

103^D CONGRESS
1ST SESSION

S. 1425

To establish a National Appeals Division of the Department of Agriculture to hear appeals of adverse decisions made by certain agencies of the Department, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, JUNE 30), 1993

Mr. CONRAD (for himself, Mr. DASCHLE, and Mr. DORGAN) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To establish a National Appeals Division of the Department of Agriculture to hear appeals of adverse decisions made by certain agencies of the Department, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “USDA National Appeals Division Act of 1993”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

- Sec. 3. National Appeals Division.
- Sec. 4. Notice and opportunity for hearing.
- Sec. 5. Informal hearings and meetings; appealable decisions.
- Sec. 6. Access to materials.
- Sec. 7. Hearings.
- Sec. 8. Administrative appeal review.
- Sec. 9. Judicial review.
- Sec. 10. Implementation of final determinations of Division.
- Sec. 11. Evaluation of employees.
- Sec. 12. Prohibition on adverse action while appeal pending.
- Sec. 13. Registry of advocates.
- Sec. 14. Relationship to other laws.
- Sec. 15. Transfer of functions.
- Sec. 16. Authorization of appropriations.
- Sec. 17. State mediation programs.
- Sec. 18. Conforming amendments.
- Sec. 19. Effective date.

1 **SEC. 2. DEFINITIONS.**

2 As used in this Act (unless the context clearly re-

3 quires otherwise):

4 (1) ADVERSE DECISION.—

5 (A) IN GENERAL.—The term “adverse de-

6 cision” means an administrative decision made

7 by a decision-maker that is adverse to an appel-

8 lant, including a denial of equitable relief, ex-

9 cept that the term shall not include a decision

10 made by the Board of Contract Appeals with

11 respect to a contract appeal.

12 (B) FAILURE TO ISSUE DECISION.—The

13 failure of an agency to issue a decision on the

14 request or right of an appellant to participate

15 in, or receive payments, loans, or other benefits

16 in accordance with, any of the programs admin-

17 istered by an agency—

1 (i) shall be considered an adverse de-
2 cision if the decision is not issued within a
3 period prescribed by statute or regulation;
4 or

5 (ii) may be considered an adverse de-
6 cision if—

7 (I) a period is not prescribed by
8 statute or regulation; or

9 (II) the decision is not issued
10 within a reasonable period of time.

11 (2) AGENCY.—The term “agency” means—

12 (A) the Agricultural Stabilization and Con-
13 servation Service;

14 (B) the Commodity Credit Corporation;

15 (C) the Farmers Home Administration;

16 (D) the Federal Crop Insurance Corpora-
17 tion;

18 (E) the Rural Development Administra-
19 tion;

20 (F) the Soil Conservation Service;

21 (G) a State or county committee estab-
22 lished under section 8(b) of the Soil Conserva-
23 tion and Domestic Allotment Act (16 U.S.C.
24 590h(b)); or

1 (H) a successor to an agency referred to in
2 subparagraphs (A) through (G).

3 (3) APPELLANT.—The term “appellant” means
4 any person or entity—

5 (A) whose request or right to participate
6 in, or receive payments, loans, or other benefits
7 in accordance with, any of the programs admin-
8 istered by an agency is affected by an adverse
9 decision made by a decisionmaker; and

10 (B) who appeals the adverse decision in ac-
11 cordance with this Act.

12 (4) CASE RECORD.—The term “case record”
13 means all the materials maintained by the Secretary
14 that concern the appellant, including materials so
15 maintained that are used to make the adverse
16 decision.

17 (5) DECISIONMAKER.—The term “decision-
18 maker” means—

19 (A) an officer or employee of an agency; or

20 (B) in the case of a State or county com-
21 mittee referred to in paragraph (2)(G), the
22 State or county committee,
23 who makes an adverse decision that is appealed by
24 an appellant.

1 (6) DEPARTMENT.—The term “Department”
2 means the United States Department of Agriculture.

3 (7) DIRECTOR.—The term “Director” means
4 the Director of the Division.

5 (8) DIVISION.—The term “Division” means the
6 National Appeals Division established by this Act.

7 (9) EMPLOYEE.—The term “employee” means
8 an individual employed by an agency, including an
9 individual who enters into a contract with an agency
10 to perform services for the agency.

11 (10) EX PARTE COMMUNICATION.—The term
12 “ex parte communication” means an oral or written
13 communication not on the public record with respect
14 to which reasonable prior notice to all parties is not
15 given, except that the term shall not include a re-
16 quest for a status report on any matter or proceed-
17 ing.

18 (11) FINAL DETERMINATION.—The term “final
19 determination” means a determination of an appeal
20 by the Division that is administratively final, conclu-
21 sive, and binding.

22 (12) FINAL DETERMINATION NOTICE.—The
23 term “final determination notice” means a written
24 determination on an appeal sent to an appellant

1 under paragraph (8) of section 7(b) or subsection
2 (d) or (e)(4) of section 8.

3 (13) FUNCTION.—The term “function” means
4 any duty, obligation, power, authority, responsibility,
5 right, privilege, activity, or program.

6 (14) HEARING OFFICER.—The term “hearing
7 officer” means an individual employed by the Divi-
8 sion who hears and determines appeals.

9 (15) HEARING RECORD.—The term “hearing
10 record” means the transcript of a hearing, any audio
11 tape or similar recording of a hearing, any informa-
12 tion from the case record that a hearing officer con-
13 siders relevant or that is raised by the appellant or
14 agency, and all documents and other evidence pre-
15 sented to a hearing officer.

16 (16) IMPLEMENT.—The term “implement”
17 means to effectuate fully and promptly a final deter-
18 mination of the Division not later than 30 calendar
19 days after the effective date of the final determina-
20 tion specified in section 7(h)(2).

21 (17) PARTICIPANT.—The term “participant”
22 means any person whose application for or right to
23 participate in, or receive payments, loans, or other
24 benefits in accordance with, any of the programs ad-

1 ministered by an agency is affected by an adverse
2 decision made by a decisionmaker.

3 (18) SECRETARY.—The term “Secretary”
4 means the Secretary of Agriculture.

5 (19) STATE DIRECTOR.—The term “State di-
6 rector” means the individual who is primarily re-
7 sponsible for carrying out the program of an agency
8 within a State.

9 **SEC. 3. NATIONAL APPEALS DIVISION.**

10 (a) ESTABLISHMENT.—The Secretary shall establish
11 and maintain a National Appeals Division, within the Of-
12 fice of the Secretary, to carry out this Act.

13 (b) DIRECTOR.—

14 (1) IN GENERAL.—

15 (A) APPOINTMENT.—The Division shall be
16 headed by a Director, appointed by the Sec-
17 retary from among individuals (including indi-
18 viduals who are attorneys and individuals who
19 are not attorneys) with substantial experience
20 in practicing administrative law. The position of
21 the Director shall be a Senior Executive Service
22 position (as defined in section 3132(a)(2) of
23 title 5, United States Code) that shall be filled
24 by a career appointee (as defined in section

1 3132(a)(4) of such title) or noncareer appointee
2 (as defined in section 3132(a)(7) of such title).

3 (B) REMOVAL.—The Secretary may only
4 remove the Director for maladministration, mal-
5 feasance, neglect of duty, or otherwise in ac-
6 cordance with statutes and regulations govern-
7 ing Federal employee personnel.

8 (2) POWERS.—

9 (A) IN GENERAL.—To carry out this Act,
10 the Secretary shall promulgate procedural regu-
11 lations and policies governing the conduct of
12 the business of the Division consistent with this
13 Act and chapters 5 and 6 of title 5, United
14 States Code, including—

- 15 (i) the conduct of appeals;
- 16 (ii) the standard of review;
- 17 (iii) guidelines for the type of evidence
18 that is necessary to justify an adverse deci-
19 sion by an agency;
- 20 (iv) the conduct of reviews of appeals;
- 21 (v) the appeals process; and
- 22 (vi) other actions affecting the proce-
23 dural rights of appellants.

24 (B) REGULATIONS.—In promulgating reg-
25 ulations under subparagraph (A), the Secretary

1 shall ensure and enhance the independence, in-
2 tegrity, and efficiency of the Division, the Di-
3 rector, hearing officers, and other employees of
4 the Division.

5 (C) DELEGATION.—The Secretary may
6 delegate the authority of the Secretary to pro-
7 mulgate the regulations to the Director.

8 (D) APPEALABLE DECISIONS.—If a
9 decisionmaker determines that an adverse deci-
10 sion is not appealable and the participant ap-
11 peals the determination to the Director, the Di-
12 rector shall determine whether the decision is
13 appealable.

14 (3) DIRECTION, CONTROL, AND SUPPORT.—The
15 Director shall be free from the direction and control
16 of any person other than the Secretary, and shall
17 not receive administrative support (except on a reim-
18 bursable basis) from any person other than the Of-
19 fice of the Secretary.

20 (4) LEVEL V OF EXECUTIVE SCHEDULE.—Sec-
21 tion 5316 of title 5, United States Code, is amended
22 by adding at the end the following:

23 “Director, National Appeals Division, Depart-
24 ment of Agriculture.”.

25 (c) LEGAL COUNSEL.—

1 (1) IN GENERAL.—The Director shall employ
2 legal counsel to advise the Director and hearing offi-
3 cers of the Division with respect to such legal ques-
4 tions as the Director considers appropriate for the
5 Division. A legal counsel shall not serve as a counsel
6 to any other division or agency of the Department.

7 (2) CONSTRUCTION.—Paragraph (1) is not in-
8 tended to affect the role of the Office of General
9 Counsel in representing the Department in civil or
10 criminal actions or as a liaison between the Depart-
11 ment and the Department of Justice.

12 (d) DIRECTOR, HEARING OFFICERS, AND OTHER
13 EMPLOYEES.—

14 (1) IN GENERAL.—The Director shall appoint
15 such hearing officers and other employees as are
16 necessary for the administration of the Division.

17 (2) POWERS OF THE DIRECTOR AND HEARING
18 OFFICERS.—To carry out this Act, the Director and
19 hearing officers—

20 (A) shall have access to all records, re-
21 ports, audits, reviews, documents, papers, rec-
22 ommendations, or other material available that
23 relate to programs and operations with respect
24 to which an appeal has been taken;

1 (B) may request such information or as-
2 sistance as may be necessary for carrying out
3 the duties and responsibilities established under
4 this Act from any Federal, State, or local gov-
5 ernmental agency or unit of the agency;

6 (C) may, or shall at the request of an ap-
7 pellant with good cause shown, require the at-
8 tendance of witnesses, the production of all
9 information, documents, reports, answers,
10 records, accounts, papers, and other data and
11 documentary evidence necessary to the proper
12 resolution of appeals;

13 (D) may permit testimony to be taken by
14 deposition, if it is inconvenient for a witness to
15 attend a hearing;

16 (E) may, if appropriate, require the at-
17 tendance of witnesses and production of docu-
18 mentary evidence by subpoena, which subpoena,
19 in the case of contumacy or refusal to obey,
20 shall be enforceable by order of any appropriate
21 United States district court;

22 (F) may administer oaths and affirma-
23 tions, whenever necessary in the process of
24 hearing appeals; and

1 (G) in the case of the Director, may enter
2 into contracts and other arrangements for re-
3 porting and other services and make such pay-
4 ments as may be necessary to carry out this
5 Act.

6 (3) EXCLUSIVE EMPLOYMENT.—An employee of
7 the Division shall have no duties other than those
8 that are necessary to carry out this Act.

9 (4) DIRECTION AND CONTROL.—

10 (A) HEARING OFFICERS.—Hearing offi-
11 cers—

12 (i) shall be generally supervised by the
13 Director; and

14 (ii) shall not receive administrative
15 support (except on a reimbursable basis)
16 from offices other than the Division.

17 (B) OTHER EMPLOYEES.—All other em-
18 ployees of the Division—

19 (i) shall report to the Director; and

20 (ii) shall not be under the direction or
21 control of, or receive administrative sup-
22 port (except on a reimbursable basis) from,
23 offices other than the Division.

24 (5) EX PARTE COMMUNICATIONS.—

1 (A) IN GENERAL.—While a proceeding is
2 in adjudicative status within the Division, ex-
3 cept to the extent required for the disposition of
4 ex parte matters as authorized by law—

5 (i) no person not employed by the Di-
6 vision, and no employee or agent of the Di-
7 vision who performs investigative or pros-
8 ecuting functions in adjudicative proceed-
9 ings shall make or knowingly cause to be
10 made to any member of the Division or to
11 any other employee who is or who reason-
12 ably may be expected to be involved in the
13 decisional process in the proceeding, an ex
14 parte communication relevant to the merits
15 of the proceeding or a factually related
16 proceeding; and

17 (ii) no member of the Division or any
18 other employee who is or who reasonably
19 may be expected to be involved in the
20 decisional process in the proceeding shall
21 make or knowingly cause to be made to
22 any person not employed by the Division,
23 or to any employee or agent of the Division
24 who performs investigative or prosecuting
25 functions in adjudicative proceedings, an

1 ex parte communication relevant to the
2 merits of the proceeding or a factually re-
3 lated proceeding.

4 (B) PROCEDURES.—

5 (i) IN GENERAL.—The Director or
6 any other employee who is or who may rea-
7 sonably be expected to be involved in the
8 decisional process who receives or who
9 makes or knowingly causes to be made, a
10 communication prohibited by subparagraph
11 (A) shall promptly provide to the Direc-
12 tor—

13 (I) all such written communica-
14 tions;

15 (II) memoranda stating the sub-
16 stance of and circumstances of all
17 such oral communications; and

18 (III) all written responses, and
19 memoranda stating the substance of
20 all oral responses, to the materials de-
21 scribed in subclauses (I) and (II).

22 (ii) HEARING RECORD.—The Director
23 shall make relevant portions of any such
24 materials part of the hearing record, ex-
25 cept that the materials shall not be consid-

1 ered by the Division as part of the hearing
2 record for purposes of decision unless in-
3 troduced into evidence in the proceeding.

4 (iii) PARTIES.—The Director shall
5 also send copies of the materials to or oth-
6 erwise notify all parties to the proceeding.

7 (C) DIVISION EMPLOYEES.—The prohibi-
8 tions of subparagraph (A) shall not apply to a
9 communication between—

10 (i) any member of the Division or any
11 other employee who is or who reasonably
12 may be expected to be involved in the
13 decisional process; and

14 (ii) any employee who has been di-
15 rected by the Division or requested by the
16 Division to assist in the decision of the ad-
17 judicative proceeding, other than an em-
18 ployee who performs an investigative or
19 prosecuting function in the proceeding or a
20 factually related proceeding.

21 (e) RESOURCES AND PERSONNEL.—The Secretary
22 shall ensure that—

23 (1) the Division has resources and personnel
24 that are adequate to hear and determine all initial
25 appeals in the State of residence of an appellant on

1 a timely basis and to otherwise carry out this Act;
2 and

3 (2) hearing officers, and employees who assist
4 the Director in reviewing appeals and determina-
5 tions, receive training and retraining adequate for
6 the duties on initial employment and at regular in-
7 tervals after initial employment.

8 (f) DELEGATION AND REVIEW.—The Secretary may
9 not delegate to any other person (other than the Director)
10 the authority of the Secretary with respect to the Division.

11 (g) REPORTS AND STUDIES.—

12 (1) IN GENERAL.—The Director shall issue
13 such reports, and conduct and provide such studies,
14 to the Secretary and the head of an agency as the
15 Director determines are necessary to identify and re-
16 solve problems of the agency with respect to imple-
17 mentation of—

18 (A) statutes, policies, procedures, and reg-
19 ulations of the agency, based on final deter-
20 minations of the Division; and

21 (B) final determinations of the Division.

22 (2) SUBMISSION OF REPORTS TO CONGRESS.—
23 Not later than 30 days after receipt of the reports,
24 the Secretary shall transmit the reports unaltered to
25 the Committee on Agriculture of the House of Rep-

representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, together with any report by the Secretary or the relevant agency head containing any comments the Secretary or relevant agency head considers appropriate.

(3) AVAILABILITY TO PUBLIC.—The reports and studies referred to in paragraph (1) shall be made available to the public.

(h) INDEX OF DETERMINATIONS.—

(1) IN GENERAL.—The Director shall develop a subject-matter index of all significant final determinations of the Division that are considered by the Director to—

(A) be precedential; or

(B) otherwise establish a principle that—

(i) governs recurring cases with similar facts;

(ii) develops Division policy and exceptions to the policy in areas in which the law is unsettled;

(iii) deals with important emerging trends; or

(iv) provides examples of the appropriate resolution of major types of cases not otherwise indexed.

1 (2) AVAILABILITY TO PUBLIC.—The Director
2 shall publicize the index and make the index and the
3 final determinations so indexed available to the pub-
4 lic.

5 (3) PUBLIC INFORMATION.—A final determina-
6 tion of the Division shall be subject to the require-
7 ments of section 552 of title 5, United States Code.

8 **SEC. 4. NOTICE AND OPPORTUNITY FOR HEARING.**

9 (a) IN GENERAL.—Not later than 10 working days
10 after an adverse decision affecting a participant, the Sec-
11 retary shall provide the participant with written notice
12 of—

13 (1) the decision, including all of the reasons,
14 facts, and conclusions underlying the adverse deci-
15 sion;

16 (2) the right of the participant to have an infor-
17 mal hearing or meeting with the decisionmaker on
18 the adverse decision;

19 (3) the availability of any State mediation pro-
20 gram under section 501 of the Agricultural Credit
21 Act of 1987 (7 U.S.C. 5101) to assist the partici-
22 pant in resolving a dispute with the agency that is-
23 sued the adverse decision;

1 (4) the availability of any formal administrative
2 appeals within an agency and any requirement to ex-
3 haust the administrative appeals;

4 (5) the right of the participant to have a hear-
5 ing by the Division on the adverse decision not later
6 than 45 calendar days after receipt of the request of
7 the participant for a hearing, except that the Direc-
8 tor may establish an earlier deadline for a hearing
9 on an appeal relating to a time sensitive decision,
10 such as a decision relating to a release of normal in-
11 come security or an operating loan;

12 (6) if the decisionmaker asserts that the ad-
13 verse decision is nonappealable, an opportunity to
14 request a determination by the Director concerning
15 whether an adverse decision is appealable; and

16 (7) a description of the procedure to—

17 (A) exhaust all formal administrative ap-
18 peals within the agency;

19 (B) appeal the adverse decision to the Di-
20 vision (including any deadlines for filing an ap-
21 peal); and

22 (C) if the decisionmaker asserts that the
23 adverse decision is not appealable, request a de-
24 termination by the Director of whether the deci-
25 sion is appealable.

1 (b) RECORDS.—The Secretary shall maintain all of
2 the materials on which an adverse decision is based with
3 respect to a participant at least until the expiration of the
4 period during which the participant may seek administra-
5 tive or judicial review of the decision.

6 (c) JOINDER.—

7 (1) IN GENERAL.—A borrower or applicant who
8 applies for a loan on which a guarantee is requested,
9 or who has received a guaranteed loan, under the
10 Consolidated Farm and Rural Development Act (7
11 U.S.C. 1921 et seq.) and who is directly and ad-
12 versely affected by a decision of the Secretary, may
13 appeal the decision under this Act without the lender
14 joining in the appeal.

15 (2) RENTAL HOUSING.—A tenant in rental
16 housing of an agency who is individually, directly
17 and adversely affected by a decision of the Sec-
18 retary, may appeal the decision under this Act with-
19 out the landlord joining in the appeal.

20 (3) THIRD PARTIES.—

21 (A) IN GENERAL.—If appropriate to pro-
22 tect the rights of a participant (other than the
23 appellant) that may be directly, substantially,
24 and adversely affected by a decision of the Divi-
25 sion, a hearing officer may invite the partici-

1 pant to participate in a hearing if the final de-
2 termination resulting from the hearing would,
3 as a practical matter, foreclose the participant
4 from protecting the rights of the participant
5 that may be adversely affected by the final de-
6 termination.

7 (B) PROCEDURAL RIGHTS FOR PARTICI-
8 PANTS.—If the participant elects to participate
9 in the hearing, the participant shall have the
10 same procedural rights as the appellant with re-
11 gard to the hearing and other procedures de-
12 scribed in this Act.

13 (C) NO APPEAL RIGHTS FOR
14 NONPARTICIPANTS.—If the participant is in-
15 vited to participate in a hearing by the hearing
16 officer and the participant elects not to partici-
17 pate in the hearing, the participant may not in-
18 stitute an appeal with respect to the implemen-
19 tation of any final determination resulting from
20 the hearing.

21 (D) BASIS FOR INVITING PARTICIPANTS.—
22 The decision to invite a participant under sub-
23 paragraph (A) shall be made at the discretion
24 of the hearing officer taking into account—

1 (i) any request to participate made by
2 the participant;

3 (ii) any request by the appellant to in-
4 clude or exclude the participant;

5 (iii) any request by the decisionmaker
6 to include or exclude the participant;

7 (iv) the opportunity the participant
8 would have to appeal the decision in a sep-
9 arate proceeding and whether the appeal
10 would be adequate to protect the rights of
11 the participant; and

12 (v) such other factors as may be spec-
13 ified in regulations issued by the Director.

14 (d) BASIS FOR DECISIONS.—A decisionmaker—

15 (1) shall base an adverse decision on the infor-
16 mation that is available to the decisionmaker at the
17 time the initial adverse decision is made; and

18 (2) may not base any subsequent adverse deci-
19 sion on information that was previously available to
20 the decisionmaker if that information could have
21 been used to support the initial adverse decision.

22 **SEC. 5. INFORMAL HEARINGS AND MEETINGS; APPEAL-**
23 **ABLE DECISIONS.**

24 (a) INFORMAL HEARINGS.—If an officer or employee
25 of the Agricultural Stabilization and Conservation Service,

1 Commodity Credit Corporation, or Soil Conservation Serv-
2 ice makes an adverse decision, the appropriate State or
3 county committee established under section 8(b) of the
4 Soil Conservation and Domestic Allotment Act (16 U.S.C.
5 590h(b)), or (if applicable) an officer or employee of the
6 Agricultural Stabilization and Conservation Service or the
7 Soil Conservation Service, may, at the request of the par-
8 ticipant, hold an informal hearing on the decision.

9 (b) INFORMAL MEETINGS.—If the Farmers Home
10 Administration or the Rural Development Administration
11 makes an adverse decision, the decisionmaker may, at the
12 request of the appellant, hold an informal meeting with
13 the appellant after the appellant has requested a hearing,
14 and before any hearing on the decision of the
15 decisionmaker by the Division. At a reasonable time prior
16 to the informal meeting, the decisionmaker shall provide
17 to the appellant, and any representative of the appellant,
18 access to materials in accordance with section 6(a).

19 (c) APPEALABLE DECISIONS.—In a case described in
20 paragraph (5) or (6) of section 4(a), the determination
21 of the Director as to whether an adverse decision is ap-
22 pealable shall be administratively final, conclusive, and
23 binding.

1 **SEC. 6. ACCESS TO MATERIALS.**

2 (a) IN GENERAL.—An appellant shall have the right
3 to have—

4 (1) access to all of the materials in the case
5 record, including a reasonable opportunity to inspect
6 and reproduce the record at an office of the agency
7 located in the area of the appellant;

8 (2) representation by an attorney or a person
9 who is not an attorney during the inspection and re-
10 production of records under paragraph (1) and at
11 any informal meeting or hearing or Division hearing;
12 and

13 (3) witnesses present at the hearing.

14 (b) CHARGES.—The Secretary may charge an appel-
15 lant for any reasonable costs incurred in the reproduction
16 of records under subsection (a)(1).

17 **SEC. 7. HEARINGS.**

18 (a) CONDUCT OF HEARING.—At a minimum, at a
19 hearing conducted under this Act, the appellant shall be
20 given a full opportunity to present argument, oral and
21 written evidence, facts, and information relevant to the
22 matter at issue.

23 (b) HEARINGS.—

24 (1) TIMING.—An appellant shall have the right
25 to have a hearing by the Division on an adverse de-
26 cision not later than 45 calendar days after receipt

1 of the request of the participant for a hearing, ex-
2 cept that the Director may establish an earlier dead-
3 line for a hearing on an appeal relating to a time
4 sensitive decision, such as a decision relating to a re-
5 lease of normal income security or an operating
6 loan.

7 (2) DE NOVO HEARING.—A hearing before a
8 hearing officer shall be de novo. An appellant shall
9 have a full opportunity to present information rel-
10 evant to the appeal.

11 (3) HEARING OFFICERS.—A hearing officer
12 within the Division in a State shall hear and deter-
13 mine a formal appeal of an adverse decision, that is
14 subject to this Act and is made by a county super-
15 visor, county committee, State committee, district di-
16 rector, State director, or other officer or employee of
17 an agency, in a fair and impartial manner and free
18 of undue influence. The determination shall be based
19 on information from the hearing record and the ap-
20 plicable statutes and regulations described in sub-
21 section (g).

22 (4) LOCATION OF HEARINGS.—A hearing shall
23 be held in the State of residence of the appellant or
24 at a location that is otherwise convenient to the ap-
25 pellant and the Division.

1 (5) TELEPHONE.—At the request of an appel-
2 lant, a hearing may be conducted over the telephone.

3 (6) WAIVER OF HEARING.—An appellant may
4 waive the right to a hearing on an adverse decision.
5 If an appellant waives the right to a hearing, the
6 hearing officer shall issue a determination based on
7 a review of the case record of the appellant and on
8 information submitted by the appellant or the agen-
9 cy to the hearing officer.

10 (7) BURDEN OF PROOF.—An agency shall bear
11 the burden of justifying an adverse decision of the
12 agency at a hearing, including the burden of proving
13 the justifying evidence and the basis for the decision
14 in statutes and regulations.

15 (8) DETERMINATION NOTICE.—The hearing of-
16 ficer shall issue a determination notice on the appeal
17 of the adverse decision not later than 30 calendar
18 days after a hearing or after receipt of the request
19 of the appellant to waive a hearing, except that the
20 Director may establish an earlier deadline for a de-
21 termination notice relating to a time sensitive deci-
22 sion, such as a decision relating to a release of nor-
23 mal income security or an operating loan.

24 (9) REVIEW BY DIRECTOR.—

1 (A) REFERRAL.—A determination of a
2 hearing officer shall, on request and election of
3 the appellant, be referred to the Director for re-
4 view.

5 (B) ACTIONS.—Not later than 30 calendar
6 days after the referral to the Director, the Di-
7 rector shall—

8 (i) review the hearing record and the
9 determination;

10 (ii) uphold the determination, issue a
11 new determination, require that a new
12 hearing be held on one or more of the is-
13 sues considered at the original hearing, or
14 take any combination of the actions de-
15 scribed in this clause; and

16 (iii) issue a determination notice.

17 (C) PRODUCTION OF RECORD.—

18 (1) VERBATIM RECORDING.—Each hearing be-
19 fore a hearing officer in the Division shall be re-
20 corded verbatim by voice recorder, stenographer, or
21 other method.

22 (2) PERSONAL RECORD.—An appellant or agen-
23 cy representative may record a hearing with a voice
24 recorder or stenographer for personal use. A record
25 made under this paragraph shall be excluded from

1 consideration during any review of the determination
2 of the hearing officer.

3 (3) AVAILABILITY TO APPELLANT.—A tran-
4 script of the hearing, together with a copy of any
5 audio recording of the hearing under paragraph (1)
6 and copies of all documents and evidence submitted,
7 shall be made available to the appellant, on request,
8 if the decision of the hearing officer is appealed.

9 (d) USE OF RECORD.—If the decision of a hearing
10 officer is appealed, the hearing officer shall certify the
11 hearing record and otherwise provide the certified hearing
12 record to the Director. The hearing record, and any addi-
13 tional information from any further appeal proceedings,
14 shall be retained by the Division at least until the expira-
15 tion of the period during which the appellant may seek
16 judicial review of the adverse decision or final determina-
17 tion notice.

18 (e) NEW INFORMATION.—

19 (1) HEARING.—A hearing officer shall consider
20 information presented at the hearing without regard
21 to whether the evidence was known to the
22 decisionmaker at the time the adverse decision was
23 made. The hearing officer shall leave the record
24 open for a reasonable period of time and allow the
25 submission of information after the hearing to the

1 extent necessary to prevent the appellant or the
2 decisionmaker from being prejudiced by new facts,
3 information, arguments, or evidence presented or
4 raised by the decisionmaker or appellant.

5 (2) REVIEW.—The Director may, under ex-
6 traordinary circumstances, consider new information
7 in reviewing a determination under this section or
8 section 8. An appellant and the decisionmaker shall
9 receive and have the opportunity to comment on the
10 new information. If a determination of a hearing of-
11 ficer is reviewed by the Director, and new informa-
12 tion is considered, the hearing officer shall have the
13 opportunity to comment on the new information.

14 (f) FINDINGS OF FACT.—The Director shall not re-
15 verse the determination of a hearing officer or the Direc-
16 tor under this section or section 8 as to a finding of fact
17 that is based on oral testimony or inspection of evidence
18 unless—

19 (1) the finding of fact is clearly erroneous; or
20 (2) the Director is considering new information
21 under subsection (e)(2) with respect to the finding
22 of fact.

23 (g) CONSIDERATION OF STATUTES AND REGULA-
24 TIONS.—In considering the merits of an appeal, a hearing
25 officer and the Director shall base a determination on and

1 consider applicable statutes, and regulations published in
2 the Code of Federal Regulations, in effect and available
3 to the public on the date the decision appealed from was
4 made. The Director shall have the same authority as the
5 Secretary to grant equitable relief.

6 (h) FINALITY.—

7 (1) IN GENERAL.—Except as provided in sub-
8 section (b) of section 7 and in section 8, the deter-
9 mination of a hearing officer or the Director shall be
10 administratively final, conclusive, and binding on the
11 relevant agency.

12 (2) EFFECTIVE DATE OF FINAL DETERMINA-
13 TIONS.—A final determination made by the Division
14 under this Act shall be effective as of—

15 (A) in the case of the Agricultural Sta-
16 bilization Service, the Commodity Credit Cor-
17 poration, the Federal Crop Insurance Corpora-
18 tion, or the Soil Conservation Service, the date
19 of filing an application or the date of the trans-
20 action or event in question, whichever is appli-
21 cable; and

22 (B) in the case of the Farmers Home Ad-
23 ministration and the Rural Development Ad-
24 ministration the date of the original adverse de-
25 cision.

1 **SEC. 8. ADMINISTRATIVE APPEAL REVIEW.**

2 (a) REVIEW OF DECISION OF HEARING OFFICER OR
3 DIRECTOR.—In extraordinary circumstances, if an agency
4 head believes that the decision of a hearing officer or the
5 Director is contrary to a statute or regulation of the agen-
6 cy, the agency head may request (in writing) that the Di-
7 rector review the decision of the hearing officer or the Di-
8 rector.

9 (b) REQUESTS FOR REVIEW.—

10 (1) TIMING.—A request for review under sub-
11 section (a) shall be made within 10 working days
12 after receipt by the decisionmaker of the decision of
13 the hearing officer or Director. If the relevant agen-
14 cy head fails to make a request for review in accord-
15 ance with this section, the decision of the hearing of-
16 ficer or the Director shall be administratively final
17 and shall be promptly implemented.

18 (2) CONTENTS.—A request for review shall in-
19 clude a full description of—

20 (A) the extraordinary circumstances justi-
21 fying the request for review; and

22 (B) the reasons that the relevant agency
23 head claims the decision is contrary to applica-
24 ble statutes or regulations of the relevant agen-
25 cy and the citations for the statutes or regula-
26 tions.

1 (3) COPY TO APPELLANT AND HEARING OFFI-
2 CER.—A copy of the request shall be provided to the
3 appellant and the hearing officer at the same time
4 the request is provided to the Director. The hearing
5 officer shall immediately forward the case record to
6 the Director on receipt of a copy of the request.

7 (c) TIMING OF DETERMINATIONS BY DIRECTOR.—
8 On receiving a request for review and the case record, the
9 Director shall determine within 5 working days after re-
10 ceipt whether the request has merit.

11 (d) REQUESTS WITHOUT MERIT.—If the Director
12 determines that the request does not have merit, the Di-
13 rector shall notify the relevant agency head, the appellant,
14 and the hearing officer, in writing, that the determination
15 of the hearing officer or Director is a final determination.

16 (e) REQUESTS WITH MERIT.—

17 (1) IN GENERAL.—If the Director determines
18 that a request by the relevant agency head has
19 merit, within 10 working days after the receipt of
20 the request for review and receipt of the case record
21 (subject to paragraph (4)), the Director shall—

22 (A)(i) conduct a review of the decision
23 (based on the hearing record), the assertions
24 raised by the relevant agency head in the letter
25 of the relevant agency head requesting an ad-

1 ministrative appeal review, any additional argu-
2 ment submitted by the appellant or the hearing
3 officer pursuant to paragraph (2), and (in ex-
4 traordinary circumstances) any new information
5 submitted by the relevant agency head or the
6 appellant; and

7 (ii) issue a final decision on the appeal; or

8 (B) if the Director determines the hearing
9 record is inadequate, remand the decision for
10 further proceedings to complete the hearing
11 record or, at the option of the Director, to hold
12 a new hearing.

13 (2) OPPORTUNITY FOR COMMENT.—In a review
14 conducted under paragraph (1)(A), an appellant and
15 the hearing officer (if the decision being reviewed
16 was made by a hearing officer) shall have the oppor-
17 tunity to—

18 (A) provide written rebuttal to a claim of
19 the relevant agency head, and in extraordinary
20 circumstances provide new information with re-
21 gard to the review of the Director; and

22 (B) comment in writing with regard to the
23 review.

24 (3) NEW HEARING.—If the Director remands a
25 decision to a hearing officer and directs the hearing

1 officer to conduct a new hearing on the decision
2 under paragraph (1)(B), the hearing officer shall
3 make a new determination with respect to the deci-
4 sion based on the case record and the hearing record
5 (as modified on remand).

6 (4) NOTICE OF FINAL DETERMINATION.—The
7 Director shall notify the hearing officer, any relevant
8 agency head, and the appellant, in writing, of the
9 final determination or other disposition of the re-
10 quest for review.

11 (5) EXTENSION OF DEADLINE.—The period of
12 time for a review may be extended by the Director
13 to the extent that an appellant or hearing officer has
14 requested and received additional time during which
15 to submit arguments, rebuttal, or new information.

16 (6) FINALITY.—Subject to section 9, the deter-
17 mination of the Director shall be administratively
18 final and shall be promptly implemented. The rel-
19 evant agency may not request a second review as to
20 the determination of the hearing officer or the Di-
21 rector on the same issues.

22 (f) RECOMMENDATIONS.—The Director or a hearing
23 officer may include recommendations in a final determina-
24 tion notice.

1 **SEC. 9. JUDICIAL REVIEW.**

2 A final determination of the Division under the proc-
3 ess provided for in this Act shall be reviewable and en-
4 forceable by a United States district court of competent
5 jurisdiction in accordance with chapter 7 of title 5, United
6 States Code.

7 **SEC. 10. IMPLEMENTATION OF FINAL DETERMINATIONS OF**
8 **DIVISION.**

9 (a) **IN GENERAL.**—Except as provided in sections
10 7(c) and 8, on the return of a case to a State pursuant
11 to the final determination of a hearing officer or the Direc-
12 tor, the State committee, county committee, or employee
13 of the relevant agency shall implement the final deter-
14 mination.

15 (b) **ACTIONS BY RELEVANT AGENCY HEAD.**—The
16 relevant agency head shall correct implementation prob-
17 lems, and shall make available to the public a report on
18 the status of implementation of final determinations of the
19 relevant agency head that reversed or modified an adverse
20 decision of the agency.

21 (c) **IMPLEMENTATION.**—

22 (1) **STATE DIRECTOR.**—A State director shall
23 be—

24 (A) responsible for reviewing all appeal re-
25 quests of adverse decisions of the State director
26 or subordinates, prior to hearings, to determine

1 whether the adverse decisions should be modi-
2 fied or withdrawn by the decisionmaker, rather
3 than proceed with the appeals;

4 (B) required to implement final determina-
5 tions of a hearing officer or the Director that
6 affect appellants in the State; and

7 (C) responsible for monitoring and ensur-
8 ing the implementation of final determinations
9 that reverse and modify adverse decisions.

10 (2) AGENCY HEADS.—Relevant agency heads
11 shall be responsible for—

12 (A) the performance of State directors
13 under paragraph (1); and

14 (B) the implementation of all final deter-
15 minations of the Division that reverse or modify
16 adverse decisions of the agency.

17 (d) PROTECTION OF APPELLANTS' RIGHTS.—

18 (1) IN GENERAL.—No officer or employee of
19 the Federal Government shall make or engage in
20 threats or intimidation, or solicit action, to prevent
21 any potential appellant from exercising the rights of
22 the appellant under this Act or make, solicit, or en-
23 gage in retaliation or retribution for the exercise of
24 a right of an appellant under this Act.

1 (2) CORRECTIVE ACTION.—If an officer or em-
2 ployee of the Federal Government violates paragraph
3 (1), the Secretary shall take corrective action (in-
4 cluding the imposition of sanctions, when necessary).

5 (e) IMPLEMENTATION PROBLEMS.—

6 (1) IN GENERAL.—The Secretary shall assign
7 employees within the Office of the Secretary whom
8 appellants may contact concerning problems with the
9 implementation of final determinations of the Divi-
10 sion. The employees shall investigate and, to the ex-
11 tent practicable, resolve the implementation prob-
12 lems.

13 (2) IDENTITY OF EMPLOYEES.—The Secretary
14 shall notify the Director of the name, business ad-
15 dress, and telephone numbers of employees assigned
16 under paragraph (1). The Director shall include this
17 information in the final determination notice of the
18 Director to an appellant.

19 (3) LETTER TO APPELLANT.—Not later than
20 30 calendar days following the issuance of a final
21 determination, the appropriate assigned employee
22 shall mail a letter to the appellant soliciting con-
23 firmation from the appellant that the final deter-
24 mination has been implemented or, if the appellant
25 believes that the decision has not been implemented,

1 a description of the failure to implement the deci-
2 sion.

3 (4) DECISION NOT IMPLEMENTED.—If the ap-
4 pellant indicates that the decision has not been im-
5 plemented, the assigned employee shall immediately
6 undertake to ensure that the final determination is
7 implemented in accordance with this Act.

8 (5) DESCRIPTION OF IMPLEMENTING STEPS.—
9 On determining that the final determination has
10 been implemented, the relevant agency head shall
11 provide the appellant and the assigned employee
12 with a description of the steps taken by the relevant
13 agency to implement the final determination.

14 **SEC. 11. EVALUATION OF EMPLOYEES.**

15 (a) IN GENERAL.—The Secretary shall promulgate
16 regulations that include in an annual review the evaluation
17 of the performance of employees and officials of each
18 agency in accordance with subsection (b).

19 (b) PERFORMANCE.—As part of the review and eval-
20 uation, a decisionmaker, a State director, or the relevant
21 agency head shall be considered to have performed poorly
22 if the decisionmaker, State director, or relevant agency
23 head—

24 (1) takes action that leads to numerous appeals
25 that result in—

1 (A) adverse decisions that are reversed or
2 modified; or

3 (B) administrative appeal reviews that are
4 determined to not have merit by the Division;

5 (2) fails to properly implement decisions;

6 (3) fails to satisfactorily perform the reviewing
7 and monitoring responsibilities required under sec-
8 tion 10(c); or

9 (4) threatens or intimidates, or engages in re-
10 taliation or retribution against, an appellant in viola-
11 tion of section 10(d).

12 (c) SANCTIONS.—If a decisionmaker, State director,
13 or relevant agency head has performed poorly (as de-
14 scribed in subsection (b) or paragraph (2) or (4) of sub-
15 section (d)), the Secretary shall issue sanctions against the
16 decisionmaker, State director, or relevant agency head, re-
17 spectively, which may include a formal reprimand or dis-
18 missal.

19 (d) EVALUATIONS.—

20 (1) IN GENERAL.—The Director shall establish
21 policies that, with regard to the hearing and deter-
22 minations of appeals, provide for the evaluation of
23 hearing officers, the Director, and other employees
24 involved in the review of appeals and determinations
25 or supervision of employees of the Division, or both,

1 by parties outside the Department, which may in-
2 clude peers. The policies shall be made available to
3 the public.

4 (2) PROCESS.—The evaluation process shall en-
5 sure and enhance the independence, integrity, and
6 efficiency of the employees and the Director.

7 (3) CONSULTATION.—The policies shall be de-
8 veloped in consultation with the Administrative Con-
9 ference of the United States, appropriate organiza-
10 tions of administrative law judges, the Director of
11 the Office of Personnel Management, the Judicial
12 College located at the University of Nevada at Reno,
13 and hearing officers.

14 (e) BASIS FOR REVERSALS.—In conducting the eval-
15 uation of the number of appeals decided against the
16 decisionmaker, the Secretary should consider mitigating
17 circumstances, such as whether the reversal was based
18 solely on—

19 (1) new information not previously available to
20 the decisionmaker;

21 (2) erroneous advice from a superior to the
22 decisionmaker;

23 (3) published agency interpretations or proce-
24 dures that were determined to be invalid by the Di-
25 vision; or

1 (4) the failure of a superior to provide clear in-
2 structions to the decisionmaker.

3 **SEC. 12. PROHIBITION ON ADVERSE ACTION WHILE AP-**
4 **PEAL PENDING.**

5 (a) IN GENERAL.—The Secretary may not take an
6 adverse action against an appellant relating to an appeal
7 while any proceeding authorized or required under this Act
8 is pending. In particular, the Secretary may not take any
9 action that would prevent the implementation of a final
10 determination in favor of the appellant.

11 (b) WITHHOLDING.—This section shall not preclude
12 the Secretary from withholding a payment if the eligibility
13 for, or amount of, the payment is an issue on appeal, ex-
14 cept that ongoing assistance to existing borrowers and
15 grantees shall not be discontinued pending the outcome
16 of an appeal.

17 **SEC. 13. REGISTRY OF ADVOCATES.**

18 (a) IN GENERAL.—The Director shall establish a reg-
19 istry consisting of individuals (including individuals who
20 are attorneys and individuals who are not attorneys) who
21 are available to represent appellants during the appeals
22 process and who apply to the Director to be included in
23 the registry.

24 (b) USE OF REGISTRY.—The Director shall provide
25 information contained in the registry to an appellant upon

1 request. The Director may not recommend individuals in-
 2 cluded in the registry.

3 **SEC. 14. RELATIONSHIP TO OTHER LAWS.**

4 (a) OTHER RIGHTS.—This Act is not intended to su-
 5 persede or deprive a recipient of assistance from the rel-
 6 evant agency of any rights that the recipient may have
 7 under any other law, including section 510(g) of the Hous-
 8 ing Act of 1949 (42 U.S.C. 1480(g)).

9 (b) EQUITABLE RELIEF.—This Act is not intended
 10 to affect the authority of an agency head to grant equi-
 11 table relief.

12 **SEC. 15. TRANSFER OF FUNCTIONS.**

13 (a) IN GENERAL.—There are transferred to the Divi-
 14 sion established by this Act all functions exercised before
 15 the effective date of this Act (including all related func-
 16 tions of any officer or employee) of or relating to—

17 (1) the National Appeals Division established
 18 by section 426(c) of the Agricultural Act of 1949 (7
 19 U.S.C. 1433e(c)) (in effect before the amendment
 20 made by section 18(a)(3));

21 (2) the National Appeals Division established
 22 by subsections (d) through (g) of section 333B of
 23 the Consolidated Farm and Rural Development Act
 24 (7 U.S.C. 1983b) (in effect before the amendment
 25 made by section 18(b)(1));

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

3 (4) appeals of decisions made by the Soil Con-
4 servation Service.

5 (b) CONSTRUCTION.—

6 (1) IN GENERAL.—If other provisions of this
7 Act or law conflict with this section, the other provi-
8 sions of this Act or law shall apply.

9 (2) TRANSFER OF FUNCTIONS ONLY.—This sec-
10 tion applies only to and during the transfer of func-
11 tions in accordance with subsection (a).

12 (c) DETERMINATIONS OF CERTAIN FUNCTIONS.—If
13 necessary, the Secretary shall make any determination of
14 the functions that are transferred under this section.

15 (d) PERSONNEL PROVISIONS.—

16 (1) APPOINTMENTS.—

17 (A) IN GENERAL.—Except as provided in
18 section 3, the Secretary may appoint and fix
19 the compensation of such officers and employ-
20 ees (including investigators and attorneys) as
21 may be necessary to carry out the respective
22 functions transferred under this section.

23 (B) CIVIL SERVICE.—Except as otherwise
24 provided by law, the officers and employees
25 shall be appointed in accordance with the civil

1 service laws and the compensation of the offi-
2 cers and employees fixed in accordance with
3 title 5, United States Code.

4 (2) EXPERTS AND CONSULTANTS.—

5 (A) IN GENERAL.—To carry out this sec-
6 tion, the Secretary may obtain the services of
7 experts and consultants in accordance with sec-
8 tion 3109 of title 5, United States Code, and
9 compensate the experts and consultants for
10 each day (including travel time) at rates not in
11 excess of the rate of pay for level IV of the Ex-
12 ecutive Schedule under section 5315 of such
13 title.

14 (B) TRAVEL EXPENSES.—To carry out
15 this section, the Secretary may pay experts and
16 consultants who are serving away from their
17 homes or regular places of business travel ex-
18 penses and per diem in lieu of subsistence at
19 rates authorized by sections 5702 and 5703 of
20 such title for persons in Government service
21 employed intermittently.

22 (e) DELEGATION AND ASSIGNMENT.—

23 (1) IN GENERAL.—Except if otherwise expressly
24 prohibited by law or otherwise provided by this Act,
25 the Secretary may delegate any of the functions

1 transferred by this section and any function trans-
2 ferred or granted after the effective date of this Act
3 to such officers and employees of the Department as
4 the Secretary may designate, and may authorize suc-
5 cessive redelegations of the functions as may be nec-
6 essary or appropriate.

7 (2) CONTINUING RESPONSIBILITY.—No delega-
8 tion of functions by the Secretary under this section
9 or under any other provision of this section is in-
10 tended to relieve the Secretary of responsibility for
11 the administration of the functions.

12 (f) RULES.—The Secretary is authorized to prescribe,
13 in accordance with chapters 5 and 6 of title 5, United
14 States Code, such rules and regulations as the Secretary
15 determines necessary or appropriate to administer and
16 manage the functions of the Department.

17 (g) TRANSFER AND ALLOCATIONS OF APPROPRIA-
18 TIONS AND PERSONNEL.—

19 (1) IN GENERAL.—Except as otherwise pro-
20 vided in this subsection, employee positions, assets,
21 liabilities, contracts, property, records, unexpended
22 balances of appropriations, authorizations, alloca-
23 tions, and other funds employed, used, held, arising
24 from, available to, or to be made available in connec-
25 tion with functions transferred by this section, sub-

1 ject to section 1531 of title 31, United States Code,
2 shall be transferred in accordance with this section.

3 (2) USE OF FUNDS.—Unexpended funds trans-
4 ferred pursuant to this section shall be used only for
5 the purposes for which the funds were originally au-
6 thorized and appropriated.

7 (h) INCIDENTAL TRANSFERS.—

8 (1) IN GENERAL.—The Secretary, at such time
9 as the Secretary shall provide, is authorized to make
10 such determinations as may be necessary with re-
11 gard to the functions transferred by this section, and
12 to make such additional incidental dispositions of
13 personnel, assets, liabilities, grants, contracts, prop-
14 erty, records, and unexpended balances of appropria-
15 tions, authorizations, allocations, and other funds
16 held, used, arising from, available to, or to be made
17 available in connection with the functions, as may be
18 necessary to carry out this section.

19 (2) TERMINATION OF AFFAIRS.—The Secretary
20 shall provide for the termination of the affairs of all
21 entities terminated by this section and for such fur-
22 ther measures and dispositions as may be necessary
23 to effectuate the purposes of this section.

24 (i) SAVINGS PROVISIONS.—

1 (1) CONTINUING EFFECT OF LEGAL DOCU-
2 MENTS.—An order, determination, rule, regulation,
3 permit, agreement, grant, contract, certificate, li-
4 cense, registration, privilege, or other administrative
5 action—

6 (A) that has been issued, made, granted,
7 or allowed to become effective by the President,
8 any Federal agency or official of a Federal
9 agency, or by a court of competent jurisdiction,
10 in the performance of functions that are trans-
11 ferred under this section; and

12 (B) that is in effect at the time this sec-
13 tion takes effect, or was final before the effec-
14 tive date of this section and is to become
15 effective on or after the effective date of this
16 section,

17 shall continue in effect according to the terms of the
18 action until modified, terminated, superseded, set
19 aside, or revoked in accordance with law by the
20 President, the Secretary or other authorized official,
21 a court of competent jurisdiction, or by operation of
22 law.

23 (2) PROCEEDINGS NOT AFFECTED.—Nothing in
24 this subsection is intended to prohibit the dis-
25 continuance or modification of a proceeding under

1 the same terms and conditions and to the same ex-
2 tent that the proceeding could have been discon-
3 tinued or modified if this section had not been en-
4 acted.

5 (3) SUITS NOT AFFECTED.—This section is not
6 intended to affect a suit commenced before the effec-
7 tive date of this section. In the suit, a proceeding
8 shall be had, an appeal taken, and a judgment ren-
9 dered in the same manner and with the same effect
10 as if this section had not been enacted.

11 (4) NONABATEMENT OF ACTIONS.—No suit, ac-
12 tion, or other proceeding commenced by or against
13 a transferred office, or by or against any individual
14 in the official capacity of the individual as an officer
15 of a transferred office, shall abate by reason of the
16 enactment of this section.

17 (j) SEPARABILITY.—If a provision of this section or
18 the application of this section to any person or cir-
19 cumstance is held invalid, neither the remainder of this
20 section nor the application of the provision to other per-
21 sons or circumstances shall be affected.

22 (k) TRANSITION.—The Secretary is authorized to uti-
23 lize—

1 (1) the services of the officers, employees, and
2 other personnel of a transferred office with respect
3 to functions transferred by this section; and

4 (2) funds appropriated to the functions for such
5 period of time as may reasonably be needed to facili-
6 tate the orderly implementation of this section.

7 (l) REFERENCES.—Each reference in any other Fed-
8 eral law, Executive order, rule, regulation, or delegation
9 of authority, or any document of or relating to—

10 (1) the head of a transferred office with regard
11 to functions transferred under this section shall be
12 deemed to refer to the head of the office to which
13 the functions are transferred; and

14 (2) a transferred office with regard to functions
15 transferred under this section shall be deemed to
16 refer to the office to which the functions are trans-
17 ferred.

18 (m) ADDITIONAL CONFORMING AMENDMENTS.—Not
19 later than 180 days after the effective date of this section,
20 if the Secretary determines (after consultation with the
21 appropriate committees of Congress and the Director of
22 the Office of Management and Budget) that additional
23 technical and conforming amendments to Federal statutes
24 are necessary to carry out the changes made by this sec-

tion, the Secretary shall prepare and submit to Congress recommended legislation containing the amendments.

SEC. 16. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act for fiscal year 1993, and each subsequent fiscal year.

SEC. 17. STATE MEDIATION PROGRAMS.

(a) QUALIFYING STATES.—Section 501 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101) is amended—

(1) by striking “agricultural loan” each place it appears; and

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking “and their creditors,” and inserting “their creditors, and (with respect to other than agricultural loan matters) the Department of Agriculture,”; and

(ii) by striking “an agricultural” and inserting “the agricultural”; and

(B) in paragraph (5), by inserting before “receive” the following: “, and all persons directly affected by actions of the Department of Agriculture involving wetlands determinations, farm program compliance, disputes between

1 farmers and their creditors, rural water loan
2 programs, grazing on national forest lands, and
3 pesticides,”.

4 (b) PARTICIPATION OF FEDERAL AGENCIES.—Sec-
5 tion 503 of such Act (7 U.S.C. 5103) is amended—

6 (1) by striking “agricultural loan” each place
7 the term appears; and

8 (2) in subsection (a)(1)—

9 (A) in the matter preceding subparagraph
10 (A), by striking “that makes, guarantees, or in-
11 sures agricultural loans”;

12 (B) in each of subparagraphs (A) and (B),
13 by inserting “, in any matter involving agricul-
14 tural loans” before the semicolon; and

15 (C) in subparagraph (B), by striking “, on
16 the date of the enactment of this Act,”.

17 (c) REPORT.—Subtitle A of title V of such Act (7
18 U.S.C. 5101 et seq.) is amended by adding at the end
19 the following new section:

20 **“SEC. 507. REPORT ON EXPANDED STATE MEDIATION PRO-**
21 **GRAMS.**

22 “Not later than 2 years after the date of the enact-
23 ment of this section, the Secretary of Agriculture shall re-
24 port to the Congress on the matters described in section

1 505 with respect to all State mediation programs receiving
 2 matching grants under this subtitle.”.

3 (d) CONFORMING AMENDMENTS.—

4 (1) WAIVER OF FARM CREDIT MEDIATION
 5 RIGHTS BY BORROWERS.—Section 4.14E of the
 6 Farm Credit Act of 1971 (12 U.S.C. 2202e) is
 7 amended by striking “agricultural loan”.

8 (2) WAIVER OF FMHA MEDIATION RIGHTS BY
 9 BORROWERS.—Section 358 of the Consolidated
 10 Farm and Rural Development Act (7 U.S.C. 2006)
 11 is amended by striking “agricultural loan”.

12 **SEC. 18. CONFORMING AMENDMENTS.**

13 (a) ASCS.—

14 (1) FINALITY OF FARMERS PAYMENTS AND
 15 LOANS.—Section 385 of the Agricultural Act of
 16 1938 (7 U.S.C. 1385) is amended—

17 (A) by striking the first sentence; and

18 (B) by striking “such payment” the first
 19 place it appears and inserting “payment under
 20 the Soil Conservation Act (16 U.S.C. 590a et
 21 seq.), payment under the wheat, feed grain, up-
 22 land cotton, extra long staple cotton, and rice
 23 programs authorized by the Agricultural Act of
 24 1949 (7 U.S.C. 1421 et seq.) and this Act,

1 loan, or price support operation, or the amount
2 thereof,”.

3 (2) DETERMINATIONS BY SECRETARY.—Section
4 412 of the Agricultural Act of 1949 (7 U.S.C. 1429)
5 is repealed.

6 (3) APPEALS.—Section 426 of the Agricultural
7 Act of 1949 (7 U.S.C. 1433e) is amended to read
8 as follows:

9 **“SEC. 426. APPEALS.**

10 “(a) DEFINITIONS.—As used in this section:

11 “(1) ASCS.—The term ‘ASCS’ means the Agri-
12 cultural Stabilization and Conservation Service, or
13 any successor agency in the United States Depart-
14 ment of Agriculture.

15 “(2) COUNTY COMMITTEE.—The term ‘county
16 committee’ means a county committee established
17 under section 8(b) of the Soil Conservation and Do-
18 mestic Allotment Act (16 U.S.C. 590h(b)).

19 “(3) NATIONAL APPEALS DIVISION.—The term
20 ‘National Appeals Division’ means the National Ap-
21 peals Division established in accordance with section
22 3 of the USDA National Appeals Division Act of
23 1993.

24 “(4) STATE COMMITTEE.—The term ‘State
25 committee’ means a State committee established

1 under section 8(b) of the Soil Conservation and Do-
2 mestic Allotment Act (16 U.S.C. 590h(b)).

3 “(b) RIGHT TO APPEAL.—Any participant in any of
4 the programs under this Act or any other Act adminis-
5 tered by ASCS shall have the right to appeal to the Na-
6 tional Appeals Division any adverse determination made
7 by any State committee or county committee, by employ-
8 ees or agents of the committees, by other personnel of the
9 ASCS, or by agents of the Commodity Credit Corporation,
10 under this Act or under any other Act administered by
11 the ASCS.

12 “(c) APPEAL PROCEDURE.—

13 “(1) IN GENERAL.—The appeal shall be made
14 in accordance with the USDA National Appeals Di-
15 vision Act of 1993 (including section 5 of such Act)
16 and this section.

17 “(2) CONDITIONS OF APPEAL.—Any participant
18 who believes that a proper determination has not
19 been made with respect to the implementation of any
20 program administered by the ASCS concerning the
21 participant may appeal the determination as follows:

22 “(A) If the determination was rendered by
23 a county committee, the participant may appeal
24 the determination to the applicable State com-
25 mittee.

1 “(B) If the determination was rendered by
2 a State committee, the participant may appeal
3 the determination to the National Appeals Divi-
4 sion.

5 “(C) If the determination was rendered by
6 any other employee or agent of the ASCS or
7 the Commodity Credit Corporation, the partici-
8 pant may appeal the determination to the Na-
9 tional Appeals Division.

10 “(D) ASCS may reverse or modify a deci-
11 sion made by a State committee or county com-
12 mittee at any time prior to commencement of
13 the appeal of an appellant to the National Ap-
14 peals Division, except that nothing in this sub-
15 paragraph is intended to affect a procedure of
16 a State committee or county committee.

17 “(d) COURT REVIEW.—A final decision of the De-
18 partment of Agriculture under the process provided for in
19 this section shall be reviewable by a United States district
20 court of competent jurisdiction.

21 “(e) PARTICIPANT.—For the purposes of this section,
22 the term ‘participant’ means any person whose right to
23 participate in, or receive payments or other benefits in ac-
24 cordance with, any of the programs under this Act or any
25 other Act administered by the ASCS is adversely affected

1 by a determination of any State committee or county com-
2 mittee, by employees or agents of the committees, by other
3 personnel of the ASCS, or by agents of the Commodity
4 Credit Corporation under this Act or under any other Act
5 administered by the ASCS.

6 “(f) DECISIONS OF STATE AND COUNTY COMMIT-
7 TEES.—

8 “(1) FINALITY.—All decisions of a State or
9 county committee, or employee of the committee,
10 made in good faith in the absence of misrepresenta-
11 tion, false statement, fraud, or willful misconduct
12 shall be final, unless such decisions are (not later
13 than 90 days after the date of issuance of the deci-
14 sion) appealed under this section or modified under
15 subsection (c)(2)(D).

16 “(2) RECOVERY OF AMOUNTS.—No action shall
17 be taken to recover amounts found to have been dis-
18 bursed thereon in error unless the participant had
19 reason to believe that the decision was erroneous.

20 “(g) REGULATIONS.—The Secretary shall issue such
21 regulations as are determined necessary to implement this
22 section, including regulations governing the conduct of ap-
23 peals made before State committees and county commit-
24 tees.”.

25 (b) FMHA.—

1 (1) NATIONAL APPEALS DIVISION.—Section
2 333B of the Consolidated Farm and Rural Develop-
3 ment Act (7 U.S.C. 1983b) is amended by striking
4 subsections (d) through (g).

5 (2) LEASE OR PURCHASE AGREEMENTS.—Sec-
6 tion 335(e)(9) of such Act (7 U.S.C. 1985(e)(9)) is
7 amended by inserting after “appealable under” the
8 following: “the USDA National Appeals Division Act
9 of 1993 (including section 5 of such Act) and”.

10 (3) HOMESTEAD PROPERTY.—The second sen-
11 tence of section 352(c)(3) of such Act (7 U.S.C.
12 2000(c)(3)) is amended by inserting after “described
13 in” the following: “the USDA National Appeals Di-
14 vision Act of 1993 (including section 5 of such Act)
15 or”.

16 (4) DEBT RESTRUCTURING AND LOAN SERVIC-
17 ING.—Section 353 of such Act (7 U.S.C. 2001) is
18 amended—

19 (A) in subsection (h), by inserting after
20 “filed under” the following: “the USDA Na-
21 tional Appeals Division Act of 1993 and”; and

22 (B) in the first sentence of subsection (j),
23 by inserting after “under” the following: “the
24 USDA National Appeals Division Act of 1993
25 and”.

1 (c) FCIC.—

2 (1) CLAIMS FOR LOSSES.—The last sentence of
3 section 508(f) of the Federal Crop Insurance Act (7
4 U.S.C. 1508(f)) is amended by inserting before the
5 period at the end the following: “or within 1 year
6 after the claimant receives a final determination no-
7 tice from an administrative appeal made in accord-
8 ance with the USDA National Appeals Division Act
9 of 1993, whichever is later”.

10 (2) APPEALS.—Section 508 of such Act is
11 amended by adding at the end the following new
12 subsection:

13 “(n) APPEALS.—Any participant (as defined in sec-
14 tion 2(16) of the USDA National Appeal Division Act of
15 1993) under this Act shall have the right to appeal to the
16 National Appeals Division established in accordance with
17 section 3 of the USDA National Appeals Division Act of
18 1993 any adverse determination made by the Corporation.
19 The appeal shall be made in accordance with such Act.”.

20 **SEC. 19. EFFECTIVE DATE.**

21 (a) IN GENERAL.—Except as provided in subsections
22 (b) and (c), this Act and the amendments made by this
23 Act shall become effective on the earlier of—

24 (1) the date that is 180 days after the date of
25 enactment of this Act; or

1 (2) the date the Director issues final regula-
2 tions pursuant to subsection (b).

3 (b) REGULATIONS.—The Director shall—

4 (1) not later than 90 days after the date of en-
5 actment of this Act, promulgate proposed regula-
6 tions to implement this Act and the amendments
7 made by this Act, in a manner consistent with provi-
8 sions of section 553 of title 5, United States Code,
9 permitting public comment;

10 (2) issue final regulations to implement this Act
11 and the amendments made by this Act, not later
12 than October 1, 1993, or 180 days after the date of
13 enactment of this Act, whichever is later; and

14 (3) issue final regulations—

15 (A) providing for the transfer of all pend-
16 ing appeals within the jurisdiction of agencies
17 referred to in section 2(2) to the Division on
18 the effective date prescribed in subsection (a);

19 (B) providing for the transfer of case
20 records with respect to the appeals; and

21 (C) otherwise providing for the orderly
22 transfer of all pending appeals and reviews
23 from the agencies to the Division.

24 (c) IMPLEMENTATION; PROTECTION OF APPEL-
25 LANTS' RIGHTS.—Subsections (c) and (d) of section 10

1 shall become effective on the date of enactment of this
 2 Act.

○

S 1425—IS——2

S 1425—IS——3

S 1425—IS——4

S 1425—IS——5

S 1425—IS——6

S 1425—IS——7

S 1425—IS——8