UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice APP-55

For: FSA Offices

Dispute Resolution Activity for FY 2009

Approved by: Administrator

1 Overview

A Background

In 2003, FSA began developing its strategic plan for FY's 2005 through 2011. The strategic plan outlines FSA's major strategic goals. One of the performance measures within FSA's management objective to improve strategic accountability increases the percentage of adverse program decisions that are resolved within FSA.

Beginning in FY 2004, ALS has been annually collecting and tracking dispute resolution activity in FSA as part of the strategic plan's requirement to establish and evaluate performance measures that support the goals included in the strategic plan.

B Purpose

This notice provides:

- additional guidance for reporting FY 2009 dispute resolution activity and examples of the type of activities to include in Exhibits 1 and 2
- examples of situations involving appeals, reconsideration, and mediation, and guidance on counting the activity.

The information ALS collects, as described in this notice, is **not** used for determining the time required performing appeals or mediation work, developing budgets, or any other purpose associated with workload.

Disposal Date	Distribution
February 1, 2010	All FSA Offices; State Offices relay to County Offices

1 Overview (Continued)

C Contact

If there are questions about this notice, contact Robin Wieland by either of the following:

- telephone at 202-690-2814
- e-mail at **robin.wieland@wdc.usda.gov**.

2 Type of Dispute Resolution Activity Information Collected at State and County Levels

A Total Estimated Number of Adverse Decisions

The total estimated number of adverse decisions shall include all appealable and nonappealable program decisions issued in FY 2009, regardless of program or subject. Both initial and subsequent decisions are counted separately and included in the total number of adverse decisions.

B Determining When a Decision is Considered "Adverse"

See 1-APP, Exhibit 2 for the definition of adverse decision. For reporting dispute resolution activity in Exhibit 1 and Exhibit 2, consider a decision "adverse" if the notification letter contains any appeal rights, including the right to request reconsideration, mediation, or an appealability review, **and** the decision is, or has the potential to be, adverse to the participant.

Examples of decisions that have the potential to be adverse to the participant include, but are not limited to, decisions that result in the following:

- an approved program contract or application, but less funds are received than the participant believes should have been paid

- an approved reconstitution, but the resulting farm or tract constitution adversely affects subsequent program benefits and payments to which the participant believes he or she is entitled

- payment eligibility and payment limitation determinations that cause potential reductions in payments the participant would otherwise have received

- less acreage than the owner or operator believes is in a given field or tract, based on certifying CLU's.

2 Type of Dispute Resolution Activity Information Collected at State and County Levels (Continued)

C Adverse Decisions That Are Not Appealable

In addition to counting the total estimated number of adverse decisions, count separately the total number of adverse decisions at both the State and county level that were not appealable.

See 1-APP, paragraph 11 for types of decisions that are not appealable. The mandatory language in the nonappealable adverse decision letter will provide the participant the opportunity to seek a review of the determination by either SED or NAD Director, but will not provide any appeal or mediation rights for the decision. See 1-APP, paragraph 15 for additional information about decisions based on issues that are not appealable.

D Counting Appeals and Mediation Activity by Subject

Exhibits 1 and 2 track, by subject, all reconsideration and appeal decisions, mediation, and actions taken after mediation.

Include the following type of activity, by subject:

- partially granted appeals and requests for reconsideration
- all appeals and requests for reconsideration granted or denied in FY 2009 regardless of FY in which the request for review was filed
- remands or requests for reconsideration

  Note: Count remands or requests for reconsideration **only** once, with the decision resulting from the remand or reconsideration being the activity reported.

- all mediation activity where mediation concluded in FY 2009 regardless of FY in which mediation began.

Do **not** report pending cases. Include only activity where a decision was made or mediation was concluded. Do **not** report mediation activity if a decision was appealed to a higher reviewing authority or NAD, if mediation is not yet concluded.

3 Examples for Counting Adverse Decisions, Appeals, Requests for Reconsideration, and Mediation

A Adverse Decisions

The following outlines when to count all initial and subsequent decisions issued by an FSA employee, STC's, and COC's.

IF the decision is considered…	THEN…	AND…
not adverse	N/A	N/A.
adverse, appealable issue	count as "adverse decision"	
adverse, not appealable issue	count as "adverse decision"	count as "decision not appealable".

Note: If the decision made by FSA is about an issue that is not appealable, the decision will be counted as an "adverse decision" and separately as a "decision not appealable".

B Example 1: Participant Appealed to COC (No Mediation)

The following outlines the type of activity that would be counted for an appeal to COC.

Action	IF decision is…	THEN count, by subject, as…	AND count as an "adverse decision" on…
Appeal to COC	reversed	"Granted" (Exhibit 1)	N/A.
	upheld	"Denied" (Exhibit 1)	Exhibit 1.
Appeal to STC (after COC denial)	reversed	"Granted" (Exhibit 2)	N/A.
	upheld	"Denied" (Exhibit 2)	Exhibit 2.

If COC, STC, or both, grant an appeal in part and deny the appeal in part, record the action, by subject, as both "Granted" and "Denied".

3 Examples for Counting Adverse Decisions, Appeals, Requests for Reconsideration, and Mediation

C Example 2: Participant Requested Mediation Before Appealing to COC and Mediation is Concluded

The following outlines the type of activity that would be counted for a request for mediation that is concluded.

Action	Is mediation concluded?		Is there a signed mediation agreement?		Was appeal filed within FSA after mediation concluded?	
Request for mediation.	**IF…**	**THEN…**	**IF…**	**THEN…**	**IF…**	**THEN count in…**
	Yes	count in "Mediated" (Exhibit 1).	Yes	count in "Signed Mediation Agreement" in Exhibit 1.	Yes	"FSA Appeals Filed Following Mediation" (Exhibit 1).
					No	"No FSA Appeals Following Mediation" (Exhibit 1).
			No	N/A.	Yes	"FSA Appeals Filed Following Mediation" (Exhibit 1).
					No	"No FSA Appeals Following Mediation" (Exhibit 1).
	No	N/A.	NA	N/A.	N/A	N/A.

If, after mediation is concluded a participant files an appeal with either COC or STC, count the appeal activity on Exhibits 1 and 2, as applicable, according to subparagraph B.

D Example 3: Participant Requested SED Review of Decision That Was Not Appealable

The following outlines the type of activity that would be counted for a request for SED review of a decision in which the issue was not appealable.

IF SED determines after "appealability" review that the issue is…	THEN record, by subject, as…	AND…	AND…
appealable	"Granted" (Exhibit 2)	N/A	N/A.
not appealable	"Denied" (Exhibit 2)	count as an "adverse decision" on Exhibit 2.	count as an "adverse decision not appealable" Exhibit 2.

If, after SED review the issue is determined appealable and the participant subsequently requested mediation appeals to COC, STC, or both, count the activity on Exhibits 1 and 2, as applicable, according to subparagraphs B and C respectively.

3 Examples for Counting Adverse Decisions, Appeals, Requests for Reconsideration, and Mediation

E Example 4: FLP Loan Applicant Requested Reconsideration

The following outlines the type of activity that would be counted for processing a reconsideration request, depending on the level of decisionmaker.

IF decisionmaker is…	AND decision on reconsideration is…	THEN record, by subject, as…	AND count as an "adverse decision" on…
FLM or FLO	reversed	"Granted" (Exhibit 1)	N/A
	upheld	"Denied" (Exhibit 1)	Exhibit 1
DD or SED	reversed	"Granted" (Exhibit 2)	N/A
	upheld	"Denied" (Exhibit 2)	Exhibit 2

F NAD Activity and Decisions Under FOIA and the Privacy Act

The information captured on Exhibits 1 and 2 is limited to adverse decisions issued by FSA and all dispute resolution activity within FSA, excluding FOIA and the Privacy Act. NAD activity is **not** counted in Exhibits 1 or 2.

4 Action

A County Office Action

County Office shall:

- review COC minutes, farm loan files, program files, and other records to determine appeal, mediation, and reconsideration cases processed at the county level, by subject, during FY 2009

- summarize and report county level data in the format shown in Exhibit 1 (Word document of Exhibit 1 to be received according to subparagraph C)

- send Exhibit 1 to arrive in the State Office by **COB December 11, 2009**.

  Note: Negative reports are **required**.

4 Action (Continued)

B State Office Action

State Offices shall:

- review STC minutes, farm loan files, program files, and other records to determine appeal, mediation, and reconsideration cases processed at the State level, by subject, during FY 2009

- summarize State level dispute resolution activity using Exhibit 2

- review all individual County Level Dispute Resolution Activity submitted on Exhibit 1 to determine accurate reporting

- summarize all County Level Dispute Resolution Activity (Exhibit 1) completed by individual County Offices and compile county level totals on a separate Exhibit 1

  Note: Word document of Exhibits 1 and 2 will be received according to subparagraph C.

- maintain County Level Dispute Resolution Activity (Exhibit 1) submitted by individual service centers to ensure availability for future reference

- send the summarized County Level Dispute Resolution Activity and State Level Dispute Resolution Activity (Exhibits 1 and 2) to be received in ALS by **COB December 18, 2009**; Exhibits 1 and 2 may be e-mailed to Robin Wieland at **robin.wieland@wdc.usda.gov** or FAXed to 202-690-3003.

  Note: Negative reports are **required**.

C ALS Action

ALS will forward by e-mail, Word versions of Exhibits 1 and 2 to SED's. SED's shall forward Exhibit 1 to all CED's and FLM's. Offices shall complete Exhibits 1 and 2 according to this notice.

County Level Dispute Resolution Activity

County/State Name: _____

Total number of **farms** listed in the county: _____

Total number of **producers** listed in the county: _____

County Level Reviews for FY 2009						
	For Decisions Appealed, Seeking Reconsideration, or Mediation, List How Many Were…					
Subject	Granted	Denied	Mediated	Signed Mediation Agreement	FSA Appeals Filed Following Mediation	No FSA Appeals Following Mediation
CRP						
All Other Conservation Programs						
Payment Eligibility/Limitation						
NAP						
Livestock Assistance and Compensation Programs						
Dairy Programs						
All other Crop Disaster Programs						
LDP's, Marketing Gains, and Commodity Loan Issues						
Farm Storage Facility Loans						
GIS – Common Land Units						
Reconstitutions						
DCP						
HELC/WC						
Prevented Planting						
Direct OL						
Direct FO						
Direct EM						
Direct Loan Servicing						
Guaranteed OL						
Guaranteed FO						
Guaranteed Loan Servicing						
Other (List by Subject)						
Totals by Column						

Total estimated number of **adverse decisions** at the county level: _____.

Note: This total should include **all** appealable and nonappealable program decisions. See subparagraphs 2 A and B.

Total number of adverse decisions that are **not appealable** decisions at the county level: _____.

Note: See subparagraph 2 C.

State Level Dispute Resolution Activity

State Name: _____

Total number of **farms** listed in the State: _____

Total number of **producers** listed in the State: _____

State Level Reviews for FY 2009						
	For Decisions Appealed, Seeking Reconsideration, or Mediation, List How Many Were…					
Subject	**Granted**	**Denied**	**Mediated**	**Signed Mediation Agreement**	**FSA Appeals Filed Following Mediation**	**No FSA Appeals Following Mediation**
CRP						
All Other Conservation Programs						
Payment Eligibility/Limitation						
NAP						
Livestock Assistance and Compensation Programs						
Dairy Programs						
All other Crop Disaster Programs						
LDPs, Marketing Gains, and Commodity Loan Issues						
Farm Storage Facility Loans						
GIS – Common Land Units						
Reconstitutions						
DCP						
HELC/WC						
Prevented Planting						
Direct OL						
Direct FO						
Direct EM						
Direct Loan Servicing						
Guaranteed OL						
Guaranteed FO						
Guaranteed Loan Servicing						
Other (List by Subject)						
Totals by Column						

Total estimated number of **adverse decisions** at the State level: _____.

Note: This total should include **all** appealable and nonappealable program decisions. See subparagraphs 2 A and B.

Total number of adverse decisions that are **not appealable** decisions at the State level: _____.

Note: See subparagraph 2 C.