

## § 784.15

accordance with the provisions of 7 CFR part 792, or successor regulations, as designated by the Department.

### § 784.15 Assignments.

Any person who may be entitled to a payment may assign his rights to such payment in accordance with 7 CFR part 1404, or successor regulations, as designated by the Department.

### § 784.16 Termination of program.

This program will be terminated after payment has been made to those applications certified as eligible pursuant to the application period established in § 784.4.

## PART 785—CERTIFIED STATE MEDIATION PROGRAM

Sec.

785.1 General.

785.2 Definitions.

785.3 Annual certification of State mediation programs.

785.4 Grants to certified State mediation programs.

785.5 Fees for mediation services.

785.6 Deadlines and address.

785.7 Distribution of Federal grant funds.

785.8 Reports by qualifying States receiving mediation grant funds.

785.9 Access to program records.

785.10 Penalties for non-compliance.

785.11 Reconsideration by the Administrator.

785.12 Nondiscrimination.

785.13 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and 7 U.S.C. 5101-5104.

SOURCE: 67 FR 57315, Sept. 10, 2002, unless otherwise noted.

### § 785.1 General.

(a) States meeting conditions specified in this part may have their mediation programs certified by the Farm Service Agency (FSA) and receive Federal grant funds for the operation and administration of agricultural mediation programs.

(b) USDA agencies participate in mediations pursuant to agency rules governing their informal appeals processes. Where mediation of an agency decision by a certified State mediation program is available to participants in an agency program as part of the agency's informal appeal process, the agen-

## 7 CFR Ch. VII (1-1-05 Edition)

cy will offer a participant receiving notice of an agency decision the opportunity to mediate the decision under the State's certified mediation program, in accordance with the agency's informal appeals regulations.

(c) USDA agencies making mediation available as part of the agency informal appeals process may execute memoranda of understanding with a certified mediation program concerning procedures and policies for mediations during agency informal appeals that are not inconsistent with this part or other applicable regulations. Each such memorandum of understanding will be deemed part of the grant agreement governing the operation and administration of a State certified mediation program receiving Federal grant funds under this part.

(d) A mediator in a program certified under this part has no authority to make decisions that are binding on parties to a dispute.

(e) No person may be compelled to participate in mediation provided through a mediation program certified under this part. This provision shall not affect a State law requiring mediation before foreclosure on agricultural land or property.

### § 785.2 Definitions.

*Administrator* means the Administrator, FSA, or authorized designee.

*Certified State mediation program* means a program providing mediation services that has been certified in accordance with section 785.3.

*Confidential mediation* means a mediation process in which the mediator will not disclose to any person oral or written communications provided to the mediator in confidence, except as allowed by 5 U.S.C. 574 or section 785.9.

*Covered persons* means producers, their creditors (as applicable), and other persons directly affected by actions of the USDA involving one or more of the following issues:

- (1) Wetlands determinations;
- (2) Compliance with farm programs, including conservation programs;
- (3) Agricultural loans (regardless of whether the loans are made or guaranteed by the USDA or are made by a third party);
- (4) Rural water loan programs;

**Farm Service Agency, USDA**

**§ 785.3**

- (5) Grazing on National Forest System lands;
- (6) Pesticides; or
- (7) Such other issues as the Secretary may consider appropriate.

*Fiscal year* means the period of time beginning October 1 of one year and ending September 30 of the next year and designated by the year in which it ends.

*FSA* means the Farm Service Agency of the U.S. Department of Agriculture, or a successor agency.

*Mediation services* means all activities relating to the intake and scheduling of mediations; the provision of background and selected information regarding the mediation process; financial advisory and counseling services (as reasonable and necessary to prepare parties for mediation) performed by a person other than a State mediation program mediator; and mediation sessions in which a mediator assists disputing parties in voluntarily reaching mutually agreeable settlement of issues within the laws, regulations, and the agency's generally applicable program policies and procedures, but has no authoritative decision making power.

*Mediator* means a neutral individual who functions specifically to aid the parties in a dispute during a mediation process.

*Qualified mediator* means a mediator who meets the training requirements established by State law in the State in which mediation services will be provided or, where a State has no law prescribing mediator qualifications, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and, to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by the USDA, by an accredited college or university, or by one of the following organizations: State Bar of a qualifying State, a State mediation association, a State approved mediation program, or a society of professionals in dispute resolution.

*Qualifying State* means a State with a State mediation program currently certified by FSA.

**§ 785.3 Annual certification of State mediation programs.**

To obtain FSA certification of the State's mediation program, the State must meet the requirements of this section.

(a) *New request for certification.* A new request for certification of a State mediation program must include descriptive and supporting information regarding the mediation program and a certification that the mediation program meets certain requirements as prescribed in this subsection. If a State is also qualifying its mediation program to request a grant of Federal funds under the certified State mediation program, the State must submit with its request for certification additional information in accordance with § 785.4.

(1) *Description of mediation program.* The State must submit a narrative describing the following with supporting documentation:

- (i) A summary of the program;
- (ii) An identification of issues available for mediation under the program;
- (iii) Management of the program;
- (iv) Mediation services offered by the program;
- (v) Program staffing and staffing levels;
- (vi) Uses of contract mediation services in the program describing both services provided by contractors and costs of such services;
- (vii) State statutes and regulations in effect that are applicable to the State's mediation program; and
- (viii) A description of the State program's education and training requirements for mediators including:
  - (A) Training in mediation skills and in USDA programs;
  - (B) Identification and compliance with any State law requirements; and
  - (C) Other steps by the State's program to recruit and deploy qualified mediators.
- (ix) Any other information requested by FSA;

(2) *Certification.* The Governor, or head of a State agency designated by the Governor, must certify in writing to the Administrator that the State's mediation program meets the following program requirements: