

106TH CONGRESS
1ST SESSION

H. R. 3312

To clarify the Administrative Dispute Resolution Act of 1996 to authorize the Merit Systems Protection Board to establish under such Act a 3-year pilot program that will provide a voluntary early intervention alternative dispute resolution process to assist Federal agencies and employees in resolving certain personnel actions and disputes in administrative programs.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1999

Mr. GEKAS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To clarify the Administrative Dispute Resolution Act of 1996 to authorize the Merit Systems Protection Board to establish under such Act a 3-year pilot program that will provide a voluntary early intervention alternative dispute resolution process to assist Federal agencies and employees in resolving certain personnel actions and disputes in administrative programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Merit Systems Protec-
3 tion Board Administrative Dispute Resolution Act of
4 1999”.

5 **SEC. 2. FINDINGS AND PURPOSES.**

6 (a) FINDINGS.—The Congress finds the following:

7 (1) Workplace disputes waste resources of the
8 Federal Government, take up too much time, and
9 deflect managers and employees from their primary
10 job functions.

11 (2) The Merit Systems Protection Board (here-
12 after in this Act referred to as the “Board”) has al-
13 ready taken steps to encourage agency use of ADR
14 before appeals are filed with the Board, including
15 extending the regulatory time limit for filing appeals
16 when the parties agree to try ADR, but high levels
17 of litigation continue.

18 (3) The Board’s administrative judges, who de-
19 cide appeals from personnel actions by Federal agen-
20 cies, find that by the time cases are formally filed
21 with the Board, the positions of the parties have
22 hardened, communication between the parties is dif-
23 ficult and often antagonistic, and the parties are not
24 amenable to open discussion of alternatives to litiga-
25 tion.

1 (4) Early intervention by an outside neutral,
2 after the first notice of a proposed action by an
3 agency or the Board but before an appeal is filed
4 with the Board, will allow the parties to explore set-
5 tlement outside the adversarial context. However,
6 without the encouragement of a neutral provided
7 without cost, agencies are reluctant to support an
8 early intervention ADR program.

9 (5) A short-term pilot program allowing the
10 Board to intervene early in a personnel dispute or
11 administrative program dispute is an effective means
12 to test whether ADR at that stage can resolve dis-
13 putes, limit appeals to the Board, and reduce time
14 and money expended in such matters.

15 (6) The Board is well equipped to conduct a
16 voluntary early intervention pilot program testing
17 the efficacy of ADR at the initial stages of a per-
18 sonnel dispute or administrative action dispute. The
19 Board can provide neutrals who are already well
20 versed in both ADR techniques and personnel law.
21 Board administrative judges handle a diverse work-
22 load including removals, suspensions for more than
23 14 days, and other adverse actions, and in the
24 course of litigation have to resolve complex legal and
25 factual questions.

1 (c) PURPOSES.—It is the purpose of this Act to au-
2 thorize the Board to establish and operate a 3-year pilot
3 program to determine whether voluntary early interven-
4 tion ADR is an effective means to limit litigation, and,
5 180 days before the expiration of the 3-year period, the
6 Board shall file a comprehensive report with the President
7 and Congress, including a recommendation as to whether
8 the program should be made permanent.

9 **SEC. 2. MERIT SYSTEMS PROTECTION BOARD ALTER-**
10 **NATIVE DISPUTE RESOLUTION PILOT PRO-**
11 **GRAM.**

12 (a) AMENDMENT TO CHAPTER 5 OF TITLE 5.—
13 Chapter 5 of title 5, United States Code, is amended by
14 adding immediately after section 584 the following:

15 **“§ 585. Establishment of voluntary early intervention**
16 **alternative dispute resolution pilot pro-**
17 **gram for Federal personnel disputes**

18 “(a) IN GENERAL.—

19 “(1) The Board is authorized under section 572
20 to establish a 3-year pilot program to provide Fed-
21 eral employees and agencies with voluntary early
22 intervention alternative dispute resolution (in this
23 section referred to as “ADR”) processes to apply to
24 personnel disputes and disputes in administrative
25 programs under the Board. In the case of personnel

1 disputes, the Board shall provide ADR services in
2 matters involving removals, suspensions for more
3 than 14 days, other adverse actions under section
4 7512 of this title, and removals and other actions
5 based on unacceptable performance under section
6 4303 of this title.

7 “(2) The Board shall test and evaluate a vari-
8 ety of ADR techniques, which may include—

9 “(A) settlement judges or attorneys;

10 “(B) mediation through use of shared
11 neutrals;

12 “(C) mediation by Board staff or others as
13 appointed by the Chairman;

14 “(D) administrative arbitration; and

15 “(E) certified ADR counselors (agency
16 personnel specifically trained in Board law and
17 ADR techniques).

18 “(b) EARLY INTERVENTION ADR.—

19 “(1) AUTHORITY.—The Board is authorized to
20 establish an early intervention ADR process, which
21 may be invoked by the Board at any time in the case
22 of a dispute under a Board administrative program
23 and in the case of personnel disputes, after an agen-
24 cy has issued a notice letter of a proposed action to
25 an employee under section 4303 or section 7513 of

1 this title but before an appeal is filed with the
2 Board.

3 “(2) NOTICE IN PERSONNEL DISPUTES.—Dur-
4 ing the term of the pilot program, an agency shall,
5 in the notice letter of a proposed personnel action
6 under section 4303 or section 7513 of this title, ad-
7 vise the employee that early intervention ADR is
8 available from the neutral Board and that the agen-
9 cy and employee may jointly request it.

10 “(3) REQUEST.—Any agency and employee may
11 seek early intervention ADR from the Board by fil-
12 ing a joint request with the Board pursuant to the
13 program standards adopted under subsection
14 (c)(1)(A). All personnel dispute matters appealable
15 to the Board under section 4303 or section 7513 of
16 this title shall be subject to early intervention ADR
17 unless the Board determines that the matter is not
18 appropriate for the program.

19 “(c) IMPLEMENTATION.—

20 “(1) PROGRAM DUTIES.—In carrying out the
21 program under this section, the Board shall—

22 “(A) develop and prescribe standards for
23 selecting and handling cases in which ADR is
24 to be used;

1 “(B) take such actions as may be nec-
2 essary, including waiver of all statutory, regu-
3 latory, or Board imposed adjudicatory time
4 frames; and

5 “(C) establish a time target within which
6 it intends to complete the ADR process.

7 “(2) EXTENSION.—A party may request an ex-
8 tension of the ADR period, or the Board may extend
9 the time period as it finds appropriate.

10 “(3) RECRUITMENT.—The Chairman of the
11 Board may recruit and hire temporary staff or con-
12 tractors to carry out the provisions of this section.

13 “(4) REGULATIONS.—The Board is authorized
14 to prescribe such regulations as may be necessary to
15 implement the ADR program.

16 “(d) EVALUATION.—

17 “(1) CRITERIA.—The Board’s Office of Policy
18 and Evaluation shall establish criteria for evaluating
19 the ADR pilot program and prepare a report con-
20 taining findings and recommendations as to whether
21 voluntary early intervention ADR is desirable, effec-
22 tive, and appropriate for cases subject to section
23 4303 or section 7513 of this title or for administra-
24 tive programs under the Board.

1 “(2) REPORT CONTENT.—The report shall
2 include—

3 “(A) the number of cases subject to the
4 ADR program, the agencies involved, the re-
5 sults, and the resources expended;

6 “(B) a comprehensive analysis of the effec-
7 tiveness of the program, including whether it is
8 cost effective;

9 “(C) a survey of customer satisfaction; and

10 “(D) a recommendation regarding the de-
11 sirability of extending the ADR program be-
12 yond the prescribed expiration date and any
13 recommended changes.

14 “(3) REPORT DATE.—The report shall be sub-
15 mitted to the President and the Congress 180 days
16 before the close of the ADR pilot program.”.

17 (b) APPROPRIATIONS.—

18 (1) IN GENERAL.—For the purpose of carrying
19 out the ADR pilot program established by subsection
20 (a), there are authorized to be appropriated the fol-
21 lowing sums: \$1,000,000 for the first fiscal year
22 after the enactment of this Act; \$1,000,000 adjusted
23 by the most recent percentage change in the employ-
24 ment cost index (ECI) for the second fiscal year
25 after the enactment of this Act; and \$1,000,000 ad-

1 justed by the most recent percentage change in the
2 ECI for the third fiscal year after the enactment of
3 this Act.

4 (2) NO REDUCTIONS.—The authorization of ap-
5 propriations by paragraph (1) shall not have the ef-
6 fect of reducing any funds appropriated for the
7 Board for the purpose of carrying out its statutory
8 mission under section 1204 of this title.

9 (c) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall take effect no later than the close of
11 the 60th day after the enactment of appropriations au-
12 thorized by subsection (b)(1) and shall remain in effect
13 for 3 years from the effective date.

14 (d) CONFORMING AMENDMENT.—The table of sec-
15 tions for subchapter IV of chapter 5 of title 5, United
16 States Code, is amended by adding after the item relating
17 to section 584 the following new item:

“585. Establishment of voluntary early intervention ADR pilot program for Fed-
 eral personnel disputes.”.

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