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## REVIEW AND APPEALS

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### A. Review and Appeal Options

Adverse Agency decisions against a program participant (lender, applicant or borrower) may be reviewed or appealed by the National Appeals Division (NAD). Adverse decisions include: administrative actions taken by Agency staff and the Agency's failure to take required actions within time frames specified in statutes or regulations or within a reasonable time if no deadline is specified. 7 CFR Part 11 provides procedures that both Agency officials and program participants must follow during the review or appeal process. Applicable portions of 7 CFR Part 11 to Office of the Single-Family Housing Guaranteed Loan Program (SFHGLP) can be found later in this appendix. Handbook letters 1 through 7 are provided to inform program participants of their rights.

Adverse decisions are subject to the following review and appeal procedures:

- **Informal Administrative Review by Agency Decision-Maker.** Program participants (participants) have the right to request that any adverse decision be reviewed by the Agency staff member who made the adverse decision.
- **Appeal Request to NAD.** Qualifying adverse decisions may be appealed to NAD.
- **Mediation as a Form of Alternative Dispute Resolution (ADR).** Adverse decisions which are appealable to NAD require the participant be given the opportunity to seek ADR prior to a hearing with NAD.

### B. Informing Program Participants of Their Rights

Agency decisions that adversely affect a participant require written notification that an informal administrative review with the person who made the decision may be requested. Letters notifying participants of adverse decisions must contain the information needed for the participant to make decisions regarding involvement in the review and appeals process. Specific civil rights language also must be included in these letters. Handbook Letters 1 through 7 following this appendix are available for guidance and are titled to assist in selecting the correct language for the decision made. Notification of adverse decisions by the Agency will include notification to the lender and the applicant/borrower when declining a request for loan commitment. Adverse decisions regarding loss payments will be directed to the servicer.

If the decision is appealable, the participant will be informed of their opportunity to seek mediation and/or to request a hearing with NAD using Handbook Letter 1. If the decision is not appealable, the participant will be informed of their rights to have NAD review the accuracy of the Agency's finding that the decision cannot be appealed using Handbook Letter 2. When a participant is denied assistance for both appealable and non-appealable decisions, the Agency will send both Handbook Letters 1 and 2.

The lender will be responsible for notifying the applicant or borrower if the lender declines an applicant or borrowers request. Denial of loan request or servicing actions by the lender are not subject to review or appeal rights.

### **C. Adverse Decisions That Cannot Be Appealed**

Certain decisions made by the Agency are not appealable and participants can request an informal administrative review. The participant will be informed through Handbook Letter 2 that they may request an informal administrative review for a review of the accuracy of the Agency's determination that the case cannot be appealed. Decisions that cannot be appealed can include:

- Decisions made by parties not employed by the Agency;
- Refusal to request an administrative waiver;
- Decisions made in accordance with statute (such as rural area designations); and
- Denial of loan commitment due to lack of program funds.

### **D. Informal Administrative Review**

The purpose of the informal administrative review is to reiterate the Agency's reasons for the adverse decision, provide a forum for the participant response, and obtain any additional information to support the participant request.

- The written request for an informal administrative review must be provided to NAD within 15 days of the date of the Agency's letter notifying the participant of the adverse decision.
- The informal administrative review can be conducted by telephone, webinar, or a face-to-face meeting with the decision maker or their representative. The Agency will determine the meeting format.
- The review of the decision must be completed within 45 days of the request. The Director, Origination and Processing Division (Director OPD) may require that

the decision be reviewed by the next-level supervisor or other designated Rural Development staff before the participant is notified of the decision.

- Handbook Letter 3 of this appendix is used if the adverse decision is not reversed as a result of the informal administrative review. If the decision is reversed, a letter will be sent to the participant notifying them of the decision and next steps.
- All documentation will be retained in the participant official case folder.

The participant may skip an informal administrative review and, if applicable, request mediation and/or an appeal. In doing so, the participant automatically waives their rights to an informal administrative review.

### **E. Mediation**

Adverse decisions which are appealable to NAD also require that the participant have the opportunity to seek mediation prior to having a hearing with NAD. The purpose of mediation is to resolve disputes using a neutral mediator. A mediator's role is to summarize each party's perception of the issues and offer procedural suggestions on a resolution which may lead to a mutual resolution of the adverse decision. The Agency will not use the services of an arbitrator. An arbitrator resolves disputes through hearing both parties and renders a binding decision. Participants may skip mediation and request an appeal to NAD.

#### ***Requests for Mediation***

After receiving Handbook Letters 1 or 3 of this appendix, a participant may request mediation services. Upon receipt of the participant's request for mediation, Handbook Letter 4 of this appendix is sent to the participant to begin the process.

### ***Cost of Mediation***

Costs associated with mediation should be shared equally between the Agency and the participant. The selection of a mediator will be based on the most economically viable alternative to both the Agency and participant. If Agency administrative funds are exhausted, the Agency will notify the participant that mediation can proceed but the cost of mediation will be absorbed fully by the participant. The Agency should ensure that all participants requesting mediation are treated consistently and pay the same percentage of the cost toward this service. The Agency may also consent to pay a larger percentage (up to 100 percent) of the cost of mediation for participants with incomes below the poverty level. The Agency will notify the mediation source of how the cost of such service will be paid. Handbook Letters 4 and 5 of this appendix include language to meet this requirement.

### ***Mediation in States with a USDA-funded mediation program***

Many States have a mediation program that is supported by grants provided by USDA and a list of mediation providers is available at [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2018/agricultural\\_mediation\\_program\\_jan2018.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2018/agricultural_mediation_program_jan2018.pdf). In States with a USDA's funded mediation program, participants who are provided appeal rights can be referred to the USDA-funded mediation program.

### ***Mediation in States with a Community-Based Mediation Center (CBMC)***

A CBMC is a nonprofit, public entity operating under the guidance of a governing board. CBMCs provide an alternative to the judicial system using trained mediators and are an option when a USDA-funded State mediation program is unavailable. The State ADR Coordinator should establish a source list of CBMCs and include the director, contact information, and cost.

### ***Mediation in States without a USDA-funded mediation program***

In States without a USDA-funded mediation program or access to a CBMC, the State ADR coordinator is responsible for maintaining a list of mediation service providers. The list will contain the approximate cost of each service provider, if known. The Agency may handle the list of mediation sources as follows:

- The mediator list will be maintained alphabetically, and sources selected in sequential order to ensure that mediation providers receive an evenly balanced number of referrals. In the case where mediators have a wide range of costs, an emphasis will be placed on the lowest cost provider.

- The Agency may provide the list of mediators to the participant and request the participant to select the source or provide the name of another acceptable source of mediation services using Handbook Letter 4.
- The participant must provide the name of a mediation provider within 10 days or the request will be withdrawn. Handbook Letter 7 will be used to notify the participant the withdrawal of the mediation request.
- Handbook letter 5 will be used to refer the case to the mediator.
- Withdrawal or cancellation of mediation does not extinguish the participant's right to an appeal with NAD.

### ***Timing of mediation***

- Mediation must be completed within 45 days after the case is referred to the mediation source unless the complexity of the case warrants a longer time frame and all parties agree to an extended time line.
- The mediator will conduct a teleconference between the parties prior to accepting a case to determine the potential success of mediation. The Agency will not refuse to participate in mediation if requested to do so by the participant.
- Mediation occurs prior to having a hearing with NAD and stops the clock on the 30-day period during which a participant may request and appeal to NAD.
- Following mediation, any days remaining from the 30-day period are available to the participant to request an appeal to NAD. Handbook Letter 7 of this appendix is used for this purpose. Hearing dates for participants who request mediation after filing an appeal must be selected within 45 days of the conclusion of mediation.

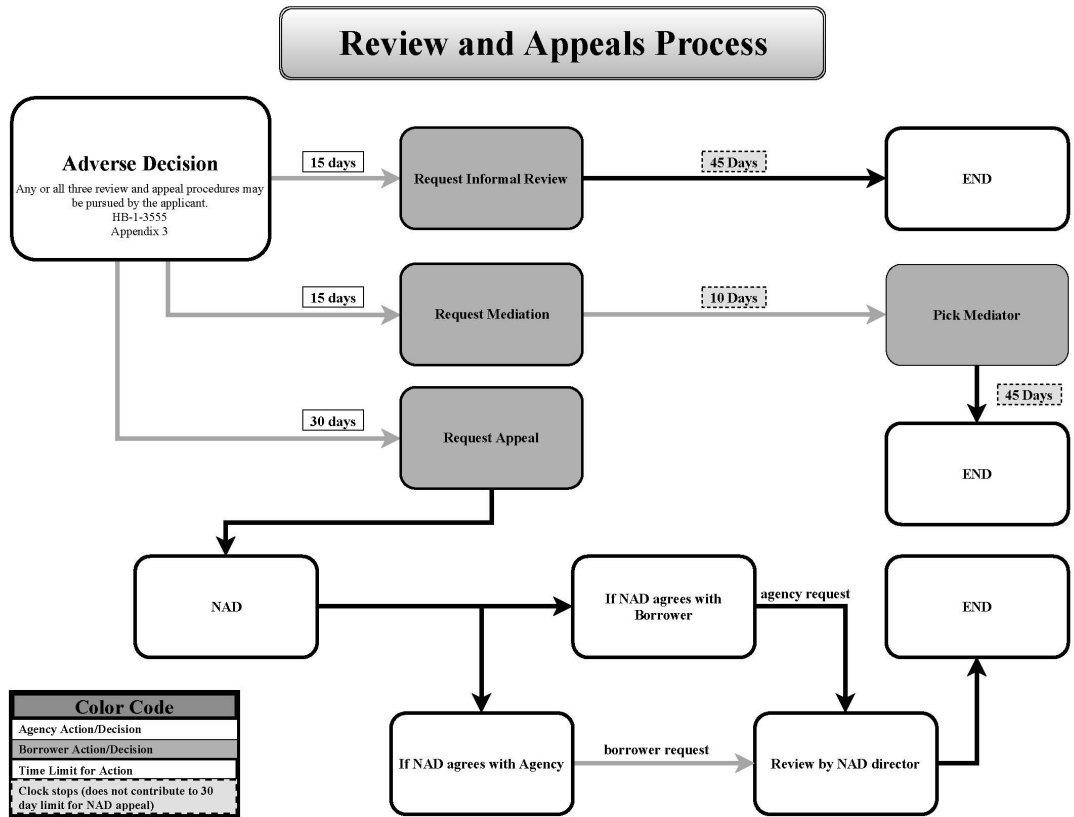
### ***Mediation on cases involving NFAOC***

Mediation on decisions made by NFAOC will be coordinated through with the OPD and the State Office ADR coordinator. When a participant receives Handbook Letters 1 or 3 of this appendix as a result of an adverse decision made by NFAOC, the participant is referred to the Director OPD to initiate mediation. Upon receipt of a participant's request, the Agency will send Handbook Letters 4, 5 or 7 of this appendix, as applicable. A copy will be provided to the Single Family Housing Appeals Coordinator in NFAOC. When Handbook Letter 5 is sent to the service provider, the Agency contact will be

NFAOC. While the OPD coordinates this service, NFAOC is responsible for participating in the actual mediation.

### *Appeals*

- Participants who wish to appeal an adverse decision must submit a written request to NAD within 30 days of receiving notice of an adverse decision. The request must be signed by the participant and include a copy of the adverse decision and a brief statement describing why the participant believes the decision is wrong.
- The Agency will promptly provide NAD with a copy of the Agency record, specific references in 7 CFR Part 3555 to support the decision, and any other pertinent information. A copy will also be provided to the participant.
- The participant may choose a face-to-face hearing in the participant's state of residence, teleconference, or webinar. The Agency will provide a field office based employee to attend the hearing and represent the Agency. In the case of a loan servicing appeal, the Director OPD and the NFAOC Single Family Housing Appeals Coordinator will work cooperatively to support to the field office representative to adequately represent the Agency in the case.
- NAD will notify the participant and Agency of the final determination.
- If NAD reverses the Agency's decision, the next processing action that would have occurred had no adverse decision been made must be taken within 30 days after the effective date of the notice from NAD; unless the Agency requests a review of the case by the Director of NAD.
- All documentation will be entered into the participant official case folder.
- See 7 CFR Part 11 of this appendix for more guidance on Director Reviews and other information regarding appeals.



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## EQUAL CREDIT OPPORTUNITY ACT

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The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, 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.

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms or conditions of such a transaction, because of race, color, religion, sex, disability, familial status, or national origin. The federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.



## **HANDBOOK LETTER 1 NOTIFYING CUSTOMERS OF AN ADVERSE DECISION THAT IS APPEALABLE**

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The decision described 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.* This written request must be received no later than 15 calendar days from the date of the attached letter. You must present 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, webinar, 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 this step in the informal administrative review process 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. 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, contact the Director, Origination and Processing Division (OPD) listed below.

*[Director Origination and Processing Division]*

There may be a cost for mediation, if so, Rural Development will 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 may waive the customer's 50 percent share.

If you elect to seek mediation, your written request for this service must be sent to the Director, Origination and Processing Division and **must be postmarked no later than 30 days from the date of the attached letter**. Once you request mediation, the 30-day period to request an appeal hearing (described in Option 3) is postponed but does not waive your right to an appeal.

Once you have requested mediation, the Director of Origination and Processing Division 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. There are three alternatives for mediation providers:

1. USDA-funded state mediation program
2. Community Based Mediation Centers, or
3. Other mediation providers you recommend, subject to Agency's approval.

Once a mediation service provider has been identified, you will have **10 days to contact the mediator** and you will be advised directly by the mediation source if they can mediate your case. You will have 45 days to complete mediation. 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.

Mediation does not take the place of or limit your right to an appeal to the National Appeals Division (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**

You may request an appeal hearing by the 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 receive 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 Director, Origination and Processing Division at:

*[Director, Origination and Processing Division Address]*

You may alternatively select to file your appeal electronically through the NAD website. You can set up a NAD efile account and then follow the prompts to request an appeal electronically. Your request for an appeal must be made no later than 30 days from the date you received the attached letter. To file an appeal online go to the following internet address:

[http://www.nad.usda.gov/app\\_appeal.html](http://www.nad.usda.gov/app_appeal.html)

You, or your representative or counsel, may contact the OPD anytime during regular office hours to request copies of the Agency's record relevant to this adverse decision. Electronic images or 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.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, 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.

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms or conditions of such a transaction, because of race, color, religion, sex, disability, familial status, or national origin. The federal agency that is responsible for enforcing this law is the U.S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

## **HANDBOOK LETTER 2 NOTIFYING CUSTOMERS OF AN ADVERSE DECISION THAT CANNOT BE APPEALED**

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The decision described 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 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. This written request **must be received no later than 15 calendar days from the date of the attached letter**. You must present 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.

Program participant generally have a right to appeal adverse decisions, but decisions based on certain reasons cannot be appealed. We have determined that reasons for the decision cannot be appealed under our regulations. You may, however, write the Assistant Director, National Appeals Division (NAD) for a review of the accuracy of our finding that the decision cannot be appealed. Your request must be made no later than 30 days from the date you receive the attached letter.

[NAD Assistant Director Address]

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, 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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**HANDBOOK LETTER 3  
NOTIFYING CUSTOMERS  
OF UNFAVORABLE DECISION REACHED AS A RESULT  
OF AN INFORMAL ADMINISTRATIVE REVIEW**

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We appreciated the opportunity to review the facts relative to your request for assistance. 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. If you believe that facts used in this case are in error, you may pursue any or all of the following two options.

**Option 1 – Request Mediation**

You have the right to request mediation. 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 option, contact the Director, Origination and Processing Division (OPD) listed below:

*[Director, Origination and Processing Division]*

There may be a cost for mediation. If so, Rural Development will pay for 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 Director, Origination and Processing Division (OPD) 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 2) but does not waive your right to an appeal.

Once you have requested mediation, the Director, Origination and Processing Division will advise you of the mediation service provider, the estimated cost of mediation, the amount the Agency will contribute to the cost, and the process and procedures for this service. There are three alternatives for mediation providers:

1. USDA-funded state mediation program,

2. Community Based Mediation Centers, or
3. Other mediation provider you recommend, subject to the Agency's approval.

Once a mediation service provider has been identified, you will have 10 days to contact the mediator and you will be directly asked if they can mediate your case. You will have 45 days to complete the mediation. 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.

Mediation does not take the place of, or limit your rights to, an appeal to the National Appeals Division (NAD); however, a NAD appeal hearing would take place only after mediation.

### **Option 2 - Request an Appeal**

You may skip mediation and request an appeal hearing. In doing so, you will automatically waive your right to an informal meeting. ***There is no cost for an appeal hearing.*** Your request for an appeal must be made no later than 30 days from the date of the original Agency's adverse decision letter. If you choose Option 1, a NAD appeal hearing would take place only after mediation as long as there are days remaining from the original 30 days to request an appeal. You must immediately contact the NAD. To request an appeal hearing, you must write the NAD Assistant Director for your region as 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 original adverse decision letter. A copy of your request must also be sent to the Director, Origination and Processing Division at the following address:

*[Director, Origination and Processing Division Address]*

You may alternatively select to file your appeal electronically through the NAD website. You can set up a NAD efile account and then follow the prompts to request an appeal electronically. Your request for an appeal must be made no later than 30 days from the date you received the original adverse decision letter. To file an appeal online go to the following internet address:

[http://www.nad.usda.gov/app\\_appeal.html](http://www.nad.usda.gov/app_appeal.html)

You may alternatively select to file your appeal electronically through the NAD website. You can set up a NAD efile account and then follow the prompts to request an appeal electronically. Your request for an appeal must be made no later than 30 days from the date you received the original adverse decision letter. To file an appeal online go to the following internet address:

[http://www.nad.usda.gov/app\\_appeal.html](http://www.nad.usda.gov/app_appeal.html)

You, or your representative or counsel, may contact the OPD anytime during regular office hours to request copies of the Agency's record relevant to this adverse decision. Electronic images or 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.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, 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.

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms or conditions of such a transaction, because of race, color, religion, sex, disability, familial status, or national origin. The federal agency that is responsible for enforcing this law is the U. S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

**HANDBOOK LETTER 4**  
**ATTACHMENT FOR NOTIFYING CUSTOMERS WHO HAVE**  
**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**

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TO: [CUSTOMER]

FROM: DIRECTOR, ORIGINATION AND PROCESSING DIVISION

SUBJECT: Request for Mediation Services

This replies to your request for 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 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.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, 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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**HANDBOOK LETTER 5**  
**ATTACHMENT FOR ASSIGNMENT BY RURAL DEVELOPMENT/USDA**  
**OF A CUSTOMER MEDIATION REQUEST TO A MEDIATION**  
**SERVICES PROVIDER**

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TO: *[Mediation Service Provider]*

FROM: Director, Origination and Processing Division

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 your 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 Origination and Processing Division. 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 Director, Origination and Processing Division:

*[Director, Origination and Processing Division 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.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, 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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Attachments (2):       Adverse decision letter  
                              Customer's request for mediation

CC:                        NFAOC Single Family Housing Appeals Coordinator

**HANDBOOK LETTER 6**  
**ATTACHMENT FOR NOTIFYING CUSTOMERS OF UNRESOLVED**  
**RESULT OF THE MEDIATION OF THE ADVERSE**

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TO: [CUSTOMER]

FROM: [Director, Origination and Processing Division]

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 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 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 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 the OPD anytime during regular office hours to request copies of the Agency's record relevant to this adverse decision. Electronic images or 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.

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.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, 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.

The Fair Housing Act prohibits discrimination in real estate related transactions, or in the terms or conditions of such a transaction, because of race, color, religion, sex, disability, familial status, or national origin. The federal agency that is responsible for enforcing this law is the U.S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U. S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777.

CC: NFAOC Single Family Housing Appeals Coordinator

**HANDBOOK LETTER 7**  
**ATTACHMENT FOR NOTIFYING CUSTOMERS OF EXPIRATION OF THE 10 DAYS**  
**TO SELECT A MEDIATION SERVICE PROVIDER**

TO:    [*Customer*]

FROM:   [*Director Origination and Processing Division*]

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 mediation service for our consideration.

The 10 days to acknowledge the selection of the mediation service provider had 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 Director, Origination and Processing Division:

*[Director, Origination and Processing Division Address]*

You may alternatively select to file your appeal electronically through the NAD website. You can set up a NAD efile account and then follow the prompts to request an appeal electronically. Your request for an appeal must be made no later than 30 days from the date you received the attached letter. To file an appeal online go to the following internet address:

[http://www.nad.usda.gov/app\\_appeal.html](http://www.nad.usda.gov/app_appeal.html)

You, or your representative or counsel, may contact the OPD anytime during regular office hours to request copies of the Agency's record relevant to this adverse decision. Electronic images or 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.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, 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: Copy of denial letter

CC: NFAOC Single Family Housing Appeals Coordinator

**HANDBOOK 3**  
**7 CFR PART 11--NATIONAL APPEALS DIVISION RULES OF**  
**PROCEDURE**

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TABLE OF CONTENTS

Sec.

- 11.1 Definitions.
- 11.2 General statement.
- 11.3 Applicability.
- 11.4 Inapplicability of other laws and regulations.
- 11.5 Informal review of adverse decisions.
- 11.6 Director review of agency determination of appealability and right of participants to Division hearing.
- 11.7 Ex parte communications.
- 11.8 Division hearings.
- 11.9 Director review of determinations of Hearing Officers.
- 11.10 Basis for determinations.
- 11.11 Reconsideration of Director determinations.
- 11.12 Effective date and implementation of final determinations of the Division.
- 11.13 Judicial review.
- 11.14 Filing of appeals and computation of time.

Authority: 5 U.S.C. 301; Title II, Subtitle H, Pub. L. 103-354, 108 Stat. 3228 (7 U.S.C. 6991 et seq.); Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).



§ 11.1 Definitions.

For purposes of this part:

Adverse decision means an administrative decision made by an officer, employee, or committee of an agency that is adverse to a participant. The term includes a denial of equitable relief by an agency or the failure of an agency to issue a decision or otherwise act on the request or right of the participant within timeframes specified by agency program statutes or regulations or within a reasonable time if timeframes are not specified in such statutes or regulations. The term does not include a decision over which the Board of Contract Appeals has jurisdiction.

Agency means:

- (1) The Agricultural Stabilization and Conservation Service (ASCS);
- (2) The Commodity Credit Corporation (CCC);
- (3) The Farm Service Agency (FSA);
- (4) The Farmers Home Administration (FmHA);
- (5) The Federal Crop Insurance Corporation (FCIC);
- (6) The Natural Resources Conservation Service (NRCS);
- (7) The Rural Business-Cooperative Service (RBS);
- (8) The Rural Development Administration (RDA);
- (9) The Rural Housing Service (RHS);
- (10) The Rural Utilities Service (RUS) (but not for programs authorized by the Rural Electrification Act of 1936 and the Rural Telephone Bank Act, 7 U.S.C. 901 et seq.);
- (11) The Soil Conservation Service (SCS);
- (12) A State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)); and
- (13) Any successor agency to the above-named agencies, and any other agency or office of the Department which the Secretary may designate.

Agency record means all the materials maintained by an agency related to an adverse decision which are submitted to the Division by an agency for consideration in connection with an appeal under this part, including all materials prepared or reviewed by the agency during its consideration and decision-making process, but shall not include records or information not related to the adverse decision at issue. All materials contained in the agency record submitted to the Division shall be deemed admitted as evidence for purposes of a hearing or a record review under Sec. 11.8 of this Appendix.

Agency representative means any person, whether or not an attorney, who is authorized to represent the agency in an administrative appeal under this part.

Appeal means a written request by a participant asking for review by the National Appeals Division of an adverse decision under this part.

Appellant means any participant who appeals an adverse decision in accordance with this part. Unless separately set forth in this part, the term "appellant" includes an authorized representative.

Authorized representative means any person, whether or not an attorney, who is authorized in writing by a participant, consistent with Sec. 11.6(c), to act for the participant in an administrative appeal under this part. The authorized representative may act on behalf of the participant except when the provisions of this part require action by the participant or appellant personally.

Case record means all the materials maintained by the Secretary related to an adverse decision. The case record includes both the agency record and the hearing record.

Days means calendar days unless otherwise specified.

Department means the United States Department of Agriculture (USDA).

Director means the Director of the Division or a designee of the Director.

Division means the National Appeals Division established by this part.

Equitable relief means relief which is authorized under section 326 of the Food and Agriculture Act of 1962 (7 U.S.C. 1339a) and other laws administered by the agency.

Ex parte communication means an oral or written communication to any officer or employee of the Division with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports, or inquiries on Division procedure, in reference to any matter or proceeding connected with the appeal involved.

Hearing, except with respect to Sec. 11.5, means a proceeding before the Division to afford a participant the opportunity to present testimony or documentary evidence or both in order to have a previous determination reversed and to show why an adverse determination was in error.

Hearing Officer means an individual employed by the Division who conducts the hearing and determines appeals of adverse decisions by any agency.

Hearing record means all documents, evidence, and other materials generated in relation to a hearing under Sec. 11.8.

Implement means the taking of action by an agency of the Department in order fully and promptly to effectuate a final determination of the Division.

Participant means any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of an agency to which the regulations in this part apply is affected by a decision of such agency. With respect to guaranteed loans made by FSA, both the borrower and the lender jointly must appeal an adverse decision except that the denial or reduction of a final loss payment to a lender shall be appealed by the lender only. The term does not include persons whose claim(s) arise under:

- (1) Programs subject to various proceedings provided for in 7 CFR part 1;
- (2) Programs governed by Federal contracting laws and regulations (appealable under other rules and to other forums, including to the Department's Board of Contract Appeals under 7 CFR part 24);
- (3) The Freedom of Information Act (appealable under 7 CFR part 1, subpart A);
- (4) Suspension and debarment disputes, including, but not limited to, those falling within the scope of 7 CFR parts 1407 and 3017;
- (5) Export programs administered by the Commodity Credit Corporation;
- (6) Disputes between reinsured companies and the Federal Crop Insurance Corporation;

- (7) Tenant grievances or appeals prosecutable under the provisions of 7 CFR part 1944, subpart L, under the multi-family housing program carried out by RHS;
- (8) Personnel, equal employment opportunity, and other similar disputes with any agency or office of the Department which arise out of the employment relationship;
- (9) The Federal Tort Claims Act, 28 U.S.C. 2671 et seq., or the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. 3721; or
- (10) Discrimination complaints prosecutable under the nondiscrimination regulations at 7 CFR parts 15, 15a, 15b, and 15e.

Record review means an appeal considered by the Hearing Officer in which the Hearing Officer's determination is based on the agency record and other information submitted by the appellant and the agency, including information submitted by affidavit or declaration.

Secretary means the Secretary of Agriculture.

#### § 11.2 General statement.

(a) This part sets forth procedures for proceedings before the National Appeals Division within the Department. The Division is an organization within the Department, subject to the general supervision of and policy direction by the Secretary, which is independent from all other agencies and offices of the Department, including Department officials at the state and local level. The Director of the Division reports directly to the Secretary of Agriculture. The authority of the Hearing Officers and the Director of the Division, and the administrative appeal procedures which must be followed by program participants who desire to appeal an adverse decision and by the agency which issued the adverse decision, are included in this part.

(b) Pursuant to section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Public Law 103-354 (the Act), 7 U.S.C. 6912(e), program participants shall seek review of an adverse decision before a Hearing Officer of the Division, and may seek further review by the Director, under the provisions of this part prior to seeking judicial review.

§ 11.3 Applicability.

(a) Subject matter. The regulations contained in this part are applicable to adverse decisions made by an agency, including, for example, those with respect to:

- (1) Denial of participation in or receipt of benefits under, any program of an agency;
- (2) Compliance with program requirements;
- (3) The making or amount of payments or other program benefits to a participant in any program of an agency; and
- (4) A determination that a parcel of land is a wetland or highly erodible land.

(b) Limitation. The procedures contained in this part may not be used to seek review of statutes or USDA regulations issued under Federal law.

§ 11.4 Inapplicability of other laws and regulations.

The provisions of the Administrative Procedure Act generally applicable to agency adjudications (5 U.S.C. 554, 555, 556, 557, & 3105) are not applicable to proceedings under this part. The Equal Access to Justice Act, as amended, 5 U.S.C. 504, does not apply to these proceedings. The Federal Rules of Evidence, 28 U.S.C. App., shall not apply to these proceedings.

§ 11.5 Informal review of adverse decisions.

(a) Required informal review of FSA adverse decisions. A participant must seek an informal review of an adverse decision issued at the field service office level by an officer or employee of FSA, or by any employee of a county or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590h(b)(5), before NAD will accept an appeal of an FSA adverse decision. Such informal review shall be done by the county or area committee with responsibility for the adverse decision at issue. The procedures for requesting such an informal review before FSA are found in 7 CFR part 780. After receiving a decision upon review by a county or area committee, a participant may seek further informal review by the State FSA committee or may appeal directly to NAD under Sec. 11.6(b).

(b) Optional informal review. With respect to adverse decisions issued at the State office level of FSA and adverse decisions of all other agencies, a participant may request an agency informal review of an adverse decision of that agency prior to appealing to NAD. Procedures for requesting such an informal review are found at 7 CFR part 780 (FSA), 7 CFR part 614 (NRCS), 7 CFR part 1900, subpart B (RUS), 7 CFR part 1900, subpart B (RBS), and 7 CFR part 1900, subpart B (RHS).

(c) Mediation. A participant also shall have the right to utilize any available alternative dispute resolution (ADR) or mediation program, including any mediation program available under title V of the Agriculture Credit Act of 1987, 7 U.S.C. 5101 et seq., in order to attempt to seek resolution of an adverse decision of an agency prior to a NAD hearing. If a participant:

(1) Requests mediation or ADR prior to filing an appeal with NAD, the participant stops the running of the 30-day period during which a participant may appeal to NAD under Sec. 11.6(b)(1), and will have the balance of days remaining in that period to appeal to NAD once mediation or ADR has concluded.

(2) Requests mediation or ADR after having filed an appeal to NAD under Sec. 11.6(b), but before the hearing, the participant will be deemed to have waived his right to have a hearing within 45 days under Sec. 11.8(c)(1) but shall have the right to have a hearing within 45 days after conclusion of mediation or ADR.

§ 11.6 Director review of agency determination of appealability and right of participants to Division hearing.

(a) Director review of agency determination of appealability.

(1) Not later than 30 days after the date on which a participant receives a determination from an agency that an agency decision is not appealable, the participant must submit a written request to the Director to review the determination in order to obtain such review by the Director.

(2) The Director shall determine whether the decision is adverse to the individual participant and thus appealable or is a matter of general applicability and thus not subject to appeal, and will issue a final determination notice that upholds or reverses the determination of the agency. This final determination is not appealable. If the Director reverses the determination of the agency, the Director will notify the participant and the agency of that decision and inform the participant of his or her right to proceed with an appeal.

(3) The Director may delegate his or her authority to conduct a review under this subsection to any subordinate official of the Division other than a Hearing Officer. In any case in which such review is conducted by such a subordinate official, the subordinate official's determination shall be considered to be the determination of the Director and shall be final and not appealable.

(b) Appeals of adverse decisions.

(1) To obtain a hearing under Sec. 11.8, a participant personally must request such hearing not later than 30 days after the date on which the participant first received notice of the adverse decision or after the date on which the participant receives notice of the Director's determination that a decision is appealable. In the case of the failure of an agency to act on the request or right of a recipient, a participant personally must request such hearing not later than 30 days after the participant knew or reasonably should have known that the agency had not acted within the timeframes specified by agency program regulations, or, where such regulations specify no timeframes, not later than 30 days after the participant reasonably should have known of the agency's failure to act.

(2) A request for a hearing shall be in writing and personally signed by the participant, and shall include a copy of the adverse decision to be reviewed, if available, along with a brief statement of the participant's reasons for believing that the decision, or the agency's failure to act, was wrong. The participant also shall send a copy of the request for a hearing to the agency, and may send a copy of the adverse decision to be reviewed to the agency, but failure to do either will not constitute grounds for dismissal of the appeal. Instead of a hearing, the participant may request a record review.

(c) If a participant is represented by an authorized representative, the authorized representative must file a declaration with NAD, executed in accordance with 28 U.S.C. 1746, stating that the participant has duly authorized the declarant in writing to represent the participant for purposes of a specified adverse decision or decisions, and attach a copy of the written authorization to the declaration.

§ 11.7 Ex parte communications.

(a) Ex parte communications.

(1) At no time between the filing of an appeal and the issuance of a final determination under this part shall any officer or employee of the Division engage in ex parte communications regarding the merits of the appeal with any person having any interest in the appeal pending before the Division, including any person in an advocacy or investigative capacity. This prohibition does not apply to:

(i) Discussions of procedural matters related to an appeal; or

(ii) Discussions of the merits of the appeal where all parties to the appeal have been given notice and an opportunity to participate.

(2) In the case of a communication described in paragraph (a)(1)(ii) of this section, a memorandum of any such discussion shall be included in the hearing record.

(b) No interested person shall make or knowingly cause to be made to any officer or employee of the Division an ex parte communication relevant to the merits of the appeal.

(c) If any officer or employee of the Division receives an ex parte communication in violation of this section, the one who receives the communication shall place in the hearing record:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses to such communications, and memoranda stating the substance of any oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section the Hearing Officer or Director may, to the extent consistent with the interests of justice and the policy of the underlying program, require the party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.



§ 11.8 Division hearings.

(a) General rules.

(1) The Director, the Hearing Officer, and the appellant shall have access to the agency record of any adverse decision appealed to the Division for a hearing. Upon request by the appellant, the agency shall provide the appellant a copy of the agency record.

(2) The Director and Hearing Officer shall have the authority to administer oaths and affirmations, and to require, by subpoena, the attendance of witnesses and the production of evidence. A Hearing Officer shall obtain the concurrence of the Director prior to issuing a subpoena.

(i) A subpoena requiring the production of evidence may be requested and issued at any time while the case is pending before the Division.

(ii) An appellant or an agency, acting through any appropriate official, may request the issuance of a subpoena requiring the attendance of a witness by submitting such a request in writing at least 14 days before the scheduled date of a hearing. The Director or Hearing Officer shall issue a subpoena at least 7 days prior to the scheduled date of a hearing.

(iii) A subpoena shall be issued only if the Director or a Hearing Officer determines that:

(A) For a subpoena of documents, the appellant or the agency has established that production of documentary evidence is necessary and is reasonably calculated to lead to information which would affect the final determination or is necessary to fully present the case before the Division; or

(B) For a subpoena of a witness, the appellant or the agency has established that either a representative of the Department or a private individual possesses information that is pertinent and necessary for disclosure of all relevant facts which could impact the final determination, that the information cannot be obtained except through testimony of the person, and that the testimony cannot be obtained absent issuance of a subpoena.

(iv) The party requesting issuance of a subpoena shall arrange for service. Service of a subpoena upon a person named therein may be made by registered or certified mail, or in person. Personal service shall be made by personal delivery of a copy of the subpoena to the person named therein by any person who is not a party and who is not less than 19 years of age. Proof of service shall be made by filing with the Hearing Officer or Director who issued the subpoena a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service in person or by return receipts for certified or registered mail.

(v) A party who requests that a subpoena be issued shall be responsible for the payment of any reasonable travel and subsistence costs incurred by the witness in connection with his or her appearance and any fees of a person who serves the subpoena in person. The Department shall pay the costs associated with the appearance of a Department employee whose role as a witness arises out of his or her performance of official duties, regardless of which party requested the subpoena.

The failure to make payment of such charges on demand may be deemed by the Hearing Officer or Director as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(vi) If a person refuses to obey a subpoena, the Director, acting through the Office of the General Counsel of the Department and the Department of Justice, may apply to the United States District Court in the jurisdiction where that person resides to have the subpoena enforced as provided in the Federal Rules of Civil Procedure (28 U.S.C. App.).

(3) Testimony required by subpoena pursuant to paragraph (a)(2) of this section may, at the discretion of the Director or a Hearing Officer, be presented at the hearing either in person or telephonically.

(b) Hearing procedures applicable to both record review and hearings.

(1) Upon the filing of an appeal under this part of an adverse decision by any agency, the agency promptly shall provide the Division with a copy of the agency record. If requested by the appellant prior to the hearing, a copy of such agency record shall be provided to the appellant by the agency within 10 days of receipt of the request by the agency.

- (2) The Director shall assign the appeal to a Hearing Officer and shall notify the appellant and agency of such assignment. The notice also shall advise the appellant and the agency of the documents required to be submitted under paragraph (c)(2) of this section, and notify the appellant of the option of having a hearing by telephone.
- (3) The Hearing Officer will receive evidence into the hearing record without regard to whether the evidence was known to the agency officer, employee, or committee making the adverse decision at the time the adverse decision was made.

(c) Procedures applicable only to hearings.

(1) Upon a timely request for a hearing under Sec. 11.6(b), an appellant has the right to have a hearing by the Division on any adverse decision within 45 days after the date of receipt of the request for the hearing by the Division.

(2) The Hearing Officer shall set a reasonable deadline for submission of the following documents:

(i) By the appellant:

(A) A short statement of why the decision is wrong;

(B) A copy of any document not in the agency record that the appellant anticipates introducing at the hearing; and

(C) A list of anticipated witnesses and brief descriptions of the evidence such witnesses will offer.

(ii) By the agency:

(A) A copy of the adverse decision challenged by the appellant;

(B) A written explanation of the agency's position, including the regulatory or statutory basis therefore;

(C) A copy of any document not in the agency record that the agency anticipates introducing at the hearing; and

(D) A list of anticipated witnesses and brief descriptions of the evidence such witnesses will offer.

(3) Not less than 14 days prior to the hearing, the Division must provide the appellant, the authorized representative, and the agency a notice of hearing specifying the date, time, and place of the hearing. The hearing will be held in the State of residence of the appellant, as determined by the Hearing Officer, or at a location that is otherwise convenient to the appellant, the agency, and the Division. The notice also shall notify all parties of the right to obtain an official record of the hearing.

(4) Pre-hearing conference. Whenever appropriate, the Hearing Officer shall hold a pre-hearing conference in order to attempt to resolve the dispute or to narrow the issues involved. Such pre-hearing conference shall be held by telephone unless the Hearing Officer and all parties agree to hold such conference in person.

(5) Conduct of the hearing.

(i) A hearing before a Hearing Officer will be in person unless the appellant agrees to a hearing by telephone.

(ii) The hearing will be conducted by the Hearing Officer in the manner determined by the Division most likely to obtain the facts relevant to the matter or matters at issue. The Hearing Officer will allow the presentation of evidence at the hearing by any party without regard to whether the evidence was known to the officer, employee, or committee of the agency making the adverse decision at the time the adverse decision was made. The Hearing Officer may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. Any party shall have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the party's position; controvert evidence relied on by any other party; and question all witnesses. When appropriate, agency witnesses requested by the appellant will be made available at the hearing. Any evidence may be received by the Hearing Officer without regard to whether that evidence could be admitted in judicial proceedings.

(iii) An official record shall be made of the proceedings of every hearing. This record will be made by an official tape recording by the Division. In addition, either party may request that a verbatim transcript be made of the hearing proceedings and that such transcript shall be made the official record

of the hearing. The party requesting a verbatim transcript shall pay for the transcription service, shall provide a certified copy of the transcript to the Hearing Officer free of charge, and shall allow any other party desiring to purchase a copy of the transcript to order it from the transcription service.

(6) Absence of parties.

(i) If at the time scheduled for the hearing either the appellant or the agency representative is absent, and no appearance is made on behalf of such absent party, or no arrangements have been made for rescheduling the hearing, the Hearing Officer has the option to cancel the hearing unless the absent party has good cause for the failure to appear. If the Hearing Officer elects to cancel the hearing, the Hearing Officer may:

(A) Treat the appeal as a record review and issue a determination based on the agency record as submitted by the agency and the hearing record developed prior to the hearing date;

(B) Accept evidence into the hearing record submitted by any party present at the hearing, and then issue a determination; or

(C) Dismiss the appeal.

(ii) When a hearing is cancelled due to the absence of a party, the Hearing Officer will add to the hearing record any additional evidence submitted by any party present, provide a copy of such evidence to the absent party or parties, and allow the absent party or parties 10 days to provide a response to such additional evidence for inclusion in the hearing record.

(iii) Where an absent party has demonstrated good cause for the failure to appear, the Hearing Officer shall reschedule the hearing unless all parties agree to proceed without a hearing.

(7) Post-hearing procedure. The Hearing Officer will leave the hearing record open after the hearing for 10 days, or for such other period of time as the Hearing Officer shall establish, to allow the submission of information by the appellant or the agency, to the extent necessary to respond to new facts, information, arguments, or evidence presented or raised at the hearing. Any such new information will be added

by the Hearing Officer to the hearing record and sent to the other party or parties by the submitter of the information. The Hearing Officer, in his or her discretion, may permit the other party or parties to respond to this post-hearing submission.

(d) Interlocutory review. Interlocutory reviews by the Director of rulings of a Hearing Officer are not permitted under the procedures of this part.

(e) Burden of proof. The appellant has the burden of proving that the adverse decision of the agency was erroneous by a preponderance of the evidence.

(f) Timing of issuance of determination. The Hearing Officer will issue a notice of the determination on the appeal to the named appellant, the authorized representative, and the agency not later than 30 days after a hearing or the closing date of the hearing record in cases in which the Hearing Officer receives additional evidence from the agency or appellant after a hearing. In the case of a record review, the Hearing Officer will issue a notice of determination within 45 days of receipt of the appellant's request for a record review. Upon the Hearing Officer's request, the Director may establish an earlier or later deadline. A notice of determination shall be accompanied by a copy of the procedures for filing a request for Director review under Sec. 11.9. If the determination is not appealed to the Director for review under Sec. 11.9, the notice provided by the Hearing Officer shall be considered to be a notice of a final determination under this part.

#### § 11.9 Director review of determinations of Hearing Officers.

(a) Requests for Director review.

(1) Not later than 30 days after the date on which an appellant receives the determination of a Hearing Officer under Sec. 11.8, the appellant must submit a written request, signed personally by the named appellant, to the Director to review the determination in order to be entitled to such review by the Director. Such request shall include specific reasons why the appellant believes the determination is wrong.

(2) Not later than 15 business days after the date on which an agency receives the determination of a Hearing Officer under Sec. 11.8, the head of the agency may make a written request that the Director review the determination. Such request shall include specific reasons why the agency believes the determination is wrong, including citations of statutes or regulations that the agency believes the

determination violates. Any such request may be made by the head of an agency only, or by a person acting in such capacity, but not by any subordinate officer of such agency.

(3) A copy of a request for Director review submitted under this paragraph (a) shall be provided simultaneously by the submitter to each party to the appeal.

(b) Notification of parties. The Director promptly shall notify all parties of receipt of a request for review.

(c) Responses to request for Director review. Other parties to an appeal may submit written responses to a request for Director review within 5 business days from the date of receipt of a copy of the request for review.

(d) Determination of Director.

(1) The Director will conduct a review of the determination of the Hearing Officer using the agency record, the hearing record, the request for review, any responses submitted under paragraph (c) of this section, and such other arguments or information as may be accepted by the Director, in order to determine whether the decision of the Hearing Officer is supported by substantial evidence. Based on such review, the Director will issue a final determination notice that upholds, reverses, or modifies the determination of the Hearing Officer. The Director's determination upon review of a Hearing Officer's decision shall be considered to be the final determination under this part and shall not be appealable. However, if the Director determines that the hearing record is inadequate or that new evidence has been submitted, the Director may remand all or a portion of the determination to the Hearing Officer for further proceedings to complete the hearing record or, at the option of the Director, to hold a new hearing.

(2) The Director will complete the review and either issue a final determination or remand the determination not later than--

(i) 10 business days after receipt of the request for review, in the case of a request by the head of an agency; or

(ii) 30 business days after receipt of the request for review, in the case of a request by an appellant.

(3) In any case or any category of cases, the Director may delegate his or her authority to conduct a review under this section to any Deputy or Associate Directors of the Division. In any case in which such review is conducted by a Deputy or Associate Director under authority delegated by the Director, the Deputy or Associate Director's determination shall be considered to be the determination of the Director under this part and shall be final and not appealable.

(e) Equitable relief. In reaching a decision on an appeal, the Director shall have the authority to grant equitable relief under this part in the same manner and to the same extent as such authority is provided an agency under applicable laws and regulations.

§ 11.10 Basis for determinations.

(a) In making a determination, the Hearing Officers and the Director are not bound by previous findings of facts on which the agency's adverse decision was based.

(b) In making a determination on the appeal, Hearing Officers and the Director shall ensure that the decision is consistent with the laws and regulations of the agency, and with the generally applicable interpretations of such laws and regulations.

(c) All determinations of the Hearing Officers and the Director must be based on information from the case record, laws applicable to the matter at issue, and applicable regulations published in the Federal Register and in effect on the date of the adverse decision or the date on which the acts that gave rise to the adverse decision occurred, whichever date is appropriate under the applicable agency program laws and regulations.

§ 11.11 Reconsideration of Director determinations.

(a) Reconsideration of a determination of the Director may be requested by the appellant or the agency within 10 days of receipt of the determination. The Director will not consider any request for reconsideration that does not contain a detailed statement of a material error of fact made in the determination, or a detailed explanation of how the determination is contrary to statute or regulation, which would justify reversal or modification of the determination.

(b) The Director shall issue a notice to all parties as to whether a request for reconsideration meets the criteria in paragraph (a) of this section. If the request for reconsideration meets such criteria, the Director shall include a copy of the request for reconsideration in the notice to the non-requesting parties to the appeal. The non-requesting parties shall have 5 days from receipt of such notice from the Director to file a response to the request for reconsideration with the Director.



(c) The Director shall issue a decision on the request for reconsideration within 5 days of receipt of responses from the non-requesting parties. If the Director's decision upon reconsideration reverses or modifies the final determination of the Director rendered under Sec. 11.9(d), the Director's decision on reconsideration will become the final determination of the Director under Sec. 11.9(d) for purposes of this part.

§ 11.12 Effective date and implementation of final determinations of the Division.

(a) On the return of a case to an agency pursuant to the final determination of the Division, the head of the agency shall implement the final determination not later than 30 days after the effective date of the notice of the final determination.

(b) A final determination will be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable under the applicable agency program statutes or regulations.

§ 11.13 Judicial review.

(a) A final determination of the Division shall be reviewable and enforceable by any United States District Court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

(b) An appellant may not seek judicial review of any agency adverse decision appealable under this part without receiving a final determination from the Division pursuant to the procedures of this part.

§ 11.14 Filing of appeals and computation of time.

(a) An appeal, a request for Director review, or any other document will be considered "filed" when delivered in writing to the Division, when postmarked, or when a complete facsimile copy is received by the Division.

(b) Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the Division is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(c) The time for filing an appeal, a request for Director review, or any other document expires at 5:00 p.m. local time at the office of the Division to which the filing is submitted on the last day on which such filing may be made.

§ 11.15 Participation of third parties and interested parties in Division proceedings.

In two situations, parties other than the appellant or the agency may be interested in participating in Division proceedings. In the first situation, a Division proceeding may in fact result in the adjudication of the rights of a third party, e.g., an appeal of a tenant involving a payment shared with a landlord, an appeal by one recipient of a portion of a payment shared by multiple parties, an appeal by one heir of an estate. In the second situation, a party may desire to receive notice of and perhaps participate in an appeal because of the derivative impact the appeal determination will have on that party, e.g., guaranteed lenders and reinsurance companies. The provisions in this section set forth rules for the participation of such third and interested parties.

- (a) Third parties. When an appeal is filed, the Division shall notify any potential third party whose rights may be adjudicated of its right to participate as an appellant in the appeal. This includes the right to seek Director review of the Hearing Officer determination. Such third parties may be identified by the Division itself, by an agency, or by the original appellant. The Division shall issue one notice to the third party of its right to participate, and if such party declines to participate, the Division determination will be binding as to that third party as if it had participated. For purposes of this part, a third party includes any party for which a determination of the Division could lead to an agency action on implementation that would be adverse to the party thus giving such party a right to a Division appeal.
- (b) Interested parties. With respect to a participant who is a borrower under a guaranteed loan or an insured under a crop insurance program, the respective guaranteed lender of reinsurance company having an interest in a participant's appeal under this part may participate in the appeal as an interested party, but such participation does not confer the status of an appellant upon the guaranteed lender or reinsurance company such that it may request Director review of a final determination of the Division.