

Farm Service Agency, USDA

§ 785.7

(iv) Services provided by a State mediation program that are not consistent with the features of the mediation program certified by the State, including advocacy services on behalf of a mediation participant, such as representation of a mediation client before an administrative appeals entity of the USDA or other Federal Government department or Federal or State Court proceeding.

§ 785.5 Fees for mediation services.

A requirement that non-USDA parties who elect to participate in mediation pay a fee for mediation services will not preclude certification of a certified State mediation program or its eligibility for a grant; however, if participation in mediation is mandatory for a USDA agency, a certified State mediation program may not require the USDA agency to pay a fee to participate in a mediation.

§ 785.6 Deadlines and address.

(a) *Deadlines.* (1) To be a qualifying State as of the beginning of a fiscal year and to be eligible for grant funding as of the beginning of the fiscal year, the Governor of a State or head of a State agency designated by the Governor of a State must submit a request for certification and application for grant on or before August 1 of the calendar year in which the fiscal year begins.

(2) *Requests received after August 1.* FSA will accept requests for re-certifications and for new certifications of State mediation programs after August 1 in each calendar year; however, such requests will not be considered for grant funding under § 785.7(c) until after March 1.

(3) *Requests for additional grant funds during a fiscal year.* Any request by a State mediation program that is eligible for grant funding as of the beginning of the fiscal year for additional grant funds during that fiscal year for additional, unbudgeted demands for mediation services must be submitted on or before March 1 of the fiscal year.

(b) *Address.* The request for certification or re-certification and any grant request must be mailed or delivered to: Administrator, Farm Service Agency, U.S. Department of Agriculture, Stop

0501, 1400 Independence Avenue, SW., Washington, DC 20250-0501.

§ 785.7 Distribution of Federal grant funds.

(a) *Maximum grant award.* A grant award shall not exceed 70 percent of the budgeted allowable costs of operation and administration of the certified State mediation program. In no case will the sum granted to a State exceed \$500,000 per fiscal year.

(b) *Funding criteria.* FSA will consider the following in determining the grant award to a qualifying State:

(1) Demand for and use of mediation services (historical and projected);

(2) Scope of mediation services;

(3) Service record of the State program, as evidenced by:

(i) Number of inquiries;

(ii) Number of requests for and use of mediation services, historical and projected, as applicable;

(iii) Number of mediations resulting in signed mediation agreements;

(iv) Timeliness of mediation services; and

(v) Activities promoting awareness and use of mediation;

(4) Historic use of program funds (budgeted versus actual); and

(5) Material changes in the State program.

(c) *Disbursements of grant funds.* (1) Grant funds will be paid in advance, in installments throughout the Federal fiscal year as requested by a certified State mediation program and approved by FSA. The initial payment to a program in a qualifying State eligible for grant funding as of the beginning of a fiscal year shall represent at least one-fourth of the State's annual grant award. The initial payment will be made as soon as practicable after certification, or re-certification, after grant funds are appropriated and available.

(2) Payment of grant funds will be by electronic funds transfer to the designated account of each certified State mediation program, as approved by FSA.

(d) *Administrative reserve fund.* After funds are appropriated, FSA will set aside 5 percent of the annual appropriation for use as an administrative reserve.

§ 785.8

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(1) Subject to paragraph (a) of this section and the availability of funds, the Administrator will allocate and disburse sums from the administrative reserve in the following priority order:

(i) Disbursements to cover additional, unbudgeted demands for mediation services in qualifying States eligible for grant funding as of the beginning of the fiscal year;

(ii) Grants to qualifying States whose requests for new certification or re-certification were received between August 2 and March 1. A previously qualifying State that submits a request for re-certification received after August 1 may receive a grant award effective as of the beginning of the fiscal year. A newly qualifying State that submits a request for certification received after August 1 may receive a grant award effective March 31 of the fiscal year.

(iii) Any balance remaining in the administrative reserve will be allocated pro rata to certified State mediation programs based on their initial fiscal year grant awards.

(2) All funds from the administrative reserve will be made available on or before March 31 of the fiscal year.

(e) *Period of availability of funds.* (1) Certified State mediation programs receiving grant funds are encouraged to obligate award funds within the Federal fiscal year of the award. A State may, however, carry forward any funds disbursed to its certified State mediation program that remain unobligated at the end of the fiscal year of award for use in the next fiscal year for costs resulting from obligations in the subsequent funding period. Any carryover balances plus any additional obligated fiscal year grant will not exceed the lesser of 70 percent of the State's budgeted allowable costs of operation and administration of the certified State mediation program for the subsequent fiscal year, or \$500,000.

(2) Grant funds not spent in accordance with this part will be subject to de-obligation and must be returned to the USDA.

§ 785.8 Reports by qualifying States receiving mediation grant funds.

(a) *Annual report by certified State mediation program.* No later than 30 days following the end of a fiscal year dur-

ing which a qualifying State received a grant award under this part, the State must submit to the Administrator an annual report on its certified State mediation program. The annual report must include the following:

(1) A review of mediation services provided by the certified State mediation program during the preceding Federal fiscal year providing information concerning the following matters:

(i) A narrative review of the goals and accomplishments of the certified State mediation program in providing intake and scheduling of cases; the provision of background and selected information regarding the mediation process; financial advisory and counseling services, training, notification, public education, increasing resolution rates, and obtaining program funding from sources other than the grant under this part.

(ii) A quantitative summary for the preceding fiscal year, and for prior fiscal years, as appropriate, for comparisons of program activities and outcomes of the cases opened and closed during the reporting period; mediation services provided to clients grouped by program and subdivided by issue, USDA agency, types of covered persons and other participants; and the resolution rate for each category of issue reported for cases closed during the year;

(2) An assessment of the performance and effectiveness of the State's certified mediation program considering:

(i) Estimated average costs of mediation services per client with estimates furnished in terms of the allowable costs set forth in § 785.4(b)(1).

(ii) Estimated savings to the State as a result of having the State mediation program certified including:

(A) Projected costs of avoided USDA administrative appeals based on projections of the average costs of such appeals furnished to the State by FSA, with the assistance of the USDA National Appeals Division and other agencies as appropriate;

(B) In agricultural credit mediations that do not result from a USDA adverse program decision, projected cost savings to the various parties as a result of resolution of their dispute in mediation. Projected cost savings will be based on such reliable statistical