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COMMENT

AVOIDING FARM FORECLOSURE THROUGH MEDIATION OF AGRICULTURAL LOAN DISPUTES: AN OVERVIEW OF STATE AND FEDERAL LEGISLATION

I. INTRODUCTION

The use of credit played a major role in the growth of agricultural productivity in the United States.¹ In recent years, however, the financial distress faced by farmers resulted in a record number of farm foreclosures and bank closures in agricultural states.² Farm losses are concentrated in the mid-size farms, indicating that the owner-operated farm has been hit the hardest.³ The attendant social and economic turmoil faced by families and communities dependant on agriculture focused attention on the responsibility of federal and state government in preventing further losses within the families and communities that comprise the agricultural sector.⁴

1. The author comes from an agricultural background and as a result her source for much of the information contained in this article is derived from first-hand knowledge and experience.

2. Agricultural banks faced losses of approximately 11 billion dollars between 1984 and 1986. G. HANSON, U.S. DEPARTMENT OF AGRICULTURE, POTENTIAL LOAN LOSSES OF FARMERS AND THEIR LENDERS 2 (Economic Research Service, Agricultural Information Bulletin No. 530, 1987). Over one-half of the commercial bank failures in 1985 and 1986 involved agricultural banks. E. MELICHAR, CONGRESSIONAL BUDGET OFFICE, AGRICULTURAL FINANCE: TURNING THE CORNER ON PROBLEM FARM DEBT 4 (Federal Reserve Bulletin July 1987) (agricultural bank defined as one with a farm loan ratio above the national average in the year preceding foreclosure).

3. N. BROOKS, J. KALBACHER & D. REIMUND, U.S. DEPARTMENT OF AGRICULTURE, FARM STRUCTURAL TRENDS IN THE 1980s 1 (Economic Research Service, Agricultural Information Bulletin No. 605, 1990).

4. *See generally* D. FRESHWATER & D. TRECHTER, U.S. DEPARTMENT OF AGRICULTURE, ISSUES IN AGRICULTURAL POLICY: NEW APPROACHES TO FINANCING LONG TERM DEBT (Economic Research Service, Agricultural Information Bulletin No. 511, 1987).

When the farmer defaults and foreclosure results, a permanent breakdown occurs in the relationship between lender and borrower. From the farmer's perspective, the opportunity to repay debt is often cut off because the property necessary to operate a business is no longer available.⁵ When lenders foreclose, they receive much less than the market value of the land due to the legal costs associated with foreclosure and other remedies.⁶ The amount the lender receives is further reduced by taxes and insurance costs on the land along with lost interest payments.⁷ Farm foreclosures caused federal land inventories to grow to over 3.5 million acres.⁸ This, combined with similar increases in state agricultural bank inventories, resulted in continuing declines in land values as creditors flood the market with the foreclosed land.⁹

This Comment discusses mediation as a feasible alternative to foreclosure and other judicial remedies. Mediation allows the borrower to work out a reasonable repayment schedule-leaving him with sufficient capital to provide support for his family while working to make his farm operations profitable.¹⁰ The creditor avoids the high costs associated with litigation. From a long-term perspective, farm land values may stabilize through the reduction of stockpiled agricultural acreage in the hands of the lender. Ultimately, the agricultural community as a whole may become more prosperous.

Mediation introduces a neutral third party into borrower and lender discussions to facilitate compromise and generate alternative plans to foreclosure.¹¹ Ideally, farmers and lenders enter mediation in good faith, with the understanding that they will seek mutually agreeable solutions. The process focuses on constructive outcomes, assuring an equal voice for all parties, and allowing a case by case consideration of problems, thus generating solutions that meet the real needs of all the parties in each specific instance.¹²

A. Nature of the Problem

The economic signals of the 1970's, including favorable world markets, a high domestic inflation rate, aggressive lending policies and income tax incentives for investment encouraged many agricultural producers to borrow money for

5. Comment, *Mediation in Debtor/Creditor Relationships*, 20 U. MICH. J.L. REF. 587, 587 (1987).

6. *Agricultural Credit: Hearings Before the Subcomm. on Agricultural Credit of the Senate Comm. on Agriculture, Nutrition & Forestry*, 100th Cong., 1st Sess. 173 (1987) [hereinafter *Hearings*] (statement of Cecil Huff, Cochairman, Farmer's Fair Credit Committee, National Save the Family Farm Coalition).

7. CONGRESSIONAL BUDGET OFFICE, *ASSISTING THE FARM CREDIT SYSTEM, AN ANALYSIS OF TWO BILLS* 42 (1987).

8. *Id.*

9. *Id.*

10. S. REP. NO. 233, 100th Cong., 1st Sess. 70 (1987).

11. *Hearings*, *supra* note 6, at 171.

12. J. WALKER, *MANDATORY FARM MEDIATION: WHAT IT IS AND HOW IT WORKS* 2 (1986).

expansion.¹³ During the economic recession of the early 1980's, however, the rural economy faced many unforeseen difficulties, resulting in record high levels of unemployment, slow income and job growth, and widespread population losses.¹⁴ Despite high government subsidy payments that produced near-record levels of farm income in real dollars,¹⁵ a large number of farmers who borrowed heavily during the boom years of the 1970's began to experience severe financial strain.¹⁶ Their expectations for farm income and asset appreciation did not materialize, and many found themselves unable to repay their outstanding debts.¹⁷

In 1973, the rural average per capita income peaked at 78 percent of the metropolitan rate; but by 1986, rural income fell to less than seventy-three percent of the urban average.¹⁸ The period after 1979 saw a corresponding rise in the rural poverty rate, which by 1986 reached a nearly fifty percent higher rate than that of the urban rate.¹⁹ Between 1982 and 1987, over half the rural counties in the United States experienced a population decrease.²⁰

The basic tenet of American farm policy is maintaining the sector of owner-operated family farms.²¹ This, in turn assumes the existence of a means by which operating farmers can obtain title to farmland. Because of the weakened condition of most farms, agricultural loans have become riskier than ever before.²² Yet the farm sector, so long as it is dominated by family-owned and operated farms, continues to require long-term credit. Debt and interest must be financed by the farmer out of volatile and increasingly erratic farm income. Fluctuations in income make it difficult for farms with high mortgage payments to survive. In addition, since farmland is owned by individuals, every generation of landowners must refinance ownership: to buy out competing heirs, to pay off inheritance taxes, or to purchase from individuals who are selling out. Thus, while evidence exists that farmers made excessive use of credit in the 1970's, an adequate supply of credit must still be maintained.²³

13. G. HANSON, *supra* note 2, at 1.

14. J. REID & M. FREDERICK, U.S. DEPARTMENT OF AGRICULTURE, RURAL AMERICA ECONOMIC PERFORMANCE 20 (Economic Research Service, Agricultural Information Bulletin No. 609, 1989).

15. *Id.*

16. G. HANSON, *supra* note 2, at 1.

17. *Id.*

18. J. REID & M. FREDERICK, *supra* note 14, at 8.

19. *Id.*

20. *Id.*

21. D. FRESHWATER & D. TRECHTER, *supra* note 4, at 4.

22. *Id.*

23. *Id.*

B. The Structure of Agricultural Credit

By 1987, agricultural real estate debt totalled more than \$80 billion.²⁴ Federal lenders held approximately forty-five percent of this debt.²⁵ In 1987, one-third of the agricultural debt held by federal lenders was classified at risk.²⁶ Of the remaining debt, twenty-eight percent was held by commercial lending institutions (thus subject to state regulation), one-fourth of which fell into the at risk classification.²⁷ Non-classified lenders, individuals and insurance companies held the remaining debt.²⁸ One-fourth of this amount was considered at risk.²⁹

Congress provided the capital to establish the Farm Credit System (FCS) as part of the Federal Farm Loan Act of 1919.³⁰ Congress designed the FCS to meet the unique credit needs of agricultural producers and address the financial problems they faced during the deteriorating financial conditions of the 1920's and 1930's.³¹ In 1968, the FCS paid back the last of the Federal capital to become a wholly private organization, owned and controlled by its user-farmers and their cooperatives.³² In the intervening years, however, the structure of agricultural economics changed dramatically and was, in many ways, unable to address the changing needs of farmers. The FCS is currently a federally-chartered cooperative that obtains its funds through the sale of securities, thus giving farmers access to national bond markets.³³ The agency is part of the Executive Branch of the Federal Government, regulated by the Farm Credit Administration.³⁴ The FCS provides approximately one-third of the funds used by its borrowers and one-half of that used by their cooperatives.³⁵ The balance of FCS funding is provided through guarantees made by the FCS to commercial lenders.³⁶

The second primary federal lender is the Farmer's Home Administration (FmHA), an agency to the U.S. Department of Agriculture and a lender of last

24. U.S. DEPARTMENT OF AGRICULTURE, AGRICULTURAL FACT BOOK 25 (1989). Total farm debt, including operating, equipment, livestock, and other farm loans, was greater than \$153 billion by the end of 1987. *Id.*

25. D. FRESHWATER & D. TRECHTER, *supra* note 4, at 2. The Farm Credit System held approximately two-thirds of the Federal agricultural debt load. The Farmer's Home Administration held most of the remainder. *Id.*

26. *Id.* Debt at risk is that held by farms with negative cash balances and a debt-to-asset ratio above 0.4. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. S. REP. NO. 230, 100th Cong., 1st Sess. 8 (1987).

31. *Id.*

32. M. HUGHES, U.S. DEPARTMENT OF AGRICULTURE, RECENT DEVELOPMENTS AT THE FARM CREDIT SYSTEM 6 (Economic Research Service, Agricultural Information Bulletin No. 572, 1989).

33. *Id.*

34. *Id.* at 7.

35. *Id.*

36. U.S. DEPARTMENT OF AGRICULTURE, *supra* note 24, at 20.

resort to farmers who have been denied credit from other commercial sources.³⁷ Like the FCS, the FmHA also guarantees agricultural loans made by other lenders.³⁸

Because these agencies are required to provide credit exclusively to farmers and farm-related businesses, their condition is closely tied to that of the agricultural sector.³⁹ In 1987, many farmers had delinquent loans with both the FCS and the FmHA.⁴⁰ The tide of farm foreclosures and deeding back of farm property to these lenders in conjunction with numerous lawsuits challenging the foreclosure policies of the FCS and FmHA led Congress to enact the Agricultural Credit Act of 1987.⁴¹ The Act includes provisions, modelled after similar state legislation, requiring the FCS, FmHA and other federal lenders to participate in and support mediation of farm loan disputes and feasible loan restructuring.⁴²

II. STATUTORY MEDIATION MODELS

A. *The State Programs*

The family farm crisis spurred many attempts by the states to promote mediation between farmers and their lenders. Iowa and Minnesota enacted statutes requiring state-regulated lenders, at the farmer's request, to participate in mandatory mediation of farm credit disputes.⁴³ These mandatory programs assured the borrower a right to mediation before foreclosure and provided a state-sanctioned forum to explore alternatives to the farmer's losing his land and the lender's taking enormous losses.⁴⁴ Although these statutes expired under self-repealing clauses, they remain relevant because their structure formed the basis for the federal mediation programs.⁴⁵ Although mediation is no longer required by statute, the voluntary mediation programs remain intact.⁴⁶

1. The Minnesota Program

The Minnesota law provided that no creditor may start judicial proceedings to collect a debt against agricultural property until the debtor and creditor first

37. *Id.* at 21.

38. *Id.*

39. M. HUGHES, *supra* note 32.

40. Lancaster, *Current Issues in FmHA Loan Servicing*, 23 U.C. Davis L. Rev. 713, 713 (1990).

41. Agricultural Credit Act of 1987, Pub. L. No. 100-233, 101 Stat. 1315 (1988) (codified at scattered sections of 7 & 12 U.S.C.).

42. *Id.* The Act was a later, expanded version of the unenacted Family Farm Act. S. 658, 99th Cong., 2d Sess.

43. IOWA CODE § 654A (1990); MINN. STAT. §§ 583.20-32 (Supp. 1989). The Illinois legislature considered similar legislation. H.R. 3357, 84th Gen. Assembly, Reg. Sess. (1986).

44. See IOWA CODE § 654A; MINN. STAT. §§ 583.20-32.

45. See IOWA CODE § 654A; MINN. STAT. §§ 583.20-32.

46. See IOWA CODE § 654A; MINN. STAT. §§ 583.20-32.

attempted to reach a resolution of the issue through mediation.⁴⁷ "Creditor" is defined as any person or organization holding secured debt of more than \$5,000 against agricultural property.⁴⁸ This includes mortgages, liens or security interest, judgments and contracts for deed.⁴⁹

Before initiating any proceeding to enforce debt against agricultural property, the law required the Minnesota creditor to file a request for mediation by serving a Mandatory Mediation Notice⁵⁰ with the debtor and the County Office of the University of Minnesota Extension Service.⁵¹ A debtor receiving such notice had two choices: he could do nothing and allow the creditor to move ahead, or, within fourteen days of receiving such notice, he could file a Mandatory Mediation Request with the County Extension Office.⁵² This request listed the names and addresses of all known secured creditors.⁵³

After the filing of the request, the County Extension Office initiated several actions. First, the office assigned a credit analyst to the debtor.⁵⁴ The office also provided the debtor with a list of attorneys and farm advocates.⁵⁵ A Mediation Meeting Notice was sent to the farmer and all specified creditors, along with the names of three volunteer mediators available to work on the case.⁵⁶ Both the debtor and the creditor possessed the right to remove one name from the list.⁵⁷ However, while the goal is to appoint a mediator acceptable to all parties, the Extension Service made the final decision appointing a mediator.⁵⁸

The mediation took place over a sixty day period.⁵⁹ All known creditors with secured debt of greater than \$5,000 with interests in farm real estate and operations were urged to participate.⁶⁰ The law required the creditors to be represented in mediation by a person with full authority to negotiate and make binding commitments.⁶¹ These representatives needed to be persons authorized to release funds from the sale of farm products so that the debtor maintained necessary funding for living expenses and farm operation expenses as the mediation progressed.⁶²

47. MINN. STAT. § 583.26(1).

48. *Id.* § 550.365(1) (1989).

49. *Id.*

50. *Id.* § 581.015(2) (1989).

51. *Id.* § 583.26(1). The statutory notice requirements are contained at § 581.015(2).

52. *Id.* § 583.26(2)(b).

53. *Id.* § 583.26(2).

54. *Id.* § 583.26(3).

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* § 583.26(4).

59. *Id.* § 583.26(8).

60. J. WALKER, *supra* note 12, at 3.

61. *Id.*

62. *Id.*

The mediation spent much time clarifying the issues and discussing options for settlement.⁶³ Mediation fostered the exchange of pertinent facts and information along with requests for expert advice.⁶⁴ The mediator took the lead role in stimulating cooperation, helping defining the issues, emphasizing common goals, assuring that all parties had an opportunity to speak, keeping the discussion focused, and reducing any guilt or blame-placing by the parties.⁶⁵

The parties prepared a written settlement, when all parties reached an agreement.⁶⁶ This tentative settlement could be reviewed by attorneys, supervisors, outside experts or family members.⁶⁷ When all the parties were satisfied that the agreement represented a realistic settlement, the agreement was signed and became a binding contract.⁶⁸ The responsibility for carrying through with the necessary paperwork and contract changes necessary to implement the new agreement fell upon the parties.⁶⁹

If at any point the mediator determined that one of the parties was not participating in good faith, he or she filed an affidavit stating the reasons for such a finding.⁷⁰ The debtor and creditors received copies of the affidavit and the mediation was then terminated.⁷¹ In such instances, mandatory court supervised mediation could result.⁷²

Within its first eight months of operation, nearly 3,000 Minnesota farmers participated in the program.⁷³ Of these, 673 cases reached a mediated settlement and another 488 settled outside the process after the filing of a mediation request.⁷⁴ In a study of 726 farmers, lenders, mediators and extension agents, the University of Minnesota Extension Service found that 85% of the farmers currently in mediation and 76% of the mediators believing the program should be continued.⁷⁵ The survey noted success in three major respects. First, the farmers were more prepared for change and began to make adjustments leading to a successful compromise with their lenders.⁷⁶ Second, mediation resulted in improved farmer-lender communication.⁷⁷ The communication channels established in mediation provided for open discussion of strategies and improved

63. *Id.*

64. *Id.*

65. *Id.* at 4.

66. *Id.* at 3.

67. *Id.* at 4.

68. *Id.*

69. *Id.*

70. MINN. STAT. § 583.27(2).

71. *Id.* § 583.27(3).

72. *Id.*

73. Peterson, *Loan Mediation Program Praised by Most—Except Lenders*, *Minneapolis Star & Tribune*, Dec. 5, 1986, at 8, col. 2.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

understanding of the opposing party's position. Third, the program was perceived to diffuse tension by fostering peaceful change within the agricultural communities.⁷⁸ Frustration and apprehension were minimized by providing a constructive forum for resolving farm indebtedness.⁷⁹

The same study found, however, that only fifteen percent of the lenders favored continuation of the program.⁸⁰ Although the law imposed a general requirement that the parties participate in "good faith," lenders stated that they entered the process, not in an effort to reach settlement, but because they were required to receive a mediation release before pursuing other remedies.⁸¹ They complained that mediation seriously affected the availability of credit to solvent farmers.⁸² The lenders also believed that many farmers were not adequately prepared for the negotiation sessions.⁸³

Part of this perceived failure resulted from the failure of the Minnesota legislature to involve the participating parties in drafting the legislation. The program, with an annual budget of over \$1 million, was developed exclusively by legislators with little or no input from the parties to be involved.⁸⁴

2. The Iowa Program

The Iowa program, on the other hand, resulted from legislative efforts involving creditors, farm groups, and social action organizations in the drafting of the legislation.⁸⁵ The Iowa law required all creditors seeking to foreclose upon or repossess agricultural property securing debt of greater than \$20,000 to offer mediation with the debtor.⁸⁶ The Iowa Farm Mediation Service provided the mediation services.⁸⁷ The law required mediators to participate in approximately forty hours of formal training, including group exercises, role playing, and discussions designed to familiarize prospective mediators with the process.⁸⁸ Prior to the enactment of the Agricultural Credit Act, the majority of the funding for the program was generated by fees assessed against disputants.⁸⁹ An analysis of its first six months of operation found that in fifty-five percent of the cases that reached the mediation stage, the debtor and creditor reached an agreement which did not involve foreclosure, at an average cost of \$263 per mediated case.⁹⁰

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. IOWA CODE § 654A.2, .3.

86. *Id.*

87. Comment, *supra* note 5, at 602.

88. *Id.* at 603.

89. *Id.*

90. *Id.* at 605.

The Iowa program proceeded under a similar process as the Minnesota plan. One major distinction is that Iowa provided the mediator without pre-selection by the parties.⁹¹ In order to remove a mediator, a party must present evidence that the mediator maintains close personal ties or professional relations with one of the parties that could jeopardize neutrality.⁹² In addition, the Iowa Code limited the time available for mediation to 42 days from the time the initial request is filed, subject to extensions of up to thirty days upon petition by the borrower or known creditors.⁹³

Iowa's statutes contained no good faith requirement; however, the Farmer-Creditor Mediation Rules promulgated by the Attorney General included a requirement that good faith be promoted among its participants.⁹⁴ In the case of *Graham v. Baker*,⁹⁵ however, the Iowa Supreme Court required the farm mediation service to issue a release for the creditor to pursue foreclosure even where that creditor refused to meaningfully participate in the mediation sessions.⁹⁶ The Court stated that the statute does not authorize the mediation service to formulate or adopt guidelines for the conduct of the participants:

The statute does not give the mediation service the power to compel either the debtor or creditor to negotiate. It merely sets up conditions in which the parties might find a solution to their problems short of forfeiture or foreclosure. In this regard, the mediator's duties are to *listen* to both the creditor and borrower, *advise* the parties as to the existence of assistance programs, *encourage* adjustment or refinancing of debt, and to *advise, counsel and assist* the parties in agreeing as to future financial relations The choice of words is a clear indication that the role of the mediation service is advisory only.⁹⁷

The *Graham Baker* holding largely dispels the notion of mandatory mediation. Where participation is required but cooperation is not, the entire process appears to become merely a perfunctory step in the foreclosure process, increasing expenditures and lengthening the time it takes to resolve the issues.

91. Iowa Admin. Bull. ch. 17, §§ 61-17.11(3), 17.14(1) (1986).

92. IOWA CODE § 654A.12.

93. *Id.*

94. Iowa Admin. Bull. ch. 17, § 61-17.12(2)(d)(3) (1986).

95. 447 N.W.2d 397 (Iowa 1989).

96. *Id.* at 398.

97. *Id.*

3. Programs and Problems in Other States

Many states other than Iowa and Minnesota offer voluntary mediation services.⁹⁸ These programs encounter three major problems at the state level. First, in many cases, even where lenders were willing to significantly write down the farmers debt, there remained a substantial gap between the written down debt payments and what the farmer could afford to pay.⁹⁹ Second, prior to enactment of the act, the FCS and FmHA often refused to participate or negotiate seriously, leaving a farmer who had negotiated a settlement with a commercial institution to face imminent foreclosure by one of the federal agencies.¹⁰⁰ Third, many agricultural states faced with decreased tax revenue because of the decreased farm incomes, struggled to find the necessary revenue to assure that their programs ran properly.¹⁰¹

B. The Federal Program: The Agricultural Credit Act of 1987

The Agricultural Credit Act funded a \$4 Billion bailout of the FCS;¹⁰² however, for many farmers, the centerpiece of the legislation was contained in the "borrower's rights" provisions which require the federal lenders to consider modification of loans to avoid losses.¹⁰³ Under Title IV of the Act, the farmer-debtor has the right to receive advance written notice of proposed adverse action, loan origination charges, changes in interest rates and loan options.¹⁰⁴ More importantly, federal lenders are required to restructure the distressed loans of family farmers¹⁰⁵ if the costs of restructuring is less than the cost of foreclosure.¹⁰⁶ Encouraged by the success of the state mediation programs, the Act requires federal lenders to participate in and support farm mediation.¹⁰⁷ Title V

98. *Id.*

99. *Id.*

100. *Id.*

101. See generally *Hearings*, *supra* note 6.

102. *Id.*

103. 7 U.S.C. § 2001 (1988).

104. *Id.*

105. "Family Farmer" is defined as an individual engaged in farming whose aggregate debt does not exceed \$1.5 million, 80% of which is from farm operations, and the majority of whose income is derived from agriculture. 11 U.S.C.A. § 101 (1988).

106. 7 U.S.C. § 2001.

107. 7 U.S.C. § 2001. A state program qualifies for approval by the FmHA if the program:

(1) provides for mediation services to be provided to producers, and their creditors, that, if decisions are reached, result in mediated, mutually agreeable decisions between parties under a mediation loan program;

(2) is authorized or administered by an agency of the State government or by the Governor of the State;

(3) provides for the training of mediators;

(4) provides that mediation sessions shall be confidential; and

of the Act contains authorization for state mediation grants, which are made to states which have agricultural loan mediation programs certified by the FmHA.¹⁰⁸ The Title provides for Federal matching of up to fifty percent of state allocated funds to eligible states.¹⁰⁹ Federal lenders would, in turn, use these mediation services in restructuring federal farm loans.¹¹⁰ Borrowers who are unable to make payments due to circumstances beyond their control can also become eligible for restructuring.¹¹¹

Federal regulations focus on the feasibility of restructuring as an option to foreclosure.¹¹² Feasibility is the borrower's ability to meet the necessary family living and farm operating expenses and to service all debts, including those that are restructured.¹¹³ If the federal lender determines that a viable plan cannot be developed using primary loan service programs,¹¹⁴ the farmer receives a "Notification of Request for Mediation or Meeting of Creditors."¹¹⁵ At this point, the farmer has the option of using the state mediation program.¹¹⁶ The mediation or meeting of creditors offers the opportunity to negotiate with both federal and other creditors to obtain debt adjustments that will allow the development of a feasible plan.¹¹⁷ In states where there is no certified mediation program, the federal lender will conduct a voluntary meeting of all creditors with a mediator or designated federal representative.¹¹⁸ Where mediation is not

(5) ensures that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program.

12 U.S.C. § 2151 (1988).

108. 7 U.S.C. § 7. Committee notes accompanying the Bill stated:

Many states have successful mediation programs which assist in resolving disputes between borrowers and agricultural lenders. Borrowers are given the opportunity to work out reasonable repayment schedules—leaving them with enough to provide adequate support for their families while working to make their farm operations profitable. Lenders benefit when non-paying loans are turned at least in part into earning assets. These state programs help farmers and ranchers avoid bankruptcy, which can be costly for both farmers and lenders.

Id. committee's note.

109. 7 U.S.C. § 2001. For fiscal year 1990, grants to the sixteen states with FmHA certified programs totalled \$3,036,340. *Hearings Before the Subcomm. on Agricultural Credit of the Senate Comm. on Agriculture, Nutrition and Forestry*, 100th Cong., 2d Sess. 323 (1988).

110. 7 U.S.C. § 2001.

111. *Id.* Conditions beyond the farmer's control include the farmer's inability to pay because of natural disaster, family illness, loss of off-farm income, animal disease, low commodity prices or high expenses in the local area.

112. 7 C.F.R. § 1951.909 (b) (1989).

113. *Id.*

114. Primary loan servicing programs include loan consolidation, loan rescheduling/amortization, interest rate reduction, loan deferral and debt write down.

115. 12 U.S.C. § 2151; 7 C.F.R. § 1951.

116. 7 U.S.C. § 5103 (1988).

117. 7 C.F.R. § 1951.912.

118. *FmHA Forms Mediation List*, 7 Alternatives to the High Cost of Litigation 12, December 1983, at 1, col. 3.

required under state law, participation of non-federal lenders in strictly voluntary.¹¹⁹ In addition, the federal lenders may not require the agricultural borrower to waive his mediation rights under state law as a condition to making, guaranteeing or insuring a loan.

For those states without certified mediation programs, the FmHA has evidenced an interest in supporting mediation by establishing a national roster of mediators.¹²⁰ FmHA directors in the thirty-six states without approved mediation programs may use the mediator list to select mediators with whom to contract for federal farm-loan disputes.¹²¹ In a statement issued by the FmHA, the agency explained:

We want to assess the resources available for mediation in all States and develop a strong system to offer mediation of agricultural-credit disputes wherever FmHA or other Federal lending or loan guarantee programs are involved. Mediation can play a major role in developing and exploring options to help resolve agricultural credit disputes in which difficult financial, family, and emotional issues are strongly intertwined.¹²²

III. ANALYSIS

The use of mediation in agricultural loan disputes provides a feasible alternative to foreclosure and judicial actions. Many factors contribute to the success of such programs. Primarily, both agricultural lenders and their borrowers must be willing and adequately prepared to enter into mediation with the purpose of finding mutual compromise. In addition, mediation should be required only where financial data demonstrates that the farmer will be able to meet his financial obligations after reasonable restructuring.

Economically, mediation can reduce losses to both lenders and borrowers by avoiding the high costs associated with foreclosure. The social gains derived from the process are difficult to quantify, but are the most important element of success. Given the desirability of maintaining the family farm, the use of mediation results in a socially valuable alternative to the family and community strife created by farm losses. As these agricultural communities and families regain their financial stability, the benefits will be felt by society at large.

DONNA L. MALTER

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*