



Recommendation 91-7

Implementation of Farmer- Lender Mediation by the Farmers Home Administration

(Adopted December 12, 1991)

The Farmers Home Administration ("FmHA") is charged with serving as a temporary source of supervised credit and technical support to help rural Americans improve their farming enterprises, housing conditions, and other business endeavors until they are able to qualify for private sector resources. During the 1980s, an economic downturn seriously affected the agricultural sector and led FmHA, as a lender of last resort, to increase its loan portfolio. As the decline continued, FmHA and other lenders began more frequently to exercise their rights to accelerate loans and foreclose. Several Midwest state legislatures responded to these economic (and resultant social) conditions by creating mediation programs, some of which required financial institutions to mediate prior to foreclosure if the borrower opted to do so. FmHA generally declined to participate in these programs or to restructure loans in connection with mediations.

In 1988, Congress passed the Agricultural Credit Act, a broad attempt to deal with problems related to farm debt. Among other things, the Act sought to encourage lenders to restructure loans when doing so would be in the government's interest and would help keep the farmer on the farm. The Act also provided for matching funds from FmHA for state mediation programs that were certified to meet prescribed standards. It further required FmHA to participate in such state mediation programs, and to make "a reasonable effort" to contact creditors and encourage them to take part in a restructuring plan. In carrying out this last requirement, FmHA has provided that delinquent borrowers in all states will routinely be offered a chance to participate in a voluntary meeting of creditors, chaired either by a mediator or a "designated FmHA representative," and has contracted for mediation services in many states that lacked mediation programs.

FmHA has found this venture into mediation to be cost effective. FmHA's approach to mediation pursuant to the Act has been quite diverse, however. This is due in significant part to differences among the certified state programs, but also to the diversity of approaches among the mediation providers in non-certified states, variations in local conditions, dissimilarities in the attitudes of FmHA state directors towards mediation, and varying enthusiasm of other



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creditors, including some federal agencies. Given the size and diversity of the farm credit program and the speed with which the Act was implemented, this is hardly surprising. On the whole, the Act's mediation provisions appear to have begun to restore frayed communications between numerous farmers and lenders, assisted many farm families to avoid crises, and avoided foreclosure in a large number of cases. Still, administering these statutory provisions has not been free of problems.

In many cases, mediation has occurred too late to produce successful outcomes. The FmHA, at present, is unable to report accurately on the numbers of mediations conducted in either the certified or noncertified states. As stated above, FmHA has sometimes had difficulty in securing satisfactory participation of non-FmHA creditors, including many that are part of the Farm Credit System, and, in some areas, agencies such as the Federal Deposit Insurance Corporation, Internal Revenue Service, Resolution Trust Corporation, and Small Business Administration. Observers have raised concerns that borrowers in FmHA's loan guarantee programs—in which it guarantees loans made by banks—may not receive timely notice of mediation's availability.

Finally, the mediators used have taken strikingly divergent views of their responsibilities and authority. These might be categorized conveniently as "broad" and "narrow." In some areas—particularly states with certified mediation programs—many mediators have taken a "broad" approach and sought to uncover the parties' real interests and develop responsive options. Thus, they have tried to lower barriers to communication and to address issues, such as off-farm employment and intra-family or interpersonal questions, important to the resolution of difficulties between the farmer and lenders. In other regions, especially some states where FmHA has contracted for mediation services, neutrals have typically taken a "narrow" approach; this emphasizes much shorter, more formulaic proceedings that focus almost exclusively on whether non-FmHA creditors will adjust their debts sufficiently to permit FmHA loan restructuring under its Debt and Loan Restructuring System computer program (DALR\$). Resort to the latter approach to mediation may have been reinforced in some places by contracting procedures that emphasized low bids and by some FmHA state directors' narrow view of their mandates for restructuring under the Act. Each of these approaches has potential advantages and disadvantages and FmHA's openness to both is understandable, especially given that FmHA's resort to mediation in all but the certified states has been wholly voluntary. However, broader approaches are more likely to improve communication and assist the parties to develop diverse solutions that will meet their needs.



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While FmHA's implementation of the Agricultural Credit Act's farmer-lender mediation provisions has been energetic and generally effective, the Conference recommends several steps to enhance the likelihood that mediation will be used, and used successfully, in future disputes.

Recommendation

1. FmHA should take steps to remedy problems associated with the inconsistencies between the broad and narrow approaches to mediation evidenced in farmer-lender mediation by fostering a better understanding of the potential of the broad model of mediation in both certified state mediation programs and FmHA contract mediation programs. To achieve that goal, the FmHA should:

(a) Modify FmHA rules for processing delinquent loans to the extent necessary to give FmHA representatives at farmer-lender mediations greater discretion with respect to loan restructuring and providing new loans. FmHA should advise its personnel, mediators, and others involved in farmer-lender mediation that the Debt and Loan Restructuring System (DALR\$) computer program should not significantly limit the purposes of mediation. FmHA also should encourage its county offices to initiate mediation proceedings at an appropriately early stage in the processing of delinquent loans.

(b) Provide additional training, including videotapes, to FmHA and other personnel who will be connected with farmer-lender mediation processes. Training should include approaches to mediation and emphasize problem-solving negotiation skills.

2. FmHA should enhance its ability to manage and improve the farmer-lender mediation program by:

(a) Ensuring that certified state mediation programs make timely, uniform submissions concerning numbers and results of mediations.

(b) Improving the system by which FmHA collects information on mediations conducted through FmHA state offices in noncertified states.



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(c) Supporting research dealing with the conduct and short-and long-term outcomes of farmer-lender mediations. This research should examine economic outcomes, the extent to which mediators follow different mediation approaches in practice, and the extent to which varying approaches, as practiced, result in different kinds of outcomes, levels of participation, or levels of satisfaction among the various participants.

3. FmHA should take appropriate measures to notify parties to guaranteed (as opposed to direct) loans of the availability of farmer-lender mediation, without however revealing the borrowers' identities without their consent.

4. FmHA and the Department of Agriculture should:

(a) Continue to encourage additional states to develop farmer-lender mediation programs that can qualify to receive matching funds.

(b) Encourage full participation in farmer-lender mediation by institutions of the Farm Credit System and all appropriate agencies of the Department.

(c) Take steps to encourage the continuing development of a diverse, capable cadre of available mediators, including the use of volunteers.

5. All federal agencies that may be involved in farm credit disputes, such as the Federal Deposit Insurance Corporation, the Internal Revenue Service, the Resolution Trust Corporation, and the Small Business Administration, should consider the overall advantages of broad participation in farmer-lender mediation.

Citations:

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