

§ 785.8

7 CFR Ch. VII (1–1–10 Edition)

(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 during 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 data as may be obtained from State statistical sources including the certified State's bar association, State Department of Agriculture, State court system or Better Business Bureau, or other reliable State or Federal sources;

(iii) Recommendations for improving the delivery of mediation services to covered persons, including:

Farm Service Agency, USDA

§ 785.11

(A) Increasing responsiveness to needs for mediation services.

(B) Promoting increases in dispute resolution rates.

(C) Improving assessments of training needs.

(D) Improving delivery of training.

(E) Reducing costs per mediation.

(3) Such other matters relating to the program as the State may elect to include, or as the Administrator may require.

(b) *Audit report.* In addition to the auditing requirements of part 3015, subpart I and §3016.26 of this title, any qualifying State receiving a grant under this part must submit an audit report to the Administrator in compliance with OMB Circular A-133.

§ 785.9 Access to program records.

Notwithstanding § 3015.24 of this title, the State must maintain and provide the Government access to pertinent records regarding services delivered by the certified State mediation program for purposes of evaluation, audit and monitoring of the certified State mediation program as follows:

(a) For purposes of this section, pertinent records consist of: the names and addresses of applicants for mediation services; dates mediations opened and closed; issues mediated; names of sessions with mediators; names of mediators; mediation services furnished to participants by the program; the sums charged to parties for each mediation service; records of delivery of services to prepare parties for mediation (including financial advisory and counseling services); and the outcome of the mediation services including formal settlement results and supporting documentation.

(b) State mediators will notify all participants in writing at the beginning of the mediation session that the USDA, including the USDA Inspector General, the Comptroller General of the United States, the Administrator, and any of their representatives will have access to pertinent records as necessary to monitor and to conduct audits, investigations, or evaluations of mediation services funded in whole or in part by the USDA.

(c) All participants in a mediation must sign and date an acknowledgment

of receipt of such notice from the mediator. The certified State mediation program shall maintain originals of such acknowledgments in its mediation files for at least 5 years.

§ 785.10 Penalty for non-compliance.

(a) The Administrator is authorized to withdraw certification of a State mediation program, terminate or suspend the grant to such program, require a return of unspent grant funds, a reimbursement of grant funds on account of expenditures that are not allowed, and may impose any other penalties or sanctions authorized by law if the Administrator determines that:

(1) The State's mediation program, at any time, does not meet the requirements for certification;

(2) The mediation program is not being operated in a manner consistent with the features of the program certified by the State, with applicable regulations, or the grant agreement;

(3) Costs that are not allowed under § 785.4(b) are being paid out of grant funds;

(4) The mediation program fails to grant access to mediation records for purposes specified in § 785.8; or

(5) Reports submitted by the State pursuant to § 785.7 are false, contain misrepresentations or material omissions, or are otherwise misleading.

(b) In the event that FSA gives notice to the State of its intent to enforce any withdrawal of certification or other penalty for non-compliance, USDA agencies will cease to participate in any mediation conducted by the State's mediation program immediately upon delivery of such notice to the State.

§ 785.11 Reconsideration by the Administrator.

(a) A State mediation program may request that the Administrator reconsider any determination that a State is not a qualifying State under § 785.3 and any penalty decision made under § 785.10. The decision of the Administrator upon reconsideration shall be the final administrative decision of FSA.

(b) Nothing in this part shall preclude action to suspend or debar a