



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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### Information Interchange Bulletin No. 018

# Administrative Dispute Resolution Act Basics

## What is alternative dispute resolution (ADR)?

ADR refers to techniques for resolving disputes without litigation or formal adjudicative proceedings. ADR techniques include:

- conciliation,
- facilitation,
- mediation,
- factfinding,
- minitrials,
- arbitration, and
- use of ombuds.

## What is the Administrative Dispute Resolution Act (ADRA)?

ADRA, 5 U.S.C §§ 571–584, provides the governing framework for ADR use by federal agencies. The statute promotes federal agencies' use of ADR techniques to resolve disputes in connection with agency actions, including:

- formal and informal adjudications,
- enforcement actions,
- license and permit issuance and revocation,
- contract administration, and
- litigation brought by or against the agency.

## What does ADRA require?

ADRA requires, among other things, that agencies adopt a policy on ADR use, designate a dispute resolution specialist, and provide regular training for personnel involved in implementing ADR policy.

ADRA does not require agencies to use “dispute resolution proceedings,” which ADRA defines to mean proceedings in which a “neutral” is appointed to help aid parties resolve an “issue in controversy” using ADR techniques. 5 U.S.C. § 571(6). Agencies that choose to use dispute resolution proceedings can customize them to suit the programs they administer.

## When may agencies use ADR?

As Congress recognized in ADRA, use of ADR can yield “decisions that are faster, less expensive, and less contentious” and “lead to more creative, efficient, and sensible outcomes.” ADRA encourages agencies to use ADR techniques to resolve issues in controversy in a wide variety of contexts.

Under ADRA, ADR techniques are “voluntary procedures” that “supplement rather than limit other available agency dispute resolution techniques” such as adjudication. In general, agencies may use dispute resolution proceedings to resolve an issue in controversy if all parties agree to do so. 5 U.S.C. § 572.

## When should agencies consider not using ADR?

Agencies should consider not using a dispute resolution proceeding if:

“[A] definitive or authoritative resolution of the matter is required for **precedential value**, and [a dispute resolution] proceeding is not likely to be accepted generally as an authoritative precedent.”

“[T]he matter involves or may bear upon **significant questions of Government policy** that require additional procedures before a final resolution may be made, and [a dispute resolution] proceeding would not likely serve to develop a recommended policy for the agency.”

“[M]aintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach **consistent results** among individual decisions.”

“[T]he matter **significantly affects persons or organizations who are not parties** to the proceeding.”

“[A] **full public record** of the proceeding is important, and a dispute resolution proceeding cannot provide such a record.”

“[T]he agency must maintain **continuing jurisdiction** over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency’s fulfilling that requirement.”

## Are dispute resolution proceedings confidential?

Confidentiality can be an important part of dispute resolution proceedings, as it allows parties to speak candidly and achieve consensus. ADRA balances openness with confidentiality by prohibiting neutrals from disclosing certain “dispute resolution communications” and exempting such communications from the Freedom of Information Act. 5 U.S.C. § 574. Protections do not extend to some materials, including final settlement agreements and agreements to enter into dispute resolution proceedings. 5 U.S.C. § 571(5).

### Additional Resources

[Alternative Dispute Resolution Act](#), ACUS Admin. Procedure Sourcebook  
Kristen Blankley, Kathleen Claussen & Judith Starr, [Alternative Dispute Resolution in Agency Administrative Programs](#) (2021)

ADR.gov, [www.adr.gov](http://www.adr.gov)

ACUS Rec. [2016-5](#), The Use of Ombuds in Federal Agencies

ACUS Rec. [2014-1](#), Resolving FOIA Disputes Through Targeted ADR Strategies

ACUS Rec. [88-5](#), Agency Use of Settlement Judges

ACUS Rec. [86-3](#), Agencies’ Use of Alternative Means of Dispute Resolution