

RAFI-USA

Rural Advancement Foundation International - USA

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National Appeals Division Regulations Reform

Many farmers have experienced FSA's and other agencies' failure to timely and effectively implement a final decision of the National Appeals Division. Such failure on the part of the agencies can cause serious financial hardship for farmer participants and may even threaten the survival of their farming operations. The NAD statute requires that agency heads implement a NAD decision within 30 days. Specifically, the statute defines "implement" to mean "those actions necessary to effectuate fully and promptly a final [NAD] determination ... not later than 30 calendar days after the effective date of the final determination."

In appeals related to FSA loan programs, the agency routinely refuses to implement final NAD decisions favorable to farmers using the information that was before the agency when it made its original decision. Instead, FSA insists that the applicant submit new information on which FSA will make a new evaluation of eligibility for the requested program. Current USDA lending regulations prohibit county loan officers from approving loans based on application information that is more than 90 days old, and do not require the implementation of appeal decisions within 30 days. The appeals process itself regularly takes 120 days. The regulations also allow the loan officer the discretion to determine the point in the season when a loan is too late to be successfully used.

These regulations force a farmer who has *won* a loan-related appeal to restart the application process before the same loan officer whose loan decision was overturned. In almost every case involving operating loans, this means that even farmers whose appeals are successful will not enjoy the benefit of their win during the crop year for which they sought a loan. This revolving door unfairly penalizes applicants who are denied services through mistakes, and allows for discrimination within the regulations by allowing a loan officer to continue the application and appeals process until they deem it too late in the season for the farmer to plant successfully. In some cases, it has delayed for many years implementation of a farmer's "success" in the appeals process.

The NAD statute already requires full and prompt effectuation of a NAD determination by the end of the 30-day implementation period. In addition, two statutory provisions relating to the effective date of NAD decisions state that they 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." 7 U.S.C. §§ 6997, 6998. These two statutory provisions make it clear that Congress intends that the final NAD determination relate back to the date of the original agency decision or action, thus establishing that implementation of the NAD determination must relate to matters before the agency at the time of the agency's original decision or action.

We recommend that the FSA regulations be amended to require appeal decisions to be implemented based on the information before the appeals officer.

The 2008 Farm Bill took a small step toward identifying the scope of the implementation problem. Section 14009 directs the head of each agency subject to NAD appeals to submit biannual reports to the House and Senate describing all cases returned to the agency pursuant to a final NAD determination and to report on the implementation of the decision, or to explain the failure to implement. The report is also to be posted on the USDA website.

We recommend that the new Secretary of Agriculture issue a directive to FSA and other agencies subject to NAD appeals reminding the leadership of the agencies, both in Washington, DC, and in each of the state offices, of their duty to fully and promptly implement final NAD determinations within 30 days. The new Secretary must take a strong, visible stance in support of administrative review and must make it clear to agency heads that thwarting or ignoring the NAD process will not be tolerated.

We recommend that USDA establish penalties on agency employees, including agency heads, for willful failure to implement NAD decisions. **We further recommend** that USDA establish strict policies prohibiting USDA employees from retaliating against farmers because they exercise their right to appeal agency decisions.

We recommend that the Office of the Secretary carefully review the reports regarding implementation of NAD decisions, including the reasons for failure to implement final determinations, and take proactive steps to investigate and act on implementation problems.

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