

DIRECTIVE

SUBJECT: OIG Whistleblower Protection Alternative Dispute Resolution Pilot Program	DIRECTIVE NUMBER: 2022-DIR-001
DISTRIBUTION: All Employees and Contractors	DATE ISSUED: August 11, 2022

I. Purpose

The directive establishes policies for the pilot Whistleblower Protection Alternative Dispute Resolution (ADR) program. The pilot ADR program offers complainants and the Responsible Management Official, employer representative or their designee (the parties) an alternative to the Whistleblower Protection Unit (WPU) investigative process.

II. Scope

This directive applies to all DHS employees, former employees, applicants, contractors and former contractors.

III. Authorities

- A. *The Inspector General Act of 1978*, as amended December 5, 2008.
- B. *DHS Directive 0810.1, The Office of Inspector General*, issued June 10, 2004.
- C. *OIG Directive OIG-2016-005.v2, OIG Handling of Whistleblower Retaliation Complaints*, issued January 24, 2017.
- D. Title 5 United States Code (U.S.C.) § 571, *Administrative Dispute Resolution Act of 1996*, October 19, 1996.
- E. *Whistleblower Protection Enhancement Act of 2012*, 112 Pub. L. No. 199 (2012).
- F. *Presidential Policy Directive-19, Protecting Whistleblower with Access to Classified Information*, October 10, 2012.
- G. *Intelligence Reform and Terrorism Prevention Act of 2004*, Pub. L. No. 108-458, § 3001 (codified at 50 U.S.C. § 3341).

- H. *Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information*, 41 U.S.C. § 4712.
- I. *Contractor Employees: Protection from Reprisal for Disclosure of Certain Information*, 10 U.S.C. § 2409.
- J. *Military Whistleblower Protection Act*, 10 U.S.C. § 1034 (MWPA).

IV. Definitions

- A. Alternative Dispute Resolution (ADR) - An informal, voluntary process in which parties may reach a resolution by using mediation or facilitated settlement negotiations.
- B. Mediation - An informal and flexible process in which a neutral third party assists the opposing parties in reaching a voluntary, negotiated resolution of the complaint.
- C. Facilitated settlement negotiations – A neutral third-party acts as an intermediary between the parties and communicates the needs and opinions of each party to the opposing party.

V. Policy

The OIG Whistleblower Protection ADR program is available to complainants employed as DHS contractors (Contractor Disclosure Program), Uniformed Coast Guard members (MWPA), and employees alleging retaliatory security clearance actions (PPD-19). In rare instances, DHS OIG may use discretionary authority to refer DHS civilian federal employee complainants to the Whistleblower Protection ADR process for other (non-PPD-19) allegations.

The ADR process is voluntary and often provides a faster and more efficient resolution of disputes. The process is facilitated by an ADR Attorney or DHS OIG Office of Counsel (OC) designee who serves as a neutral intermediary between the parties during a facilitated negotiation or as a mediator during a mediation. The ADR Attorney does not provide legal representation to either party and does not have decision-making authority regarding the resolution of the dispute.

The parties must agree to enter the ADR process in a good faith effort to resolve the pending complaint. The ADR process and all dispute resolution communications are confidential unless otherwise agreed upon by the parties through written agreement or disclosure is required through a compulsory process.

VI. Responsibilities

- A. DHS OIG OC exercises overall supervision for the ADR program.
- B. ADR Attorney(s) communicate with parties to discuss the DHS OIG whistleblower protection ADR pilot program, confidentiality provisions, and processes; facilitate the dispute resolution process as an impartial neutral to assist parties in reaching a mutually agreeable resolution; and ensure drafted settlement agreements are consistent with the law.

VII. Procedures

If both parties in a complaint (the complainant and Responsible Management Official, employer representative or their designee) agree to participate in ADR, the ADR Attorney works with the parties to facilitate negotiations or a mediation.

VIII. Questions

Address any questions or concerns regarding this Directive to the DHS OIG Deputy Counsel, the Whistleblower Protection Coordinator, or the lead ADR Attorney.

APPROVED BY: _____

JOSEPH V CUFFARI

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