

PART 1940 - GENERAL

Subpart E - Alternative Dispute Resolution Program Policy for the
Customer/Program Mediation Services

TABLE OF CONTENTS

<u>Sec.</u>		<u>Page</u>
1940.201	Purpose.	1
1940.202	Authority.	2
1940.203	Definitions.	2
1940.204	Responsibilities.	3
1940.205	Implementing mediation.	4
1940.206	Selecting a mediation service provider.	4
	(a) Mediation in states with a USDA- funded state mediation program.	4
	(b) Mediation in states with a Community-Based Mediation Center.	5
	(c) Mediation in states which are not able to use either a USDA-funded state mediation program or Community-Based Mediation Center.	6
1940.207	Funding.	7
1940.208	Reporting.	7
1940.209	Memorandum of Understanding with mediation service provider.	8
1940.110 - 1940.250	[Reserved]	8
Exhibit A	- Rural Development ADR Procedures for Resolving Adverse Decisions	
Exhibit B	- Adverse Decision Attachments	
Exhibit B-1	- Equal Credit Opportunity Act	
Exhibit B-2	- Attachment to Letter Notifying Customer of an Appealable Adverse Decision	

- Exhibit B-3 - Attachment to Letter Notifying Customer of Unfavorable Decision Reached as a Result of an Informal Administrative Review
- Exhibit B-4 - Assignment by Rural Development/USDA of a Customer Mediation Request to a Mediation Service Provider
- Exhibit B-5 - Assignment by Rural Development/USDA of a Customer Mediation Request to a Mediation Service Provider
- Exhibit B-6 - Notification to Customer of Expiration of the 10 days to Select a Mediation Service Provider
- Exhibit B-7 - Customer Notification of Result of the Mediation of the Adverse Decision
- Exhibit C - Example Time-Line Customer/Program Mediation
- Exhibit D - Customer/Program Mediation Request Report

PART 1940 - GENERAL

Subpart E - Alternative Dispute Resolution Program Policy for the
Customer/Program Mediation Services

§ 1940.201 Purpose.

This instruction provides administrative guidance regarding the requirements and procedures on the use of mediation as a form of alternative dispute resolution (ADR) to resolve program disputes with the Rural Development customer. Mediation is the only form of ADR funded in part by Rural Development. Mediation is one of the three methods available for resolving administrative disputes with the Rural Development customer. The other two are: (1) administrative/informal review by the program staff issuing the initial adverse decision; and (2) administrative appeal to the National Appeals Division (NAD). (See Exhibit A.)

(a) Mediation applies to the resolution of Agency adverse decisions in all loan, grant, and technical assistance issues in Business and Cooperative Programs, Housing and Community Facilities Programs, and competitive Utilities Programs.

(b) Rural Development is committed to mediation as a tool for dealing with customer disputes. Implementation of mediation does not displace the traditional adjudicative methods of resolving disputes.

(c) Mediation is a supplemental method intended to resolve disputes between the Agency and its customers in a manner that is expeditious, cost-effective, and mutually acceptable to both the Rural Development customer and to Rural Development. Mediation does not affect the rights of program participants to seek resolution of their issues through the established administrative appeal procedure. Rural Development will use mediation in any dispute which can be appealed and where there is the potential for a negotiated solution. This mediation policy has two objectives: (1) to enhance customer satisfaction by establishing a culture of respect and trust between Rural Development and its customers; and (2) to make every effort to maintain the viability of Rural Development program resources in rural America.

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Loan and Grant making
General

§ 1940.202 Authority.

On April 5, 2006, the United States Department of Agriculture (USDA) Assistant Secretary for Administration issued the Departmental Regulation 4710-001 on ADR. The following authorities, among others, authorize the use of mediation as a form of alternative dispute resolution by Rural Development: Administrative Dispute Resolution Act of 1996; Agriculture Credit Act of 1987, as amended by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 and the Grain Standards and Warehouse Improvement Act of 2000 (Public Law No. 106-472); and Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

§ 1940.203 Definitions.

For purposes of this instruction, the following definitions apply:

Adverse Decision. An administrative decision by an officer of an Agency that is adverse to a customer. The term includes denial of equitable relief, failure to issue a decision, failure to act on a request or right of the customer within timeframes specified by Agency program statutes or regulations, or the failure to act within a reasonable time if timeframes are not specified.

Alternative Dispute Resolution (ADR). Any of a number of conflict resolution techniques that use a neutral third party to assist managers, agencies, and USDA customers in resolving disputes.

Customer. An applicant, a borrower, or a grantee.

Good Faith. An effort to honestly, sincerely, and fully discuss problems and matters in conflict, and to explore possible solutions to those problems or conflicts.

Mediation. An ADR technique in which a neutral third party (the *mediator*) facilitates a confidential, non-adversarial, direct discussion between two or more parties who are in conflict, as an attempt to reach a resolution that is acceptable to all parties.

§ 1940.203 (Con.)

Participant. The Rural Development customer who has received an appealable adverse decision (7 CFR 11.1) and who has requested mediation.

State ADR Coordinator. A State Office collateral duty position which is responsible for setting up and supporting the customer's request for mediation.

§ 1940.204 Responsibilities.

(a) Mediation is a tool for resolving disputes related to an adverse decision made by any USDA Rural Development Agency involving these programs: Housing, Business - Cooperative Programs, Enterprise Communities, Empowerment Zone and Champion Communities, and competitive Utility Programs.

(b) The following exceptions apply:

(1) The Civil Rights Program complaints filed will continue to be processed pending the result of the mediation.

(2) The National Office Program Compliance Branch of the Civil Rights Staff will be notified of the mediation. On a quarterly basis, the Program Compliance Branch of the Civil Rights Staff and the ADR Director will meet to review case activity to ensure that program cases closed in mediation are removed from current inventory. A copy of the mediation agreement will be provided to the Program Compliance Branch on the Civil Rights Staff to be included in the complainant file.

(3) Reasonable accommodation requirements will be included in all notifications for mediation.

(4) For the Single Family Housing (SFH) Direct and Grant programs, this Instruction is the base document for the SFH procedures in HB-1-3350 and HB-2-3550.

(5) For RD Utilities Programs Electric and Telecommunications programs, the ADR procedures are contained in RD Utilities Programs Staff Instruction 1700-2 and are to be followed in making decisions concerning the use of ADR.

§ 1940.205 Implementing mediation.

(a) Following an adverse decision as defined in § 1940.203, mediation is an option for resolving disputes with Rural Development customers. (See Exhibit B for information concerning mediation to be included in the notice to the customer of an adverse decision and mediation.) In the mediation, the two participants are customers and the Rural Development representative.

(b) After requesting mediation and Rural Development has acknowledged the request in writing, if the participant (customer) does not concur with the mediator provided by Rural Development within the prescribed 10-day time period, the request for mediation will be considered withdrawn. If the participant's mediation request has been filed within the applicable 30-day timeframe, withdrawal or cancellation of mediation does not change the customer's right to an appeal with NAD. (See Exhibit C)

(c) The mediator ensures that all participants to the mediation receive a copy of the results of the mediation (a statement of resolution, or of no resolution). The Rural Development representative involved in the mediation is responsible for making sure that a copy of the mediation report is in the customer's file. Resolution agreement terms and conditions represent a binding contract. The State ADR Coordinator is not responsible for monitoring the implementation of any mediated agreement.

§ 1940.206 Selecting a mediation service provider.

All mediators utilized by Rural Development shall follow the model standards of conduct for mediators promulgated by the National Association for Conflict Resolution, the American Arbitration Association, and/or the American Bar Association.

(a) Mediation in states with a USDA-funded state mediation program. Many states have a state mediation program that is annually certified by USDA. These programs, funded in part by USDA, were established to mediate farm and ranch cases originating from the Farm Service Agency but are now available to Rural Development. (If uncertain of the existence of a USDA-funded state mediation program in a particular State, contact the Rural Development National ADR Division, Operations and Management.) There is only one USDA-certified and-funded

§ 1940.206(a) (Con.)

mediation program in a state. Participants, who are provided appeal rights and request mediation, will be referred to the USDA-funded state mediation program. The participant does have the option to not use the USDA-funded state mediation program. If so, Rural Development will follow the procedures in (b) or (c) of this subpart, as appropriate. If either procedures (b) or (c) is utilized, Rural Development should consider the lowest cost option.

(1) There is no charge to Rural Development when the USDA-funded state mediation program is used to provide mediation services (see 7 CFR 785.5), because the Agency's participation is mandatory. The use of mediation for Rural Development customers is voluntary; however, the program may charge the customer a 50 percent cost share for mediation.

(2) In states with a USDA-funded state mediation program, the State Director shall sign a Memorandum of Understanding (MOU), specific to only Rural Development and the state designated mediation entity, which will not apply to any other USDA Agency or State entity. (Contact the National ADR Unit for a copy of the MOU.)

(b) Mediation in states with a Community-Based Mediation Center. A Community-Based Mediation Center (CBMC) is a nonprofit, public entity operating under the guidance of a governing board. Its goal is to provide an alternative to the judicial system by the use of trained mediators located in the geographical area served. The CBMC provides mediation services to clients regardless of their ability to pay. In states without a USDA-funded state mediation program, the CBMC is an option. Customers with appeal rights who request mediation can be referred to the CBMC. No MOU is required. Instead, the State ADR Coordinator should establish a source/vendor list of CBMCs. For each CBMC on the list, include the director, contact information, and cost. After a CBMC has been chosen and before the CBMC schedules the mediation, the Contracting Officer (CO) for the Rural Development State Office must determine which contractual vehicle is best suited for contracting with the CBMC. The National ADR Division will reimburse the state for all costs associated with the mediation(s).

§ 1940.206 (Con.)

(c) Mediation in states which are not able to use either a USDA-funded state mediation program or Community-Based Mediation Center. In states without a USDA-funded state mediation program or access to a CBMC, the State ADR Coordinator shall maintain a source/vendor list of mediation providers. Assistance in developing the list may be obtained from the National Association for Conflict Resolution, many state universities, community colleges, the Office of the State Attorney General, the State Bar Association and/or the National ADR Division. When making contacts to establish the list, the Agency will request the services of a mediator and not an arbitrator.

(1) The State ADR Coordinator shall develop and use the source/vendor list as follows:

(A) For each mediator on the list, include: 1) name, 2) type of document offered as proof of certification, 3) contact information, and 4) approximate cost to provide mediation services.

(B) It is important to keep the cost of mediation at a reasonable level for both Rural Development and the Rural Development customer, especially the low-income participant. (Contact the National ADR Division regarding the protocol for mediation costs).

(C) The list should be alphabetical.

(D) For each mediation request, the State ADR Coordinator will provide the participant with the complete list from which the participant is to select a mediator. (See Exhibit B) and

(E) If a participant desires to use a certified mediator not on the Rural Development list, with Agency approval, this mediator may be used. (Contact the National ADR Division for the protocol to determine mediation costs.)

§ 1940.207 Funding.

There may be a cost associated with mediation. When there are costs, they will be shared equally between Rural Development and the participant, except when using the USDA-funded state mediation program. Rural Development policy is to pay 50 percent of the reasonable cost for mediation. The State Director will ensure that all participants requesting mediation in their state are treated consistently and pay the same percentage, unless Agency regulations provide otherwise. Procedures for a State Office contracting and paying for mediation services are as follows:

(a) Before scheduling mediation, the State Office Contracting Officer must prepare the appropriate funding contract document Purchase Order.

(b) After the mediation has been contracted, scheduled, and completed, the State Office will forward, for verification to pay the Rural Development portion of the actual cost, the necessary information to the National ADR Division.

§ 1940.208 Reporting.

(a) The Rural Development Customer/Program Mediation Request Report will be used to report all requested mediation even if the mediation was not held and/or there is no cost to be reimbursed. (See Exhibit D)

(b) When the requested mediation is closed (that is the participant withdrew, did not show for the scheduled mediation, mediation was successful or unsuccessful, or closed for some other reason), the State ADR Coordinator will report the following information to the National ADR Unit: 1) Description of the Request; 2) Customer File number; 3) Total Cost (amount requested); 4) Program Area; 5) Adverse Action; 6) Outcome of the Requested Mediation; 7) Mediation Service Used; 8) Unique Situation (i.e., poverty status) and/or program status; and 9) the signature of the State Approving Official (the State Director or the designated individual).

RD Instruction 1940-E

§ 1940.209 Memorandum of Understanding with Mediation Service Provider.

Under this instruction, Rural Development State Directors are given the authority to enter into a MOU between Rural Development and the USDA-funded state mediation program. (Contact the National ADR Office for a copy of the approved MOU.)

§§ 1940.110 - 1940.250 [Reserved]

Attachments: Exhibits A, B, B-1, B-2, B-3, B-4, B-5, B-6, B-7, C, D

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RURAL DEVELOPMENT
ADR PROCEDURES FOR RESOLVING ADVERSE DECISIONS
Administrative Review - Mediation - Appeals

	Informal Administrative Review	MEDIATION	Appeal
	Within 15 calendar days from when the customer received the adverse decision letter. ¹	Within 30 calendar days from the date of any adverse decision letter. ²	Within 30 calendar days from receipt of an adverse decision letter. ³
	Customer can instead request mediation or appeal but waives future rights to informal review.	Participant may request an appeal without first going to mediation. (No mediation rights after appeal hearing.)	Participant has no administrative recourse to dispute the Agency's decision.
Does the 30 days for filing an appeal stop when request is made?	No, the 30-day period continues during the administrative review.	Yes, on day following the postmarked date the Agency receives the written request for mediation. ⁴	Not applicable
	1) Considered an <i>adverse decision</i> , new 30-day appeal clock begins for mediation and appeal. 2) Notify customer in writing of rights to <i>mediation</i> and appeal. ⁵	Written notice of the right to appeal the <i>original</i> adverse decision within remaining days of original 30-day time (NOTE: <i>only</i> NAD can determine the number of remaining appeal days.)	Not applicable
How much time to complete?	45 days from the request for informal review, unless the parties agree to an extension.	45 days from the case being accepted by the mediator.	Generally held within 45 days -- See NAD 7 CFR Part 11.

1. If unable to determine when the customer received the letter, count 7 calendar days from the day after the date of the adverse decision letter [letter date + 7 days = receipt date of letter + 15 days = 22 days when request must be made].
2. The request for mediation can be made after the request for an appeal and prior to the hearing, provided the request is made within the same 30 calendar days from receipt of the adverse decision letter.
3. If unable to determine when the letter was received, count 7 calendar days, after the date on the adverse decision letter [date on letter + 7 days = date of receipt of letter + 30 days = 37 days when request must be made].
4. The customer has 10 days to: respond to the State Office mediator referrals to the USDA mediation Community-Based Mediation Center; select a mediator from a list; provide another certified mediator for the State Office to consider.
5. If the informal review is successful, no further action is necessary. If the review is not successful, this is considered another adverse decision and a new 30 calendar day period to request an appeal begins.

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**ADVERSE DECISION ATTACHMENTS
for
IMPLEMENTING AND CARRYING OUT MEDIATION**

- Exhibit B-1** Equal Credit Opportunity Act Statement to be included in all correspondence.
- Exhibit B-2** Attachment to Letter Notifying Customer of an Appealable Adverse Decision (also used in the acceleration of an account) with the options for electing an informal administrative review, mediation, or an appeal hearing.
- Exhibit B-3** Attachment to Letter Notifying Customer of Unfavorable Decision Reached as a Result of an Informal Administrative Review, customer notification of an unfavorable (adverse) decision reached as a result of an informal administrative review with the option to select mediation or an appeal hearing.
- Exhibit B-4** (*) Notification to Customer Who has Requested Mediation of The Assignment of Their Case to a mediation service provider, with a copy to the provider: either a USDA-funded center, a Community-Based Center (CBMC), or other certified mediation provider. This includes the estimated cost for the mediation.
- Exhibit B-5** Assignment by Rural Development/USDA of a Customer Mediation Request to a Mediation Service Provider, either a USDA-funded center, Community-Based Center (CBMC), or other certified mediation provider.
- Exhibit B-6** (*) Notification to Customer of Expiration of the 10 days to Select a Mediation Service Provider.
- Exhibit B-7** (*) Customer Notification of Result of the Mediation of the Adverse Decision, a written notification to all participants of the results of the mediation sent to all participants, customers, Rural Development representatives (for SFH copy to CSC, St Louis), as well as any participant representatives.

(*) CRS Recommendation Reminder: All letters of notification to the customer should include the USDA Nondiscrimination Statement at the bottom of the first page. If this is already being done, please disregard this recommendation/reminder.

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Equal Credit Opportunity Act

Attachment to be Included in all Correspondence

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants based on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law concerning this creditor is the Federal Trade Commission.

If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580.

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**Attachment to Letter Notifying Customer
of
An Appealable Adverse Decision**

...including the acceleration of an account, with the options for electing an informal administrative review, a mediation, or an appeal hearing.

Note: Attachment should not be sent if the adverse decision is not subject to an administrative review or an appeal.

The described action in the attached letter [*did not grant you the assistance you requested or will terminate or reduce the assistance you are currently receiving*]. If you believe this decision or the facts used in this case are in error, you may pursue any or all of the following three options:

Option 1 - Request an Informal Administrative Review

If you have questions concerning this decision or the facts used in making it and desire further explanation, you may write this office to request an informal administrative review. There is no cost for an informal administrative review. Your written request must be received no later than 15 calendar days from the date when you received this adverse decision letter. Include any new information, evidence, and possible alternatives along with your request. You may also have a representative or legal counsel participate in the process at your cost. The informal administrative review may be conducted by telephone or in person at the discretion of the Agency. Please include a daytime phone number in your request to arrange for the review. You may skip the informal administrative review and select one of the following two options. If you do, you will automatically waive your right to an informal administrative review.

Option 2 - Request Mediation

You have the right to request mediation. The purpose of mediation is to resolve disputes through the use of a certified, neutral mediator. In most cases, the mediator is not a Federal Government employee. A mediator will listen to all parties involved in the dispute and work with all parties to achieve a mutually agreeable resolution. Many cases that go to mediation are resolved without further action, extended delays, or the cost of formal litigation. You have 30 days to request mediation, 10 days to select a mediator, and then 45 days to complete mediation. If you need more information on the mediation process to assist you in deciding whether to use this Option 2, contact the Rural Development State Director listed below.

{*Rural Development State Director*}

There may be a cost for mediation. If so it is Rural Development policy to pay 50 percent of the reasonable cost for mediation. When there is a cost, it is your responsibility to pay the other 50 percent. Every effort, however, is made to keep any cost to a minimum, and in some cases, the mediator will waive the customer's 50 percent share.

If you elect to seek mediation, your written request for this service must be sent to the Rural Development State Director and ***must be postmarked no later than 30 days from the date when you received the attached letter.*** Once you request mediation, it stops the running of the 30-day period in which you may request an appeal hearing (described in Option 3), but does not waive your right to an appeal.

Once you have requested mediation, the Rural Development State Director will advise you of the mediation service provider, the estimated cost of mediation, the amount the Agency will contribute, and the process and procedures for this service:

- 1) In states with a USDA-funded state mediation program, you will be referred to such a service.
- 2) In states without a USDA-funded state mediation program, you will be either directed to a local community mediation service; or you will be provided with the names of mediators from which to select one.
- 3) Also, you may suggest a mediator subject to the Agency's approval.

Once a mediation service provider has been identified, you will have ***10 days to contact the mediator:*** Following the 10 days you are allowed to select the mediator, you will be advised directly by the mediation source if they can mediate your case.

Once you have been referred to a mediator, you have ***45 days to complete the mediation.*** The Agency can agree to an extension. If mediation does not result in resolution of these issues, you have the right to continue with a request for an appeal hearing as set forth in Option 3.

When mediation is concluded, you will be notified of the result and your right, if applicable, to request an appeal hearing.

Mediation does not take the place of, or limit your right to, an appeal to the NAD; however, a NAD appeal hearing would take place only after mediation. You may skip mediation and request an appeal hearing. However, in doing so, you will automatically waive your right to an informal meeting. Once the appeal hearing begins, you also waive your right to mediation.

Option 3 - Request an Appeal Hearing

You may request an appeal hearing by NAD rather than an informal administrative review or mediation. There is no cost for an appeal hearing. Your request for an appeal must be made no later than 30 days from the date you received the attached letter. To request an appeal hearing, you must write the NAD Assistant Director for your region at the following address:

[NAD Assistant Director Address]

Your request must state the reasons why you believe the decision is wrong, be personally signed by you, and must include a copy of the attached letter. A copy of your request must also be sent to the Rural Development State Director at:

[Rural Development State Director Address]

You, or your representative or counsel, may contact this office anytime during regular office hours to examine or copy the Agency's record relative to this adverse decision. Photocopies will be provided to you. Your representative or counsel must have your written authorization to represent you and review your file. The NAD Hearing Officer will contact you regarding a time and place for the hearing.

Equal Credit Opportunity Act

[Enclose Exhibit B-1.]

Attachments (2)

Copies for: State and/or National Office Program Director
CSC St. Louis for SFH cases

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**Attachment to Letter Notifying Customer
of
Unfavorable Decision Reached as a Result of an Informal Administrative Review**

We appreciated the opportunity to review the facts relative to your [request for assistance, or reduction or termination of benefits, or foreclosure]. We regret that the decision in the attached letter did not [grant the assistance you requested or will terminate or reduce the assistance you are currently receiving, or will give you relief from foreclosure]. If you believe that facts used in this case are in error, you may pursue either or both of the following two options.

Option 1- Request Mediation

You have the right to request mediation. The purpose of mediation is to resolve disputes through the use of a certified, neutral mediator. In most cases, the mediator is not a Federal employee. A mediator will listen to all parties involved in the dispute and work with all parties to achieve a mutually agreeable resolution. Many cases that go to mediation are resolved without further action, extended delays, or the cost of formal litigation. You have 30 days to request mediation, 10 days to select a mediator, and then 45 days to complete mediation.

There may be a cost for mediation. If so, Rural Development will pay 50 percent of the reasonable cost for mediation. Where there is a cost, it is your responsibility to pay the other 50 percent. Every effort, however, is made to keep any cost to a minimum, and in some cases, the mediator will waive the customer's 50 percent share.

If you elect to seek mediation, your written request for this service must be sent to the Rural Development State Director and **must be postmarked no later than 30 days from the date of the attached letter**. Once you request mediation, it stops the running of the 30-day period in which you may request an appeal hearing (described in Option 3) but does not waive your right to an appeal.

Once you have requested mediation, the Rural Development State Director will advise you of the mediation service provider, the estimated cost of mediation, the amount the Agency will contribute, and the process and procedures for this service:

- 1) In states with a USDA-funded mediation program, you will be referred to that service.
- 2) In states without a USDA-funded state mediation program, you will be either directed to a local community mediation service; or, you will be provided with the names of mediators from which to select one.
- 4) Also, you may suggest a mediator subject to the Agency's approval.

Once a mediation service provider has been identified, they will contact you and you will have **10 days to contact the mediator**: Following the 10 days that you are allowed to select the mediator, you will be advised directly by the mediation source if they can mediate your case.

Once you have been referred to a mediator, you have **45 days to complete the mediation**. The Agency can agree to an extension. If mediation does not result in resolution of these issues, you have the right to continue with a request for an appeal hearing as set forth in Option 2.

When mediation is concluded, you will be notified of the result and your right, if applicable, to request an appeal hearing.

If you request mediation prior to filing for an appeal, the number of days you will have to request an appeal will be 30 days from the adverse decision minus the number of days you took to request mediation. Mediation does not take the place of, or limit your right to, an appeal to the NAD; however, a NAD appeal hearing would take place only after mediation. You may skip mediation and request an appeal hearing. However, in doing so, you will automatically waive your right to an informal meeting. Once the appeal hearing begins, you also waive your right to mediation.

Option 2 - Request an Appeal Hearing

Following your mediation, you may request an appeal hearing by NAD, as long as there are days remaining from the original 30 days to request mediation as outlined in the original adverse decision letter. You must *immediately* contact the NAD Assistant Director for your region (at the following address) to determine if you can file for an appeal hearing.

[*NAD Assistant Director Address*]

There is no cost for an appeal hearing. Your request must state the reasons why you believe the decision is wrong, be personally signed by you, and include a copy of the attached letter. A copy of your request must also be sent to the Rural Development State Director:

[*Rural Development State Director Address*]

You, or your representative or counsel, may contact this office anytime during regular office hours to examine or copy the Agency's record relative to this adverse decision. Photocopies will be provided to you. Your representative or counsel must have your written authorization to represent you and review your file. The NAD Hearing Officer will contact you regarding a time and place for the hearing.

Equal Credit Opportunity Act

[Enclose Exhibit B-1.]

Attachments (2)

Copies for: State and/or National Office Program Director
CSC St. Louis for SFH cases

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**Notification to Customer Who has Requested Mediation
of
The Assignment of Their Case to:
A USDA-Funded State Mediation Program
or
A Community-Based Mediation Center
or
Certified Mediation Provider
for
Mediation**

TO: [CUSTOMER]

FROM: Rural Development State Director

SUBJECT: Request for Mediation Services

This replies to your request for the mediation of your adverse decision. Your request has been referred to a [USDA-funded state mediation program] [Community Based Mediation Center] or [you must select from the attached list of certified mediation providers].

As indicated in our adverse decision letter, there may be a cost for the mediation. The following is an estimate, but you will be advised by the mediation service provider if there will be a cost. Rural Development policy is to pay 50 percent of the reasonable cost for mediation.

\$ _____ USDA-funded state mediation program [and address]

\$ _____ Community-Based Mediation Center [and address]

Attached is an alphabetical list of certified mediators to select a mediator, or subject to our concurrence you may request the use of another mediator.

Within 10 days of the date of this letter, you must provide this office, in writing, with the concurrence/selection of the mediator. If you do not, you will waive your right to mediation. Rural Development will then contact the mediator, who in turn will contact you to determine if they can mediate the issues in your case. You will then have 45 days to complete the mediation.

When the mediation is concluded, you may file an appeal of the original adverse decision by immediately contacting the National Appeals Division (NAD):

[NAD Assistant Director Address]

Once you have been contacted by the mediation provider and if you decide not to pursue mediation, you must immediately contact this office (address at the top of this letter). You are responsible for all costs incurred by the mediation provider from the time of selection until your cancellation.

Mediation, or the cancellation of mediation, does not affect your rights to seek an appeal with NAD.

Equal Credit Opportunity Act

[Enclose Exhibit B-1.]

Copies for: State and/or National Office Program Director
CSC St. Louis for SFH cases
State ADR Coordinator

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**Assignment by Rural Development/USDA of a Customer Mediation Request
to
A Mediation Service Provider**

TO: *[Mediation Service Provider]*

FROM: Rural Development State Director

SUBJECT: Request for Mediation

CUSTOMER: *[Name of the Rural Development customer requesting mediation]*
[Customer contact information]

The above Rural Development customer has received an adverse decision from our Agency and has requested mediation. Attached is a copy of the adverse decision letter and the customer's request for mediation.

Informal Administrative Review

- _____ The Customer was provided with the opportunity for an informal administrative review with the Agency; however, the customer chose not to exercise this option.
- _____ An informal administrative review was conducted; however, the Agency did not reverse its decision.

Jurisdiction of the Case

The adverse decision in this case was made by the following office. You should contact this office for further information on the case:

[Agency contact: program, individual, address phone and e-mail]

Payment for Service

The Rural Development policy is to pay 50 percent of the reasonable cost of the mediation service and the customer will pay 50 percent. In addition, we encourage the mediation service to consider the customer's ability to pay. The customer is solely responsible for their portion of the cost of this service and should be billed directly. The bill for the Agency's portion should be submitted to this Rural Development State Office:

[State ADR Coordinator Name and Address]

Mediation must be completed within 45 days from the date of this letter, unless both parties agree to an extension. We also request a teleconference prior to your acceptance of this case to determine whether the adverse decision lends itself to mediation by your service.

Equal Credit Opportunity Act

[Enclose Exhibit B-1.]

Copies for: State and/or National Office Program Director
CSC St. Louis for SFH cases
State ADR Coordinator

Enclosure (2): Adverse decision letter
Customer's request for mediation

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**Notification to Customer
of
Expiration of the 10 days to Select a Mediation Service Provider**

TO: [CUSTOMER]
FROM: [State Director]
SUBJECT: Expiration of Selection of Mediation Service Provider

On [date], you requested mediation of the adverse decision as outlined in the attached letter which did not [grant the assistance you requested or will terminate or reduce the assistance you are currently receiving, or will give you relief from foreclosure]. You were also informed that you had 10 days from [date] to either concur in the mediation service assigned by Rural Development to your case, or name another mediation service for our consideration.

The 10 days to acknowledge the selection of the mediation service provider has expired. Your request for mediation therefore has expired, and Rural Development will begin to process the initial adverse decision as outlined in the attached letter.

Request an Appeal Hearing

Your request for mediation did not take the place of, or limit your right to request an appeal to the National Appeals Division (NAD). You may request an appeal hearing by NAD as long as there are days remaining from the original 30 days to request an appeal as outlined in the original adverse decision letter. You must *immediately* contact the NAD Assistant Director for your region (at the following address) to determine if you can file for an appeal hearing.

[NAD Assistant Director Address]

There is no cost for an appeal hearing. Your request must state the reasons why you believe the decision is wrong, be personally signed by you, and include a copy of the attached original decision letter. A copy of your request must also be sent to the Rural Development State Director:

RD Instruction 1940-E
Exhibit B-6
Page 2

[Rural Development State Director Address]

You, or your representative or counsel, may contact this office at anytime during regular office hours to examine or copy the Agency's record relative to the adverse decision. Photocopies will be provided to you. Your representative or counsel must have your written authorization to represent you and review your file. The NAD Hearing Officer will contact you regarding a time and place for the hearing.

Equal Credit Opportunity Act

[Enclose Exhibit B-1.]

Attachments (2)

Copies for: State and/or National Office Program Director
CSC St. Louis for SFH cases
State ADR Coordinator

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**Customer Notification
of
Unresolved Result of the Mediation of the Adverse Decision**

TO: [CUSTOMER]
FROM: [State Director]
SUBJECT: Unresolved Result of the Requested Mediation

Your request for mediation has been completed. We regret that mediation did not result in resolution of the issues. [We are unable to grant the assistance you requested, or will terminate, or will reduce the assistance you requested].

If you believe the decision or facts used in the case are in error, you may continue to pursue your right to an appeal by the National Appeals Division (NAD). There is no cost for an appeal. Please follow the guidance in the paragraph indicated with an "X."

____ You requested an appeal hearing to NAD prior to entering into mediation. You must immediately write to the Assistant Director of NAD at the address below to determine the number of days remaining, if any, to schedule the appeal hearing.

[NAD Regional Assistant Director Address]

____ You did not request an appeal hearing to NAD prior to entering into mediation. If you wish to schedule an appeal hearing, you must immediately write to the Assistant Director of NAD at the address below to determine the number of days remaining, if any, to schedule the appeal hearing. Your appeal request must be received within the remaining days, as determined by NAD, from the date when you requested mediation.

[*NAD Regional Assistant Director Address*]

Information Regarding Appeals

If NAD determines that you have appeal rights and you want to exercise those appeal rights, you, or your representative or counsel, may contact this office at anytime during regular office hours to examine or to have copied the Agency's record relating to the original adverse decision. Photocopies will be provided. Your representative or counsel must have your written authorization to represent you and review your file.

The NAD Hearing Officer will contact you regarding a time and place for the hearing. You may also request a teleconference hearing in lieu of the face-to-face hearing. At any time before the scheduled hearing, you may also request that the Hearing Officer make a decision without a hearing.

Equal Credit Opportunity Act

[Enclose Exhibit B-1.]

Copies for: State and/or National Office Program Director
CSC St. Louis for SFH cases
State ADR Coordinator

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**EXAMPLE TIME-LINE CUSTOMER/PROGRAM MEDIATION
 RURAL DEVELOPMENT**

[Start 30-day Appeal option ¹]	June 1, 2007	Customer receives adverse decision.
	June 14, 2007 [30-day clock stops appeal day following postmark.]	The Agency receives written request from the customer for an administrative review postmarked on June 14.
[Start new 30-day Appeal clock]	July 16, 2007	Unfavorable decision letter sent on the administrative review. This adverse decision starts a second 30-day appeal clock. A request for mediation must be made before the end of this second 30-day time period.
30 days to ask for mediation.....10 days to select a mediator.....45 days to conclude mediation		
[Mediation process begins]	July 23, 2007	The Agency ² receives written request from the customer for mediation, postmarked July 23. [Clock stops on the new 30-day appeal option on day following postmark]
[Start the 10-day clock for selection]	July 28, 2007	ADR Coordinator sends (7/28/07) designated mediator service provider ³ for the selection to be made within 10 days from date of the letter ⁴ ...by August 7.
[Stop the 10-day clock for selection]	August 4, 2007	The Agency receives mediator selection from participant on 8/4/07...3 days early on the 8/7/07 10-day clock.
[Start 45-days to complete mediation]	August 6, 2007	The Agency notifies the selected mediator and informs mediator the mediation is to be completed within 45 days from August 5 on September 19.
[Stop 45-day clock for mediation]	August 30, 2007	Mediation is held, and an agreement is signed on the status of the adverse decision, with 20 days remaining.
NOTE: 46 days elapsed from 7/16 to 8/30: 8 days for customer to request mediation, 5 days for the State ADR Coordinator to assign mediator, 7 days to select, 2 days to notify mediator, and 24 days to arrange and hold mediation.		
[Resume 2 nd 30-day clock (-6 days) 7/16-22, before requested mediation and day after mediation was held, 8/30.]	September 15	Customer requests an appeal. Even in a successful mediation (resolution), the participant can ask for an appeal hearing of the adverse decision. REMEMBER, only NAD has the authority to determine whether a participant has timely filed for an appeal.

1. All counts are calendar days, including weekends and holidays.
2. The appropriate program representative, the State ADR Coordinator, and the State Procurement staff work as a team to ensure the necessary procedures are followed.
3. If the participant is located in a state with a USDA-funded program, or the State Office is using a Community-Based Mediation service, the participant has 10 days to respond to the assigned mediator; if not, the participant has 10 days to select from a State Office list, or ask the consideration of a certified mediator.
4. If unable to determine when the letter was received, count 7 calendar days from day after date on the adverse decision letter [example: date on letter + 7 days = date of receipt of letter + 10 days = 17 days when request must be made].

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