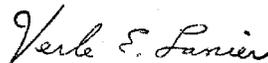


For: State and County Offices

**Providing Review Rights in Adverse Decisions**

Approved by: Associate Administrator, Operations and Management



**1 Overview**

**A Background**

FSA farm program and farm loan program participants have the right to request reconsideration, file appeals, and enter into alternative dispute resolution (ADR) regarding adverse FSA program decisions according to the regulations at 7 CFR Part 780, Appeal Regulations, and 7 CFR Part 11, National Appeals Division (NAD) Rules of Procedure. FSA's operating procedure is in 1-APP.

Notice APP-29 expired on July 1, 2002. This notice reiterates FSA's current policy regarding review rights in adverse decisions.

**B Purpose**

This notice:

- provides mandatory language to use for providing reconsideration, appeal, and ADR rights in adverse decision letters
- simplifies the process for determining which rights to provide in adverse decision letters to FSA participants

**Reminder:** Include additional mandatory language from 1-FLP in determination letters concerning appraisals.

- clarifies the number of days participants have to request mediation and appeal
- provides guidance regarding adverse decisions that are not appealable
- provides an example letter notifying a participant of an initial adverse decision

<b>Disposal Date</b>	<b>Distribution</b>
June 1, 2004	State Offices; State Offices relay to County Offices

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**1 Overview (Continued)**

**B Purpose (Continued)**

- provides an example letter acknowledging a request for reconsideration or appeal
- does not apply in cases where 7 CFR Part 1951, Subpart S, provides other appropriate notices.

**2 Right to Request Reconsideration, Appeal, or ADR**

**A Options to Give Participants in Initial Adverse Decisions**

When notifying a participant of an adverse initial decision, use the applicable language in paragraph 3 to provide the right to request reconsideration, appeal, and ADR according to the following table.

**Note:** This does **not** apply to initial adverse decisions that do not fall within the scope of 7 CFR Part 780 and 7 CFR Part 11, such as nonprogram loans and tobacco quota reviews by marketing quota review committees. Refer to the applicable regulations and operating procedures for specific instructions regarding the handling of these types of decisions.

As part of ADR, FSA offers participants the opportunity for mediation according to this notice. If a participant requests a form of ADR other than mediation, contact the Appeals and Litigation Staff (ALS) for guidance.

<b>IF the initial adverse decision is made by...</b>	<b>THEN provide the right to...</b>
County Committee (COC) employee	appeal to COC.
COC	reconsideration, appeal to the State Committee (STC), ADR, and appeal to NAD.
Farm Loan Officer	reconsideration, ADR, and appeal to NAD.
Farm Loan Manager	
SED	
STC	
National Office official  <b>Example:</b> DAFLP or Program Manager	appeal to NAD.

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**2 Right to Request Reconsideration, Appeal, or ADR (Continued)**

**B Options to Give Participants in Reconsideration Decisions**

When notifying a participant of an adverse reconsideration decision, use the applicable language in paragraph 3 to provide the right to appeal and request ADR according to the following table.

<b>IF the reconsideration decision is made by...</b>	<b>THEN provide the right to...</b>
COC	appeal to STC, ADR, and appeal to NAD.
Farm Loan Officer	ADR and appeal to NAD.
Farm Loan Manager	
SED	
STC	

**Exception:** Do **not** provide the right to ADR if FSA and the participant have previously mediated the issue.

**C Options to Give Participants in Appeal Decisions**

When notifying a participant of an adverse appeal decision, use the applicable language in paragraph 3 to provide the right to appeal and request ADR according to the following table.

<b>IF the adverse appeal decision is made by...</b>	<b>THEN provide the right to...</b>
COC	appeal to STC, ADR, and appeal to NAD.
STC	ADR and appeal to NAD.

**Exception:** Do **not** provide the right to ADR if FSA and the participant have previously mediated the issue or otherwise completed ADR.

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### 3 Mandatory Language to Insert in Adverse Decision Letters

#### A Requirements to Use Language

The language in subparagraphs B through F shall be used, as applicable, pursuant to paragraph 2, in all adverse decision letters.

**Exception:** For farm loan servicing actions under FmHA Instruction 1951-S, the exhibits and attachments provided in FmHA Instruction 1951-S must be used when notifying participants of adverse decisions.

#### B Appeal to COC

You may appeal my determination to the County Committee by filing a written request not later than 30 calendar days after the date of this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you appeal to the County Committee, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you appeal this determination to the County Committee, you may later appeal an adverse determination of the County Committee to the FSA State Committee or NAD. To appeal, write to the County Committee at the following address and explain why you believe my determination is erroneous.

*(Insert county committee address.)*

#### C Reconsideration

You may request that the *(insert County Committee, Farm Loan Officer, Farm Loan Manager, or State Committee, as applicable)* reconsider this determination by filing a written request not later than 30 calendar days after the date of this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you request reconsideration, you have the right to an informal hearing with *(insert County Committee, Farm Loan Officer, Farm Loan Manager, or State Committee, as applicable)* which you or your representative may attend either personally or by telephone. If you choose to seek reconsideration, you may later appeal the determination to *(insert County Committee or NAD, as applicable)*. To request reconsideration, write to *(insert County Committee, Farm Loan Officer, Farm Loan Manager, or State Committee, as applicable)* at the following address and explain why you believe this determination is erroneous.

*(Insert applicable address.)*

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### 3 Mandatory Language to Insert in Adverse Decisions Letters (Continued)

#### D Appeal to State Committee

You may appeal the County Committee's determination to the State Committee by filing a written request not later than 30 calendar days after the date of this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you appeal to the State Committee, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you choose to appeal to the State Committee, you may later appeal the determination of the State Committee to NAD. If you appeal to the State Committee, you waive your right to reconsideration. To appeal, write to the State Committee at the following address and explain why you believe this determination is erroneous.

*(Insert State Committee address.)*

#### E ADR

States **with** a certified mediation program shall use the following.

Mediation through the *(insert State name)* State mediation program is available as part of FSA's informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. The *(insert State name)* State mediation program may require you to pay all or part of the cost of mediation. If you request mediation, the running of the time frame in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request not later than 30 calendar days after the date of this notice. To request mediation, write to the *(insert State name)* State mediation program at the following address and provide a copy to FSA.

*(Insert Mediation program address.)*

In the alternative, you may seek another acceptable form of ADR.

## Notice APP-34

### 3 Mandatory Language to Insert in Adverse Decision Letters (Continued)

#### E ADR (Continued)

States **without** a certified mediation program shall use the following.

Mediation is available as part of FSA's informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the time period in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request not later than 30 calendar days after the date of this notice. To request mediation, write to the FSA State Executive Director at the following address.

*(Insert SED address.)*

In the alternative, you may seek another form of ADR.

#### F Appeal to NAD

You may appeal this determination to NAD by filing a written request not later than 30 calendar days after the date you receive this notice in accordance with the NAD appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter.

*(Insert applicable NAD address.)*

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### 4 Issues That Are Not Appealable

#### A Notification

1-APP, subparagraph 1 D, describes issues that are not appealable. Decisions involving cases that do not have any disputes of fact are not appealable. Participants have the right to appeal when there is a question of fact but cannot appeal general provisions or regulations that apply to all participants. Letters notifying participants that a decision is not appealable must clearly explain to the participant the reasons that the decision is not appealable. Avoid using general and vague statements that do not sufficiently demonstrate the reasons that the decision is not appealable.

Participants may request that the NAD Director review the FSA determination that the decision is not appealable. After fully explaining the adverse decision, according to paragraph 5, and the reasons why the facts in the case are not in dispute, include the following in the adverse decision.

*(Insert, as applicable, “I have”, “The COC has”, or “The STC has”)* determined that this issue is not appealable. You may seek a review of this determination by filing with the NAD Director a written request not later than 30 calendar days after the date you receive this notice in accordance with the NAD appeal procedures found at 7 CFR Part 11. If you believe that this issue is appealable, you must write to the NAD Director at the following address, explain why you believe this determination is appealable, and provide FSA a copy of your request for an appealability review.

*(Insert applicable NAD address.)*

### 5 Adverse Decisions

#### A Initial Adverse Decision Letters

Initial adverse decisions must sufficiently and completely explain to participants:

- the program benefits being sought, such as operating loan, Conservation Reserve Program payment, etc.
- the program eligibility provisions at issue
- findings about the issue under appeal
- analysis and conclusions regarding the application of the program provisions to the findings of fact
- determination, according to the example in Exhibit 1.

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### 5 Adverse Decisions (Continued)

#### B Appeal and Reconsideration Adverse Decision Letters

Refer to 1-APP, Exhibit 12, for a sample determination letter that must be used when notifying participants of appeal and reconsideration adverse decisions.

### 6 Acknowledging Request for Review

#### A Notification to Participant

The reviewing authority such as CED, Farm Loan Manager, STC, etc., must acknowledge a participant's request for appeal or reconsideration. See example in Exhibit 2 of a letter that must be provided to participants upon receipt of a request for appeal or reconsideration.

**Reminder:** In cases involving an appeal to NAD, NAD is the reviewing authority.

### 7 Required Action

#### A SED Action

SED's shall ensure that the instructions in this notice are executed.

#### B DD Action

DD's shall ensure that Farm Loan Officers and Farm Loan Managers, COC's, and COC employees adhere to the instructions in this notice

#### C Farm Loan Officer, Farm Loan Manager, and CED Action

Farm Loan Officers, Farm Loan Managers, and CED's shall follow the instructions in this notice when issuing adverse decision letters.

### 8 Questions

#### A Contact ALS

Direct questions about the procedures discussed in this notice or other issues relating to FSA's informal appeal system to ALS at 202-690-3297.

**Example of Initial Adverse Decision Letter**

Dear *(insert participant's name)*:

This responds to your request for *(insert applicable program benefit - e.g. "a direct operating loan in the amount of \$60,000")*.

*(Insert and explain adverse decision as described in paragraph 5 of this notice.)*

If you believe that this decision is erroneous, you have the following options.

**Reconsideration**

You may request that I reconsider this determination by filing a written request not later than 30 calendar days after the date of this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you request reconsideration, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you choose to seek reconsideration, you may later appeal the determination to the STC or NAD. To request reconsideration, write to me at the following address and explain why you believe this determination is erroneous.

*(Insert applicable address.)*

**Alternative Dispute Resolution (ADR)**

*(In this example, the State has a certified mediation program.)*

Mediation through the *(insert State name)* State mediation program is available as part of FSA's informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. The *(insert State name)* State mediation program may require you to pay all or part of the cost of mediation. If you request mediation, the running of the time period in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request not later than 30 calendar days after the date of this notice. To request mediation, write to the *(insert State name)* State mediation program at the following address and provide a copy to FSA.

*(Insert Mediation program address.)*

In the alternative, you may seek another form of ADR.

**Example of Initial Adverse Decision Letter (Continued)**Appeal to the Department of Agriculture National Appeal Division (NAD)

You may appeal this determination to NAD by filing a written request not later than 30 calendar days after the date you receive this notice in accordance with the NAD appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and must include a copy of this letter.

*(Insert applicable NAD address.)*

If you do not exercise timely one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

*(Insert applicable nondiscrimination statement.)*

Sincerely,

*(Insert name)*

Farm Loan Manager

**Example Letter of Acknowledgment of Request for Reconsideration or Appeal**

Dear *(insert participant's name)*:

This letter acknowledges your *(insert "request for reconsideration" or "appeal", as applicable)* of the *(specify date and decision maker)* determination regarding *(insert issue under review - e.g. request for production flexibility payments on farm number 206)*.

*(Identify reviewing authority)* will review your request for *(insert "reconsideration" or "appeal", as applicable)* on *(insert date and time)*. The hearing will be held in the *(insert name and address of office)*. You, your authorized representative, or both, are invited to attend this hearing and submit any additional information in support of your request for *(insert "reconsideration" or "appeal", as applicable)*.

The hearing is informal and a verbatim transcript is not ordinarily made. However, if you want a transcript to be made at your expense, please notify me at least seven days prior to the hearing and I will make the necessary arrangements. FSA will not reimburse you for any costs you may incur in connection with your *(insert "reconsideration" or "appeal")*.

If you choose not to attend the hearing, you may submit, before the scheduled hearing, information and evidence you wish to be considered. *(Insert name of reviewing authority)* will consider your *(insert "request for reconsideration" or "appeal", as applicable)* and make a decision based upon the information submitted by you, in addition to the documents and evidence contained in the administrative record.

The *(insert name of reviewing authority)* will provide the determination in writing to you or your representative as soon as possible after the scheduled hearing. If you have any questions regarding this matter, you may contact *(insert name and telephone number of contact)*.

Sincerely,

*(Insert name.)*

*(Insert title.)*