

riculture Reorganization Act of 1994. For complete classification of title II to the Code, see Short Title note set out under section 6901 of this title and Tables.

§ 6992. National Appeals Division and Director

(a) Establishment of Division

The Secretary shall establish and maintain an independent National Appeals Division within the Department to carry out this subchapter.

(b) Director

(1) Appointment

The Division shall be headed by a Director, appointed by the Secretary from among persons who have substantial experience in practicing administrative law. In considering applicants for the position of Director, the Secretary shall consider persons currently employed outside Government as well as Government employees.

(2) Term and removal

The Director shall serve for a 6-year term of office, and shall be eligible for reappointment. The Director shall not be subject to removal during the term of office, except for cause established in accordance with law.

(3) Position classification

The position of the Director may not be a position in the excepted service or filled by a noncareer appointee.

(c) Direction, control, and support

The Director shall be free from the direction and control of any person other than the Secretary. The Division shall not receive administrative support (except on a reimbursable basis) from any agency other than the Office of the Secretary. The Secretary may not delegate to any other officer or employee of the Department, other than the Director, the authority of the Secretary with respect to the Division.

(d) Determination of appealability of agency decisions

If an officer, employee, or committee of an agency determines that a decision is not appealable and a participant appeals the decision to the Director, the Director shall determine whether the decision is adverse to the individual participant and thus appealable or is a matter of general applicability and thus not subject to appeal. The determination of the Director as to whether a decision is appealable shall be administratively final.

(e) Division personnel

The Director shall appoint such hearing officers and other employees as are necessary for the administration of the Division. A hearing officer or other employee of the Division shall have no duties other than those that are necessary to carry out this subchapter.

(Pub. L. 103-354, title II, §272, Oct. 13, 1994, 108 Stat. 3229.)

§ 6993. Transfer of functions

There are transferred to the Division all functions exercised and all administrative appeals pending before the effective date of this subchapter (including all related functions of any officer or employee) of or relating to—

(1) the National Appeals Division established by section 1433e(c)¹ of this title (as in effect on the day before October 13, 1994);

(2) the National Appeals Division established by subsections (d) through (g) of section 1983b¹ of this title (as in effect on the day before October 13, 1994);

(3) appeals of decisions made by the Federal Crop Insurance Corporation; and

(4) appeals of decisions made by the Soil Conservation Service (as in effect on the day before October 13, 1994).

(Pub. L. 103-354, title II, §273, Oct. 13, 1994, 108 Stat. 3230.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in text, probably means the date of enactment of Pub. L. 103-354, which was approved Oct. 13, 1994.

Section 1433e of this title, referred to in par. (1), was repealed by Pub. L. 103-354, title II, §281(b), Oct. 13, 1994, 108 Stat. 3233.

Section 1983b of this title, referred to in par. (2), was repealed by Pub. L. 103-354, title II, §281(c), Oct. 13, 1994, 108 Stat. 3233.

§ 6994. Notice and opportunity for hearing

Not later than 10 working days after an adverse decision is made that affects the participant, the Secretary shall provide the participant with written notice of such adverse decision and the rights available to the participant under this subchapter or other law for the review of such adverse decision.

(Pub. L. 103-354, title II, §274, Oct. 13, 1994, 108 Stat. 3230.)

§ 6995. Informal hearings

(a) In general

If an officer, employee, or committee of an agency makes an adverse decision, the agency shall hold, at the request of the participant, an informal hearing on the decision.

(b) Farm Service Agency

With respect to programs carried out through the Consolidated Farm Service Agency (or other office, agency, or administrative unit of the Department assigned to carry out the programs authorized for the Consolidated Farm Service Agency under section 6932 of this title), the Secretary shall maintain the informal appeals process applicable to such programs, as in effect on October 13, 1994.

(c) Mediation

If a mediation program is available under title V of the Agricultural Credit Act of 1987 (7 U.S.C. 5101 et seq.) as a part of the informal hearing process, the participant shall—

(1) be offered the right to choose such mediation; and

(2) to the maximum extent practicable, be allowed to use both informal agency review and mediation to resolve disputes under that title.

(Pub. L. 103-354, title II, §275, Oct. 13, 1994, 108 Stat. 3230; Pub. L. 110-234, title XII, §12032, May

¹ See References in Text note below.

22, 2008, 122 Stat. 1391; Pub. L. 110-246, §4(a), title XII, §12032, June 18, 2008, 122 Stat. 1664, 2153.)

REFERENCES IN TEXT

The Agricultural Credit Act of 1987, referred to in subsec. (c), is Pub. L. 100-233, Jan. 6, 1988, 101 Stat. 1568. Title V of the Act is classified principally to chapter 82 (§5101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 2001 of Title 12, Banks and Banking, and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Pub. L. 110-246, §12032, designated the three sentences of existing provisions as subsecs. (a) to (c), respectively, inserted headings, and in subsec. (c) designated part of existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

§ 6996. Right of participants to Division hearing

(a) Appeal to Division for hearing

Subject to subsection (b) of this section, a participant shall have the right to appeal an adverse decision to the Division for an evidentiary hearing by a hearing officer consistent with section 6997 of this title.

(b) Time for appeal

To be entitled to a hearing under section 6997 of this title, a participant shall request the hearing not later than 30 days after the date on which the participant first received notice of the adverse decision.

(Pub. L. 103-354, title II, §276, Oct. 13, 1994, 108 Stat. 3230.)

§ 6997. Division hearings

(a) General powers of Director and hearing officers

(1) Access to case record

The Director and hearing officer shall have access to the case record of any adverse decision appealed to the Division for a hearing.

(2) Administrative procedures

The Director and hearing officer shall have the authority to require the attendance of witnesses, and the production of evidence, by subpoena and to administer oaths and affirmations. Except to the extent required for the disposition of ex parte matters as authorized by law—

(A) an interested person outside the Division shall not make or knowingly cause to be made to the Director or a hearing officer who is or may reasonably be expected to be involved in the evidentiary hearing or review of an adverse decision, an ex parte communication (as defined in section 551(14) of

title 5) relevant to the merits of the proceeding;

(B) the Director and such hearing officer shall not make or knowingly cause to be made to any interested person outside the Division an ex parte communication relevant to the merits of the proceeding.

(b) Time for hearing

Upon a timely request for a hearing under section 6996(b) of this title, an appellant shall have the right to have a hearing by the Division on the adverse decision within 45 days after the date of the receipt of the request for the hearing.

(c) Location and elements of hearing

(1) Location

A hearing on an adverse decision shall be held in the State of residence of the appellant or at a location that is otherwise convenient to the appellant and the Division.

(2) Evidentiary hearing

The evidentiary hearing before a hearing officer shall be in person, unless the appellant agrees to a hearing by telephone or by a review of the case record. The hearing officer shall not be bound by previous findings of fact by the agency in making a determination.

(3) Information at hearing

The hearing officer shall consider information presented at the hearing without regard to whether the evidence was known to the agency officer, employee, or committee making the adverse decision at the time the adverse decision was made. The hearing officer shall leave the record open after the hearing for a reasonable period of time to allow the submission of information by the appellant or the agency after the hearing to the extent necessary to respond to new facts, information, arguments, or evidence presented or raised by the agency or appellant.

(4) Burden of proof

The appellant shall bear the burden of proving that the adverse decision of the agency was erroneous.

(d) Determination notice

The hearing officer shall issue a notice of the determination on the appeal not later than 30 days after a hearing or after receipt of the request of the appellant to waive a hearing, except that the Director may establish an earlier or later deadline. If the determination is not appealed to the Director for review under section 6998 of this title, the notice provided by the hearing officer shall be considered to be a notice of an administratively final determination.

(e) Effective date

The final determination shall be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable.

(Pub. L. 103-354, title II, §277, Oct. 13, 1994, 108 Stat. 3230.)