

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Notice APP-66

For: FSA Offices

Dispute Resolution Activity for FY 2015

Approved by: Administrator



1 Overview

A Background

For many years, ALS has been annually collecting and tracking dispute resolution activity in FSA to establish and evaluate FSA's goals and to identify trends. Each year, activity categories and other information are updated to better reflect FSA's programs and activity.

B Purpose

This notice provides:

- guidance for reporting FY 2015 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, together with guidance for 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.

C Contact

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

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

Disposal Date	Distribution
February 1, 2016	All FSA Offices; State Offices relay to County Offices

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 2015, regardless of program or subject. Count initial and subsequent decisions separately and include them in the total number of adverse decisions.

B Determining When a Decision Is Considered “Adverse”

See 1-APP, Exhibit 2 for the definition of an adverse decision. For reporting dispute resolution activity in Exhibits 1 and 2, consider a decision “adverse” if **both** of the following apply:

- the notification letter contains any appeal rights, including the right to request reconsideration, mediation, appeal, or an appealability review
- the decision is, or has the potential to be, adverse to the participant.

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

- an approved 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
- adjusted gross income decisions where participant exceeds AGI or fails to file required documents.

**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 other 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, at the county level and State level, respectively, by subject or program, all reconsideration and appeal decisions, mediation, and actions taken after mediation.

Include the following type of activity, by subject or program:

- partially granted appeals and requests for reconsideration
- all appeals and requests for reconsideration granted or denied in FY 2015 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 2015 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 participant appealed a decision to a higher reviewing authority or NAD if mediation is not yet concluded.

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

A Total Estimated Adverse Decisions

The following table provides guidance for counting 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 "not appealable decision".

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 "not appealable decision".

B Example 1: Participant Appealed to COC, STC, or Both (No Mediation)

The following table provides the type of activity that would be counted for an appeal to COC and STC.

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 (initially or 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 (Continued)

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

The following table provides 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?	
	IF...	THEN...	IF...	THEN...	IF...	THEN count in...
Request for mediation.	Yes	count in “Mediated” (Exhibit 1).	Yes	count in “Signed Mediation Agreement” (Exhibit 1).	Yes	“FSA Appeals Filed Following Mediation” on Exhibit 1.
					No	“No FSA Appeals Following Mediation” on Exhibit 1.
			No	N/A.	Yes	“FSA Appeals Filed Following Mediation” on Exhibit 1.
					No	“No FSA Appeals Following Mediation” on Exhibit 1.
	No	N/A.	N/A	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 table provides 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” (Exhibit 2)	count as an “adverse decision not appealable” on Exhibit 2.

Note: If, after SED review, the issue is determined appealable and the participant subsequently appeals to COC, STC, requested mediation, or elected more than 1 of these options, count the activity on Exhibits 1 and 2, as applicable, according to subparagraphs B and C respectively.

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

E Example 4: FLP Loan Applicant Requested Reconsideration

The following table provides the type of activity that would be counted for processing a reconsideration request, depending on the level of the decision maker.

IF decision maker is...	AND decision on reconsideration is...	THEN record, by subject, as...	AND count as an "adverse decision" on...
FLM, SFLO, or FLO	reversed	"Granted" (Exhibit 1)	N/A.
	upheld	"Denied" (Exhibit 1)	Exhibit 1.
DD, SED, FLC, or FLS	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. Do **not** count NAD activity in Exhibit 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 or program, during FY 2015
- summarize and report county level data in the Word document format shown in Exhibit 1, according to subparagraph C
- send Exhibit 1 to arrive in the State Office by **COB December 4, 2015**.

Note: Negative reports are **required**.

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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 or program during FY 2015
- 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 and work with individual County Offices to ensure 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 11, 2015**; 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 Word versions of Exhibits 1 and 2 by e-mail to SAC's. SAC's shall forward Exhibit 1 to all CED's, FLM's, or SFLO's, as applicable. Exhibits 1 and 2 shall be complete according to this notice.

D State Office Using Microsoft SharePoint

Individual State Offices that are using SharePoint to compile FY 2015 county level data may continue to do so. However, State Offices **must** review for accuracy and submit State-level data and summarized county level data according to subparagraph B.

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 2014						
Subject/Program	For Decisions Appealed, Reconsidered, or Mediated, List How Many					
	Granted	Denied	Mediated	Signed Mediation Agreement	FSA Appeals Filed Following Mediation	No FSA Appeals Filed Following Mediation
CRP/CREP						
All Other Conservation Programs						
Payment Eligibility/Limitation						
NAP						
SURE Program						
Livestock Loss Programs						
Dairy Programs						
Other Crop Loss Programs						
AGI						
Reconstitutions						
ARC/PLC						
HELC/WC and NRCS appeals						
Direct CL						
Direct OL						
Direct FO						
Direct EM						
Direct Loan Servicing						
Guaranteed CL						
Guaranteed OL						
Guaranteed FO						
Guaranteed Loan Servicing						
Other (List by Subject or Program)						
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 2014						
Subject/Program	For Decisions Appealed, Reconsidered, or Mediated, List How Many					
	Granted	Denied	Mediated	Signed Mediation Agreement	FSA Appeals Filed Following Mediation	No FSA Appeals Filed Following Mediation
CRP/CREP						
All Other Conservation Programs						
Payment Eligibility/Limitation						
NAP						
SURE Program						
Livestock Loss Programs						
Dairy Programs						
Other Crop Loss Programs						
AGI						
Reconstitutions						
ARC/PLC						
HELC/WC and NRCS appeals						
Direct CL						
Direct OL						
Direct FO						
Direct EM						
Direct Loan Servicing						
Guaranteed CL						
Guaranteed OL						
Guaranteed FO						
Guaranteed Loan Servicing						
Other (List by Subject or Program)						
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.