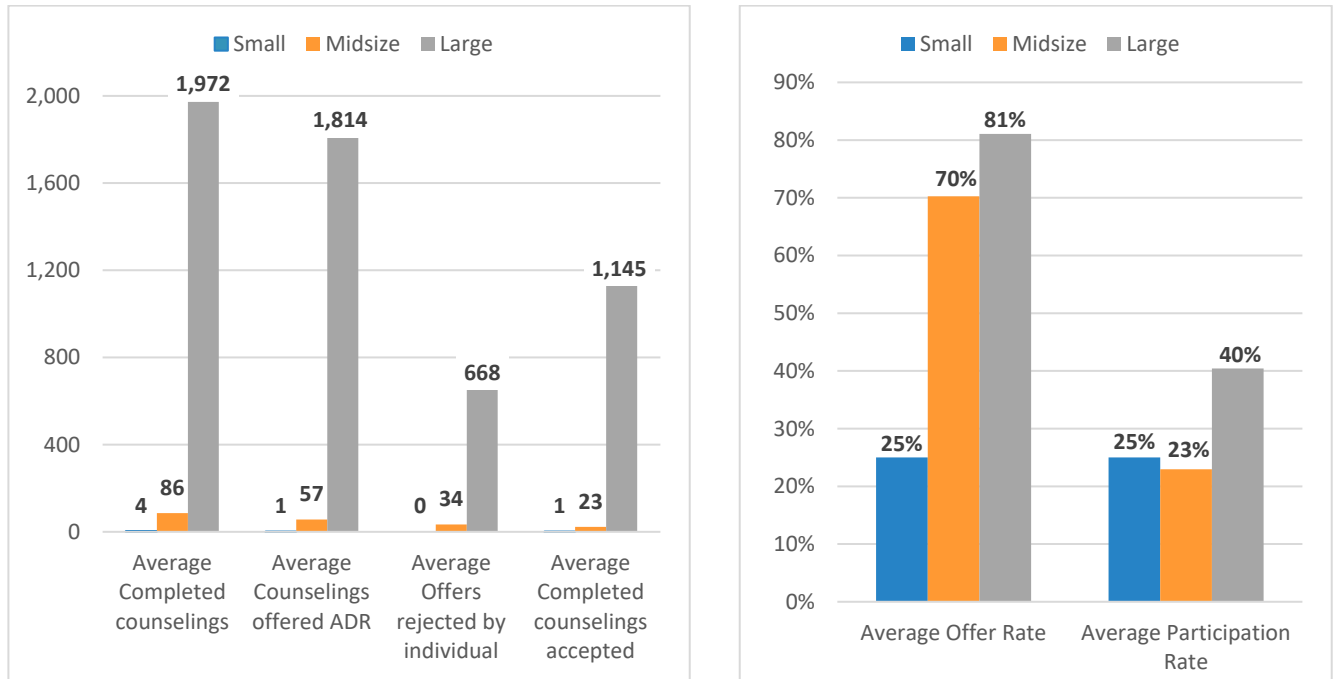
Findings

The analysis of the deficiencies revealed that the level of ADR program deficiencies discovered by AOD is not high—again, only 4.3% of agencies had ADR program deficiencies in FY 2019. However, agencies that did have deficiencies had what could be considered critical program deficiencies, such as not requiring managers and supervisors to participate in ADR, allowing the manager at the center of the complaint to be the settlement authority, and failing to assess the effectiveness of its ADR program regularly.

Form 462: ADR Complaint Data

The central focus of this report is to understand ADR’s role in the complaint process. EEOC researchers analyzed the complaint data submitted via Form 462 by the 24 sample agencies in FY 2019 by agency size (i.e., small, midsize, and large).

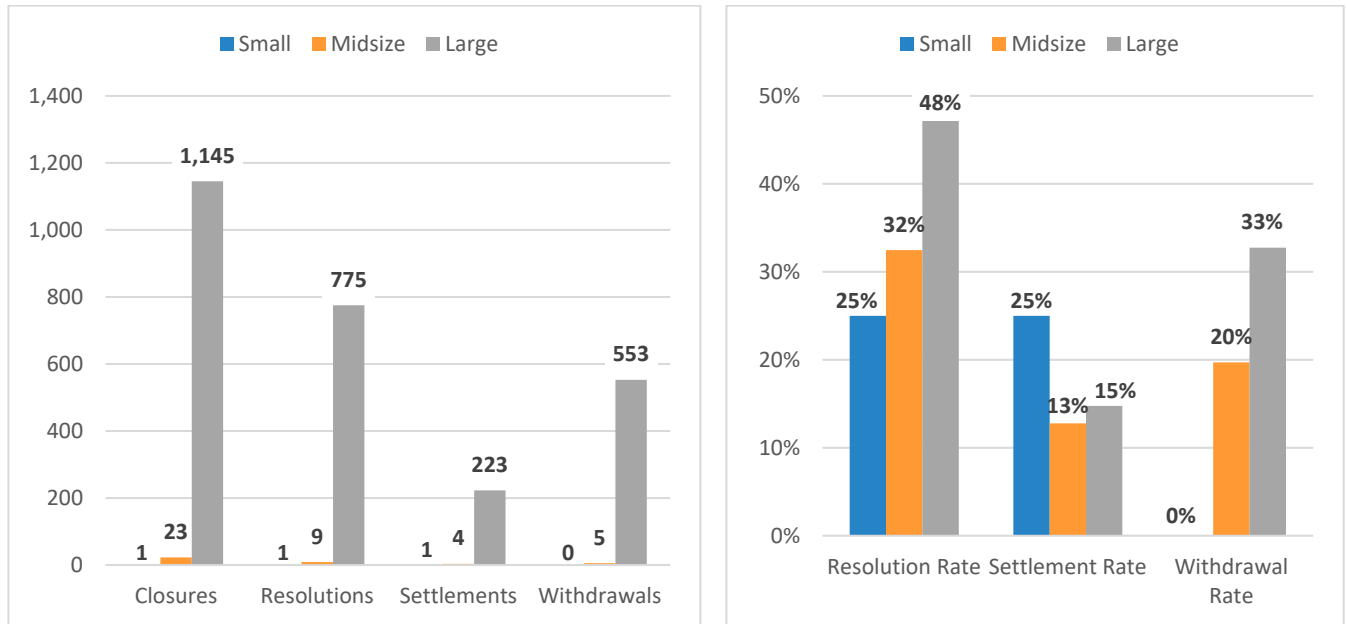
Figure 2: Average pre-complaint offers, rejections, and acceptances of ADR by agency size, FY 2019



Source: U.S. Equal Employment Opportunity Commission.

Across all 24 sampled agencies in FY 2019, there were approximately 30,029 completed counselings, with roughly 27,492 counselings in which ADR was offered to the complainant. This represented an average offer rate of 69.5%. Overall, 26,266 individuals chose not to participate in ADR. However, 17,297 individual counselings were accepted into the ADR program, which represents a participation rate of 34.2%. Although the average ADR offer rate for small agencies was relatively low (25.0%), the average participation rate of small agencies (25.0%) was higher than for midsize (23.0%) agencies.

Figure 3: ADR pre-complaint resolutions during the informal counseling phase by agency size, FY 2019

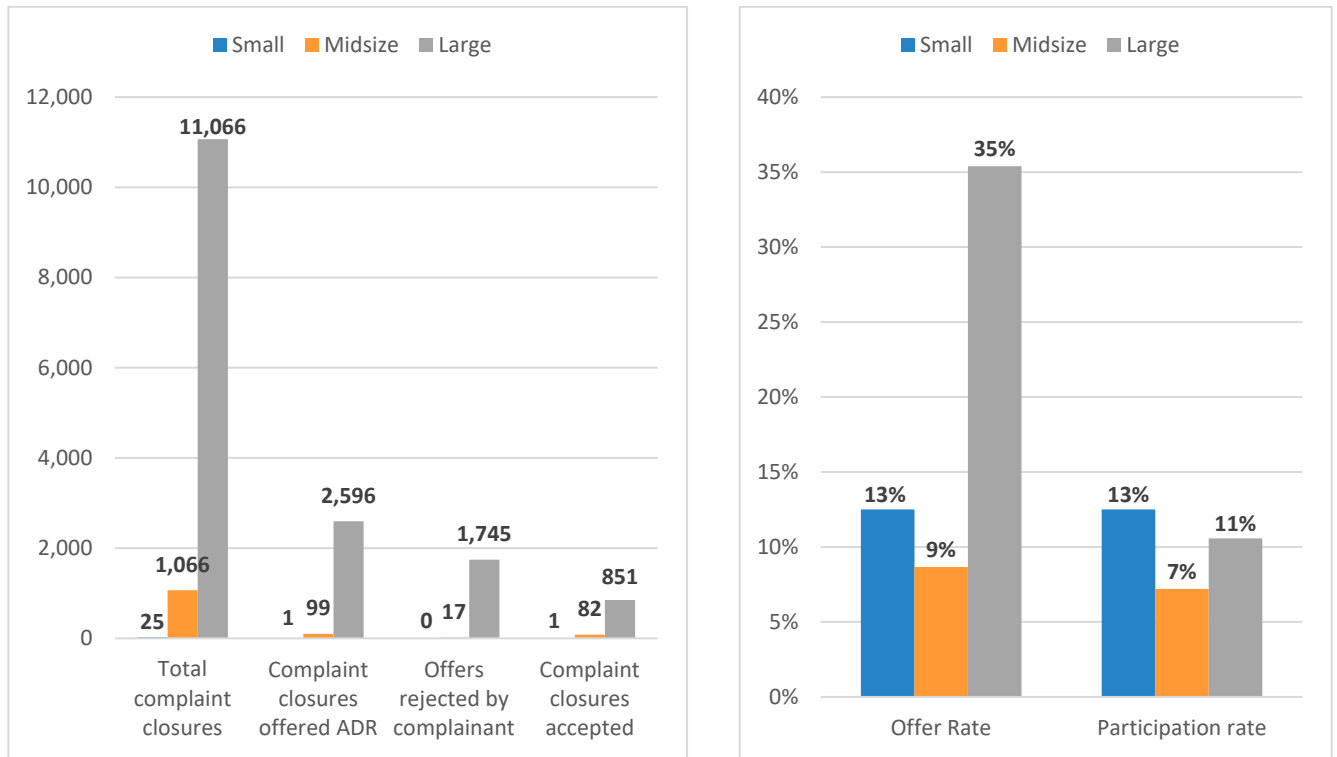


Notes: Closures are the total number of complaints closed during the fiscal year. Settlements agreements are the total voluntary agreements between agencies and complainants during the fiscal year. Resolutions are the sum of the total of the number of settlements and the total number of cases closed using other conflict resolution techniques (e.g., peer review, Ombuds, etc.) during the fiscal year. Withdrawals are the total number of complaints closed by complainants who chose not to continue participating in the complaint process during the fiscal year. Because complaint activity often spans different fiscal years, involves hearings, and involves resolutions other than settlements, the number of resolutions does not equal the number of settlements plus the number of withdrawals. For these same reasons, closures are not the sum of resolutions, settlements, and withdrawals.

Source: U.S. Equal Employment Opportunity Commission.

In FY 2019, during the informal counseling phase, there were a total of 17,297 closures with 11,674 resolutions for the 24 sample agencies. Those resolutions resulted in 3,359 settlements and 8,315 withdrawals. Across all 24 agencies, the average ADR resolution rate was 40.6%, the average settlement rate was 16.1%, and the average withdrawal rate was 24.6%. Small agencies had a higher average settlement rate (25.0%) than midsize (12.8%) or large (14.8%) agencies, but large agencies had the highest resolution rate. It is unclear why large agencies had the largest resolution rate; further research is necessary.

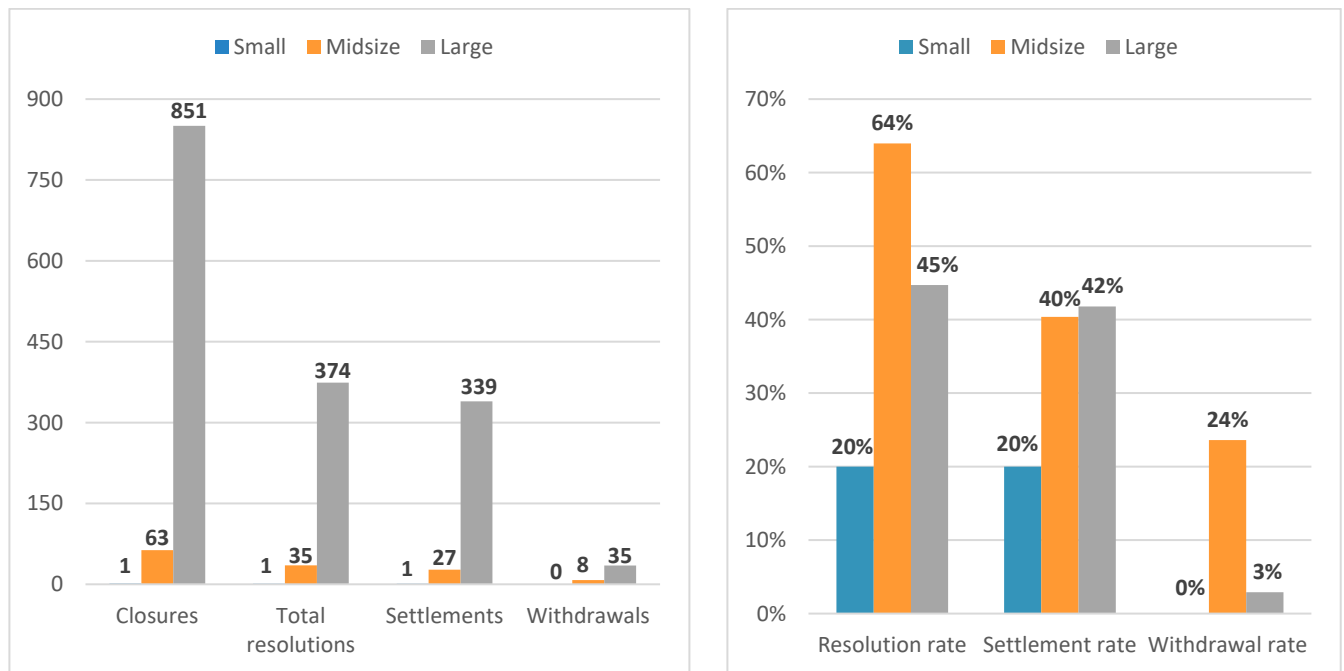
Figure 4: ADR formal complaint closures, offers, and participation by agency size, FY 2019



Source: U.S. Equal Employment Opportunity Commission.

Across the 24 Federal agencies in the sample, there were a total of 171,421 complaint closures in FY 2019. Out of those, ADR was offered in 39,441 closures—at an average offer rate of 26.0%. Complainants rejected a total of 26,266 ADR offers. However, 13,175 ADR closures were accepted, at an average participation rate of 10.2%. Data varies by agency size. The average offer rate at large agencies (35.4%) was more than double the offer rates of small (12.5%) and midsize (8.7%) agencies. However, the average participation rate at large agencies (10.6%) was lower than at small agencies (12.5%) and higher than at midsize agencies (7.2%).

Figure 5: ADR complaint resolutions during the formal phase by agency size, FY 2019



Notes: Closures are the total number of complaints closed during the fiscal year. Settlements agreements are the total voluntary agreements between agencies and complainants during the fiscal year. Resolutions are the sum of the total of the number of settlements and the total number of cases closed using other conflict resolution techniques (e.g., peer review, Ombuds, etc.) during the fiscal year. Withdrawals are the total number of complaints closed by complainants who chose not to continue participating in the complaint process during the fiscal year. Because complaint activity often spans different fiscal years, involves hearings, and resolutions other than settlements, the number of resolutions does not equal the number of settlements plus the number of withdrawals. For these same reasons, closures are not the sum of resolutions, settlements, and withdrawals.

Source: U.S. Equal Employment Opportunity Commission.

For the 24 sample agencies, during the formal complaint phase in FY 2019, there were a total of 13,079 closures and 5,791 resolutions. Those resolutions resulted in 5,230 settlements and 561 withdrawals. Across all 24 sample agencies, the average ADR resolution rate was 44.6%, the average settlement rate was 37.9%, and the average withdrawal rate was 6.7%. Data varied by agency size. Midsize agencies had the highest average resolution rate (64.0%) and the highest average withdrawal rate (23.6%). The midsize average resolution rate was nearly 20 percentage points higher than the rate for large agencies (44.7%) and 44 percentage points higher than for small agencies (20.0%). Notably, small agencies had, on average, a withdrawal rate of zero%. The relatively higher withdrawal rate of midsize agencies likely drove the differences in resolution rates.

Findings

In FY 2019, across the 24 sample agencies, there were approximately 30,029 completed counselings, with roughly 27,492 counselings in which ADR was offered. The ADR counseling participation rate was 34.2% (17,297 individual counselings). In the informal phase, the offer

rate for small agencies (25%) was comparatively lower than for midsize (70%) and large agencies (81%), but participation rates for small agencies (23%) were comparable to midsize agencies (25%). In the formal phase, the average offer rate (35%) at large agencies was more than double the offer rate of small (12.5%) and midsize (8.7%) agencies. This difference may reflect the fact that larger agencies tend to have more resources available than small or midsize agencies.

The average resolution rate in the formal phase was 44.6%, 4 points higher than the resolution rate (40.6%) in the informal phase. This was not an appreciable difference. However, the settlement rates did have a marked difference, with 37.9% in the formal phase—more than double the settlement rate for the informal phase (16.1%). This difference suggests that agencies were less willing to negotiate without a formal complaint having been filed.

Lastly, the average withdrawal rate was 24.6% in the informal phase, compared to 6.7% in the formal phase. This suggests that complainants had hardened their resolve to follow through on their complaints, believing their complaints legitimate and deserving of objective examination.

Focus Group Lessons

EEO Directors from the 24 sample agencies were invited to two separate focus groups held via video conference and divided based on participant availability. In some instances, the EEO Director elected to have their ADR Program Manager attend with them or in their place. Each focus groups lasted one hour and fifteen minutes and addressed the following topics:

- ADR policy implementation
- ADR policy effectiveness
- Management participation in and support for ADR processes
- ADR participation rates.

The focus groups discussed each topic for a designated amount of time, lasting between 6 and 20 minutes depending on participant responses. When given the floor, participants were asked to keep their answers concise so that all agencies would have the opportunity to respond.

Focus Group 1

Focus Group 1 was held on July 14, 2021, with six agencies participating:

- Department of Energy (DOE)
- Department of State (DOS)
- Department of Transportation (DOT)
- Department of Homeland Security (DHS)
- Defense Logistics Agency (DLA)

- National Aeronautics and Space Administration (NASA)

ADR Policy Implementation

Each agency began the session with a brief description of their ADR policy, detailing the structure of their program and any deficiencies they had been facing. Most agencies operated under a central ADR policy that was distributed to all subcomponents and implemented at their discretion. One agency formed an ADR Managers Council to address common issues faced by each component, finding that their shared interest program cut down expenses for many of these divisions. Notably, two agencies indicated that participation in ADR was not mandatory for management officials.

One individual reported that certain complaint categories, such as sexual harassment and security clearance issues, were being declined at disproportionate rates by their agency, prompting them to implement a policy mandating that key officials authorize all declined complaints. Based on a survey conducted after the ADR process, two-thirds of this agency's participants indicated that they would not engage in ADR again, contributing to their "abysmally low" participation rates.

Another agency indicated a similar problem with external non-selections. The agency refused to conduct ADR on any complaints that could unilaterally change agency policy or procedure, even if those changes may have been necessary. Other reported deficiencies included excessive attorney involvement, lacking manager participation, and insufficient manager support—citing complaints that escalated to settlement before the necessary fact-finding and informal counseling processes could occur.

Notably, all agencies felt that their ADR programs were fair, but most were uncertain of the programs' effectiveness and felt that they were likely underutilized. One agency expressed interest in conducting a survey of ADR participants after the process had concluded to gain feedback, but most agencies did not review their ADR program's effectiveness. Upon trying to implement changes to these policies, several agencies expressed frustration with resistance from agency leadership. Another agency indicated that their ADR program would be more effective if senior leaders outside of the EEO Office actively promoted these practices. Other factors listed as obstacles to ADR efficacy were a culture of settlement (in which management officials tried to avoid participating in the full ADR process) and a lack of voice for the employees pursuing these claims. Finally, one agency stated that the most important measure of ADR effectiveness is a sense of closure for all participants, ensuring that employees' complaints are heard even if they do not achieve their initial goals.

Regarding agencies' responses to incidents of noncompliance with ADR policy, several individuals provided strong examples of their efforts to correct the unlawful practices. One agency's officials had allegedly used intentionally vague settlement agreements to discourage participation in ADR, but the agency's EEO representative solved this problem by insisting that they review all future settlement agreements prior to ADR. Another agency reportedly used quarterly briefings with executive directors and agency heads as an opportunity to call out major

incidents of noncompliance. In one example, the agency's EEO representative appealed directly to a manager's supervisor to encourage mediation.

On the other hand, two agencies indicated that they had no mechanisms in place to enforce compliance. However, one of those agencies hoped to begin compliance reviews in FY 2021.

ADR Participation Rates

When asked to identify the primary obstacles limiting participation in ADR, agencies overwhelmingly cited a lack of trust in agency leadership or management to come to the table in good faith. Other factors listed included:

- Unrealistic expectations about ADR
- Concerns regarding mediator neutrality
- Lack of support from agency leadership
- Taking too long to process claims
- And reluctance from managers to admit wrongdoing.

None of the participating agencies had any sense of employee retention following the ADR process. One agency estimated that approximately 20% of ADR participants left the agency after these proceedings. This highlights the need for data collection on ADR programs' effect on employee retention.

Best Practices and Areas for Improvement

EEO Directors indicated that many complaints arise from simple miscommunication. Several agencies emphasized the importance of ADR in restoring communication between the two parties in conflict. Appealing to ADR can provide both parties with the opportunity to really listen to one another and get to the root of the conflict. Agencies also suggested ways to improve participation rates, including stronger messaging on the benefits and requirements of ADR, increased direction and support from senior leadership on ADR policies, and a greater emphasis on EEO objectives as a central component of agencies' missions. However, one agency was strongly opposed to mandatory ADR, asserting that such a policy would destabilize the workforce by fostering miscommunication.

When asked to identify one promising practice in their agency's ADR programs, participants provided a variety of recommendations that could be adopted across the Federal sector. These recommendations included:

- ADR training for all employees during on-boarding
- Regular engagement with collateral duty neutrals to identify what is actually occurring during mediation
- Regular coffee "roundtables" with ADR professionals

- And printed materials that clarify expectations for the overall ADR process.

Two of the most unique proposals offered were a “mock mediation” video to clarify employee expectations and a training program for settlement officials.

Focus Group 2

Focus Group 2 was held on July 19, 2021 via video conference, with eight agencies participating:

- Department of Labor (DOL)
- Tennessee Valley Authority (TVA)
- Environmental Protection Agency (EPA)
- Department of Justice (DOJ)
- American Battle Monuments Commission (ABMC)
- Social Security Administration (SSA)
- Department of the Interior (DOI)
- Department of the Treasury (Treasury)

ADR Policy Implementation

The session opened with a brief discussion of agencies’ ADR policies. Several agencies indicated that their management officials were required to participate in mediation, while another agency reported that ADR was voluntary for both supervisors and employees. Two agencies employed contractors for all mediation, and a third used external mediators for all EEO cases through an interagency agreement with the Federal Mediation and Conciliation Services (FMCS).

Regarding fairness and efficiency, several agencies emphasized the importance of maintaining neutrality throughout the ADR process, giving complainants the confidence to engage in settlement agreements. One agency cited difficulties in this area due to their size, forcing their Acting Secretary to serve as the settlement authority in all complaints. Another agency reported that its ADR program was fair, but many complainants did not feel so and described the process as “unduly influenced” or “under management control.”

Several agencies reported that they conduct regular trainings for employees, managers, and EEO counselors on the ADR process. One agency implemented orientation trainings on the EEO process for all new hires and held annual or bi-annual ADR trainings for management officials. These programs were carried out in collaboration with the agency’s HR Office, indicating the importance of establishing strong relationships within each agency. Another individual reported difficulty in implementing new trainings due to strained communications between their ADR and EEO Offices.

When asked how they would mitigate noncompliance with ADR policies, only one agency responded. This agency indicated that incidents of noncompliance were rare, as most managers recognized their obligation to participate in good faith. However, the agency cited one occasion when a manager refused to participate in mediation. The agency resolved the problem by reminding the official of their mandatory duty to seek fair resolution of the issue.

ADR Participation Rates

When asked to identify the primary obstacles limiting participation in ADR, several individuals reported a lack of trust in the agency to be fair and neutral throughout the process. Notably, one agency reported significant communication issues between their ADR and EEO Offices, requesting the EEOC's guidance to resolve the problem. In many cases, the agency's ADR component failed to inform the EEO Office of incoming complaints and refused to recognize the proper theories of discrimination during mediation, contributing to the agency's low participation rates. Another agency found it difficult to raise ADR participation rates when requests for mediation were largely driven by the complainant. While agencies can attempt to raise awareness for these programs, this individual felt that it was unfair for the EEOC to reprimand them for low rates when participation rates depended on the complainant.

Regarding ADR offer rates, two agencies reported that they allow all employees to request ADR, ensuring that all cases are considered. However, only those claims deemed suitable were actually offered to participate in ADR. Another agency indicated that they do not offer mediation for claims involving probationary removals. This agency also found it likely that certain suitability claims, such as those relating to security clearance, may be excluded in the future. Finally, another agency reported that they do not send sexual harassment claims to ADR, but they have considered revisiting this policy in the future.

When asked if participation in ADR impacted employee retention, one agency felt certain that it did, citing high turnover rates after mediation had occurred. This individual felt that their employees were not being adequately supported throughout the ADR process, and their ADR Office refused to provide the EEO Director with the exit survey data necessary to solve the issue.

Best Practices and Areas for Improvement

Participants offered several promising recommendations to remedy low participation rates:

- Increased marketing or advertisement of ADR programs
- Stronger support from agency leadership
- Trainings for mediators and EEO counselors
- And regular updates to materials posted online for employees and managers.

When asked about best practices implemented at their agencies, one agency emphasized the importance of mediator trainings and ADR information sessions for managers. Another agency indicated that it outlines all possible remedies at the EEO intake stage to clarify complainants'

expectations. There were no other practices that had been implemented at the time these focus groups were held.

Findings from Focus Groups

Overall, the focus groups included the perspectives of 14 agencies. While the second group was larger than the first, participants in the first group were much more willing to discuss challenges with the operation of their programs. This is in contrast to the second group, which seemed hesitant to identify deficiencies in their ADR programs. Both groups cited lack of trust in agency leadership as the primary factor inhibiting ADR participation rates. Certain categories of complaints, such as sexual harassment and security clearance issues, were being declined at disproportionate rates in many departments.

While agencies generally felt that their ADR programs were fair, minimal data had been collected to measure their effectiveness, and little information existed on the relationship between participation in ADR and employee retention rates. Participants indicated that greater messaging and support from agency leadership, as well as training sessions to clarify expectations, could improve the climate surrounding their ADR programs.

There were three additional takeaways of import to note. First, agencies would likely benefit from the creation of a barrier analysis self-assessment tool to identify the root causes of program deficiencies and other challenges associated with their ADR programs. Second, agencies would likely benefit from the creation of a sample “exit” survey after ADR participation to better determine the effectiveness of their ADR policies and procedures. Finally, AOD may need to place greater emphasis on ADR program effectiveness during technical assistance visits.

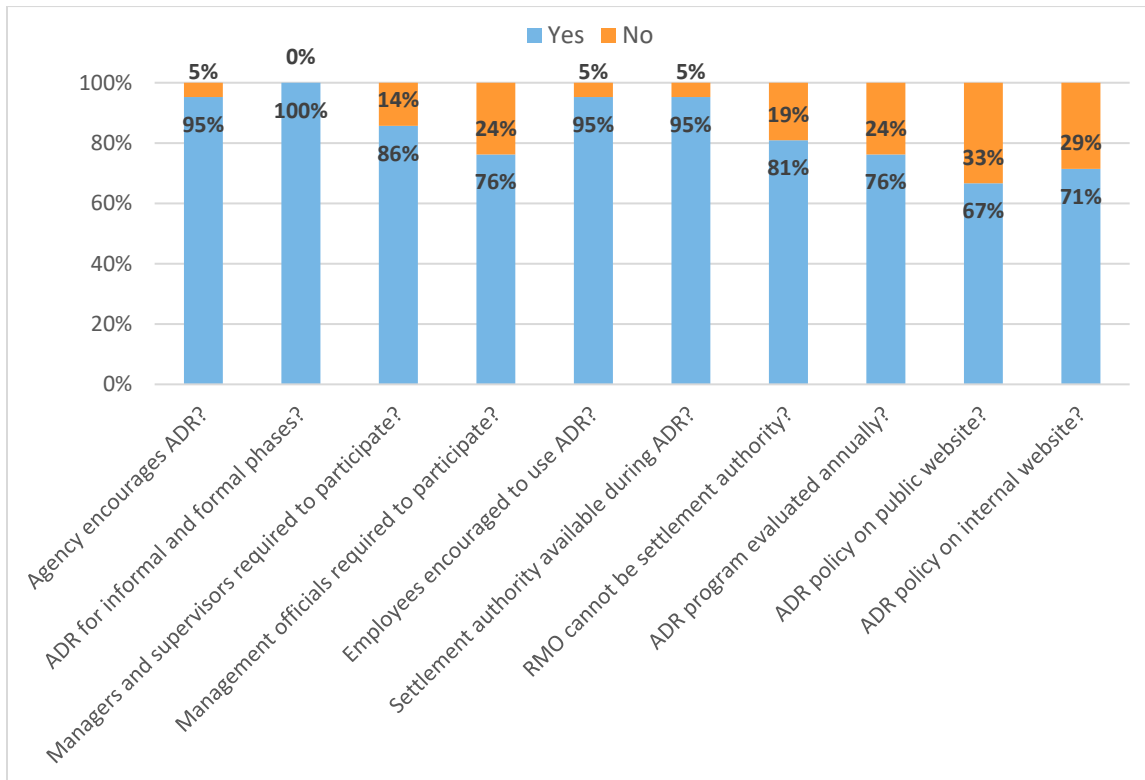
Agency ADR Survey Results

EEO Directors from all 24 sample agencies were invited to complete a survey on agency ADR policies and practices. The survey included a total of 10 questions, with one question collecting information regarding promising ADR practices that agencies use and another question collecting respondent information. Twenty-one responses were received for an approximate response rate of 88%. However, two submitted surveys included no respondent information. With this high of a response rate, EEOC researchers have confidence that the survey results are valid.

Survey results appear in Figure 6 below. Results reveal that the majority of agencies attempted to administer their ADR programs well, but there were areas where improvements could be made. Specifically, 33% of agencies did not have their ADR policies publicly posted and 29% did not have their policies internally posted. In addition, 24% of agencies did not evaluate their programs annually and 19% of agencies allowed the manager accused in the complaint to be the settlement authority. Participation from management was also an issue. About 14% of agencies did not require managers to participate in ADR and 24% did not require management officials to participate.

On the positive side, at least 95% of agencies indicated that their agency encourages the widespread use of ADR, encourages employees to participate, offers ADR in both the counseling and formal complaint phases, and ensures that the settlement authority is available during active ADR sessions.

Figure 6: Self-reported fundamental ADR program elements



Note: RMO = Responsible Management Official. ADR = Alternative Dispute Resolution.

Source: U.S. Equal Employment Opportunity Commission.

Prior to this survey, OFO was aware that agencies have individual policies for when to offer ADR, but OFO still needed to understand the reasons why ADR is sometimes not offered. Thus, agencies were asked to share why ADR was sometimes not offered to complainants. Results show that 60% of responding agencies did not provide ADR in sexual harassment complaints, and 80% indicated that they also did not offer ADR for other reasons. Additional reasons for not offering ADR included:

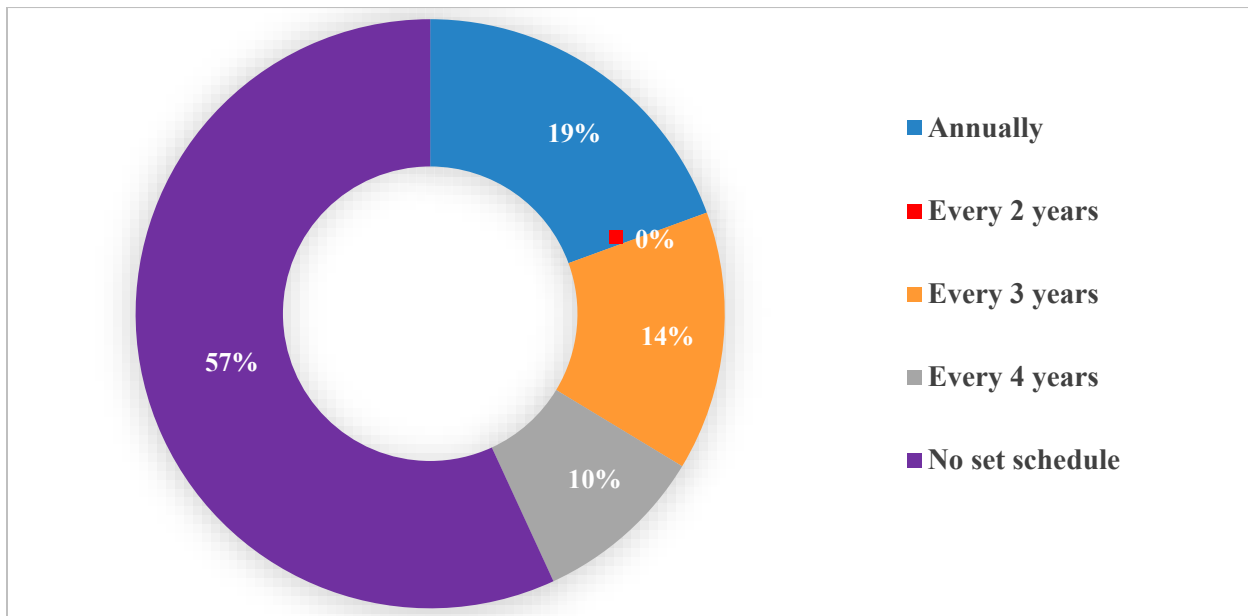
- Complaints regarding selections (especially from non-employees)
- Criminal history, workplace theft, or workplace violence
- Non-EEO protected categories
- Internal disciplinary matters

- Medical and security clearance issues
- Allegations challenging the application of Federal law/regulation or agency policy
- And contractors/contingent workers.

One agency’s survey stated that they “occasionally do not offer ADR when we know the agency position will not change; when, for example, someone was not selected for promotion and filed a complaint in response.” Another agency remarked that the decision to offer ADR did not follow a set policy, but rather was made on a case-by-case basis. An agency where the ADR program is separate from the EEO operations noted: “We actually have no knowledge of what is or is not offered for ADR as the Departmental ADR Program will not provide that information.”

As shown in Figure 7 below, when agencies were asked how often they updated their ADR policies and procedures, roughly 33% indicated at least every three years, with 19% of agencies indicating that their policies are reviewed on an annual basis. However, the majority of agencies (57%) indicated that there was no set schedule for updating their ADR policies—meaning that these agencies’ policies were only updated in response to outside pressures or had not been updated for a very long time. For example, one agency’s policy published on its external website is dated in 1995. Another reason might be a perceived lack of public support from agency leadership for the ADR program.

Figure 7: Frequency of ADR policy and procedure updates



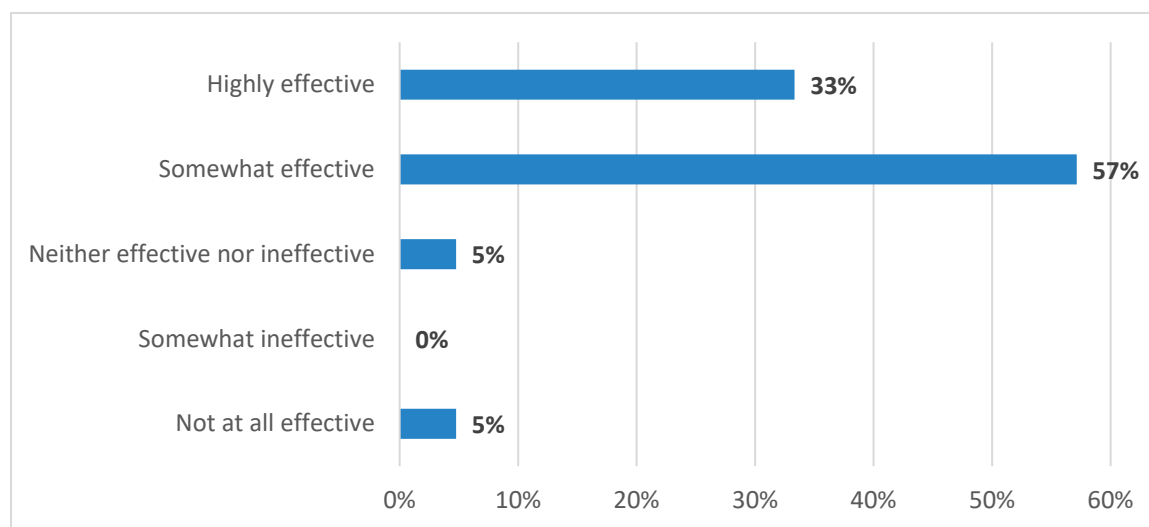
Notes: ADR = Alternative Dispute Resolution. “No set schedule” indicates that the agency’s policy was only updated in response to outside pressures or had not been updated for a very long time.

Source: U.S. Equal Employment Opportunity Commission.

In addition, approximately 90% of agencies responded that their agency’s leadership demonstrated a commitment to ADR as a means for resolving complaints. However, 10% did not feel that way. One agency remarked: “I have never actually heard or seen any reference to or demonstrated support for ADR programs.”

Agencies were asked if they regularly evaluated the effectiveness of its ADR policies. Approximately 67% of agencies indicated that they did regularly update their policies. Agencies were also asked about how effective their ADR programs were, in their opinion. Only 33% felt that ADR programs were highly effective in helping resolve complaints. However, 57% felt that it was somewhat effective. In contrast, 5% felt that their agency’s ADR program was not at all effective.

Figure 8: Perceived effectiveness of ADR programs by survey participants



Source: U.S. Equal Employment Opportunity Commission.

Agencies were invited to share the reasoning behind their opinions. Responses included:

- “ADR is somewhat effective primarily because success depends on the willingness and reasonableness of the parties involved. Oftentimes, there are unrealistic expectations during ADR, particularly on the part of the complaining party, which tend to exacerbate existing issues and harden the positions of the parties. This may lead to further deterioration of the relationship and unwillingness to engage in resolution.”
- “Over the years, the feedback has consistently shown that most parties feel that the mediation was worthwhile regardless of the outcome.”
- “ADR allows the parties to focus solely on resolution rather than litigation. Where the parties agree in good faith to use ADR, resolutions often occur.”
- “It is ineffective for the following reasons: 1) it has low resolution rates; 2) the bureau

EEO directors gave a vote of ‘no confidence;’ 3) the program acknowledges that it is not well versed in EEO; 4) the office purports not to track data and will not provide a record of EEO-related contacts with impacts data on timeliness rates.”

- “We are finding a lot of ill will on the part of the managers against whom an EEO Complaint was filed when a complaint is settled by a higher-level official. We are finding that the managers are themselves starting to file EEO complaints. It might be good to involve the manager in the process even if it is behind the scenes so they have a voice.”

Agencies were then asked what proactive steps they took to support the use of ADR. About 20% of agencies indicated that they provided agency-wide ADR training, while 30% provided annual ADR training to agency leaders. In addition, 35% indicated that they discussed ADR in town hall meetings and 80% took other steps to improve ADR.

Nine agencies provided additional insights on how they seek to make their ADR programs successful. These insights included:

- “Our full-time mediators are a key subdivision in our EEO office which ensures they are adequately funded for training, travel, and ongoing educational opportunities. We conduct workforce analysis monthly, develop action plans to address lower than expected participation levels. ADR is embedded in our performance standards. [sic] Continuing education training for Alternative Dispute Resolution Specialists. We offer [agency] and contract ADR services such as facilitation, conflict coaching, and mediation. ADR is included in our [agency] Union master agreement. EEO Specialists and ADR Specialists work closely together to resolve workplace conflict. [We are] heavily invested in our workplace disputes before they become complaints and we have a neutral certification program to ensure collateral mediators are certified to conduct mediations. We conduct basic mediation skills training 4-5 times per year.”
- “We have a 45% participation goal for informal counseling that our bureau are aware of that they should be striving to exceed. They need to verify their ADR stats quarterly so they have to look at (be aware) of their ADR stats.”
- “We provide all aggrieved individuals ADR guidance documents and information during new EEO complaint intake, including information about thinking outside the box when considering remedies.”
- “Issue a notice to [...] Heads of Components annually about ADR and the requirement for management to enter into good faith discussions to help resolve disputes.”
- “This year instituted a process action team to benchmark with other agencies and survey participants.”

Findings

Most agencies encourage the widespread use of ADR by employees and management. However, roughly a third of agencies did not have their ADR policies on their websites, making it challenging for them to learn about what is involved in the ADR process. Furthermore, some agencies did not require managers and management officials to participate in ADR—and nearly a fifth of agencies allowed the manager accused in the complaint to be the settlement authority. However, a vast majority of agencies ensured that the settlement authority is available during active ADR sessions.

Only roughly 33% of agencies updated ADR policies and procedure at least once every three years. Similarly, nearly a quarter of agencies did not evaluate their programs annually.

In addition, 60% of agencies did not provide ADR in sexual harassment complaints. Agencies also frequently did not offer ADR when the complaint concerned hiring, removal, or behavioral issues (such as workplace violence or theft). Also, ADR was generally not offered when the complaint came from a non-employee (e.g., applicant or contractor).

Agencies were generally not overwhelmingly convinced of the effectiveness of their own ADR programs in helping resolve complaints. EEO Directors felt that lack of trust was often a hindrance. In addition, a third of agencies did not conduct regular self-assessments of their programs' effectiveness. A majority of agencies did not routinely provide annual training to agency leaders or offered agency-wide ADR training.

Key Findings and Recommendations

This section provides a summary of the most important findings within this report. Based upon these findings, we provide actionable recommendations for improving the effectiveness of ADR programs within the Federal government.

ADR Policy Deficiencies and Complaint Data Insights

While the small sample of 24 agencies did not allow for the examination of the potential causal relationship of ADR policy deficiencies on complaint activity, there were several findings of note. Approximately 40% of agencies' ADR policies were incomplete. The policy deficiencies were related to:

1. Failure to publish the policy or upload the policy in FedSEP under supporting documentation.
2. Failure to provide timeframes involved in the administrative and ADR processes.
3. Failure to provide the criteria the agency uses to determine when an issue is appropriate for ADR.
4. Failure to provide assurance that the agency will make accessible an individual with settlement authority, and that no responsible management official or agency official directly involved in the case will serve as the person with settlement authority.

5. Source(s) of neutrals.
6. Failure to inform the aggrieved party that ADR is voluntary and that the ADR procedure can be terminated at any time and without penalty.

Despite the above policy deficiencies noted, the analysis of program deficiencies from AOD technical assistance visits is not high. Only 4.3% of agencies had ADR program deficiencies in FY 2019. However, agencies that did have deficiencies had critical deficiencies, such as not requiring managers and supervisors to participate in ADR, allowing the manager at the center of the complaint to be the settlement authority, and failing to assess the effectiveness of its ADR program regularly. The difference between the 4.3% found by AOD and the 40% in the survey is likely attributable to the fact that the AOD TAV data in the report represents a different set of agencies than the sample of 24 agencies surveyed. Thus, it is probable that the percentage of deficiencies discovered by AOD would have been higher if AOD had performed TAVs with each of the 24 agencies surveyed.

With respect to the complaint data, across the 24 sample agencies in FY 2019, there were approximately 30,029 completed counselings, with roughly 27,492 counselings in which ADR was offered. This represented an average participation rate of 34.2%. During the informal phase, the offer rate for small agencies was lower than for midsize and large agencies, but participation rates for small agencies were comparable to midsize agencies. During the formal phase, the average offer rate at large agencies was more than double the offer rate of small (12.5%) and midsize (8.7%) agencies. This difference may reflect the fact that larger agencies tend to have more resources available than do small or midsize agencies.

The average formal phase resolution rate was 44.6%, which was four points higher than the resolution rate in the informal phase. This was not an appreciable difference. However, settlement rates did show a marked difference, with the settlement rate in the formal phase (37.9%) being more than double the rate in the informal counseling phase (16.1%). This suggests that agencies were less willing to negotiate without a formal complaint having been filed. In addition, during the informal counseling phase, the average withdrawal rate was 24.6% compared to 6.7% during the formal phase. This suggests that complainants hardened their resolve to follow through on their complaints, believing their complaints to be legitimate and deserving of objective examination. It is worth noting that small agencies, on average, had withdrawal rate of zero% during the formal complaint phase.

General Program Recommendations

EEO researchers recommend that OFO should:

- Require agencies to update their policies at a minimum of every three years.
- Conduct a webinar on the key elements of ADR policies.
- Develop a required annual training course for ADR program administration.
- Consider conducting additional research to understand the differences between the formal

and informal stages across the Federal government.

- Consider conducting additional research to understand the differences in offer, participation, and withdrawal rates by agency size across the Federal government.

Focus Group and Survey Insights

The survey results indicated that agencies typically updated their ADR policies and procedures every three years. Although focus group participants generally felt that their ADR programs were fair, minimal data had been collected to objectively measure their effectiveness, which was reflected by the survey data. Agencies were generally not overwhelmingly convinced of the effectiveness their own ADR programs in helping resolve complaints, a third of these agencies did not conduct regular self-assessments of their program's effectiveness, and nearly a quarter of agencies did not annually evaluate their programs at all. Furthermore, the focus groups revealed that little information existed on the relationship between participation in ADR and employee retention rates, as agencies had not been tracking the turnover of complainants following their participation in ADR.

Both focus groups cited lack of trust in agency leadership as the primary factor dampening ADR participation rates. Certain categories of complaints, such as sexual harassment or security clearance issues, were declined ADR as a matter of policy. Survey results showed that 60% of agencies did not provide ADR in sexual harassment complaints. Agencies also frequently did not offer ADR when the complaint concerned hiring, removal, or behavioral issues (such as workplace violence or theft). In addition, ADR was generally not offered when the complaint came from a non-employee (e.g., applicant or contractor).

Nearly a fifth of agencies allowed the manager accused in the complaint to be the settlement authority. This likely lowered employees' trust in their agency's ADR program. Furthermore, both the survey and focus group results indicated that some agencies did not require managers and management officials to participate in ADR, which could potentially delegitimize the program in the eyes of complainants. On the other hand, one positive finding was that the vast majority of agencies ensured that the settlement authority was available during active ADR sessions.

According to the survey results, a majority of agencies did not routinely provide annual training to agency leaders or offer agency-wide ADR training. This was somewhat inconsistent to the survey responses, which indicated that most agencies encouraged the widespread use of ADR and encouraged employees and managers to participate. Focus group participants indicated that greater messaging and support from agency leadership, as well as training sessions to clarify expectations, could improve the climate surrounding their ADR programs.

Despite the number and variety of ADR program deficiencies documented in this report, there were several promising practices that might warrant further research in future reports or that could be readily adopted by other agencies now.

Communication and Culture Recommendations

- Regularly communicating with all employees about ADR and its benefits.
- Issuing an annual statement on the importance of ADR from the head of agency.
- Ensuring that all EEO Counselors and other EEO officials make employees aware of ADR throughout all stages of the complaint process.
- Providing the complainant with a list of potential agency settlement remedies for the complainant's consideration during mediation.

Training

- Frequent (e.g., bimonthly) ADR awareness training to ensure new hires receive timely ADR training.
- Training settlement officials on their role and responsibilities.
- Hiring full-time mediators who are trained regularly.
- Ensuring shared neutrals have completed basic mediation skills training.
- Ensuring that all EEO Collateral Duty Counselors are certified mediators.

Partnering and Coordinating

- Creating an ADR workgroup with key stakeholders that is dedicated to improving the effectiveness of the ADR program.
- Participating in a shared neutrals program.
- Improving collaboration in agencies where the ADR program is separate from the EEO program.

Reporting Accountability

- Holding regular (e.g., quarterly) ADR status briefings with senior agency leaders to discuss successes and concerns.
- Providing complainants with the opportunity to provide feedback after participating in each mediation.
- Quarterly reviews of agency-wide aggregate ADR acceptance, participation, and declination rates to share with all internal stakeholders.

From this research, two clear needs emerged. First, there was a need to provide agencies with a means of conducting a self-assessment, as agencies were not uniformly conducting annual evaluations of their ADR program effectiveness. Second, agencies need a survey to give to complainants following the mediation process—while one agency clearly indicated they surveyed agencies following their ADR participation, most did not indicate they had such a practice.

To respond to these needs, EEO researchers developed two separate tools:

- ADR Barrier Analysis Tool for agency self-assessment of their program's effectiveness (Appendix E).
- Sample survey for complainants that participate in ADR (Appendix F).

Additionally, AOD should place greater emphasis on ADR program effectiveness during technical assistance visits and forward deficiencies to the EEOC's Special Operations Division for action.

No singular solution will serve as a panacea to the concerns expressed above. In order to realize the vision of MD-715 and the EEOC itself, the OFO must conduct further research on the efficacy of ADR techniques and carefully analyze deficiencies in Federal ADR programs. This can help OFO find remedies that represent the interests of the employees which ADR programs were created to protect. Through annual analysis of Form 462 data and additional focus groups and surveys, the OFO can continue to identify innovative "best practices" to help Federal agencies become model EEO employers.

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Appendix A: Public Access of Agency ADR Policy Information (September 2021)

- National Aeronautics and Space Administration
 - <https://www.nasa.gov/offices/odeo/policy-and-publications>
 - Lists several ADR policies/procedures for employees and supervisors.
- Defense Logistics Agency
 - <https://www.dla.mil/EEO/Business/Alternative-Dispute-Resolution/>
 - Describes which issues are eligible for mediation, what the process entails, and why employees benefit from this process.
- Department of Commerce
 - <https://www.commerce.gov/cr/complaints/alternative-dispute-resolution-adr>
 - Provides a general mediation guide, as well as materials for employees and managers.
- Department of Transportation
 - <https://www.transportation.gov/civil-rights/civil-rights-library/alternative-dispute-resolution-policy>
 - Policy clearly posted and explained on website.
- Department of Health and Human Services
 - <https://www.hhs.gov/about/agencies/dab/adr-services/index.html>
 - Extremely comprehensive guide to the mediation process, including additional resources for ADR training, conflict coaching, and office conflict intervention.
- Department of the Treasury
 - <https://www.treasury.gov/about/organizational-structure/offices/Mgt/Documents/2012-04726%20ADR%20Brochure.pdf>
 - Detailed brochure explaining the ADR process and the agency's specific policies.
 - <https://home.treasury.gov/system/files/306/alternative-dispute-resolution-policy.pdf>
 - Policy statement from 2003 posted on the agency's "EEO and Civil Rights Policies" page.
- Department of Agriculture
 - <https://www.ocio.usda.gov/sites/default/files/docs/2012/DR-4300-007%20Processing%20Equal%20Employment%20Opportunity.htm>

- ADR guidelines found in the agency’s “Processing Equal Employment Opportunity (EEO) Complaints of Discrimination” Departmental Regulations (2016).
 - Posted through the Office of the Assistant Secretary for Civil Rights.
 - <https://www.ocio.usda.gov/sites/default/files/docs/2012/DR4710-001.htm>
 - Specific ADR policy (2006).
- Department of Justice
 - <https://www.justice.gov/jmd/alternative-dispute-resolution>
 - Clearly explains ADR procedures and policies.
 - <https://adr.gov/wp-content/uploads/2022/02/reno.pdf>
 - 1995 policy.
- Department of Veterans Affairs
 - <https://www.va.gov/adr/Directive5978.asp>
 - Clearly articulates agency’s ADR directives.
- U.S. Postal Service
 - <https://about.usps.com/who/legal/redress/policies.htm>
 - Outlines policies for the agency’s REDRESS mediation program.
 - <https://about.usps.com/who/legal/redress/programs.htm>
 - Home page for REDRESS program.
- Department of Homeland Security
 - https://www.dhs.gov/sites/default/files/publications/mgmt/workforce-management/mgmt-dir_065-04-equal-employment-opportunity-alternative-dispute_revision-00.pdf
 - Agency’s ADR Directive.
 - https://www.dhs.gov/sites/default/files/publications/adr_one-pager_508_final.pdf
 - DHS brochure on ADR.
- Department of Energy
 - https://www.energy.gov/sites/prod/files/ADR_Policy_Federal_Register.pdf
 - Official ADR policy published in 2008.
 - <https://www.energy.gov/oha/articles/secretary-granholm-adr-statement-june-24-2021>
 - Official policy statement from Secretary Granholm in June 2021.

- Environmental Protection Agency
 - <https://www.epa.gov/sites/default/files/2015-09/documents/epaadrpolicyfinal.pdf>
 - Official ADR policy published in 2000.
- Department of Housing and Urban Development
 - <https://www.hud.gov/sites/documents/ADRPOLICYSTATEMENT031715.PDF>
 - Official ADR policy published in 2015.
- U.S. Commission on Civil Rights
 - <https://www.usccr.gov/files/2021/EEO-USCCR-Policy-on-ADR-2021.pdf>
 - Official ADR policy published in 2021.
- Department of the Interior
 - <https://www.doi.gov/pmb/eo/ADR>
 - Brief description of the ADR process, but no specific articulation of agency policy.
- Department of Labor
 - <https://www.dol.gov/general/topic/labor-relations/adr>
 - Provides a general description of ADR, but it fails to articulate a clear policy for the agency.
- Department of State
 - <https://www.state.gov/key-topics-office-of-civil-rights/filing-an-eo-complaint/>
 - Brief description of the ADR process on their “Filing an EEO Complaint” page, but no specific articulation of agency policy.
- Office of Personnel Management
 - <https://www.opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf>
 - ADR handbook published by OPM.

Agencies with no policy publicly posted:

- American Battle Monuments Commission
- Commodity Futures Trading Commission
- Millennium Change Corporation
- Social Security Administration

- Tennessee Valley Authority

Appendix B: Focus Group Protocol

Alternative Dispute Resolution Focus Group for Form 462 Data Reporting

This is the focus group protocol for Alternative Dispute Resolution - *ONLY* read text in **BOLD**.

INTRODUCTION (3 TO 5 MINUTES)

READ:

I want to welcome everyone to the call. I am Romella El Kharzazi and I have with me Katie Kroft, who is an intern with RED; she will be helping me run today's focus group.

The Office of Federal Operations at the U.S. Equal Employment Opportunity Commission (EEOC) regularly produces an Annual Report on the Federal Workforce based on data collected from Form 462 (Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints) and MD-715 (Equal Employment Opportunity Management Directive 715 Annual Report). This Report is conducted to learn about Federal agencies' alternative dispute resolution (ADR) and equal employment opportunity (EEO) complaint processes in compliance with MD-715's Model EEO Employer standards.

While very informative, the analysis of the data we collect alone cannot provide sufficient insight on the nuances that likely exist within these programs, and given this consideration, we've decided to hold this focus group to gather additional information.

The results of this session will help determine commonalities in agencies' ADR processes, which will assist the EEOC in identifying best practices and possible areas for improvement in ADR policy implementation. Through this study, we hope to produce a checklist that agencies can employ to increase ADR participation rates and facilitate a workplace climate that realizes the goals of MD-715's Model EEO Employer standards.

Over the course of the next hour, we will discuss the following topics relative to your agency's ADR program: policy implementation; policy effectiveness; management participation in and support for ADR processes; and ADR participation rates. Each question will be discussed for a designated amount of time, which will typically last around 6 minutes. When given the floor, please keep your answers concise so that we may hear from as many different agencies as possible.

Finally, this meeting is being recorded in order to assist with note-taking.

So, let me pause here to see if there are any questions?

READ:

Now, I want to jump right into the first question.

ADR Policy Implementation

We will begin with a discussion of your agency's ADR policies:

- 1. What are the major components of your agency's ADR policy? (Romella - 10 minutes)**
- 2. Do you feel that your agency's ADR programs are both fair and effective? Why? (Katie - 5 minutes)**
- 3. How would your agency seek to correct noncompliance with its ADR policies? (Katie - 5 minutes)**

ADR Participation Rates – Conclusion questions about ways to improve ADR participation

- 4. What is one obstacle that could explain low ADR participation rates at some agencies? (Romella - 8 minutes)**
- 5. What changes in agency climate or policy would be most helpful in remedying low ADR participation rates? (Romella - 8 minutes)**
- 6. In general, are employees more or less likely to remain with the agency after completing ADR? (Katie - 6 minutes)**
- 7. Given the final goal of our study, what is one “promising practice” conducted at your agency that could be helpful to other Federal sector ADR programs? (Romella - 10 minutes)**

CLOSEOUT (Romella)

Well, that was our last question. I want to give everyone another chance to share your thoughts, so I will be emailing out an optional comment sheet to provide any information that we may not have covered today. Thank you for attending.

Appendix C: Survey Questions

Q1. Tell us about your ADR program.
The agency has established and encouraged the widespread use of a fair alternative dispute resolution (ADR) program.
Has the agency established an ADR program for use during both the pre-complaint and formal complaint stages of the EEO process?
Does the agency require managers and supervisors to participate in ADR once it has been offered?
Does the Agency encourage all employees to use ADR, where ADR is appropriate?
Does the agency ensure a management official with settlement authority is accessible during the dispute resolution process?
Does the agency prohibit the responsible management official named in the dispute from having settlement authority?
Does the agency annually evaluate the effectiveness of its ADR program?
Is your agency's ADR policy posted on its public website?
Is your agency's ADR policy posted on its internal website?
Q2. We know that ADR is sometimes not offered, but we would like to know why it is not always offered. (Check all that apply.)
ADR is not offered for Sexual Harassment complaints.
ADR is not offered for other reasons. (Please explain.)
Q3. How often are your agency's ADR policies and procedures updated?
Annually.
Every two years.
Every 3 years.
Every 4 years.
We do not have a set schedule for reviewing ADR policies and procedures.
Q4. Does agency leadership demonstrate public support for ADR programs?
Yes
No

Q5. Does your agency require management officials to participate in ADR once it has been offered?
Yes
No
If not, what has been the biggest obstacle to achieving this objective?
Q6. Does your agency regularly evaluate the effectiveness of its ADR policies?
Yes
No
If so, how is this process conducted, and if not, what has prevented your agency from meeting this standard?
Q7. In your opinion, how effective is ADR in resolving complaints?
Please explain your rating.
Q8. What proactive steps do you take to support the use of ADR?
Annual agency-wide ADR training.
Annual leadership ADR training.
Town Hall meetings in which ADR is discussed.
Other (please specify):
Q9. Please tell us any other things that you do to help your ADR program be successful.
Q10. Please provide the following information.
Your Name:
Agency:
Job Title:

Appendix D: Form 462 Agency Data

The below tables detail Form 462 ADR data for FY 2019 for the 24 sample agencies. The tables numbers in parentheses are their corresponding numbers in the FY 2019 *Annual Reports on the Federal Workforce* (<https://www.eeoc.gov/Federal-sector/reports>).

Table 1: ADR pre-complaint offers, rejections, and acceptances in FY 2019 (Table B-4)

Agency or department	Number completed / ended counselings	Number completed / ended counselings offered ADR	Percent completed / ended counselings offered ADR (offer rate)	Number of offers rejected by individual	Total completed / ended counselings accepted / participated in ADR Program	Percent completed / ended counselings accepted into ADR program (participation rate)
American Battle Monuments Commission	3	0	0.00%	0	0	0.00%
Commodity Futures Trading Commission	5	0	0.00%	0	0	0.00%
Defense Logistics Agency	318	272	85.53%	76	196	61.64%
Department of Agriculture	737	632	85.75%	371	261	35.41%
Department of Commerce	434	97	22.35%	48	49	11.29%
Department of Energy	109	51	46.79%	31	20	18.35%
Department of Health and Human Services	553	448	81.01%	283	165	29.84%
Department of Homeland Security	2,339	1,743	74.52%	740	1,003	42.88%
Department of Housing and	115	69	60.00%	40	29	25.22%

Urban Development						
Department of Justice	1,424	1,271	89.26%	959	312	21.91%
Department of Labor	231	231	100.00%	106	125	54.11%
Department of State	379	335	88.39%	279	56	14.78%
Department of the Interior	523	496	94.84%	317	179	34.23%
Department of Transportation	443	267	60.27%	74	193	43.57%
Department of Treasury	711	653	91.84%	272	381	53.59%
Department of Veterans Affairs	5,372	5,347	99.53%	2,622	2,725	50.73%
Environmental Protection Agency	107	82	76.64%	33	49	45.79%
Millennium Challenge Corporation	4	0	0.00%	0	0	0.00%
National Aeronautics and Space Administration	74	50	67.57%	21	29	39.19%
Office of Personnel Management	41	41	100.00%	41	0	0.00%
Social Security Administration	1,003	785	78.27%	390	395	39.38%
Tennessee Valley Authority	59	40	67.80%	25	15	25.42%
U.S. Postal Service	15,043	14,580	96.92%	3,467	11,113	73.87%

United States Commission on Civil Rights	2	2	100.00%	0	2	100.00%
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Table 2: ADR pre-complaint resolutions during the informal phase, FY 2019 (Table B-5)

Agency or department	Number of ADR closures	Number of ADR settlements	Percent ADR settlements	Number of ADR withdrawals / no complaints filed	Percent ADR withdrawals / no complaints filed	Number of ADR resolutions	Percent ADR resolutions (resolution rate)
American Battle Monuments Commission	0	0	0.00%	0	0.00%	0	0.00%
Commission on Civil Rights	2	2	100.00 %	0	0.00%	2	100.00%
Commodity Futures Trading Commission	0	0	0.00%	0	0.00%	0	0.00%
Consumer Product Safety Commission	0	0	0.00%	0	0.00%	0	0.00%
Defense Logistics Agency	196	25	12.76%	80	40.82%	105	53.57%
Department of Agriculture	261	20	7.66%	98	37.55%	118	45.21%
Department of Commerce	49	7	14.29%	10	20.41%	17	34.69%
Department of Energy	20	4	20.00%	7	35.00%	11	55.00%
Department of Health and Human Services	165	19	11.52%	45	27.27%	64	38.79%
Department of Homeland Security	1,003	83	8.28%	372	37.09%	455	45.36%

Department of Housing and Urban Development	29	1	3.45%	3	10.34%	4	13.79%
Department of Justice	312	50	16.03%	82	26.28%	132	42.31%
Department of Labor	125	4	3.20%	32	25.60%	36	28.80%
Department of State	56	7	12.50%	14	25.00%	21	37.50%
Department of the Interior	179	24	13.41%	57	31.84%	81	45.25%
Department of Transportation	193	27	13.99%	69	35.75%	96	49.74%
Department of Treasury	381	72	18.90%	133	34.91%	205	53.81%
Department of Veterans Affairs	2,725	166	6.09%	1,105	40.55%	1,271	46.64%
Election Assistance Commission	0	0	0.00%	0	0.00%	0	0.00%
Environmental Protection Agency	49	10	20.41%	13	26.53%	23	46.94%
Millennium Challenge Corporation	0	0	0.00%	0	0.00%	0	0.00%
National Aeronautics and Space Administration	29	9	31.03%	7	24.14%	16	55.17%
Office of Personnel Management	0	0	0.00%	0	0.00%	0	0.00%
Social Security Administration	395	108	27.34%	116	29.37%	224	56.71%

Tennessee Valley Authority	15	3	20.00%	4	26.67%	7	46.67%
U.S. Postal Service	11,113	2,718	24.46%	6,068	54.60%	8,786	79.06%

Table 3: Total complaint closures accepted / participated in ADR, FY 2019 (Table B-19)

Agency or department	Total complaint closures	Number of complaint closures that offered ADR	Percent complaints closures that offered ADR (offer rate)	Number of offers rejected by complainant	Number of complaint closures accepted / participated in ADR program	Percent complaint closures accepted into ADR program (participation rate)
American Battle Monuments Commission	10	5	50.00%	0	5	50.00%
Commission on Civil Rights	0	0	0.00%	0	0	0.00%
Commodity Futures Trading Commission	34	0	0.00%	0	0	0.00%
Defense Logistics Agency	2,656	410	15.44%	94	316	11.90%
Department of Agriculture	12,806	4,404	34.39%	2,592	1,812	14.15%
Department of Commerce	3,678	543	14.76%	438	105	2.85%
Department of Energy	1,203	206	17.12%	74	132	10.97%
Department of Health and Human Services	6,939	1,927	27.77%	1,269	658	9.48%
Department of Homeland Security	28,077	7,674	27.33%	5,374	2,300	8.19%

Department of Housing and Urban Development	1,320	204	15.45%	0	204	15.45%
Department of Justice	15,896	622	3.91%	70	552	3.47%
Department of Labor	1,801	1,792	99.50%	1,332	460	25.54%
Department of State	2,070	326	15.75%	6	320	15.46%
Department of the Interior	5,900	4,284	72.61%	3,579	705	11.95%
Department of Transportation	8,093	231	2.85%	9	222	2.74%
Department of Treasury	5,961	5,082	85.25%	4,410	672	11.27%
Department of Veterans Affairs	14,243	855	6.00%	15	840	5.90%
Election Assistance Commission	0	0	0.00%	0	0	0.00%
Environmental Protection Agency	1,377	7	0.51%	4	3	0.22%
Millennium Challenge Corporation	55	0	0.00%	0	0	0.00%
National Aeronautics and Space Administration	751	265	35.29%	73	192	25.57%
Office of Personnel Management	927	58	6.26%	6	52	5.61%
Social Security Administration	8,074	6,620	81.99%	6,360	260	3.22%

Tennessee Valley Authority	505	20	3.96%	1	19	3.76%
U.S. Postal Service	49,045	3,906	7.96%	560	3,346	6.82%

Table 4: ADR complaint resolutions during formal phase, FY 2019 (Table B-20)

Agency or department	Number of ADR closures	Number of ADR settlements	Percent ADR settlements	Number of ADR withdrawals	Percent ADR withdrawals	Total number of ADR resolutions	Percent ADR resolutions (resolution rate)
American Battle Monuments Commission	5	4	80.00%	0	0.00%	4	80.00%
Commission on Civil Rights	0	0	0.00%	0	0.00%	0	0.00%
Commodity Futures Trading Commission	0	0	0.00%	0	0.00%	0	0.00%
Defense Logistics Agency	316	177	56.01%	4	1.27%	181	57.28%
Department of Agriculture	1,810	705	38.95%	72	3.98%	777	42.93%
Department of Commerce	105	50	47.62%	0	0.00%	50	47.62%
Department of Energy	132	58	43.94%	17	12.88%	75	56.82%
Department of Health and Human Services	658	183	27.81%	28	4.26%	211	32.07%
Department of Homeland Security	2,300	597	25.96%	264	11.48%	861	37.43%
Department of Housing and Urban Development	110	35	31.82%	0	0.00%	35	31.82%
Department of Justice	552	281	50.91%	18	3.26%	299	54.17%
Department of Labor	460	435	94.57%	4	0.87%	439	95.43%
Department of State	320	157	49.06%	5	1.56%	162	50.62%

Department of the Interior	705	277	39.29%	9	1.28%	286	40.57%
Department of Transportation	222	69	31.08%	2	0.90%	71	31.98%
Department of Treasury	672	139	20.68%	26	3.87%	165	24.55%
Department of Veterans Affairs	840	85	10.12%	28	3.33%	113	13.45%
Election Assistance Commission	0	0	0.00%	0	0.00%	0	0.00%
Environmental Protection Agency	3	0	0.00%	2	66.67%	2	66.67%
Millennium Challenge Corporation	0	0	0.00%	0	0.00%	0	0.00%
National Aeronautics and Space Administration	192	96	50.00%	6	3.12%	102	53.12%
Office of Personnel Management	52	30	57.69%	20	38.46%	50	96.15%
Social Security Administration	260	84	32.31%	8	3.08%	92	35.38%
Tennessee Valley Authority	19	13	68.42%	0	0.00%	13	68.42%
U.S. Postal Service	3,346	1,755	52.45%	48	1.43%	1,803	53.89%

Appendix E: Agency Self-Assessment Questions for Barrier Analysis

General Questions

- Date
- Agency Name
- Are ADR programs available during the informal stage of the complaint process?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Pursuant to 29 CFR §1614.102(b)(2) and MD-715(II)(E), agencies must establish a fair ADR program at the informal stage of the complaint process.
 - **If “I don’t know”:** Possible deficiency
 - Please determine whether ADR programs are available at the informal stage of the complaint process. Pursuant to 29 CFR §1614.102(b)(2) and MD-715(II)(E), agencies must establish a fair ADR program at this point in the complaint process.
- Are ADR programs available during the formal stage of the complaint process?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Pursuant to 29 CFR §1614.102(b)(2) and MD-715(II)(E), agencies must establish a fair ADR program at the formal stage of the complaint process.
 - **If “I don’t know”:** Possible deficiency
 - Please determine whether ADR programs are available at the formal stage of the complaint process. Pursuant to 29 CFR §1614.102(b)(2) and MD-715(II)(E), agencies must establish a fair ADR program at this point in the complaint process.
- Does agency leadership actively promote the use of ADR?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified

- Pursuant to MD-715(II)(E), agency leadership must establish and encourage the widespread use of a fair ADR program.
 - **If “I don’t know”:** Possible deficiency
 - Please determine whether agency leadership promotes the use of ADR. Pursuant to MD-715(II)(E), agency leadership must establish and encourage the widespread use of a fair ADR program.
- Is an updated ADR policy posted on the agency’s external and internal websites?
 - **If yes:** No trigger identified
 - Great job!
 - **If no:** Trigger identified
 - Please post an updated ADR policy on your agency’s external and internal websites. Pursuant to 29 CFR §1614.102(b)(5) and MD-715(II)(C), agencies must provide written materials informing their employees of all rights and responsibilities pursuant to the EEO and ADR processes. Based on these guidelines, agencies *should* prominently post these policies in all agency offices and on the agency’s external website.
 - **If “I don’t know”:** Possible trigger
 - Please determine whether your agency’s ADR policy is posted on its external website. Pursuant to 29 CFR §1614.102(b)(5) and MD-715(II)(C), agencies must provide written materials informing their employees of all rights and responsibilities pursuant to the EEO and ADR processes. Furthermore, these policies *should* be prominently posted in all agency offices and on the agency’s external website.
- Once offered, is participation in ADR mandatory for all management officials?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Please update your agency’s ADR policy to require participation from all management officials once an offer has been made. Pursuant to MD-715(II)(E), managers and supervisors must participate in ADR once it has been offered. This will ensure that EEO objectives remain central to the agency’s mission through a fair and neutral complaint process.
 - **If “I don’t know”:** Possible deficiency

- Please determine whether ADR is mandatory for all management officials. Pursuant to MD-715(II)(E), managers and supervisors must participate in ADR once it has been offered. This will ensure that EEO objectives remain central to the agency’s mission through a fair and neutral complaint process.
- Do management officials receive regular training on ADR and EEO policies and procedures?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Please implement regular trainings on ADR and EEO policies and procedures for management officials. Pursuant to MD-715(II)(E), managers and supervisors must receive periodic training on the EEO and ADR processes to ensure that they possess effective managerial and communication skills.
 - **If “I don’t know”:** Possible deficiency
 - Please determine whether management officials receive regular training on ADR and EEO policies. Pursuant to MD-715(II)(E), managers and supervisors must receive periodic training on the EEO and ADR processes to ensure that they possess effective managerial and communication skills.
- Do ADR trainings for management officials include these five elements, as specified in MD-110 Ch. 3? (listed in tool tip box)
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Pursuant to MD-110 Ch. 3, agencies’ ADR trainings must include the five components listed above. Please incorporate these elements into your agency’s training programs.
 - **If “I don’t know”:** Possible deficiency
 - Please determine whether your agency’s ADR programs include the five components listed above. Pursuant to MD-110 Ch. 3, agencies’ ADR trainings must incorporate each of these elements.
 - **Not applicable:** Not applicable

- This question is not applicable only if management officials do not receive regular trainings on ADR policies and procedures.
- Does the agency offer trainings and educational materials on ADR to all employees?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Please ensure that all employees have access to trainings and educational materials on the ADR process. Pursuant to MD-715(II)(B), agencies must have sufficient resources and staffing to provide all employees with training on the EEO program, including the ADR complaint process.
 - **If “I don’t know”:** Possible deficiency
 - Please determine whether the agency offers trainings and educational materials on ADR to all employees. Pursuant to MD-715(II)(B), agencies must have sufficient resources and staffing to provide all employees with training on the EEO program, including the ADR complaint process.
- Do all neutrals receive professional training on the types of dispute resolution conducted by the agency?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Pursuant to MD-110 Ch. 3(V)(B), all neutrals must receive professional dispute resolution training. Please incorporate these trainings into your agency’s ADR program to ensure fairness and impartiality in the complaint process.
 - **If “I don’t know”:** Possible deficiency
 - Please determine whether all neutrals receive professional training in the types of dispute resolution conducted by your agency. Pursuant to MD-110 Ch. 3(V)(B), all neutrals must receive professional dispute resolution training.
- Does agency leadership act in a timely manner to remedy noncompliance with the EEOC’s ADR guidelines?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified

- Pursuant to MD-715(II)(F), agencies must ensure that they are in full compliance with EEOC regulations and that managers comply in a timely manner with EEOC orders for corrective action or relief.
 - **If “I don’t know”:** Possible deficiency
 - Please determine whether agency leadership acts in a timely manner to remedy noncompliance with ADR policies. Pursuant to MD-715(II)(F), agencies must ensure that they are in full compliance with EEOC regulations and that managers comply in a timely manner with EEOC orders for corrective action or relief.
- During the ADR process, does the agency ensure that an individual with settlement authority is present throughout the proceedings?
 - **If yes:** No deficiency identified
 - Great!
 - **If no:** Deficiency identified
 - Please update your agency’s policy to ensure that a settlement official unaffiliated with the proceedings is made available. Pursuant to MD-110 Ch.3(III)(A), agencies’ written procedures regarding ADR programs must include an assurance that an individual with settlement authority will be made accessible during the proceedings. Furthermore, no responsible management official directly involved in the case can serve as the individual with settlement authority.
 - **If “I don’t know”:** Possible deficiency
 - Please determine whether the agency ensures that an individual with settlement authority is present throughout the proceedings. Pursuant to MD-110 Ch.3(III)(A), agencies’ written procedures regarding ADR programs must include an assurance that an individual with settlement authority will be made accessible during the complaint process. Furthermore, no responsible management official directly involved in the case can serve as the individual with settlement authority.

Fairness & Effectiveness Questions

- Do you collect data on the fairness of your ADR programs, as defined under MD-110 Ch. 3(II)(A)? (elements included in tool tip box)
 - **If yes:** No deficiency identified
 - Excellent! Now you can analyze this data to identify triggers and best practices in your ADR programs

- **If no:** Deficiency identified
 - Pursuant to MD-110 Ch. 3(II)(A), agencies must provide the specified elements, at a minimum, to ensure the fairness of its ADR programs. Furthermore, MD-110 Ch. 3(II)(D) mandates that agencies implement a barrier analysis to develop and maintain its EEO programs. Please ensure that your agency is collecting the requisite data to meet these objectives.
- **If “I don’t know”:** Possible deficiency
 - Please determine if your agency collects data on the fairness of your ADR programs. Pursuant to MD-110 Ch. 3(II)(A), agencies must provide the following elements, at a minimum, to ensure the fairness of its ADR programs: as much information about the ADR proceeding to the parties as soon as possible; the right to be represented throughout the ADR proceeding; and an opportunity to obtain legal or technical assistance during the proceeding to any party who is not represented. Furthermore, MD-110 Ch. 3(II)(D) mandates that agencies implement a barrier analysis to develop and maintain its EEO programs.
- Do you collect data on the effectiveness of your ADR programs, relative to benchmarks established by EEOC regulations and specified in MD-715(II)(E)?
 - **If yes:** No deficiency identified
 - Excellent! Now you can analyze this data to identify triggers and best practices in your ADR programs
 - **If no:** Deficiency identified
 - Pursuant to 29 CFR §1614.102(a)(10) and MD-715(II)(E), agencies must evaluate the impact and effectiveness of their EEO programs to measure their progress toward achieving equal employment opportunity. Please ensure that your agency is collecting the requisite data to meet these objectives.
 - **If “I don’t know”:** Possible deficiency
 - Please determine if your agency collects data on the effectiveness of your ADR programs. Pursuant to 29 CFR §1614.102(a)(10) and MD-715(II)(E), agencies must evaluate the impact and effectiveness of their EEO programs to measure their progress toward achieving equal employment opportunity.
- In the agency’s ADR data, have ADR participants expressed concerns about the fairness or effectiveness of the agency’s complaint programs?

- **If yes:** Trigger identified
 - Since a trend exists within these programs, please determine if there is a particular policy, practice, or procedure that is causing this lack of confidence in the agency's complaint programs.
- **If no:** No trigger identified
 - Please skip to question B.6.
- **If "I don't know":** Possible trigger
 - Please analyze ADR data regarding the fairness and effectiveness of your agency's complaint programs. If there are problematic trends, please determine if there is a particular policy, practice, or procedure that is causing this lack of confidence in the agency's complaint programs.
- **Not applicable:** Not applicable
 - This question is not applicable only if there were no expressed concerns regarding the fairness or effectiveness of the agency's ADR programs.
- Did the agency establish an action plan in response to these concerns?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Pursuant to MD-715(II)(D), agencies must develop strategic plans to correct any identified employment barriers or deficiencies. Once the agency identifies concerns regarding the fairness and effectiveness of its ADR programs, the agency must examine its policies, procedures, and practices relating to the specified issues. The agency must then address these issues with the appropriate management officials and develop an action plan to prevent these trends from continuing.
 - **If "I don't know":** Possible deficiency
 - The agency needs to determine if it addresses issues with management officials once trends are identified. First, has the agency examined its policies, procedures, and practices related to the specified issues? Second, has the agency taken steps to prevent the trend from continuing?
 - **Not applicable:** Not applicable
 - This question is not applicable only if there were no expressed concerns regarding the fairness or effectiveness of the agency's ADR programs.
- Has the agency taken steps to implement this action plan after it was established?

- **If yes:** No Deficiency identified
 - Great job!
- **If no:** Deficiency identified
 - Pursuant to MD-715(II)(D), agencies must develop strategic plans to correct any identified employment barriers or deficiencies. Please ensure that management officials are held accountable for the timely execution and evaluation of action plans.
- **If “I don’t know”:** Possible deficiency
 - Please determine if management officials are held accountable for ensuring that action plans are executed. Pursuant to MD-715(II)(D), agencies must develop strategic plans to correct any identified employment barriers or deficiencies.
- **Not applicable:** Not applicable
 - This question is not applicable only if the agency has not established an action plan in response to concerns about its ADR programs.
- Does the agency collect data on employee turnover following ADR?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Pursuant to MD-715(II)(E), agencies must work to identify, monitor, and report significant trends in complaint activity. In order to determine why employees are leaving after ADR, the agency should conduct exit interviews or surveys. Exit interviews allow employees to provide constructive feedback and a candid assessment of the agency's environment and culture. Results from exit interviews can also help the agency to identify areas for improvement in their complaint programs and policies.
 - **If “I don’t know”:** Possible deficiency
 - In order to determine why employees are leaving after ADR, the agency should conduct exit interviews or surveys. Exit interviews allow employees to provide constructive feedback and a candid assessment of the agency's environment and culture. Results from exit interviews can also help the agency to identify areas for improvement in their complaint programs and policies.

- Do employees who have participated in the ADR process voluntarily separate from the agency at a higher rate than the agency-wide separations rate?
 - **If yes:** Trigger identified
 - Since a trend exists within these programs, please determine if there is a particular policy, practice, or procedure that is causing increases in employee turnover following the ADR process.
 - **If no:** No trigger identified
 - Please continue answering questions on the next section of the tool.
 - **If “I don’t know”:** Possible trigger
 - Please analyze separations data for employees that have participated in ADR. If there are problematic trends, please determine if there is a particular policy, practice, or procedure that is causing increases in employee turnover following the ADR process.
 - **Not applicable:** Not applicable
 - This question is not applicable only if the agency does not collect data on employee turnover following ADR.

ADR Offer Rate Questions

- Do you have data on ADR offer rates within the past three years?
 - **If yes:** No deficiency identified
 - Excellent! Now you can analyze this data to identify triggers and best practices in your ADR programs
 - **If no:** Deficiency identified
 - Pursuant to MD-715(II)(E), agencies must identify, monitor, and report significant trends in complaint processing activity to monitor their progress toward achieving equal employment opportunity. Please ensure that your agency is collecting the requisite data to meet these objectives.
 - **If “I don’t know”:** Possible deficiency
 - Find out if the agency’s data on ADR offer rates are available.
- In the agency’s ADR data, are there trends involving low offer rates for particular offices, divisions, components, or management officials? For the purposes of the following questions, low offer rates fall below the EEOC’s benchmark of 75%.
 - **If yes:** Trigger identified

- Since a trend exists within these offices or divisions, please determine if there is a particular policy, practice, or procedure that is causing these low offer rates.
 - **If no:** No trigger identified
 - Please skip to question C.4.
 - **If “I don’t know”:** Possible trigger
 - Please analyze ADR offer rates between varying offices or divisions within your agency. If there are problematic trends, please determine if there is a particular policy, practice, or procedure that is causing these low offer rates.
 - **Not applicable:** Not applicable
 - This question is not applicable only if your agency does not collect data on ADR offer rates.
- If there are concerning offer rate trends specific to a particular office, division, component, or management official, has the agency addressed these trends with the associated management official?
 - **If yes:** No deficiency identified
 - Good job!
 - **If no:** Deficiency identified
 - Once the agency identifies trends regarding the offer rates associated with a particular office, division, component, or management official, the agency should examine its policies, procedures, and practices related to the identified issues. The agency should address these issues with the appropriate management officials to prevent the trend from continuing.
 - **If “I don’t know”:** Possible deficiency
 - The agency needs to determine if it addresses issues with management officials once trends are identified. First, has the agency examined its policies, procedures, and practices related to the identified issues? Second, has the agency taken steps to prevent the trend from continuing?
 - **Not applicable:** Not applicable
 - This question is not applicable only if there were no concerning offer rate trends specific to a particular office, division, component, or management official.
- In the agency’s ADR data, are there trends involving low offer rates for certain EEO groups?

- **If yes:** Trigger identified
 - Since a trend exists, please determine if there is a particular policy, practice, or procedure that is causing these disparate participation rates.
- **If no:** No trigger identified
 - Please skip to question A.X.
- **If “I DON’T KNOW”:** Possible trigger
 - Please analyze ADR participation rates between varying EEO groups within your agency. If there are problematic trends, please determine if there is a particular policy, practice, or procedure that is causing these disparate participation rates.
- If there are concerning offer rate trends specific to a particular EEO group, has the agency addressed these trends with the associated management official?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Once the agency identifies trends regarding the offer rates associated with a particular EEO group, the agency should examine its policies, procedures, and practices related to the identified issues. The agency should address these issues with the appropriate management officials to prevent the trend from continuing.
 - **If “I don’t know”:** Possible deficiency
 - The agency needs to determine if it addresses issues with management officials once trends are identified. First, has the agency examined its policies, procedures, and practices related to the identified issues? Second, has the agency taken steps to prevent the trend from continuing?
 - **Not applicable:** Not applicable
 - This question is not applicable only if there were no concerning offer rate trends specific to a particular EEO group.
- In the agency’s ADR data, are there trends involving low offer rates for certain categories of complaints?
 - **If yes:** Trigger identified
 - Since a trend exists, please determine if there is a particular policy, practice, or procedure that is causing these disparate offer rates.
 - **If no:** No trigger identified

- Please skip to question A.X.
- **If “I don’t know”:** Possible trigger
 - Please analyze offer rates between varying types of claims within your agency. If there are problematic trends, please determine if there is a particular policy, practice, or procedure that is causing these disparate offer rates.
- If there are concerning offer rate trends specific to a particular complaint category, has the agency addressed these trends with the associated management official?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Once the agency identifies trends regarding the offer rates associated with a particular complaint category, the agency should examine its policies, procedures, and practices related to the identified issues. The agency should address these issues with the appropriate management officials to prevent the trend from continuing.
 - **If “I don’t know”:** Possible deficiency
 - The agency needs to determine if it addresses issues with management officials once trends are identified. First, has the agency examined its policies, procedures, and practices related to the identified issues? Second, has the agency taken steps to prevent the trend from continuing?
 - **Not applicable:** Not applicable
 - This question is not applicable only if there were no concerning offer rate trends specific to a particular complaint category.

ADR Participation Rate Questions

- Do you have data on ADR participation rates within the past three years?
 - **If yes:** No deficiency identified
 - Excellent! Now you can analyze this data to identify triggers and best practices in your ADR programs
 - **If no:** Deficiency identified
 - Pursuant to MD-715(II)(E), agencies must identify, monitor, and report significant trends in complaint processing activity to monitor their progress toward achieving equal employment opportunity. Please ensure that your agency is collecting the requisite data to meet these objectives.

- **If “I don’t know”:** Possible deficiency
 - Find out if the agency’s data on ADR participation rates are available.
- In the agency’s ADR data, are there trends involving low participation rates for particular offices, divisions, components, or management officials?
 - **If yes:** Trigger identified
 - Since a trend exists within these offices or divisions, please determine if there is a particular policy, practice, or procedure that is causing these low participation rates.
 - **If no:** No trigger identified
 - Please skip to question D.4.
 - **If “I don’t know”:** Possible trigger
 - Please analyze ADR participation rates between varying offices or divisions within your agency. If there are problematic trends, please determine if there is a particular policy, practice, or procedure that is causing these low participation rates.
- If there are concerning participation trends specific to a particular office, division, component, or management official, has the agency addressed these trends with the associated management official?
 - **If yes:** No deficiency identified
 - Good job!
 - **If no:** Deficiency identified
 - Once the agency identifies trends regarding the participation rates associated with a particular office, division, component, or management official, the agency should examine its policies, procedures, and practices related to the identified issues. The agency should address these issues with the appropriate management officials to prevent the trend from continuing.
 - **If “I don’t know”:** Possible deficiency
 - The agency needs to determine if it addresses issues with management officials once trends are identified. First, has the agency examined its policies, procedures, and practices related to the identified issues? Second, has the agency taken steps to prevent the trend from continuing?
 - **Not applicable:** Not applicable

- This question is not applicable only if there were no concerning participation trends specific to a particular office, division, component, or management official.
- In the agency’s ADR data, are there trends involving low participation rates for certain categories of complaints?
 - **If yes:** Trigger identified
 - Since a trend exists, please determine if there is a particular policy, practice, or procedure that is causing these disparate participation rates.
 - **If no:** No trigger identified
 - Please skip to question D.6.
 - **If “I don’t know”:** Possible trigger
 - Please analyze participation rates between varying types of claims within your agency. If there are problematic trends, please determine if there is a particular policy, practice, or procedure that is causing these disparate participation rates.
 - **Not applicable:** Not applicable
 - This question is not applicable only if the agency does not collect data on ADR participation.
- If there are concerning participation rate trends specific to a particular complaint category, has the agency addressed these trends with the associated management official?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Once the agency identifies trends regarding the participation rates associated with a particular complaint category, the agency should examine its policies, procedures, and practices related to the identified issues. The agency should address these issues with the appropriate management officials to prevent the trend from continuing.
 - **If “I don’t know”:** Possible deficiency
 - The agency needs to determine if it addresses issues with management officials once trends are identified. First, has the agency examined its policies, procedures, and practices related to the identified issues? Second, has the agency taken steps to prevent the trend from continuing?

- **Not applicable:** Not applicable
 - This question is not applicable only if there were no concerning participation rate trends specific to a particular complaint category.
- Has the agency conducted a survey to obtain employees' perception of its ADR programs?
 - **If yes:** Best practice achieved
 - Great job!
 - **If no:** Best practice not achieved
 - Pursuant to 29 CFR §1614.102(a)(10) and MD-715(II)(E), agencies must evaluate the impact and effectiveness of their EEO programs to measure their progress toward achieving equal employment opportunity. Conducting a survey of ADR participants would provide the agency with constructive feedback and a candid assessment of the agency's complaint programs. These results could also help the agency to identify areas for improvement in their complaint programs and policies.
 - **If "I don't know":** Possible failure to achieve best practices
 - Please determine whether your agency has conducted a survey to obtain employees' perception of its ADR programs. Pursuant to 29 CFR §1614.102(a)(10) and MD-715(II)(E), agencies must evaluate the impact and effectiveness of their EEO programs to measure their progress toward achieving equal employment opportunity. Conducting a survey of ADR participants would provide the agency with constructive feedback and a candid assessment of the agency's complaint programs. These results could also help the agency to identify areas for improvement in their complaint programs and policies.
- In the agency's employee survey data, are there trends involving common barriers to participation in ADR?
 - **If yes:** Trigger identified
 - Since a trend exists, please formulate an action plan to remedy these disparate participation rates.
 - **If no:** No trigger identified
 - Please move on to the next applicable question.
 - **If "I don't know":** Possible trigger

- Please analyze employee survey data to identify common barriers to participation in ADR. If there are problematic trends, please formulate an action plan to remedy these disparate participation rates.
 - **Not applicable:** Not applicable
 - This question is not applicable only if agencies do not conduct surveys on employees' perception of ADR programs.
- Did the agency establish an action plan or rebrand its programs in response to these barriers?
 - **If yes:** No deficiency identified
 - Great job!
 - **If no:** Deficiency identified
 - Pursuant to MD-715(II)(D), agencies must develop strategic plans to correct any identified employment barriers or deficiencies. Once the agency identifies common barriers to participation in its ADR programs, the agency should examine its policies, procedures, and practices relating to the specified issues. The agency should then address these issues with the appropriate management officials and develop an action plan to prevent these trends from continuing.
 - **If "I don't know":** Possible deficiency
 - Pursuant to MD-715(II)(D), agencies must develop strategic plans to correct any identified employment barriers or deficiencies. The agency needs to determine if it addresses issues with management officials once trends are identified. First, has the agency examined its policies, procedures, and practices related to the specified issues? Second, has the agency taken steps to prevent the trend from continuing?
 - **Not applicable:** Not applicable
 - This question is not applicable only if there were no expressed concerns regarding barriers to employee participation in ADR.

Appendix F: Sample Post-ADR Participation Survey for Complainants

This survey is intended to serve as a model for agencies; the use of this survey is not required. However, agencies are required to conduct evaluations of the effectiveness of their respective ADR programs and understand the drivers behind complainant participation rates are imperative. Thus, it is recommended that agencies consider implementing a post-ADR survey for complainants. This survey should be administered to complainants upon the immediate completion of the ADR process. It is possible that complainants are asked to complete the survey for both the formal and informal phases. Completion of this survey should be strictly voluntary.

Sample Questions

1. **Please indicate in which phase did you recently complete ADR?** (Counseling/Informal Phase, Formal Complaint Phase)
2. **Please provide the basis or bases of your complaint.** (Enter your legally protected basis or bases.)
3. **Please provide the issues involved in your complaint.** (Enter your workplace issues that led to your complaint.)
4. **Did you have an attorney or other representative (e.g., union official) present during the ADR mediation that was there to provide you support and advice?** (Attorney, Union Representative, Other, I did not have anyone attend ADR mediation with me.)
5. **Was your complaint fully resolved during ADR mediation?** (Yes, No)
 - **If not, was it resolved immediately following your participation in ADR mediation?** (Yes, No)
6. **Were your expectations for participating in ADR mediation met?** (Yes, No)
 - **If not, why not?** (Please explain what expectations were unmet.)
7. **If your complaint has been resolved, how satisfied are you with the resolution of your complaint?** (1 - Highly dissatisfied, 2 - Somewhat dissatisfied, 3 - Neither satisfied nor Dissatisfied, 4 - Somewhat Satisfied, 5 - Very Satisfied)
8. **Do you feel the ADR process was fair?** (1 - Not at all Fair, 2 - Somewhat unfair, 3 - Neither Fair nor Unfair, 4 - Somewhat Fair, 5 - Very Fair)
9. **Based upon how your experience in participating in the ADR program, how likely are you to continue working for your agency?** (1 - Very Unlikely, 2 - Somewhat Unlikely, 3 - Uncertain, 4 - Somewhat Likely, 5 - Very Likely)
10. **Any additional feedback?** (Please share your thoughts here.)

This sample of questions is not intended to be exhaustive. An agency's unique ADR policy and procedures might necessitate the addition of other topics for exploration.