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5 USC Sec. **571**

01/07/2011

-EXPCITE-

TITLE **5** - GOVERNMENT ORGANIZATION AND EMPLOYEES

PART I - THE AGENCIES GENERALLY

CHAPTER **5** - ADMINISTRATIVE PROCEDURE

SUBCHAPTER IV - ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE

ADMINISTRATIVE PROCESS

-HEAD-

Sec. 571. Definitions

-STATUTE-

For the purposes of this subchapter, the term -

(1) "agency" has the same meaning as in section 551(1) of this title;

(2) "administrative program" includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter;

(3) "alternative means of dispute resolution" means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, factfinding, minitrials, arbitration, and use of ombuds, or any combination thereof;

(4) "award" means any decision by an arbitrator resolving the issues in controversy;

(5) "dispute resolution communication" means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(6) "dispute resolution proceeding" means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;

(7) "in confidence" means, with respect to information, that the information is provided -

(A) with the expressed intent of the source that it not be

disclosed; or

(B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

(8) "issue in controversy" means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement -

(A) between an agency and persons who would be substantially affected by the decision; or

(B) between persons who would be substantially affected by the decision;

(9) "neutral" means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(10) "party" means -

(A) for a proceeding with named parties, the same as in section 551(3) of this title; and

(B) for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;

(11) "person" has the same meaning as in section 551(2) of this

title; and

(12) "roster" means a list of persons qualified to provide services as neutrals.

-SOURCE-

(Added Pub. L. 101-552, Sec. 4(b), Nov. 15, 1990, 104 Stat. 2738, Sec. 581; renumbered Sec. 571 and amended Pub. L. 102-354, Secs. 3(b)(2), 5(b)(1), (2), Aug. 26, 1992, 106 Stat. 944, 946; Pub. L. 104-320, Sec. 2, Oct. 19, 1996, 110 Stat. 3870.)

-COD-

CODIFICATION

Section 571 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2256 of Title 7, Agriculture.

-MISC1-

PRIOR PROVISIONS

A prior section 571 was renumbered section 591 of this title.

AMENDMENTS

1996 - Par. (3). Pub. L. 104-320, Sec. 2(1), struck out ", in lieu of an adjudication as defined in section 551(7) of this title," after "any procedure that is used", struck out "settlement negotiations," after "but not limited to," and substituted "arbitration, and use of ombuds" for "and arbitration".

Par. (8). Pub. L. 104-320, Sec. 2(2), substituted "decision;" for "decision," at end of subpar. (B), and struck out closing provisions which read as follows: "except that such term shall not include any matter specified under section 2302 or 7121(c) of this title;".

1992 - Pub. L. 102-354, Sec. 3(b)(2), renumbered section 581 of this title as this section.

Par. (3). Pub. L. 102-354, Sec. 5(b)(1), inserted comma after "including".

Par. (8). Pub. L. 102-354, Sec. 5(b)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: " 'issue in controversy' means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement between the agency and persons who would be substantially affected by the decision but shall not extend to matters specified under the provisions of sections 2302 and 7121(c) of title 5;".

TERMINATION DATE; SAVINGS PROVISION

Section 11 of Pub. L. 101-552, as amended by Pub. L. 104-106, div. D, title XLIII, Sec. 4321(i)(5), Feb. 10, 1996, 110 Stat. 676, which provided that the authority of agencies to use dispute resolution proceedings under this Act [see Short Title note below]

was to terminate on Oct. 1, 1995, except with respect to pending proceedings, was repealed by Pub. L. 104-320, Sec. 9, Oct. 19, 1996, 110 Stat. 3872.

SHORT TITLE OF 1996 AMENDMENT

Section 1 of Pub. L. 104-320 provided that: "This Act [enacting sections 570a and 584 of this title, amending this section, sections 569, 573 to 575, 580, 581, and 583 of this title, section 2304 of Title 10, Armed Forces, section 1491 of Title 28, Crimes and Criminal Procedure, section 173 of Title 29, Labor, section 3556 of Title 31, Money and Finance, and sections 253 and 605 of Title 41, Public Contracts, repealing section 582 of this title, enacting provisions set out as notes under section 563 of this title, section 1491 of Title 28, and section 3556 of Title 31, amending provisions set out as notes under this section, and repealing provisions set out as notes under this section and section 561 of this title] may be cited as the 'Administrative Dispute Resolution Act of 1996'."

SHORT TITLE

Section 1 of Pub. L. 101-552 provided that: "This Act [enacting this subchapter, amending section 556 of this title, section 10 of Title 9, Arbitration, section 2672 of Title 28, Judiciary and

Judicial Procedure, section 173 of Title 29, Labor, section 3711 of Title 31, Money and Finance, and sections 605 and 607 of Title 41, Public Contracts, and enacting provisions set out as notes under this section] may be cited as the 'Administrative Dispute Resolution Act'."

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 101-552 provided that: "The Congress finds that -

"(1) administrative procedure, as embodied in chapter 5 of title 5, United States Code, and other statutes, is intended to offer a prompt, expert, and inexpensive means of resolving disputes as an alternative to litigation in the Federal courts;

"(2) administrative proceedings have become increasingly formal, costly, and lengthy resulting in unnecessary expenditures of time and in a decreased likelihood of achieving consensual resolution of disputes;

"(3) alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;

"(4) such alternative means can lead to more creative, efficient, and sensible outcomes;

"(5) such alternative means may be used advantageously in a wide variety of administrative programs;

"(6) explicit authorization of the use of well-tested dispute resolution techniques will eliminate ambiguity of agency authority under existing law;

"(7) Federal agencies may not only receive the benefit of techniques that were developed in the private sector, but may also take the lead in the further development and refinement of such techniques; and

"(8) the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public."

PROMOTION OF ALTERNATIVE MEANS OF DISPUTE RESOLUTION

Section 3 of Pub. L. 101-552, as amended by Pub. L. 104-320, Sec. 4(a), Oct. 19, 1996, 110 Stat. 3871, provided that:

"(a) Promulgation of Agency Policy. - Each agency shall adopt a policy that addresses the use of alternative means of dispute resolution and case management. In developing such a policy, each agency shall -

"(1) consult with the agency designated by, or the interagency committee designated or established by, the President under

section 573 of title 5, United States Code, to facilitate and encourage agency use of alternative dispute resolution under subchapter IV of chapter 5 of such title; and

"(2) examine alternative means of resolving disputes in connection with -

"(A) formal and informal adjudications;

"(B) rulemakings;

"(C) enforcement actions;

"(D) issuing and revoking licenses or permits;

"(E) contract administration;

"(F) litigation brought by or against the agency; and

"(G) other agency actions.

"(b) Dispute Resolution Specialists. - The head of each agency shall designate a senior official to be the dispute resolution specialist of the agency. Such official shall be responsible for the implementation of -

"(1) the provisions of this Act [see Short Title note above] and the amendments made by this Act; and

"(2) the agency policy developed under subsection (a).

"(c) Training. - Each agency shall provide for training on a regular basis for the dispute resolution specialist of the agency

and other employees involved in implementing the policy of the agency developed under subsection (a). Such training should encompass the theory and practice of negotiation, mediation, arbitration, or related techniques. The dispute resolution specialist shall periodically recommend to the agency head agency employees who would benefit from similar training.

"(d) Procedures for Grants and Contracts. -

"(1) Each agency shall review each of its standard agreements for contracts, grants, and other assistance and shall determine whether to amend any such standard agreements to authorize and encourage the use of alternative means of dispute resolution.

"(2)(A) Within 1 year after the date of the enactment of this Act [Nov. 15, 1990], the Federal Acquisition Regulation shall be amended, as necessary, to carry out this Act [see Short Title note above] and the amendments made by this Act.

"(B) For purposes of this section, the term 'Federal Acquisition Regulation' means the single system of Government-wide procurement regulation referred to in section 6(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405(a)) [now 41 U.S.C. 1121(a) to (c)(1)]."

USE OF NONATTORNEYS

Section 9 of Pub. L. 101-552 provided that:

"(a) Representation of Parties. - Each agency, in developing a policy on the use of alternative means of dispute resolution under this Act [see Short Title note above], shall develop a policy with regard to the representation by persons other than attorneys of parties in alternative dispute resolution proceedings and shall identify any of its administrative programs with numerous claims or disputes before the agency and determine -

"(1) the extent to which individuals are represented or assisted by attorneys or by persons who are not attorneys; and

"(2) whether the subject areas of the applicable proceedings or the procedures are so complex or specialized that only attorneys may adequately provide such representation or assistance.

"(b) Representation and Assistance by Nonattorneys. - A person who is not an attorney may provide representation or assistance to any individual in a claim or dispute with an agency, if -

"(1) such claim or dispute concerns an administrative program identified under subsection (a);

"(2) such agency determines that the proceeding or procedure does not necessitate representation or assistance by an attorney under subsection (a)(2); and

"(3) such person meets any requirement of the agency to provide representation or assistance in such a claim or dispute.

"(c) Disqualification of Representation or Assistance. - Any agency that adopts regulations under subchapter IV of chapter 5 of title 5, United States Code, to permit representation or assistance by persons who are not attorneys shall review the rules of practice before such agency to -

"(1) ensure that any rules pertaining to disqualification of attorneys from practicing before the agency shall also apply, as appropriate, to other persons who provide representation or assistance; and

"(2) establish effective agency procedures for enforcing such rules of practice and for receiving complaints from affected persons."

-CROSS-

DEFINITIONS

Section 10 of Pub. L. 101-552, as amended by Pub. L. 102-354, Sec. 5(b)(6), Aug. 26, 1992, 106 Stat. 946, provided that: "As used in this Act [see Short Title note above], the terms 'agency', 'administrative program', and 'alternative means of dispute resolution' have the meanings given such terms in section 571 of title 5, United States Code (enacted as section 581 of title 5, United States Code, by section 4(b) of this Act, and redesignated

as section 571 of such title by section 3(b) of the Administrative

Procedure Technical Amendments Act of 1991 [Pub. L. 102-354])."



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