

Nothing prohibits the disclosure of information to persons not directly participating in a mediation, e.g., government officials, supervising attorneys, brokers, and life care planners, whose possession of such information is necessary to further the progress of the ADR proceeding. Individuals given information on this basis are bound by the confidentiality requirements above.

The mediator must not reveal to the presiding special master or others the nature of the discussions or specific offers made during the ADR process. The mediator is not prohibited, however, from providing the presiding special master with a brief general report on the progress of the negotiations and whether a settlement is likely, without disclosing the substance of the negotiations or the positions of the parties.

The parties ordinarily agree that if the ADR proceedings fail to result in settlement, the parties, and any other participants in the proceedings, will be bound by this rule of confidentiality.

In the “shuttle diplomacy” process, the mediator/evaluator will often be required to convey the substance of one party’s position or offer to the other party. If any additional information is to be conveyed, the party should explicitly inform the mediator/evaluator of that information and grant permission to disclose it.

## **Chapter 5. Post-Settlement Processing.**

### **A. Approval Process Time Constraints.**

Once a case is tentatively settled, there is a period of time before the settlement is approved and payment can be made. Because both the client agency (Health and Human Services) and the Department of Justice must review any tentative settlement reached by the parties, the agencies must obtain final approval from the authorized agency personnel. The time frames vary, depending on whether entitlement has been determined prior to settlement. If entitlement has been determined prior to the tentative settlement, a proffer is often used, resulting in faster processing. If entitlement has not been determined, the special master will issue a “15-Week Order,” setting deadlines for finalizing and filing an executed settlement agreement.

### **B. Issues Regarding the Purchase of Annuities.**

The parties may negotiate that the annuity pay a stream of benefits, usually expressed as annual payments of certain amounts for a specific number of years or for the life of the payee. Alternatively, on some occasions, the parties negotiate a sum certain to be used to purchase an annuity. In such instances, the agreed on settlement amount is the sum used to purchase the annuity. The distinction between these two approaches is significant because fluctuations in market conditions between the time of negotiation and the time the annuity is purchased may affect the annuity’s value. If a stream of benefits has been negotiated, then the amount paid to petitioner is certain and any fluctuation will affect the amount the respondent pays for that annuity, increasing or

decreasing the cost. If a sum certain has been negotiated, the cost of the annuity is set, and any fluctuation will affect the stream of benefits, increasing or decreasing the amount paid to petitioner.