Minnesota Department of Agriculture

Farmer-Lender Mediation Task Force Report

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Pursuant to Minn. Stat. § 3.197, the cost of preparing this report was approximately $3,500.

Introduction

The Minnesota Legislature established the Farmer-Lender Mediation Task Force during the 2016 legislative session to make recommendations to the Legislature regarding the Farmer-Lender Mediation Program. According to Minnesota Laws Chapter 184 Sec. 12:

> *The commissioner of agriculture must convene an advisory task force to provide recommendations to the legislature regarding the state's Farmer-Lender Mediation Act. The task force must be comprised of 14 members, including the commissioner or the commissioner's designee, one farm advocate appointed by the commissioner who is responsible for mediating debt between farmers and lenders, one adult farm business management instructor appointed by the commissioner, and three farmers appointed by the commissioner, at least one of whom is a beginning or nontraditional farmer and at least one of whom has personal experience with the farmer-lender mediation program. The remaining membership of the task force consists of one member appointed by each of the following entities:*
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> 1) *Minnesota Farm Bureau;*
> 2) *Minnesota Farmers Union;*
> 3) *Minnesota Bankers Association;*
> 4) *Independent Community Bankers of Minnesota;*
> 5) *Farm Credit Services- Minnesota State Federation;*
> 6) *Minnesota Credit Union Network;*
> 7) *Minnesota-South Dakota Equipment Dealers Association; and,*
> 8) *University of Minnesota Extension.*
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> *No later than February 1, 2017, the commissioner must report the task force's recommendations to the legislative committees with jurisdiction over agricultural policy and finance.*

Farmer-Lender Mediation Act

The Farmer-Lender Mediation Act[1] was passed by the Legislature and signed into law in 1986 to help address the financial crisis that Minnesota farmers were facing. The Farmer-Lender Mediation Act gives farmers the opportunity to renegotiate, restructure, or resolve farm debt through mediation. Mandatory mediation means that creditors cannot start a proceeding to enforce a debt against agricultural property until an offer of mediation has been extended and, if the farmer so chooses, completed. Mediation is executed by a trained neutral facilitator to assist in the negotiations between or among parties in a dispute. The Farmer-Lender Mediation Program is administered by the University of Minnesota Extension.

[1] Minnesota Statutes Chapter 583.

The goals of the mediation process are to achieve open communication between parties in order to resolve differences, define the rights of the debtor and creditor, and to produce agreements that are acceptable to all parties. Farming is a volatile business and is often dependent on global market forces outside of a farmer's control. Mediation can provide a way for farms to stay in business during difficult economic times by working together with lenders to renegotiate, restructure, or resolve farm debts.

Farmer-Lender Mediation Task Force

The members of the Task Force were appointed or recommended according to statute. Membership includes:

Dave Frederickson, Minnesota Department of Agriculture
David Hesse, Farm Advocate
Jim Molenaar, Farm Business Management Instructor
Pakou Hang, Farmer
Jessica Hofschulte, Farmer
Tim Velde, Farmer
Kevin Paap, Minnesota Farm Bureau
Doug Peterson, Minnesota Farmers Union
Mark Miedtke, Minnesota Bankers Association
Scott Wakefield, Independent Community Bankers of Minnesota
Jessica Fyre, Farm Credit Services
Mike Wehlage, Minnesota Credit Union
Mike St. Onge, Minnesota-South Dakota Equipment Dealers Association
Kent Olson, University of Minnesota Extension

Recommendations

Members of the Task Force agreed that the Farmer-Lender Mediation Program is a valuable program for Minnesota farmers and for the state's economy. Discussion of the Task Force highlighted the option for mandatory mediation can keep farmers operating in times of economic downturn, keep young or beginning farmers in business, and assist in mitigating mental health risks due to financial stress. The Task Force developed consensus around recommendations that would address concerns about the program process and ensure proper and fair use of the program.

The Task Force recommends if a debtor accepts mediation, the same debtor should not be eligible for another mediation with the same creditor within a two-year period of acceptance.

To ensure that mandatory mediation is being utilized in good faith, a mediation timeline for individuals should be established in statute. In some cases, mediation has been used as an ongoing backstop, leading to continuous restructuring of debt without advances in payment. The option to continue mediating unconditionally deters lenders from providing additional credit during the mediations, which often is used to restructure finances. The Task Force recommends that a two-year period should pass before a second mediation can take place with the same creditor.

The Task Force recommends that, if the minimum debt level for mediation, which is currently $5,000 in statute, is increased, it should be adjusted for inflation to no more than $13,800. This amount should be adjusted for inflation by multiplying that amount by the cumulative inflation rate as determined by the USDA Index of the Cost of Production.

The appropriate minimum debt level to be eligible for mediation has been a discussion topic at the legislature. The current minimum debt for program eligibility is $5,000, which was included in the original 1986 statute and has not changed since then. The Task Force had a robust discussion on whether raising the debt limit was a good option for the program and for the farmers it serves. Some Task Force members wanted to ensure that the program was available to farms with any size of debt in order to continue to achieve the program's goals. Others wanted the minimum debt to reflect increases in agricultural price and capital cost increases, which include increased prices of farm land and equipment and inputs, which have been driven by spikes in high agricultural commodity prices over time. The $13,800 figure represents the USDA Index of the Cost of Production increase of 176% from when the $5,000 was enacted in 1986 until 2015.

The Task Force recommends the amount released for living expenses to an entity going through a mediation be raised to meet current cost of living standards. In subsequent years, this amount should be adjusted for inflation by multiplying that amount by the cumulative inflation rate as determined by the United States All-Items Consumer Price Index.

The Farmer-Lender Mediation Act allows for a release of $1,600 per month to farmers going through an active mediation. This figure has not been changed since the 1986 legislation was passed, and is not enough to protect farmers from going into further debt by not having access to enough funds to account for living expenses. The current number of $1,600 may not be adequate for a family of four. The Task Force recommends updating this figure and that the legislature consider tying it to the inflation rate and adjusted as appropriate on a yearly basis.

The Task Force recommends that if a borrower signs up for mediation, the mediator or mediator's designee should be authorized to perform a credit search and financial statement verification as necessary in order to facilitate completion of a financial statement prior to the first mediation meeting.

Currently there is no authority for anyone involved in the mediation process to perform a credit search. This can result in incomplete financial statements and delay of mediation, which could impact both the creditor and borrower. A document should be provided that borrowers could sign, allowing the mediator to perform a credit search and a credit bureau report.

The Task Force recommends that, in order to best use the state's resources, consideration should be given for a maximum debt level.

Agricultural operations have increased in their ability to use sophisticated financial instruments to benefit operations. A maximum debt level for participation in the program should be considered, perhaps including as a factor the resources of the debtor, such as the sophistication of debt use and ability to retain an attorney.

The Task Force recommends that 'in a timely manner' be added to Minnesota Statute 583.27, Subdivision 1(a)(2).

Subdivision 1 outlines the obligation of good faith required for participation in the program. The Task Force noted that this obligation was critical to the success of mediations and felt that requiring timeliness in providing information will aide in the success of the mediation.

Additional Discussion Topics

During the Task Force discussions, additional points were raised about the program. First, Task Force members widely agreed that the Minnesota State Colleges and Universities Adult Farm Business Management programming is critical to provide farmers with the knowledge and tools that can assist in management of their operations. Excellent management of operations across the farm can ensure that debt obligations continue to be met, even during times of economic downturn.

Second, Task Force members expressed appreciation that agricultural lenders understand the risks and financial considerations required for farming. Many lenders work with farmers on an ongoing basis to make sure that financial agreements continue to work. Mediation is often a last resort when issues are unable to be resolved independently between lenders and farmers.

Third, it was pointed out that having access to free or low-cost legal services can be critical for farmers in financial distress, and that the income eligibility threshold for farmers to qualify for free legal services has not changed since 1986. The Task Force encourages the Legislature to study this issue further.

Finally, the Task Force discussed the sunset date for the program. Because the program relies on federal funding from the Farm Bill, the committee concluded that the sunset date should continue in statute.