

KANSAS AGRICULTURAL MEDIATION SERVICES (KAMS)

ANNUAL REPORT

For the period

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Submitted by:

**Kansas Agricultural Mediation Services
2A Edwards Hall, KSU Campus
Manhattan KS 66506-4806
Forrest Buhler
fbuhler@ksu.edu**

KAMS Annual Report for FY 2017

Introduction

In accordance with the criteria set out in the regulations, the annual report for the Kansas Agricultural Mediation Services (KAMS) will examine the performance and accomplishments of KAMS in three major areas: 1) a review of the mediation services provided by KAMS; 2) a quantitative summary of program activities; and 3) an assessment of the performance and effectiveness of the program. As is also required by the regulations we will address recommendations for improving the delivery of mediation services.

Program Background

On June 16, 1988, the Kansas Agricultural Mediation Services (KAMS), as part of the Kansas State Board of Agriculture, was certified by USDA to operate the official agricultural loan mediation program in Kansas. In 1995 the Kansas Legislature transferred jurisdiction of KAMS to the Cooperative Extension Service and Kansas State University, now called K-State Research and Extension (KSRE), effective July 1, 1995. KSRE then applied for, received, and administered the state's agricultural loan mediation grant for FY 1996, and has continued to do so since that time.

KAMS is also an "approved mediation program" under Kansas law (K.S.A. 5-501 *et seq.*), having been so certified by the Office of Judicial Administration of the Kansas Supreme Court, Office of Dispute Resolution. KAMS was originally approved as such on February 4, 1997, and KAMS has been approved each year since that time. Being an "approved program" under Kansas law gives KAMS legal status to preserve and maintain confidentiality of mediation sessions and records (K.S.A. 5-512).

Program Characteristics

The services provided by KAMS include three major components: 1) face-to-face mediation; 2) farm financial counseling; and 3) legal counseling for all parties. The last two components, which prepare all parties for mediation, have been vital to the success of the KAMS program over the years. The work of our farm analysts and attorneys often result in agreements being reached prior to a face-to-face mediation session. Early intervention by such professionals with objective advice and information contributes to the success of the mediation process and enhances the long-term viability of any agreement reached. Our support services are described in more detail in paragraph "II.A.3." below as is required by the format.

A. KAMS Staff

KAMS had two fulltime staff members this past year including: Char Henton, Mediation Coordinator; and Forrest Buhler, Staff Attorney. KAMS hired Gary Kepka as Extension Assistant to replace the previous staff member who resigned the first week of FY 2017. Gary has been on board since April, 2017.

B. KAMS Mediators

KAMS currently has a pool of 10 mediators who conduct the face-to-face mediations on a case-by-case basis. They are specially trained in mediating agricultural credit disputes and USDA adverse decision disputes. The mediators come from a wide variety of professions including farmers, attorneys, mediators, and mental health counselors. The KAMS mediators are required to be State approved mediators with the Kansas Office of Dispute Resolution. Under Kansas law (K.S.A. 5-501 *et seq.*) and the rules of the Kansas Supreme Court relating to mediation (Rules 901-904) an “approved” mediator must meet the following requirements: 1) complete 16 hours of “core mediation training” requirements as required by Kansas Supreme Court Rule 902; 2) sign an agreement to follow the ethical standards set forth in Kansas Supreme Court Rule 903; 3) co-mediate with or be supervised by an approved mentor mediator for three cases during the first year of approved mediation practice with cases in the area the trainee took his/her training after completing core training; and 4) earn a minimum of six credit hours of approved mediation education each calendar year as required by Kansas Supreme Court Rule 904. All KAMS mediators meet these requirements.

KAMS provides an annual training for its mediators that meets the continuing mediator education requirements of State law. These trainings keep KAMS mediators updated on issues and skills unique to agricultural mediation and handling agricultural credit and USDA agency adverse decision cases done as part of being the USDA Certified State Agricultural Mediation Program for Kansas.

1. Overview of Mediation Services Provided in FY 2017

1A. Review of Goals and Accomplishment

In paragraphs B-G below we have set out our goals and accomplishments in the various categories required by 785.8(a)(1)(i).

1B. Intake and Scheduling

A toll-free hotline (1-800-321-FARM) provides callers an easy and affordable connection to KAMS services. Staff answering the hotline first explains the mediation program, the K-State Research and Extension connection, how mediation helps in ag situations, and available support services. Staff further clarify that initial work is conducted over the phone, and that all calls are free and confidential. Experienced staff members create a trusting open line of communication with callers. Collectively Char and Forrest have over 60 years of experience working with farm families.

Once issues and concerns are identified, a telephone appointment is made with the KAMS staff attorney. With over 29 years of ag law experience the attorney helps callers clarify legal issues, understand how mediation resolves issues, and refers them to financial and legal support services once the parties agree to mediate. Support services include low-cost legal advice through Kansas Legal Services and financial counseling through the K-State Research and Extension (KSRE) Farm Analyst program (see paragraph 3 below for more details about these two services). Callers are encouraged to continue to contact KAMS with any questions or concerns.

The KAMS office schedules a mediation once parties have completed necessary paperwork and worked with support services so they are well prepared for a face-to-

face mediation. A mediator is selected from the KAMS pool of approved mediators. The mediation is held at a neutral location convenient to all parties. The mediator, a neutral facilitator, conducts the mediation and summarizes the session with all parties signing a Memorandum of Understanding (MOU). The MOU indicates an official closing date for the mediation case.

KAMS has agreements with three USDA Agencies to process cases in a timely manner. For Farm Service Agency and Natural Resource Conservation Service cases, the cumulative time line allows for 75 days from the time the case is opened until it is mediated or closed. For FY 2018 the cumulative time line has been changed to 120 days in FSA Farm Loan Program adverse decision cases where a K-State Research and Extension Farm Analyst is assigned to help parties develop financial options to resolve the issue. For Rural Development cases the time line is 45 days from the initial contact made with the client by KAMS after mediation is requested through RD.

1C. Background Information on KAMS Mediation Process

Privileged to be one of the original participating ag mediation states, KAMS has provided 29 years of service to the Kansas ag community. Working through the 80's farm crisis, the KAMS staff developed an empathetic and helpful response to all callers resulting in the formation of trusting, confidential relationships.

It is important to explain the mediation process and its role in solving ag issues and concerns. Efforts are made to help callers understand mediation as a viable way to resolve difficult situations and explore options. KAMS provides a set of Mediation Rules that establishes the parameters of how mediation will be conducted and the importance of confidentiality to the process.

KAMS has developed many materials and publications to assist parties in understanding the mediation process and the services provided by KAMS. One beneficial resource is our website (<http://www.ksre.k-state.edu/kams/>). It gives clients access to information about the mediation process as well as links to other helpful resources and programs we work with.

A valuable part of the process that has been vital to KAMS' success is the good relationships developed with FSA, NRCS, RMA and RD. We have shared in each other's training and education sessions; and we have an open line of communication that creates an effective working relationship. When faced with issues outside our area of expertise KAMS makes thoughtful referrals through the connections we have made with other programs and agencies across the state. Positive working relationships have been developed with USDA offices, K-State Research and Extension (KSRE), Kansas Farm Management Association, farm financial analysts, aging agencies, mental health centers, AgrAbility and the Kansas Bankers Association Ag Bankers Division, to name a few. These connections provide a reputable network of resources for assistance outside of KAMS and are a good source for referrals back to KAMS.

The program has been challenged in promotion and outreach efforts. The State of Kansas does not require parties to participate in mediation in agricultural credit disputes. Over the years KAMS staff have managed to develop creative ways to stretch available funds for outreach with low-cost public service announcements, articles in commodity group newsletters and magazines, connections with state-wide church alliances, meetings with various farm groups, programs for FSA and NRCS training

workshops, meetings with the Kansas Ag Bankers Association, exhibits at farm shows, KSRE workshops, and educational meetings with agencies and programs not accustomed to working with farm families and rural communities. For a detailed explanation of our outreach efforts for this past year see paragraph 4 below.

Overall KAMS' goal has been to reach out to callers and help them explore options, find sound supportive help for all problems, and generate solutions. KAMS continues to be a safe place to call and ask questions.

1D. Financial Advisory and Counseling Services

i. Financial Counseling

Financial Counseling Services Overview. Farm and ranch financial counseling services are provided by the KSRE Farm Analyst Program, which consists of a team of five analysts that cover the entire state of Kansas. A significant part of the funding for the KSRE Farm Analyst Program comes from KAMS. The analysts, with access to a computer program called FINPACK, provide hands on assistance and advice in the homes of producers. The FINPACK program is specifically designed to help analyze the profitability and feasibility of farm and ranch operations, as well as the viability of alternatives being considered or developed during the mediation process for restructuring the producer's operation or the debt associated with that operation. This service is provided at a low cost (\$100) to the producer and can be waived in hardship cases.

Financial Counseling Cases. The "KSRE Financial Counseling Cases" chart attached to this report represents the number of mediation cases dealt with where a referral was made to a KSRE farm financial analyst as part of a covered case. Of the eighty-eight (88) referrals dealt with during the year thirty (30) were carryover cases from FY 2016 and fifty-eight (58) were referred in FY 2017. Thirty-five (35) referrals were carried over into FY 2018. Fifty-three (53) of the referrals were closed: one (1) declined mediation; forty-eight (48) with agreement; and four (4) with no agreement. Of the fifty-two (52) cases closed resulting in an agreement or non-agreement, thirty-nine (39) cases were closed without face-to-face mediation (37 agreements and 2 no agreement), and thirteen (13) were closed with a face-to-face mediation (11 agreements and 2 no agreement). Based on the number of cases closed during FY 2017, excluding declinations, the chart shows another high degree of success with an overall agreement rate of 94.2% in reaching an agreement in FY 2017 in cases where a farm analyst was involved. To arrive at this figure the number of non-face-to-face and face-to-face mediation cases with a farm analyst referral are totaled and divided into the total number of non-face-to-face and face-to-face mediations with agreement (48/52). An increasing ag credit caseload left twenty-seven (27) cases pending that were in need of farm analyst assistance.

ii. Legal Counseling

Farm Mediation Legal Counseling Services Overview. KAMS offers legal advice to all parties in preparation for mediation. The legal advice component is provided by Kansas Legal Services, Inc. (KLS). KLS is a not-for-profit corporation, funded in part by the federal Legal Services Corporation, that provides a wide range of assistance to over

20,000 Kansans each year in addition to the Farm Mediation Legal Counseling Program. There are currently seven KLS farm mediation attorneys who provide legal services to clients on a regional basis across the state. Producers share in the cost of the legal counseling services based on their ability to pay.

Legal Assistance Is Provided to ALL Parties Who Request It. The KAMS Staff Attorney first contacts the initial client who calls in and requests mediation to determine if legal assistance would benefit the client in preparing for mediation. Legal fees and more detailed information is shared, making clear that the use of KAMS' legal assistance is an option and not mandatory as parties sometimes prefer to use their own private attorney. KAMS' funding does not pay for their private attorney. If legal assistance through KAMS' Farm Mediation Legal Counseling Program is chosen by a party, a referral letter is written to the client and to the KLS attorney assigned to the case. It is then up to the client to contact the KLS attorney and set up an appointment. It is made clear to the client that the legal assistance is only available to help them prepare for mediation and not for assisting the party at a mediation session. It is also made clear that USDA regulations do not allow grant funds to be used for representation of a party before an administrative appeals entity of USDA, other Federal Government agency, or any Federal or State Court proceeding.

As information is gathered over time about the case and the other party(s) are identified to be included in the mediation, the KAMS' Staff Attorney contacts the other party(s) by letter and follow up phone calls to explain the legal assistance available and the necessity of an agreement to mediate. If another party wants the advice of an attorney in the KAMS system, then a referral is made as set out in the previous paragraph.

Additionally, information about legal support services is explained in all KAMS' public presentations, farm shows, KSRE educational programs, media promotions, handouts, publications and forms.

Farm Mediation Legal Counseling Cases. The "Cases with KLS Farm Mediation Legal Counseling" chart represents the number of mediation cases dealt with where a referral was made to a KLS attorney for preparation work. Of the forty-six (46) case referrals dealt with during the year seven (7) of them were carryovers from FY 2016 and thirty (30) of them were referred in FY2017. Thirty-three (33) of the referrals were closed: two (2) declined mediation; twenty-five (25) cases with agreement; and eight (8) cases with no agreement. Thirteen (13) referrals were carried over into FY 2018. Of the thirty-three (33) cases closed resulting in an agreement or non-agreement, eighteen (18) cases were closed without face-to-face mediation (15 agreements and 3 no agreement), and fifteen (15) were closed with a face-to-face mediation (10 agreements and 5 no agreement). Based on the number of cases closed during FY 2017, excluding declinations, the chart shows an overall agreement rate of 75.8% in cases where a referral was made to a KLS attorney. To arrive at this figure the number of non-face-to-face and face-to-face mediations with a KLS referral are totaled and divided into the total number of non-face-to-face and face-to-face mediations with agreement (25/33).

1E. Training, Notification, Outreach and Public Education

Training for KAMS Mediators.

Kansas law requires that “approved mediators” earn a minimum of six credit hours of continuing mediation education each calendar year (Kansas Supreme Court Rule 904). KAMS held its annual mediator training on September 11, 2017, in Manhattan, KS. KAMS’ contract mediators, KLS attorneys, KSRE farm analysts, Extension Agents, and some of the newly trained Ag Extension Agent Farm Financial Analysts participated in the training. Topics and speakers for the training included the following: 1) “CAMP Update; Who can use KAMS services; and discussion of timelines for KAMS mediation.” by KAMS staff; 2) “Kansas Concealed Carry Law and Impact on Mediation,” presented by Lt. Brad Millington of the KSU Police Department and Forrest Buhler; 3) “Kansas Ag Economic Update” presented by Kevin Herbel, Kansas Farm Management Association Director, and Duane Hund, K-State Research and Extension Farm Analyst Program; 4) “USDA FSA Farm Loan Program Issues Affecting Mediation” presented by Robert White Kansas FSA Farm Loan Program Chief; 5) “Dealing with Confidential Mediation Data” presented by Gary Kepka of the KAMS staff; 6) “Role of KAMS Professionals – Round Table Discussion of KAMS Cases” lead by KAMS mediators, farm analysts and KLS attorneys; and 7) “Bankruptcy Basics as it Relates to Ag Credit Mediation” presented by Wes Smith a bankruptcy attorney that represents both creditors and debtors. The training was approved for 6 hours of continuing mediator education (CME) credits by the Kansas Supreme Court Office of Dispute Resolution. This meets the annual CME requirements (six hours) for our mediators to continue to be approved mediators in Kansas, thus also satisfying the definition of a “qualified mediator” under 7 C.F.R. 785.2.

Notification, Outreach and Public Education

1st Quarter (October 1, 2016 to December 31, 2016)

1. Char attended the Ag Lenders Conference, Garden City on October 4, 2017 and Forrest attended the Oct 5, 2016, Ag Lenders Conference, Manhattan, to set up an exhibit about KAMS and to speak about KAMS services. The Kansas State University Department of Agricultural Economics puts on two conferences each year for ag lenders across the state to update them on the ag economy and outlooks for the next year. It is well attended each place with usually 70 in Garden City and 80 in Manhattan. It is a great opportunity to network for KAMS.
2. Forrest attended the American Ag Law Association Conference in Oklahoma City, OK, Oct. 6-7, 2016, to network with ag lawyers from across the nation to keep updated on issues that ultimately impact KAMS mediation cases.
3. Char set up an exhibit booth about KAMS at the 3i Farm Show in Dodge City, Kansas, during October 13-15, 2016. Over 1,000 companies representing irrigation, implements and industry (plus miscellaneous vendors) participated in the three-day event.
4. KAMS staff attended the K-State Research and Extension (KSRE) Annual Conference at Kansas State University on October 25-27, 2016. The annual conference is attended by all KSRE Extension Agents and KSRE specialists from across the state. During a poster session KAMS staff set up a display and networked with Extension professionals.
5. On October 28-29, 2016 Char set up an information exhibit at the 18th Annual Kansas Cattlemen’s Association Convention and Trade Show in Newton, Kansas.

- The event included educational seminars, industry updates and the opportunity for cattlemen, stockmen, consultants and suppliers to exchange ideas and learn about key issues impacting the cattle industry. Over 25 exhibitors and 150 members and guests attended.
6. Char manned the KAMS booth at the Wichita Farm and Ranch Show, November 8-10-12, 2016. Approximately 2,500 attended the three-day event.
 7. Forrest manned the KAMS booth at the Kansas Crop Insurance Conference on November 10, 2016 to network with crop insurance agents about KAMS.
 8. Char set up a booth and spoke about KAMS services to 30 women at the Saline County Women in Ag meeting on November 17, 2016. A representative from the Central Kansas Mental Health Center spoke about "Mental Health...part of Good Health!!" Char shared information about KAMS and how those services helps farmers with stress during hard times.
 9. Forrest and Char set up a KAMS exhibit at the Annual KSU Swine Day November 17, 2016. The one-day event provides research updates to swine producers, industry partners and students.
 10. KAMS staff participated in the Kansas Rural Center's (KRC) Farm and Food Conference in Manhattan on November 18-19, 2016. The conference focused on "Transforming our Farms, Our Food and Our Future: Building the Road as We Go." Forrest participated on a panel addressing "Weathering Hard Times: Lessons from the 1980's Farm Crisis." Forrest and Char also set up a KAMS' information table. Over 200 attended each day. For 37 years, KRC has provided information regarding sustainability, healthy food system and alternative to make thing happen in agriculture.
 11. On December 2, 2016, Forrest gave an interview on KKSU radio with Eric Atkinson on his Agriculture Today program about KAMS and some ag law topics.
 12. Kansas Farm Bureau (KFB) Annual Meeting December 5, 2016 98th Annual Meeting Tradeshow. Throughout the day on Monday. An estimated 650 participants visited workshops and tradeshow.
 13. Char, Forrest and Duane presented a workshop at KFB Annual Meeting "Managing Your Farm's Future". An uncertain farm economic forecast creates a strain on finances and relationships. The Kansas Agricultural Mediation Services (KAMS) team shared information about resources available to help navigate through uncertain times. Through a toll-free number, KAMS provides a network of financial analysts, attorneys and mediators with experience in helping producers. The KSU Farm Analyst Program highlighted how the analysts go on-farm to use the FinPack computer program to look at profitability of the current operation and the feasibility of various options if changes are needed.
 14. On December 6, 2016 Forrest talked about KAMS at a K-State Research and Extension (KSRE) conference in Salina in conjunction with the presentation he gave on Agricultural Lease Law and Fence Law.
 15. On December 7, 2016 Forrest talked about KAMS at a KSRE conference in Hays in conjunction with the presentation he gave on Agricultural Lease Law and Fence Law.
 16. Forrest attended the Kansas Farmers Union Annual Convention Wichita KS on December 8, 2016, to make a presentation about KAMS and be on a panel about resources available now compared to the Farm Crisis of the 1980's. Over 75

producers, crop insurance agents and a group of beginning farmers attended the convention.

17. On December 19, 2016 Forrest talked about KAMS at a KSRE conference in Kingman in conjunction with the presentation he gave on Agricultural Lease Law and Fence Law.

2nd Quarter (January 1 – March 31, 2017)

1. KAMS staff attended and set up a KAMS exhibit at the Topeka Farm Show on January 10-12, 2017, in Topeka, Kansas, at the Expo-Center. Over 10,000 attended the show.
2. On January 18, 2017 Forrest attended the KSRE conference for ag producers entitled The Top Ten Considerations for Navigating a Struggling Farm Economy in Salina. KAMS set up a display about the services we provide.
3. On January 19, 2017 Forrest and Duane Hund gave a presentation on KAMS services and farm financial record keeping at the Sumner County Ag Day Conference in Winfield at the request of the KSRE Ag Agent for Sumner County. The presentation drew about 25 attendees including producers and lenders.
4. KAMS staff gave a presentation on KAMS and Succession Planning to KSRE constituents in Dodge City and Lawrence on January 23 and 26, respectively. These presentations were done as part of a separate grant through the North Central Extension Risk Management Education Center on Succession Planning for the Future. All expenses were paid by the other grant but we still reviewed KAMS services.
5. KAMS staff set up an exhibit booth at the Kansas Farm Bureau Young Farmers and Ranchers annual convention in Manhattan on January 28, 2017. Over 500 farmers and ranchers attended the conference.
6. KAMS staff and Charlie Griffin gave a presentation on KAMS services and the ag economy to the directors of the Association of community Mental Health Centers of Kansas in Topeka KS on February 16, 2017. This was a networking opportunity as KAMS staff was experiencing an increase in the number of high stress calls from farm clients and lenders.
7. Forrest gave a presentation on February 17, 2017, to the Ag Stewardship Conference in Overbrook, KS, put on by the KSRE Agents for Shawnee County, Douglas County, and Frontier Extension District. The presentation was on KAMS services and what KAMS staff was seeing in the way of calls and cases in the midst of the downturn in the ag economy. Over 120 producers attended the conference.
8. On February 20 and 23, 2017, Duane Hund and Forrest gave a presentation on KAMS and transferring assets as part of a succession plan in association with the grant from the North Central Extension Risk Management Education Center. All expenses were paid by the other grant but we still reviewed KAMS services.
9. Char served on planning committees for the regional "Women Managing the Farm". Char helped with the curriculum committee selecting breakout topics and speakers and also served on the conference participants' scholarship review committee.

10. KAMS set up a booth at the “Women Managing the Farm Conference” in Manhattan, Kansas on February 9-10, 2017. Over 180 women attended the regional conference from Kansas and surrounding states.
11. Char presented a breakout session about stress at the “Women Managing the Farm Conference” in Manhattan, February 10, 2017. Twenty attended her presentation about
12. Forrest gave a presentation about KAMS dealing with the downturn in the ag economy at the Women Managing for Farm Conference on February 10, 2017.
13. Forrest gave a presentation to the Women In Agriculture meeting on March 9, 2017, provided by the River Valley Extension District. KAMS services and basic estate planning concepts for farm families involved in succession planning were topics he covered. Over 30 producers attended at the meeting in Washington, Kansas.
14. The 104th Annual Cattlemen’s Day was held on March 3, 2017 on the K-State Campus. Over 700 beef producers, allied industrial representatives, K-State staff and students participated in the one-day event. The KAMS staff set up an exhibit and shared information about resources and services.
15. KAMS staff attended the Kansas Ag Bankers Conference put on by the Kansas Bankers Association on March 8-9, 2017, at the KSU Alumni Center in Manhattan, Kansas. A booth was set up to share information about KAMS services. Over 300 ag lenders from across the state attended and provided an excellent opportunity to network about our services.
16. KAMS staff shared time working the KAMS exhibit at the Mid-America Farm Expo in Salina on March 28-30, 2016 in Salina, Kansas. Event organizers estimate over 10,000 people visit the Expo over the three-day period.

3rd Quarter (April – June, 2017)

1. Forrest attended the Heartland Mediators Association meeting at the Kansas State University Olathe Campus on April 6, 2017, to network with Kansas mediators and learn about new developments in mediation.
2. Forrest attended the Kansas Bar Association Annual Bankruptcy and Insolvency Seminar to network with attorneys handling bankruptcies as there had been a significant increase in Chapter 12 farm bankruptcies due to the downturn in the ag economy. The seminar took place in Lawrence Kansas. A few of the attorneys there had used our mediation services.
3. April 25, 2017 Forrest, Char and Gary met with Kitra Cooper, Kansas FSA State Outreach Coordinator. FSA employees sometimes get involved with difficult conversation with producers and we discussed how we could help.
4. On May 3, 2017, Forrest, Char and Gary attended the Aging Expo and Trade Show in Paola, KS, to make a presentation on KAMS services and put up an exhibit booth about KAMS. Three area KSRE extension districts and East Central Kansas Disability Resource Center sponsored the event. Seniors make up a large percentage of KAMS clients. The Expo provided an opportunity to visit with older farmers and network with service agencies in southeast Kansas. There were over 200 attendees.
5. On May 9, 2017, Gary attended the Northeast Kansas Regional Homeland Security Council's (NKRHSC) Animal Disease Response Training and met with

responders for animal disease outbreaks. These outbreaks can affect the people KAMS can help.

6. Forrest, Char and Gary participated in the Ag Econ Faculty and Staff Meeting. Also attending were farm analysts Duane Hund, David Kehler, and Lavell Winsor. Part of the meeting was discussion of the state of the current farm economy and its impact on producers.

4th Quarter (July 1 – September 30, 2017)

1. July 14, 2017 Char sent program brochures and KAMS marketing information to David Kehler for the Beaumont Cowboy Classic Pasture Golf Tournament. Approximately 150 participants.
2. July 18, 2017 Gary provided program update information for the Junction City public library community information directory.
3. July 17, 2017 Gary provided program update information for the High Plains Journal Big Book resource directory for farmer and ranchers.
4. On August 17-18, 2017 Forrest and Gary attended and set up an exhibit on KAMS at the annual Agricultural Risk and Profit Conference at Kansas State University put on by the Agricultural Economics Department at KSU. Over two hundred ag producers, lenders and ag industry representatives attend the conference each year. It is an excellent opportunity to network with participants and get updated on the latest info on the ag economy.
5. On September 11, 2017, KAMS held their annual mediator training. 40 participants included: KAMS mediators; KSU farm analysts and Ag Extension Agents training to become farm analysts; some of the Kansas Legal Services attorneys that advise parties as they prepare for mediation; Robert White, Kansas FSA Farm Loan Program Chief; and other guests that work with the program.
6. On September 14, 2017, Forrest and a few other members of the Coalition of Agricultural Mediation Programs were invited to speak and two Congressional briefings in Washington DC on national USDA certified state agricultural mediation program. The meetings were well attended by Congressional aides. Valuable information was exchanged.
7. Char and Gary set up a booth at the Sunflower Fair on September 19, 2017 in Salina, Kansas. The one-day event is sponsored by the Flint Hills Area Agency on Aging and attracts seniors and care providers from northeast Kansas. Over 500 seniors and care providers
8. September 21-22 participated in the 2017 Missouri & Kansas Behavioral Health Conference in KCMO. Gary, Char and Forrest shared information about KAMS at an information booth and at informal meetings with participants. Missouri Coalition for Community Behavioral Healthcare and the Association of Community Mental Health Centers of Kansas, Inc were co-sponsors of the conference for mental health professionals. Over 1000 attendees. KAMS presented a session on "Rural Mental Health Considerations" as we see farm families are reacting to the current economy.
9. Ongoing: Gary sends program packets to new Extension agents so they are aware of the assistance we can provide.

1F. Increasing Resolution Rates

The resolution rates are calculated from the closed cases after excluding inquiries and declinations. The overall rate is set out below and continues to show a high agreement rate.

Agreement rates:	<u>FY 2017</u>	<u>FY 2016</u>	<u>FY 2015</u>	<u>FY 2014</u>	<u>FY 2013</u>
Ag Credit	89.8%	94.1%	97.1%	93.1%	89.2%
USDA non-credit	40.0%	80.0%	87.5%	63.6%	61.5%
Overall	85.9%	92.8%	95.3%	86.7%	80.5%

1G. Obtaining Program Funding from Other Sources

In FY 2016 and FY 2017 KAMS in collaboration with K-State Research and Extension applied for a grant through the North Central Extension Risk Management Education Center (NCERMEC) to do education on Farm Succession Planning including the benefits of mediation. A small percentage (5%) of KAMS staff time was devoted to that project and paid for by the new grant. Accordingly, that reduced the salary commitment needed from the ag mediation grant.

Otherwise KAMS is funded through matching dollars from Kansas State University and K-State Research and Extension along with the USDA ag mediation grant. KAMS does not receive funding from any other sources to do ag mediation.

2. Quantitative Summary – Comparison of FY 2017 to Prior Years

The Quantitative Summary chart required by the “FY 2017 Annual Report Guidance” is set out on the attached information sheet. Below are the summary charts we have used in the past to show the types and number of covered cases and services.

A. Comparison of FY 2017 Total “Covered Cases” to Prior Years

<u>Total Cases:</u>	<u>FY 2017</u>	<u>FY 2016</u>	<u>FY 2015</u>	<u>FY 2014</u>	<u>FY 2013</u>
Total Carryover	44	12	8	16	17
Total New	82	68	53	29	42
Total Cases Dealt with	126	80	61	45	59
Inquiries	169	143	131		

<u>Types of Cases:</u>	<u>FY 2017</u>	<u>FY 2016</u>	<u>FY 2015</u>	<u>FY 2014</u>	<u>FY 2013</u>
Credit FSA-FLP	25	9	7	4	7
Credit Other	92	61	43	25	31
(New credit-all)	(41)	(60)	(42)	(9)	(28)
(Carryover credit-all)	(76)	(10)	(8)	(20)	(10)
FSA non-credit	3	3	8	10	11
NRCS	3	5	2	1	3
RD	1	0	1	4	6
RMA	2	2	0	1	1
Total	126	80	61	45	59

Cases w/Support Services

Financial Analysis	88	59	43	35	40
Legal Assistance	46	37	38	43	56

There was a substantial increase in the number of ag credit cases over the last three years as well as the number of referrals for farm analyst preparation. This can be explained by the Kansas Farm Management Association (KFMA) average net farm income statistics from 2015 which shows a dramatic decrease in the statewide average net farm income for KFMA membership from 2012 through 2015 coinciding with the decrease in grain and livestock prices (2012-\$159,352; 2013-\$140,356, 2014-\$128,731, 2015-\$4,568). Average net farm income for 2016 was a little better (\$43,161) but still substantially less than previous years. It is difficult to recover from a low of \$4,568 in 2015, which was less than 5% of the previous year's average.

Prices for both grain and livestock are still low tightening up profit margins in all sectors. Both net cash and net farm income are forecast to decline for the third consecutive year. "Despite the forecast upturn in these profit measures relative to 2016, levels would be below all other years since 2010 (net farm income) and since 2011 (net cash farm income)." (USDA Economic Research Service). This will increase the caseload of mediation programs across the nation.

3. Covered Cases – Detailed Listing and Cumulative Totals

A separate spreadsheet listing the number of covered cases with reference number, party and agency names, the issue or dispute, the outcome of the case, list of support services provided, and pending cases at the end of FY 2017 is attached. The chart AMP's were asked to fill out summarizing some of those statistics is contained in the attached "Additional Information Addendum for FY 2017".

4. Program Characteristics

See pages 2-3 above after Introduction and Program Background.

5. Mediation Services Provided

Overview. During FY 2017 KAMS, as well as the KLS Farm Mediation legal counseling program and the KSRE Farm Analyst Program, processed mediation cases as shown on the attached charts. The charts show the number of cases, case outcome statistics, and agreement rate percentages for the current and past years in "Ag Credit Cases," "USDA Non-Credit 'Expanded' Cases," cases with "KSRE Financial Counseling,"

and cases with “KLS Farm Mediation Legal Counseling”. Hopefully, the following paragraphs will help the reader understand how those statistics were compiled and what they mean.

Clients referred to KAMS are in various stages of the mediation process (i.e. preparation, pre-mediation negotiation, and ready for face-to-face mediation). Some are involved in preparation with the assistance of their KLS attorney and/or their KSRE farm financial analyst, referred by KAMS for those services to help the participants prepare for mediation. During this stage, pre-mediation negotiation may occur where many clients have their case disposed of by various means such as restructuring or refinancing in ag credit situations.

Several clients may not take advantage of KAMS support services and come to mediation with their own private attorney and/or financial counselor. Some clients may use a KLS attorney but not a financial counselor and vice versa. In some cases, producers will retain a private financial counselor other than KSRE analysts.

The annual report focuses on the results obtained in closed cases. With that in mind the following paragraphs explain and summarize the information supplied in the attached charts.

Ag Credit Cases. The "Ag Credit Cases" chart, showing the results in closed cases, continues to show a high degree of success when a case goes through the mediation process. In FY 2017 KAMS experienced an overall agreement rate of 89.8% in the ag credit mediation process. Prior years' agreement rate results are listed on the bottom half of the chart. **FSA ag credit** mediation cases this year included the following issues: delinquent direct loan (2); direct loan application denial (4); loan restructuring (13); and guaranteed loan restructure (3); guaranteed loan denial (2) and notice of intent to accelerate a direct loan (1).

USDA Non-Credit 'Expanded' Cases. The “USDA Non-Credit 'Expanded' Cases” chart shows that for FY 2017 there was a decrease in the success rate over last year. In FY 2017 KAMS experienced an overall agreement rate of 40.0% in the non-credit mediation process which was inconsistent with past years due to the small number. The chart breaks out the statistics for each agency (NRCS, FSA-FP, RD-H and RMA) involved in the mediations. Some of the agreements may be procedural in nature due to the fact that recommendations developed at the mediation must often be submitted to a higher authority for approval or rejection. USDA non-credit “expanded” mediation cases this year included the following issues: **FSA-** wetland conversion (1), denial of prevented planting under NAP (1), ineligibility due to high adjusted gross income (1), **NRCS—** EQIP contract penalty (1), wetland determination (1), and EQIP adverse decision (1); **RMA –** penalty for failure to pay premium (1), high risk crop insurance premium determination (1); **RD-RH –** change in management determination (1).

6. Assessment of Performance and Effectiveness of KAMS

6A. Estimated Average Costs of Mediation Services Per Client

Cost per “client” problematic. When the regulation [785.8(a)(2)(i)] requests a statement of average costs per “client,” in terms of allowable costs, the calculations can be problematic. First of all there are often multiple people involved in a single case that represent the same agency, creditor or producer; i.e. husband and wife may have the same interest and are considered one “party”; multiple employees of the same creditor may be involved but because they represent the same creditor they are only counted as one party; etc. Secondly, the cost of administrative services, provided through salaried staff who are involved with intake, case processing and case management, cannot be focused on a “client” as they deal with all parties to the mediation. Thirdly, although costs may be attributed to a particular “client”, the other parties to the mediation may benefit from the service provided by that cost. For example, the costs for KAMS support services (financial and legal counseling) can certainly be attributed directly to a client because they are focused to help the client. However, those services also benefit the other parties to the mediation process—i.e. creditors benefit from an objective, neutral, credible financial analysis just as much as the producer. Even so, dividing up the costs of the mediation amongst multiple “clients” or parties could tend to skew the efficacy of that statistic. The following paragraphs set out a cost analysis of KAMS services on a per “case” basis, but the reader should keep in mind the multiple parties who benefit from the services provided through those costs. We have also “estimated” a cost per “client” using the average number of parties (2.6) to a mediation session that KAMS experienced in FY 2017. Party is a person with a separate interest, so a husband and wife may constitute one party.

Average Overall Cost per Case. One way to figure the cost per case is to divide the overall total expenditures for FY 2017 by the number of “covered cases” processed and dealt with during the year. KAMS total expenditures for FY 2017 was approximately \$379,894. Under the definition of a “covered case” there were 44 cases pending at the end of FY 2016, and 82 new cases opened during FY 2017 for a total of 126 cases dealt with during FY 2017. Forty-one (41) cases were pending at the end of FY 2017 which will be carried over into FY 2018 (Note: We have not included inquiries in this figure as we have in years past because of the new definition of a case; thus, the case numbers are significantly lower than in past years. Even though we cannot count them as a case there is still a significant amount of work involved with handling inquiries.) Using these figures the average overall cost per case for KAMS in FY 2016 is \$3,015 ($\$379,894/126$) or if you include the state match of \$177,326 in the calculation \$4,422 ($\$557,220/126$). This figure includes expenditures for financial and legal counseling services even though not all cases are referred to one or both of those support services. The average number of parties per mediation case was 2.6; so, if we were to use that figure to calculate a per “client” average, the average cost would be \$1,160 or \$1,701 per client.

However, KAMS staff handled other ag credit or USDA adverse decision situations that did not qualify as a “case” under the new definition. For example, there were one hundred sixty-nine (169) inquiries where staff spent a significant amount of time explaining mediation services, sending brochures and other information to help in the client’s decision, determining if a caller qualifies for mediation under the grant, finding resources and options for those who did not want to pursue mediation, and the beginning efforts to process a matter into a “case” including case notes and other paperwork. If inquiries were included in the “cost per case” calculations our cost per case would be \$1,989 [$\$423,747/(80 + 143)$].

Average Cost per Case for Face-to-Face Mediation. KAMS has ten mediators on contract to provide face-to-face mediation services. The mediators are paid an hourly rate (\$75/hour), plus travel and expenses, on a case-by-case basis. The average cost for the mediator in the face-to-face mediation sessions conducted in FY 2017 was \$716.83/case. A total of 44 “parties” participated in these mediations and benefited from the service for an average of 2.6 parties per case. Cost per client would be \$275/client. (Note: there were 149 people that participated in the mediation sessions but only 39 “parties” because oftentimes more than one person represents an agency, creditor or borrower with the same interest.)

6B, 6D, and 6E. Estimated Savings to the State, Non-USDA cases, & Qualitative Benefit

1. Economic Impact of Ag Credit Mediations.

a. Projected Cost Savings.

Over the years KAMS has contacted several sources in Kansas in an attempt to establish reliable statistical data as to the costs of foreclosure, collection services, bankruptcy, and other costs associated with accelerating and liquidating a delinquent loan or account. If such data could be found, KAMS would then be able to compare such costs with the cost per case of KAMS mediation services in order to project cost savings to the various parties as a result of resolution of an ag credit dispute in mediation. KAMS staff contacted representatives of the following organizations in search of such statistics: the Director of the Office of Dispute Resolution for the State of Kansas; the clerk of the U.S. Bankruptcy Court for the District of Kansas; the Kansas Bankers Association; the Kansas Bar Association; and the Office of Judicial Administration of the Kansas Supreme Court. No such statistics were found. Two sources were found that touch on the issue including savings in attorney fees, as well as time and efficient use of resources in the Kansas courts.

Cost Savings in Attorney Fees. In 1997, 2005, and 2012 the Kansas Bar Association conducted a survey of active attorneys in the state of Kansas on the economics of law practice. That survey was updated and the results published by the Kansas Bar Association in September 2017, in a document called “A Flash Report on the 2017 Economics of Law Practice Survey in Kansas: Summary of Key Findings”. Among the information collected was data on the 2017 hourly billing rates of Kansas attorneys by primary field of law. Exhibit 24 on page 18 of the report lists the rates charged by attorneys who concentrate their practice on certain types of law. The area of concentration that would have the most relevance to the issue of litigation costs in ag credit cases was for attorneys who represent debtors in bankruptcy. The “mean” (average) of the 2017 hourly rates in this area of law practice was \$237/hour. The number of hours spent per case on average in this area of concentration was not included in the survey questionnaire. The only use that we can make of this is to compare it to the hourly rate of \$50.00/hour charged by KLS in helping KAMS clients prepare for mediation. This is a savings to the State, KAMS, and KAMS clients of \$187.00/hour. For FY 2017 the total hours billed by KLS for the Farm Mediation Legal Counseling Program was 149.5. Thus the overall cost savings compared to a private

attorney's fees for FY 2017 would be \$27,956 (149.5 hours x the savings of \$187.00/hour).

Savings in attorney fees for lenders in these cases can be found in the above report as well. Again, Exhibit 58 on page 37 of the report lists the rates charged by attorneys representing creditors. The mean/average hourly rates that attorneys charged to creditors include the following: collection actions--\$178 per hour. For anecdotal information about how much creditors can save by using KAMS see the paragraphs below where some Kansas bankers have commented on the savings mediation can provide. One can readily see when considering the high rates that lenders are required to pay for legal fees how the savings would be substantial from using mediation.

Savings in Time and Efficiency to Kansas Courts. The other source KAMS staff found that had some relevancy to the issue, did not establish a specific dollar savings that can be attributed to mediation but did find that alternative dispute resolution techniques, including mediation, saved time and costs in general compared to litigation in Kansas courts. In 1999/2000 the Kansas Supreme Court Advisory Council on Dispute Resolution conducted a survey on the use of alternative dispute resolution methods by Kansas courts. A total of 108 state judges, 236 Kansas Bar Association members, and 171 mediators participated in the survey. The pertinent portion of the survey report entitled "The Status of Alternative Dispute Resolution in Kansas 1999/2000" reads as follows:

"ADR Saves Time and Assists Court Operations

The three groups (*judges, lawyers and mediators*) strongly agree or agree that **ADR saves time in resolving cases** (81.5% vs. 4.6% of the judges, 81.4% vs. 4% of the attorneys and 91.2% vs. 4.1% of the mediators).

The three groups also strongly agree that **"the Court operates more smoothly now that ADR is available"** (75% vs. 8.3% of judges, 58% vs. 26.3% of attorneys and 76% vs. 9.4% of mediators).

All parties also strongly agreed with the statement, **"ADR helps reduce the number of issues in disputes"** (77.7% vs. 8.3% of judges, 75.4% vs. 14.6% of attorneys and 80.7% vs. 14.6% for mediators).

The advisory Council on Dispute Resolution has received approval from the Office of Judicial Administration to conduct research to provide additional data to indicate how and when mediation saves court time."

Thus, mediation participants and users generally agree that mediation saves time and costs but there is no reliable statistical data to quantify and project the cost savings in Kansas with respect to ag credit mediations compared to foreclosure, collection services, bankruptcy and other costs associated with accelerating and liquidating a delinquent loan or account.

b. Overall Economic Impact to the State.

Economic Impact of Farm Analyst Preparatory Services. Duane Hund, the Coordinator for the KSU Farm Analyst Program, submits a report annually showing the savings to Kansas farm families because of their work. In FY 2017 KSRE Farm Analysts completed a FINPACK computer analysis on 57 farm operations that sought assistance

through the Farm Analyst Program. During these sessions, base line and alternative outcome data were collected. The analysis completed resulted in a projected average increase of \$41,531 in annual cash surplus income for each farm. (Cash surplus income refers to the amount of income projected to be available after deductions for income taxes, principal payments and family living needs.) This translates into a total increase of annual cash surplus income for those 57 farms of over \$2,367,267.¹

Economic Impact on Lending Institutions. Lending institutions also significantly benefit from the service. An example of the direct monetary benefit, as well as the community and state benefit, to both a bank and its customers is evidenced by a letter² from Kent Buer the Sr. Vice President and Sr. Loan Officer of The Citizens National Bank in Concordia, Kansas, as of the date of the letter. The letter points out that:

"...CNB does not have the cost accounting systems in place to verify the savings to the State of Kansas as a result of having an agricultural mediation program and KSU Extension Farm Analysts. However, we feel confident that the average savings to the State of Kansas from the KSU Extension Service Farm Analysts Program per client is in the thousands of dollars when one considers the following: (1) the improvements in production practices increases gross revenue which turns over several times in the economy, (2) helping producers stay productive on the farm versus the cost of retraining them for another occupation, (3) keeping more producers on the farm is important for the rural Kansas economy including the small town merchants, (4) having a source to help address farm producers financial problems early on can keep many situations out of the courtroom (if the producer does eventually have no other choice but to take bankruptcy, it can be done much more efficiently if a professional consultant is involved), and (5) having the program available for troubled debtors to access and work to address their problems versus fighting it out in court allows financial institutions to spend more time developing new business and serving their communities which is definitely positive for the State of Kansas."

Mr. Buer is now Senior Vice President of First Bank Kansas in Salina, Kansas, and on June 4, 2010, wrote a letter to the Kansas Bankers Association in support of KAMS and the KSRE Farm Analyst Program. He again confirms how KAMS and the Farm Analysts continue to provide valuable services to producers and bankers:

¹Hund, Duane, Program Coordinator KSRE Farm Analysts, "KSU Farm Analyst Annual Report FY 2017" representing reports from the program's five farm analysts for work done from July 1, 2016 to June 30, 2017. Date of report, October 21, 2017.

²Buer, Kent, Sr. Vice President and Sr. Loan Officer for The Citizens National Bank of Concordia, Kansas; a letter dated September 23, 1996, "Re: Kansas State University Extension Farm Analysts Program", page 2, third and seventh full paragraphs, and page 3 of the letter.

I was raised on a diversified farming operation in north central Kansas along with two older brothers who planned to go into the operation with my father. My parents lost everything in farm crises in the early to mid 1980's. My father was a good producer but a poor financial manager. I often think about how things could have been different had he and my mother had the benefit of the resources offered by KAMS and especially the farm analyst program. They needed help with the financial side of the operation and if they would have had access to a service such as the one offered by Duane Hund and his farm analysts I am confident that our family farm would have survived those turbulent times.

I have been a loan officer since 1991 and have worked with farm families my whole banking career. I understand the challenges that they face and am very grateful to be able to refer families to the services of KAMS and the Farm Analyst Program when needed. If these programs were not available I do not know of another service the families could turn to. The expertise and professionalism of the people involved in these programs and the services provided are outstanding.”

The value of these services to bankers can again be seen in a letter written by James Koch, President of the Peoples Exchange Bank of Clyde, Kansas. The letter is dated June 2, 2010, and was written to the Kansas Bankers Association Ag Banker Division in support of the KSRE Farm Analyst Program. The letter shows why the Farm Analyst Program is valuable to banks as they work with producers in the mediation process:

“During the history of the Farm Analyst Program, Peoples Exchange Bank and the bank at which I previously worked have had the opportunity to use the services of farm analyst Duane Hund and the FinPack software package on several occasions. In each of those circumstances, the outcomes were more favorable than they might have been without the assistance of Duane. The FinPack analysis and the services of the farm analyst are helpful not only in problem loan situations or in mediation conferences, but can also be used to address potential expansion of a production unit or to address an issue such as generational transfers. It is good to have a software program to thoroughly analyze the various enterprises of an operation; it is even better to have the services of a farm analyst who understands agriculture well and who is adept at communicating objectively the results of the FinPack analysis to the producer and sometimes to his banker. The analysis can be most helpful to bankers and their customers as they determine appropriate courses of action to undertake. The independence of the farm analyst in the process often allows for a great deal of emotion to be removed from decisions in which producer and banker can easily become adversarial.”

Economic Impact of Farm Mediation Legal Counseling Program. Further savings from and the economic impact of successful mediations on the State can be seen in a

report³ for FY 2017 submitted by T.K. Shively, the Project Coordinator for Kansas Legal Services Farm Mediation Legal Counseling Program. The report sets out compilations from KLS client surveys indicating the number of farmers who stated that the legal help they received from KLS (through KAMS) helped keep them in operation. The pertinent section of the most recent survey results reads as follows:

"Most of the farmers surveyed by KLS since 1986 have reported that when they contacted KAMS they were in danger of losing their farms due to legal /financial problems. One thousand thirty-five (1,037) of those farmers have indicated that the legal help they received from KLS helped keep them in operation. Many others received legal assistance that strengthened their operations even though their immediate survival may not have been threatened.

"When legal assistance helps farmers retain their farms, the economies of local communities and the state benefit in a number of ways. According to the Kansas State Farm Management Association, farms in Kansas spend an average of \$448,528 per year in cash operating expenses. The 1,037 farmers known to have been assisted in retaining their farms by the KLS Farm Mediation Legal Counseling Project will spend about \$465.1 million on cash operating expenses during 2017."

The survey also gathered data on the clients' satisfaction with the service provided by the farm mediation legal counseling program. The survey results are below showing a high degree of appreciation for the attorneys' assistance:

	Prior Years	<u>2017</u>
Results		
1. Original problem received satisfactory action by KLS attorney staff.	84%	86%
2. Valuable additional legal advice or representation was provided.	77%	79%
3. Satisfied with overall service rendered by KLS farm staff.	83%	86%
4. Would recommend KLS farm services to other farmers.	90%	93%
5. Program should continue.	92%	93%

Overall, KAMS' savings to the state and the positive impact on the Kansas economy has been substantial.

6C. Estimated Savings of Avoided USDA Administrative Appeals.

FSA has provided projected cost savings of avoided USDA administrative appeals as required by 7 CFR 785.8(a)(2)(ii)(A). FSA has determined that the estimated savings from mediations that result in the avoidance of administrative appeal before the USDA National Appeals Division is an average cost of \$6,000.

³Shively, TK, Project Coordinator for KLS, report dated October 19, 2017, entitled "Kansas Legal Services Farm Mediation Legal Counseling Program (KAMS Legal Services) 2017 Report", specifically a subsection entitled "Economic Impact".

The number of FSA cases that KAMS resolved in the mediation process in FY 2017, either in a face-to-face mediation or a pre-mediation negotiation, by agreement and no further appeal, are as follows: 1 FSA non-credit closed case where no appeal was taken; and 9 FSA ag credit disputes closed, where no appeal was taken, for a total of 10 where a NAD appeal was avoided. The savings due to mediation as a result of avoided NAD appeals would be \$60,000 (10 X \$6,000). It is important to note that these amounts are only savings to NAD due to avoided appeals. If the statistics were available for showing USDA staff time and expense at the local and state level to handle an appeal to the STC or NAD, the savings due to the avoided appeals would presumably be substantially higher.

7. Recommendations for Improving Delivery of Services

7A. Public Education and Increasing Responsiveness to the Need for Mediation.

Require FSA to request mediation after denial of primary loan servicing on direct FLP loans. Effective January 1, 2008, FSA “streamlined” the rules governing the making and servicing of direct FLP loans. One of the amendments eliminated the requirement that FSA initiate and request mediation when an application for primary loan servicing was denied by FSA due to lack of a feasible plan. The rule requiring FSA to initiate the request for mediation in states that had a certified state mediation program had been in place since the Agricultural Credit Act of 1987, and the rules implementing that Act in 1988. No reason was given justifying the change other than the fact that FSA believes it is only required to give the borrower the option to request mediation as in other adverse decisions. However, that change disregarded nearly 20 years of successful effective resolution of FSA direct loan ag credit issues through the use of mediation. It has had a substantial impact on the caseload of certified states, including Kansas. It does not make sense for FSA to refuse to take advantage of what has historically been the most effective use of the USDA Certified State Agricultural Mediation Program. From a budget standpoint it makes sense to make use of a popular, cost effective program designed to help both borrowers and FSA. We would strongly urge FSA to reinstitute the regulation that required FSA to initiate mediation in FLP primary loan servicing cases.

Expansion of the types of cases covered by the grant. KAMS supports several of the proposals submitted by CAMP asking USDA to expand the types of cases that are covered by the grant. The types of cases contained in CAMP’s proposal that KAMS sees the need for are set out in the paragraphs below.

Expansion case: All debt of the producer. Debt, incurred from any source, can affect an agricultural producer’s financial health and the ability to repay existing agricultural loans or obtain new credit. Many producers operate on a thin margin. Health care expenses and unpaid taxes, for instance, though not agricultural credit *per se*, are financial disputes related to the successful operation of the farm that will affect a producer’s bottom line and may impact their ability to pay their operating loan when it is due.

Expansion case: Use of financial counseling and other preparation services prior to a creditor agreeing to mediate. Currently, USDA’s position is that KAMS may not provide its financial counseling and legal assistance preparatory services under the

USDA grant if the second party declines to mediate. However, the definition of “mediation services” in the federal authorizing statute at 7 USC 5101(d) refers to activities “...with respect to mediation **or a request for mediation** (emphasis added)...” and include “...(3) financial advisory and counseling services (as appropriate).” The statute does not require an agreement to mediate by all parties. Besides preparatory services being allowed by the statute prior to a formal agreement to mediate, the results of a financial counseling session can be a factor in convincing the lender to participate in mediation. In some cases the lender will not agree to participate until they see objective and realistic numbers from a neutral financial counselor through the mediation service. Often lenders complain that the borrower will simply come to the mediation with the same unworkable figures that have been unacceptable in previous negotiations without mediation. Until the lender sees a different set of numbers prepared by a neutral financial counselor, they will not participate. Sometimes the availability of the service and a borrower's interest in using it will be enough, but in a lot of cases the lender will need to see the actual numbers themselves. A financial counselor can also help uncover other creditors that may be key to a comprehensive restructure. It is hard to know what problems exist that may be causing the lender concerns without analyzing the data about the operation. Once the financial counselor is able to sort out key creditors, KAMS would then be in a better position to show the advantage of a comprehensive approach to the issue through mediation. Identifying key problems gives the state AMP better information to persuade the lender to participate. It helps in handling cases efficiently and effectively for all parties.

Expansion case: Mediation of family farm succession/transition conflicts. Farm families are frequently involved in transition issues, which may include but are not limited to: land division, asset and debt distribution, individual and business responsibility for repayment of farm loans, farm viability issues, managing interests and responsibilities of on-farm and off-farm heirs, and intergenerational conflict and responsibilities. It has been our experience that family conflict can make it difficult to reach a good business decision for a successful transition. Family and business restructuring have direct and significant impacts on debt management and producers' ability to manage USDA credit, USDA program obligations and other agricultural credit. For example, often there may be a FSA Beginning Farmer Loan, limited resource loan, guaranteed loan, or direct loan being considered for the producer who is taking over the operation. Resolving disputes and developing business plans helps FSA in being able to make the loans. Collaborative resolution of issues, rather than through litigation, keeps farms viable. In Kansas all of the bankers, FSA Farm Loan Program personnel, and farm financial consultants KAMS works with, report that there continues to be a growing need for family farm transition mediation. Unresolved family and business conflict often complicates the process when FSA is considering loan applications. To have such disputes resolved and a sound business plan developed would help both FSA and the producer, as FSA or other creditors decide whether or not to make loans to assist with the transition. In fact, the Kansas FSA State Executive Director Adrian Polansky wrote a letter in support of an additional grant from the North Central Extension Risk Management Education Center (NCRMEC) that KAMS was involved in last year. KAMS collaborated with KSRE, FSA, Kansas Bankers Association, Kansas Farm Bureau, Kansas Farmers Union, Frontier Farm Credit, and the Kansas Farm Management Association, to provide five general awareness conferences across the state on “Planning Successful

Farm and Ranch Successions". Over 250 producers and family members attended these conferences. There is a large demand for succession planning services and mediation programs can play a key role in the overall process. KAMS received a follow-up grant from the NCRMEC to do advanced training for succession planning facilitators and to put on a series of four intensive workshops for farm families on the different steps in the success planning process. The demand for these services is still high and mediation often plays a role in helping the family deal with conflict in the process.

Expansion case: Mediation prior to a USDA agency adverse decision. We appreciate FSA's efforts to consider cases where mediation is allowed prior to a USDA agency adverse decision. This can be very useful where issues exist that could lead to an adverse determination at a later time resulting in resolution of the conflict prior to a formal punitive determination and potentially costly appeal. The USDA Farm Service Agency allows for mediation prior to an adverse decision. The current FSA Appeal Procedures were published as Interim and Final Rules in the Federal Register on July 27, 2005, and May 30, 2006, respectively. In the Preamble section of both rules (specifically pages 43265-66 of the Interim Rule, and page 30573 of the Final Rule) FSA stated that mediation may occur in advance of an adverse decision on a limited basis. That policy was included in the FSA Handbook "Program Appeals, Mediation and Litigation", in paragraphs 54A and 52B. This policy should be extended to all USDA agency decisions covered by the grant.

Expansion case: Farm leases. Increased restrictions in agricultural leases or the loss of a lease have negative impacts on a farm's viability. The producer is left with less flexibility or land to work with, is not able to generate as much income, and may lose any investments made in the leased land and assets. This affects the farm's cash flow, the farm's ability to service debt, and the long term viability of the operation. For example, in one of our cases resolving a lease dispute was the key to FSA making a new direct loan and restructuring an old one for a producer. KAMS has dealt with the latter in guaranteed loan cases as well.

Expansion case: Pesticide drift cases. Disputes about damages caused to a producer as a result of an agricultural business applying pesticides improperly can have a significant economic impact on both parties. Resolving the issue prior to incurring litigation costs can assist both parties in handling the issue effectively. The rise of Dicamba disputes in 2017 show the need for mediation.

7B. Promoting increases in resolution rates.

Allow FSA County Committee members to participate in mediation. KAMS continues to bring this issue to the forefront as it has for several years. KAMS also raised it at the CAMP annual meeting in Des Moines, Iowa in June, 2013. Several years ago KAMS was notified by the FSA State Office, upon direction from the national Appeals and Litigation Division of FSA, that mediations involving the local FSA County Committee (COC) are prohibited. Up to that point KAMS had worked with the Kansas State FSA office for nearly eight years in including FSA COC members in mediations where it was appropriate. FSA CED's, producers, and mediators found that it was important to have at the mediation table the FSA representatives with authority to decide the issues [i.e. COC members] in order to effectively resolve the dispute through the use of mediation. In all such mediations involving the COC, the CED was present and provided input. The

more FSA allows the participation of representatives with authority to resolve issues at the mediation, the more effective the mediation process will become in avoiding further time consuming appeals. Under current conditions where it is usually the CED that represents FSA at the mediation, any agreement reached where the COC has the authority to rule on an issue will have to be taken back to the COC for further consideration. At the very least the rule prohibiting COC members from participating amounts to another unnecessary layer of informal appeal that inhibits the timely and cost effective resolution of an adverse decision. More importantly, however, is that the COC does not benefit from the clarification, discussion, and exploration of alternative options at the mediation session. The participant must rely on the CED, with whom there may have been a communication problem to begin with, to present the case to the COC. The rule prohibiting COC's from participating in mediation inhibits the timely and effective delivery of the benefits of the mediation process. Because of the success KAMS has had in the past as a direct result of including the COC in the mediation process, we would respectfully ask that the Appeals and Litigation Division reverse this prohibition and give state certified programs the flexibility to include the COC in mediations where appropriate.

7C. & 7D. Education, Improving assessments & delivery of training.

Sponsor training events. Again, we appreciate efforts by USDA at the national level two years ago to include CAMP in training events. We have found it helpful in doing so in Kansas. For example, KAMS has given presentations on its services to: the Farm Service Agency District Directors for the State of Kansas and FSA State Office personnel, including the State Executive Director; FSA district meetings across the state with local FSA FLP and Farm Program staff; and the annual FSA Guaranteed Lenders Trainings across the state.

7E. Reducing cost per mediation.

USDA must establish projection of average costs of appeals. In order to properly compare the cost of mediation with the cost of appeals, USDA must supply to the certified state agricultural mediation programs, as is required by 7 CFR 785.8(a)(2)(ii)(A), projections of the average costs of USDA administrative appeals. Litigation costs should also be documented. The minimal information the state mediation programs have been given is not enough to show a true comparison.

Value of Financial and Legal Counseling. The impact of allowing these services cannot be over emphasized. In many instances, KAMS cases are resolved before going to a mediation session, reducing costs for all parties and for KAMS. It also makes the agreement reached more viable and enduring.

7F. Other recommendations to reduce costs in the program.

Cooperative Efforts. KAMS has continued to work diligently with the Kansas USDA agencies required to include mediation as an option for producers to deal with adverse decisions made by those agencies. Regular periodic meetings with the FSA State Executive Director, State Specialists, and KAMS staff have improved communication and

case coordination. For the past seventeen years KAMS has provided monthly reports to the Kansas State FSA Office tracking the progress of mediation cases involving Farm Loan Program cases. These reports are shared with County and District Offices, and have facilitated communication and coordination with KAMS at all levels of FSA within the state.

Because of KAMS efforts and the reciprocal efforts of the Kansas USDA agencies, we feel that we have a very strong working relationship with USDA. KAMS cannot emphasize enough our appreciation for the dedication of the USDA local, state and national offices in lending their time, consideration and expertise to help make our program successful. The FSA State Office continues to participate in trainings for our mediators and support services (see paragraph II.A.4. above).

Preparation provided by KAMS support services important to success of mediation. One of the most important keys to a KAMS successful mediation is making sure that the parties are well prepared to come to the mediation table. In ag credit mediations conducted by KAMS both a financial counselor and an attorney representing the parties are vital to helping develop feasible and realistic options to present at the mediation. The KAMS program makes sure that referrals to financial analysts and attorneys are done promptly upon a request for mediation, and that borrowers follow through on those services as the mediation is processed.

Early intervention is vital to the mediation process. USDA should encourage the use of mediation even prior to adverse decisions. It is clearly allowed under the regulations and handbook provisions in limited circumstances. Attending to financial issues even prior to a delinquency will save the producer, FSA and other lenders much time and cost. Resolving misunderstandings before a formal decision is made and bringing multiple stakeholders to the table to reach a comprehensive solution are key benefits if mediation is used early in the dispute process.

8. Budget and State Match

See attached "Additional Information Addendum for FY 2017"

9. Budget Justification

See attached "Additional Information Addendum for FY 2017"

10. Updated Contact Information

See attached "Additional Information Addendum for FY 2017"

Kansas Agricultural Mediation Services
 "Summary of Mediation Covered Case Activity"
Ag Credit Cases
 For October 1, 2016 to September 30, 2017

<u>Ag Credit Covered Mediation Cases</u>	<u>FSA-FLP*</u>	<u>CRED**</u>	<u>KAMS Total</u>
Cases Carried Forward 10-01-16	07	34	41
New Cases:10-01-16 to 9-30-17	18	58	76
Subtotal of Cases	25	92	117
Cases Closed During Period	15	61	76
Open Cases Remaining 09-30-17	10	31	41

Disposition of "CLOSED" Ag Credit Cases:

		<u>FSA-FLP*</u>	<u>CRED**</u>	<u>KAMS Total</u>
1.	TOTAL--No Face-to-Face (NFF)	7	33	40
	NFF-- With Agreement	7	30	37
	NFF-- No Agreement	0	3	3
2.	TOTAL--Face-to-Face (FF)	8	11	19
	FF-- With Agreement	7	9	16
	FF-- No Agreement	1	2	3
3.	Declinations (17)	1	16	17
Agreement Rate	FY 2017	93.3%	88.6%	89.8%
Agreement Rate Previous Years:	FY 2006	91.7%	91.8%	91.8%
	FY 2007	94.1%	92.3%	92.8%
	FY 2008	100.0%	92.3%	94.3%
	FY 2009	75.0%	97.3%	94.2%
	FY 2010	92.3%	93.6%	93.4%
	FY 2011	90.0%	95.6%	94.3%
	FY 2012	88.9%	90.0%	89.8%
	FY 2013	83.3%	90.0%	88.4%
	FY 2014	100.0%	92.0%	93.1%
	FY 2015	100.0%	96.6%	97.1%
	FY 2016			94.1%

* Some cases included here involve both FSA direct/guaranteed loans and non-FSA credit.

** Includes all eligible non-FSA debt only.

Kansas Agricultural Mediation Services
 "Summary of Mediation Covered Case Activity"
 USDA **Non-Credit** "Expanded" Cases
 For October 1, 2016 to September 30, 2017

<u>Non-Credit "Expanded" Covered Cases</u>	<u>NRCS</u>	<u>FSA-FP</u>	<u>RD-H</u>	<u>RMA</u>	<u>KAMS Total</u>
Cases Carried Forward 10-1-16:	2	1	0	0	3
New Cases:10-01-16 to 9-30-17	1	2	1	2	06
Subtotal of Cases	3	3	1	2	09
Cases Closed During Period	3	3	1	2	09
Open Cases Remaining 09-30-17	0	0	0	0	0

Disposition of "CLOSED" Non-Credit Cases:

	<u>NRCS</u>	<u>FSA-FP</u>	<u>RD-H</u>	<u>RMA</u>	<u>KAMS Total</u>
1. TOTAL--No Face-to-Face (NFF)	0	1	0	0	1
NFF-- With Agreement	0	1	0	0	1
NFF-- No Agreement	0	0	0	0	0
2. TOTAL--Face-to-Face (FF)	1	2	1	0	4
FF-- With Agreement*	1	0	0	0	1
FF-- No Agreement	0	2	1	0	3
3. Declines	2	0	0	2	4
Agreement Rate FY 2017	100%	00.0%	00.0%	N/A	40.0%
Agreement Rate Prior Years: FY 2006	100%	70.0%	100%	N/A	76.9%
FY 2007	100%	80.0%	N/A	N/A	81.8%
FY 2008	100%	83.3%	N/A	N/A	90.0%
FY 2009	83.3%	100%	100%	N/A	90.9%
FY 2010	75.0%	60%	50%	100%	66.0%
FY 2011	100%	100%	100%	0%	88.9%
FY 2012	50.0%	85.7%	N/A	N/A	81.2%
FY 2013	0.0%	100%	50%	100%	61.5%
FY 2014	100%	55%	0%	100%	63.6%
FY 2015	100%	83.3%	100%	100%	87.5%
FY 2016	100%	50.0%	100%	100%	80.0%

Kansas Agricultural Mediation Services

Summary of Cases with KSRE Farm Analyst

For October 1, 2016 to September 30, 2017

	<u>Total</u>
Cases Carried Forward	30
Requests Received for Financial Counseling	58
Subtotal of Cases	88
Cases Closed During Period	53
Open Cases Remaining	35

Disposition of "CLOSED" Cases:

1.	Services declined	1
2.	TOTAL—No Face-to-Face (NFF)	39
	With Agreement	37
	No Agreement	2
3.	TOTAL—Face-to-Face Mediation (FF)	13
	With Agreement	11
	No Agreement	2

Agreement Rate $(37 + 11)/(39 + 13)$ FY 2017 94.2%

Agreement Rate Previous Years:

FY 2006	93.9%
FY 2007	91.7%
FY 2008	97.4%
FY 2009	96.5%
FY 2010	89.1%
FY 2011	96.5%
FY 2012	91.6%
FY 2013	86.0%
FY 2014	92.6%
FY 2015	96.8%
FY 2016	96.5%

Kansas Agricultural Mediation Services

Cases with KLS Farm Mediation Legal Counseling

October 1, 2016 to September 30, 2017

	<u>KLS Total</u>
Referrals Carried Forward	16
Requests Received for Legal Assistance	30
Subtotal of Cases	46
Referrals Closed During Period	33
Referrals Remaining Open	13

Disposition of "CLOSED" KLS Cases:

1.	Services Declined	02
2.	TOTAL—Cases without face-to-face mediation (NFF)	18
	With Agreement	15
	No Agreement	3
3.	TOTAL—Cases with Face-to-face Mediation (FF)	15
	With Agreement	10
	No Agreement	5

Agreement Rate $(15 + 10)/(18 + 15)$ FY 2017 75.8%

Agreement Rate Previous Years:	FY 2006	87.3%
	FY 2007	90.3%
	FY 2008	96.6%
	FY 2009	92.8%
	FY 2010	89.6%
	FY 2011	93.4%
	FY 2012	87.7%
	FY 2013	74.0%
	FY 2014	83.8%
	FY 2015	92.6%
	FY 2016	85.7%