

Approved March 3, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Clifford Campbell at
Chairperson

9:08 a.m. ~~pm~~ on March 1, 1988 in room 423-S of the Capitol.

All members were present ~~except~~

Committee staff present: Raney Gilliland, Legislative Research Department
Norman Furse, Revisor of Statutes Office
Marjorie Brownlee, Committee Secretary

Conferees appearing before the committee: Larry Davis, Farm Home Administration
Paul E. Fleener, Director of Public Affairs
Division, Kansas Farm Bureau
Charles Stones, Kansas Bankers Association
Raymond Fowler, Director of Kansas Farmers
Union
Penny Geis, Director, Prairie View, Inc.

After announcements from the Chair and from Representative Roenbaugh, Chairman Campbell pronounced the hearings on HB 2966 to be open.

The first conferee was Larry Davis, Farm Home Administration. He discussed the several servicing options which they have available, namely: rescheduling, reamortization, consolidation, limited resource, deferral, and debt restructuring. He expressed the thought of the Farm Home Administration that a large percentage of the delinquent borrowers will be able to use the servicing options to take care of the delinquency without using a mediation program. He also stated that in his opinion the mediation program needs to be neutral and be "perceived" to be neutral as well. (ATTACHMENT I)

Paul E. Fleener, Director of the Public Affairs Division of the Kansas Farm Bureau, spoke to the Committee next. He indicated that they continue to be supportive of the FACTS program which was established by the legislature. He quoted from the legislation---"The provisions of this Act shall expire July 1, 1990." and commented that "...it is our sincere hope that there will be no need for a FACTS referral program beyond July 1, 1990." Later in his testimony he said---"It has not been and is not a mandatory program. It should not be and should not become a mandatory program." There were several questions and comments from the members of the Committee with regard to this testimony. (ATTACHMENT II)

The next conferee to address the Committee was Charles Stones, representing the Kansas Bankers Association. He also made the comment on their stand in opposing mandatory mediation. He commented "...true mediation cannot be effective if the system is not voluntary." He further reiterated from the previous day's testimony wherein Penny Geis, Director, Prairie View, Inc., stated "...maybe the best case scenario would be to place the program under the umbrella of someone like the Attorney General's office and continue to subcontract the actual administration to Prairie View." (ATTACHMENT III)

Raymond Fowler, a Director of the Kansas Farmers Union, spoke in support of the bill. His only criticism was it could be a little stronger.

Penny Geis, Director of Prairie View, Inc., Kansas Farmer/Creditor Mediation Service, again spoke with the group. She restated their concern that we do not have adequate notification and stressed the point of

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,
room 423-S, Statehouse, at 9:08 a.m.~~p.m.~~ on March 1, 1988

confidentiality. There was also discussion concerning sufficient funding.
(ATTACHMENT IV)

Chairman Campbell passed out relevant testimony from Ron Wilson, Executive Director, Farm Credit Council, Inc., who was unable to be present for today's Committee hearing and who wanted to go on record in support of HB 2966. (ATTACHMENT V)

Hearings were closed and the Chairman adjourned the meeting at 10:02 a.m.

The next meeting of the House Agriculture and Small Business Committee will be on March 2, 1988, at 9:00 a.m. in Room 423-S.

Committee on Agriculture and Small Business

Farmers Home Administration (FmHA) has several servicing options. They are as follows:

Rescheduling

Rewriting loans made for operating purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

Reamortization

Rewriting loans made for real estate purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

Consolidation

Combining and rewriting similar type loans made for operating purposes at new rates and terms.

Limited Resource

Provides credit at an interest rate which is lower than FmHA's regular interest rate, 6% operating - 5% farm ownership.

Deferral

An approved delay in making regularly scheduled payments. (Is being changed to no accrual of interest during deferral period).

Debt Restructuring

Write down of debt to value of collateral if the net recovery is equal to or greater than what the government would recover from an involuntary liquidation.

In addition, guaranteed loans made after the enactment of the Agricultural Act of 1987 provides for a reduction up to 4% of interest.

As of December 31, 1987, FmHA had the following delinquent borrowers:

1 year delinquent	382
2 years delinquent	189
Over 2 years delinquent	220
Matured	<u>259</u>
Total	1,050

A large percentage of the delinquent borrowers will be able to use the servicing options to cure the delinquency without using a mediation program, especially the ones that are two years or less delinquent and FmHA is the major creditor.

As you are aware, the Agricultural Credit Act of 1987 provided for the federal government to share expenses of a state mediation program. FmHA

Committee on Agriculture and
Small Business
- Page 2 -

and the Farm Credit System is directed by this Act to participate in the mediation program.

In my opinion, a mediation program needs to be truly neutral and be perceived to be the same.

I would be glad to answer any questions.



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

RE: H.B. 2966 - Expanding The Scope Of FACTS

March 1, 1988
Topeka, Kansas

Presented by:
Paul E. Fleener, Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and Members of the Committee:

My name is Paul E. Fleener. I am the Director of the Public Affairs Division for Kansas Farm Bureau. We want to express our appreciation to you for an opportunity to make brief comments on **H.B. 2966**, the legislation which proposes to expand the scope of the FACTS program. We have been and continue to be supportive of the assistance, counseling and training referral program established by this Legislature.

Mr. Chairman, we are supportive of the increased scope of the FACTS program as we read and understand what is outlined in **H.B. 2966**. We read this to allow assistance to be made available by contract or by referral. We read this legislation to **permit** mediation, personal and family support counseling and other related services.

Importantly, what is proposed in new subsection (d) and new subsection (e) is authorization for the Secretary of the State Board of Agriculture to negotiate and **enter into contracts for the performance of the duties** outlined in subsection (c). In order to do that ... to negotiate and make a contract for provision of one of the services ... the Secretary is authorized to receive grants,

gifts or donations from the United States Government or from any source whatsoever.

We want to stress today there is an important line in this legislation which none of us should lose sight of, and it says this: "The provisions of this Act shall expire July 1, 1990." It was never envisioned that we were etching in stone something that would last for generations. The hope has always been that the agricultural crises of the 1980s would become the agricultural opportunities for what is left of this decade and on into the twenty first century!! It is our sincere hope that there will be no need for a **FACTS** referral program beyond July 1, 1990.

One other word about one of the new services amended into subsection (c): We would address brief remarks to the mediation program. We have some experience in the development of the **VOLUNTARY MEDIATION PROGRAM** which exists in Kansas today. The Kansas Farm Bureau, the Kansas Bankers Association, the Kansas Bar Association, Farm Credit Services (Wichita District) and others participated in financing the Kansas Farmer/Creditor Mediation Services, a program of Prairie View, inc., of Newton, Kansas. This has been a success, a model program of assistance and counseling and mediation for debt restructuring and for the betterment of distressed farmers. It has not been and is **not** a mandatory program. It should not be and **should not become a mandatory program.**

The new federal legislation on Farm Credit ... P.L. 100-233 ... provides an opportunity for state mediation programs. The Conference Committee adopted the **Senate language**, not the out and out mandatory language contained in H.R. 3030 which came over from

the House of Representatives. The Conference Report authorizes matching grants to "qualifying state" programs on mediation. A qualifying program is one which leads to fruition ... which leads to a **mediated mutually agreeable** solution to a farm debt restructuring problem. It is also one which is **AUTHORIZED** or administered by a state agency or by the Governor. Your language in H.B. 2966 authorizes the Secretary to negotiate and enter into contracts for the performance of this important service. It is our belief, our firm belief that the Kansas Farmer/Creditor Mediation Services program would qualify. The Secretary and the Governor would need to submit this program and its structure to the U.S. Secretary of Agriculture,

We thank you for the opportunity to make these comments of support for continuation for the next two years of the FACTS program, authorized by **H. B. 2966**.

We would attempt to respond to any questions.

The Kansas Bankers Association
1500 Merchants National Bank Bldg.
Topeka, KS 66612
913-232-3444

3-1-88

TO: House Committee on Agriculture and Small Business

From: Charles Stones

RE: HB 2966

Mr. Chairman and Members of the Committee:

The KBA appreciates the opportunity to testify before this committee on the topic of mediation. Until yesterday we were not intending to testify on HB 2966. As we understand the bill, it is intended to lay the groundwork for the voluntary mediation program already in existence to take advantage of federal matching dollars provided for in Federal legislation.. We have no opposition to that concept. At a meeting of the original sponsors of the voluntary mediation program held January 5 these same topics were discussed at length. In attendance were representatives of the Kansas Bankers Association, Rural Assistance Corp., Kansas Bar Association, Farm Credit System, FACTS, Kansas Farm Bureau, and Prairie View, Inc.. The general conclusions of that meeting were to wait for final regulations to be written from the federal act before making any final decisions, for the sponsors to renew efforts to publicize the program, and to start work on getting the current program certified and get matching money. However, in light of yesterday's testimony we felt the necessity to appear before the committee on this topic.

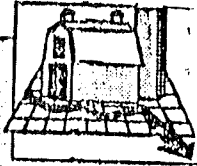
The KBA has always seen the benefits of mediation. We were the first group to be contacted by an attorney about the concept of voluntary mediation. The leadership was quick to see its merits. The KBA was an original contributor to the program. We also held a series of seminars across the state and have included the topic of mediation in several other meetings. We have encouraged banks to participate in the program because we felt that voluntary mediation could prove helpful in facilitating dialogue between borrowers and lenders thus saving both parties considerable money and stress.

However, the KBA has been and continues to be opposed to mandatory mediation. True mediation cannot be effective if the system is not voluntary. Mandatory mediation has proved to be time consuming, costly, and even counter-productive. Attempts to compare Iowa and Minnesota to Kansas can be misleading. Iowa has 53% more farms and Minnesota has 31% more farms than does Kansas. Naturally the number of mediation cases in those states would be higher. USDA records show that Iowa lost 2,000 farms from June 1986 - June 1987 and Minnesota lost 1,000. The same study showed that Kansas showed no change in the number of farms. (See attachment) This tends to show that the situation is much worse in those two states than in Kansas. In addition to that Stan Ward, in our January 5th meeting mentioned earlier stated that he considered the program, as a whole, to be effective because, even though a relatively small number of cases had gone to actual mediation that approximately 100 cases have been through a negotiation process with financial consultants and a mediator was not necessary. This has been the strength of the program. Another reason for the relatively small number of mediation cases in Kansas is the improvement of the Agriculture economy. Reports of record farm net income and stabilizing land values have been encouraging and would tend to decrease the number of cases requiring mediation.

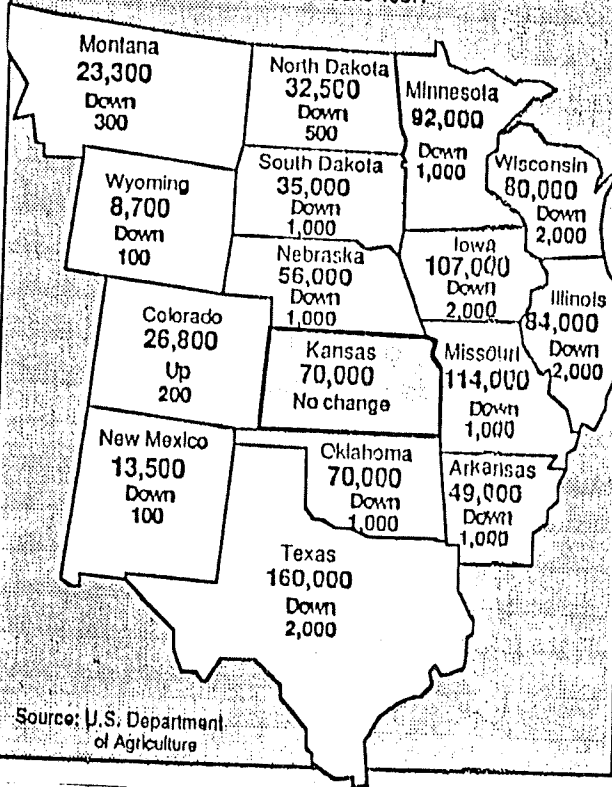
Finally, the KBA has always had concerns about the neutrality of the mediation program when it is associated heavily with the FACTS program. This has also been a concern of the administrative personnel of the mediation program. In fact the original printed material was revised (see attachment) in order to downplay FACTS involvement and maintain neutrality. FACTS was, is and always will be an advocate for the farmer. It was designed to be that way and is that way. We are not critical of that fact but if mediation is to work, it must be administered by someone who is perceived to be "neutral" by both sides. When creditors see FACTS involvement they automatically think "farmer advocate", and rightly so. We do not feel a program administered by FACTS could be perceived as neutral by creditors any more than a program administered by the KBA could be perceived as neutral by the farmer. Both may be perfectly neutral, but as stated earlier, perception is reality in the eyes of the beholder.

We urge you to consider the credibility of the program if placed under the umbrella of a farmer advocacy group. Penny Geis, in testimony yesterday, stated maybe the best case scenario would be to place the program under the umbrella of someone like the Attorney General's office and continue to sub-contract the actual administration to Prairie View. The Oklahoma Voluntary Mediation program is an example of this type of structure.(see attachment)

Midwest's Declining Farm Numbers



First number indicates number of farms in state. Second number indicates change from June 1986 to June 1987.



Source: U.S. Department of Agriculture

Farm recession bottoming out, article asserts

The "long, painful recession" in agriculture is bottoming out, according to Mark Drabentstott, economist with the Federal Reserve Bank of Kansas City.

Drabentstott's conclusion, in a signed article in the Kansas City Fed's December 1986 Economic Review, was based on signs that prices have stabilized, land values have generally ceased to drop, and farm loan problems have crested.

"In the coming year," he wrote, "agriculture is likely to find itself on a plateau. Conditions in the industry may not improve much, ... but they may not decline much either thanks to generous farm programs."

While the road to recovery will be long, particularly for crops, Drabentstott said there are some bright spots.

Livestock producers can expect good profits in 1987, he said. "Feed will be extremely cheap, and consumer demand likely will be strong."

Cattle prices will be much stronger and, though pork production will decline, disciplined lenders and slow expansion plans by producers could mean record profits. Broilers production will increase, possibly by 6 percent, and turkey may register a production increase of 16 percent after a strong 12 percent increase in 1986.

Congressional debate is likely during the year, the Kansas City economist wrote, about the costs of government support to agriculture. "The crop surplus will be enormous, and exports offer no immediate prospects of emptying U.S. bins," he said.

Farm income, bolstered by government payments, is likely to increase, he said, and the value of agricultural land will be stable if government payments continue.

"Current land values accurately reflect returns when government payments are included. But if investors look only at the returns generated by the market, land bought at current prices will not cash flow in most cases... If government farm spending is reduced, or if investors have good reason to believe programs will be cut, farmland values will adjust accordingly," Drabentstott said.

The agricultural financial sector will continue to wrestle with the problems of the past five years, including farm bank closings, which "may keep pace with the high number of failures in 1986," he said.

However, the problems will be holdovers, with no further deterioration in the situation, he said.

NEW BROCHURE



Kansas Farmer/Creditor Mediation Services

A Program of Prairie View Inc.

How much does mediation cost?

Fees begin at \$100 per hour for a mediation involving one farmer and one creditor. As additional creditors are involved, each creditor's share decreases according to the following scale:

	Farmer Pays	Creditor Pays
1 cred.	\$20 per/hr	\$80 per/hr
2 cred.	20 per/hr	65 per/hr
3 cred.	20 per/hr	60 per/hr
4 cred.	20 per/hr	56 per/hr

A five-hour retainer fee is required, two hours of which are refundable. Checks or money orders, payable to KS Farmer/Creditor Mediation, should be mailed to Prairie View Inc. only after calling to receive an identifying number.

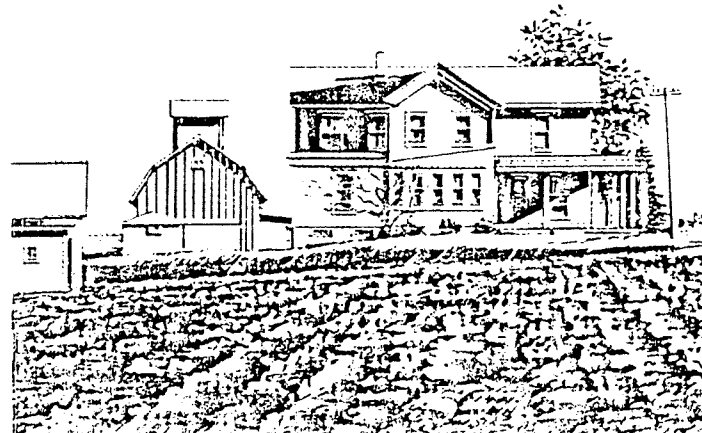


For more information contact:

Prairie View inc.

1901 East First Street
Newton, KS 67114

1-316-283-2400, Ext. 462



OLD BROCHURE

FARMERS ASSISTANCE COUNSELING & TRAINING SERVICE

Offers:
Kansas Farmer/Creditor
Mediation Services





FARM OR RANCH DEBT MEDIATION

OKLAHOMA AGRICULTURE MEDIATION PROGRAM (AMP)

Mediation is a means of offering an orderly process to farmers and agricultural lenders addressing the problem of farm indebtedness. Mediation is a response to the urgent need for lenders and borrowers to work out mutually beneficial solutions when farmers are unable to service their debt. It provides a low-cost mechanism outside of bankruptcy courts for lenders and borrowers to restructure farm debt or otherwise resolve their relationship. Mediation is a supplement to the existing legal process; if no agreement is reached through mediation, the present legal system remains available.

Mediation - The Process:

Mediation introduces a neutral third party into the farmer and lender discussions and helps to generate alternative plans. This comes at a time when the relationship between the lender and borrower may have deteriorated to the point that communication has broken down. All decisions and agreements are made by the debtors and creditors themselves. The parties come to mediation with the understanding they will seek a mutually agreeable solution that attempts to meet the needs of them both.

Key Factors of Mediation Are:

...It focuses on creative alternatives and constructive outcomes.

...It guarantees all parties have an equal voice.

...It allows the parties, themselves, to determine the outcome, thus assuring greater compliance and smoother working relationships in the future.

...It focuses on the individual circumstances and parties of each case.

...It encourages a speedier resolution to the problem without great cost.

...It is completely confidential.

The Role of the Mediator:

The mediator, a trained volunteer leads and manages the discussion as a neutral without making decisions or judgments.

The mediator's role is to make sure all participants get to speak and be heard, to help define the issues, to help identify the common goals, to keep the discussion focused and to facilitate discussion of all options and assistance programs. It is the mediator who keeps the meetings orderly, fair, and forward-moving. The mediator can advise and assist the participants on ways to come to an agreement, but does not tell them how they should conduct their business or what the outcome should be. Knowledge of farming or loan procedures is not as

necessary for the mediator as a clear understanding of conflict resolution skills.

Access to Mediation:

AMP is a program of the Oklahoma Department of Agriculture under the Dispute Resolution Program of the Oklahoma Supreme Court. The Commissioner of Agriculture has contracted the operation of AMP to the Oklahoma Conference of Churches (OCC). Oversight of the program is offered by the Special Task Force on the Farm Crisis of the Oklahoma Bar Association.

Access to AMP for farmers and creditors alike is the AG-LINK Hotline, a statewide OCC service, which links the farmer or rancher or their families to a host of public and private resources. To obtain a mediation of farm or ranch debt, a call on the Hotline, 1-800-AG8-LINK (1-800-248-5465), will connect you with AMP, which will make appropriate referrals and coordinate the mediation service.

Preparation for Mediation:

Preparedness is the key to successful mediation. If all parties can come to the table with a complete and current understanding of the financial and legal implications of the various alternatives, the likelihood of a successful agreement speedily reached is greatly increased.

Oklahoma has recognized this prerequisite by incorporating that assistance into the total mediation process. That means that the farmer when applying for mediation is instructed and assisted.

Assistance in Mediation:

Initially upon receipt of an AMP inquiry from a farmer or creditor, AMP will inform the farmer about

the program and forward an "Interview Sheet" to secure appropriate information about the case. When the completed sheet is returned, the first referral AMP makes is to counsel for a determination of appropriateness for mediation, OCC's AG-LINK Legal Services and Legal Aid of Western Oklahoma's Farm Law Project are the primary sources of this referral.

When approved by counsel, the second referral AMP will make is to a program of individual and confidential counseling provided either by a Vo-Tech School, through their Farm Business Management instructor, or by Oklahoma State University, through the "Intensive Financial Management and Planning Service" (IFMAPS). Vo-Tech classes are available to farmers and ranchers in some cases without cost, through a program developed by the 1986 Oklahoma Legislature. IFMAPS is generally available to Oklahoma farm and ranch families at no cost or obligation under a pilot program partially sponsored by the United States Department of Agriculture and the Oklahoma Department of Commerce.

IFMAPS, for example, provides services of specially trained Financial Specialists who will work with individual families to analyze the financial condition of their business. These specialists will also help the families identify options and develop and evaluate a comprehensive business plan. Once the individual planning is completed for the farmer or rancher, the AMP procedure calls for the release of the options and cash flow information to the various creditors of the farmer or rancher. All creditors are notified of the pending mediation and encouraged to participate fully.



Prairie View inc.

1901 East First Street • Box 467 • Newton, Kansas 67114-0467 • (316) 283-2400

KANSAS FARMER CREDITOR MEDIATION SERVICE

helping people
help themselves
since 1954

FIRST YEAR REPORT

January 5, 1987

In mid 1986 Kansas was hearing mandatory agricultural credit mediation proposed by gubernatorial candidate Mike Hayden. Candidate Tom Docking responded with support for voluntary mediation. Iowa and Minnesota had each passed legislation which forced lenders to mediate with thousands of lenders before they could file for foreclosure.

Stan Ward, director of the Department of Agriculture FACTS hotline, and Don Reynolds, Oklahoma banker and attorney, contacted several Kansas groups about the possibility of helping to establish a voluntary farmer/creditor mediation program here. Together the Kansas Farm Bureau, the Kansas Farmers Union, the Kansas Bankers Association, the Farm Credit System bank at Wichita, the Kansas Bar Association and the Kansas Department of Agriculture contributed a total of \$25000.

At the request of the Department of Agriculture, Prairie View, Inc. at Newton contracted to administer the program, and the Center for Dispute Resolution from Colorado was hired to train mediators. Each mediation case was to be assigned a mediation team with one trained mediator and one trained financial consultant. Fees were set with an eye toward making the service self-supporting. On October 10, 1986, then Governor Carlin announced the beginning of the Kansas Farmer/Creditor Mediation Service.

November, 1986, Prairie View contracted with Penny Geis to direct the service. In January 1987, the first referrals were received through the FACTS hotline financial consultant, Earl Wright. As we began working on the first few cases, Prairie View and FACTS agreed to make a more clear distinction between the roles of the two agencies. Prairie View agreed to assume long term responsibility for the program. The mediators and financial consultants would no longer be considered a team. The financial consultants, hired by the farmer, would be free to give advice in the best interest of their clients. The mediators would be clearly neutral, not teamed with someone hired by one party. New brochures were printed, in a format distinct from the original FACTS "look-alike" brochures.

During 1987, Prairie View had contact with farmers and lenders in 21 cases. In 9 of those, the parties agreed to sit down together with a mediator to try to resolve their differences. In 8 of those, they reached an agreement. (The ninth was closed in 1988 with no agreement.) In an additional 3 cases an agreement was reached after limited telephone contact from a mediator. For comparison, in Iowa during the first year of the mediation service, of 6,266 referrals, 2,305 cases were mediated and agreements were signed in 1445 cases. Of Minnesota's 5197 cases, 2191 ended in memorandums of agreement.

The exceptionally high percentage of agreements in cases mediated in Kansas can probably be attributed to

1. the voluntary nature of the program
2. selection and training of the mediators, and
3. preparation of the participants
(every farmer had both financial and legal counsel).

The low number of cases served may also be a result of the voluntary nature of the program. Other factors may be a staff of only one person, only two days a week, and a limited publicity effort, both functions of a small budget.

The original funds have been exhausted. The service is now being subsidized by Prairie View and the mediators because they have been impressed by the results they have seen in individual cases.

When farmers and bankers have stopped talking to each other, when they have expressed "severe dislike and mistrust", our mediators have helped them sit down and work out a plan they could agree to. When court action has been threatened, and even initiated, people have come to agreement. Loans have been bought out, property voluntarily liquidated, interest rates and principal reduced, cattle and machinery recovered, and "bad debts" are performing loans again. Most farmers have stayed on the farm, though sometimes with a reduced operation. Some have left, with dignity, usually transferring ownership and operation to another family member. Families severely divided over farm problems have begun to heal. The delay, expense and stress of court actions have been avoided. People have listened to each other.

KANSAS FARMER/CREDITOR MEDIATION SERVICE

1986-87 INCOME AND EXPENSES

INCOME

Rural Assistance Corporation	10,317
Farmer fees	810
Creditor fees	3,265
Speaker reimbursement	2,443
	16,835

EXPENSES

Mediator expenses	2,519	
Speaker expenses	128	
Brochures and posters	2,707	
Travel	3,873	
Administrative support *	7,561	
Director	9,663	
Miscellaneous	247	
	26,698	(9,863)

(Rural Assistance Corporation funds came from the following donations, according to verbal report from Stan Ward:

1. Kansas Bankers Association \$8333.33
2. Farm Credit Services \$5000
3. Kansas Farm Bureau \$5000
4. Kansas Bar Association \$1000
5. Kansas Farm Bureau \$400
6. FACTS Department of Agriculture, remainder necessary for establishment of mediation program. Expenses also included between \$14000 and \$15000 paid to Center for Dispute Resolution of Denver for mediator training.)

COMMENTS
on
CERTIFICATION REQUIREMENTS
for
STATE AGRICULTURE LOAN MEDIATION PROGRAMS

It appears that FCS and FmHA will participate in mediation only if FmHA certifies the state program.

Farmers Home Administration states that they will participate in mediation with Kansas farmers only if they determine that our program qualifies under the terms of the Agricultural Credit Act of 1987. The Act provides that within 15 days after the Secretary receives a description of a State program, he shall certify the program if it:

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 an agricultural loan mediation program;

This is the essence of our program. In conversations with Senator Harkins staff, I understood it was the intent to include our program, even knowing it had not been created by state legislation. What Vance Clark will consider sufficient evidence is another question.

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

The program is administered by Prairie View, Inc., a private, not-for-profit corporation in Newton which also provides mental health, management and consulting services. An executive order of the Governor is probably the most straightforward way to satisfy this requirement, according to Tam Orniston, Assistant Attorney General for Iowa. Tam continues to be heavily involved in this issue and has offered to serve as a resource to Kansas. (Tam Orniston, Assist. Atty. Gen., Hoover State Office Bldg, Des Moines, IA 50319, 515-281-6634).

Another option would be for a state agency to contract with Prairie View to provide the mediation service. It would be important to choose an agency viewed as neutral by farmers, creditors, and the general public. Possibilities might include the Attorney General's Office or the Office of Court Administration. Although the FACTS hotline is viewed as a farmer advocate service, that perception may or may not extend to the Department of Agriculture. The Office of the State Bank Commissioner would probably not be viewed as neutral, either.

3. provides for the training of mediators;

Our mediators have received 40 hours of training in farm credit mediation from the Center for Dispute Resolution from Colorado. CDR is one of the premier mediation training groups in the country. Continuing education is provided by staff and guest speakers. New mediators will be required to have comparable training.

4. provides that the mediation sessions shall be confidential;

KSA 60-452A provides for the confidentiality of all mediation in Kansas, protecting mediators from being required to testify in court regarding information learned in mediation. Although it would seem unnecessary, legislation could also include language similar to the confidentiality clauses in the the custody mediation act, KSA 23-606.

and

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

This is our weakest point. Every farmer facing foreclosure and perhaps lenders facing bankruptcy should receive information about the mediation option. Public education is extremely important, but even if there were budget and staff for the most thorough effort, it's unrealistic to expect each person involved to be aware of mediation without individual notice at the appropriate time.

Notification of the mediation program before a foreclosure is filed seems to be the very minimum requirement for the potential success of a mediation program, whether voluntary or mandatory. Currently, farmers who have not called the FACTS crisis hotline and been evaluated as suitable for mediation, are unlikely to know about it. People are not going to choose the mediation option if they do not know it exists.

Notification language from the U.S. Senate, although later removed in Conference, could be used as a model for a Kansas statute that would likely meet the requirements for certification.

MEMORANDUM

November 13, 1987

Dear Peggy, Penny

In response to our conversation early last month on the farm mediation program in Kansas, I have enclosed a copy of the most recent version of the bill's sectiona as it emerged from the Senate Agriculture Comm.

Thank you for the help you provided.

Sincerely,

Dave
Dave Yanchulis
Sen. Harkin's Office

stitutions to

; State if the
e referred to
e meets the

ROGRAM IN
loan media-
s of section

12 (2) NOTICE TO BORROWER OF AVAILABILITY OF

13 STATE-MEDIATION SERVICES.—The law of the State
14 requires that, not less than 21 days before the credi-
15 tor of a farm borrower engages in conduct described
16 in any paragraph of section 362(a) of title 11, United
17 States Code (but not described in any paragraph of
18 subsection (b) of such section). with respect to the
19 individual, the creditor shall—

20 (A) notify the individual that—

21 (i) the creditor intends to engage in
22 such conduct:

23 (ii) the individual or creditor may
24 apply to the farm loan mediation program
25 of the State to obtain mediation services

1 with respect to any farm loan made to the
2 individual;

3 (iii) the individual to be eligible for
4 the program must apply to the mediation
5 program within 21 days after receipt of the
6 notice; and

7 (iv) the conduct of the creditor de-
8 scribed in paragraph (2), shall be suspend-
9 ed during the pendency of State mediation
10 with respect to the loan; and

11 (B) prominently include on the notice an
12 address and telephone number where informa-
13 tion may be obtained by an individual about—

14 (i) the farm loan mediation program
15 of the State; and

16 (ii) obtaining help in preparing debt
17 restructuring proposals.

18 (3) SERVICES REQUIRED TO BE PROVIDED BY A
19 STATE.—

20 (A) IN GENERAL.—The law of the State
21 must require the State—

22 (i) to make farm management counsel-
23 ing and technical support available to any
24 individual to whom a farm loan has been
25 made and who faces substantial financial

M.S.M. 1/2/11

PROVIDING CREDIT ASSISTANCE TO FARMERS, TO STRENGTHEN THE FARM CREDIT SYSTEM, TO FACILITATE THE ESTABLISHMENT OF SECONDARY MARKETS FOR AGRICULTURAL LOANS, AND FOR OTHER PURPOSES

DECEMBER 18, 1987.—Ordered to be printed

Mr. DE LA GARZA, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 3030]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3030), to provide credit assistance to farmers, to strengthen the Farm Credit System, to facilitate the establishment of secondary markets for agricultural loans, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the "Agricultural Credit Act of 1987".

(b) **TABLE OF CONTENTS.**—The table of contents is as follows:

TABLE OF CONTENTS

- Sec. 1. Short title; table of contents.
- Sec. 2. References to the Farm Credit Act of 1971.

TITLE I—ASSISTANCE TO FARM CREDIT SYSTEM BORROWERS

- Sec. 101. Protection of borrower stock.
- Sec. 102. Restructuring distressed loans.
- Sec. 103. Disclosure by banks and associations.
- Sec. 104. Access to documents and information.
- Sec. 105. Notice of action on application for loans or restructuring.
- Sec. 106. Reconsideration of actions.
- Sec. 107. Protection of borrowers who meet all loan obligations.
- Sec. 108. Right of first refusal.
- Sec. 109. Differential interest rates.

"(1) **TREASURY FUND.**—The amounts collected under subsection (a) shall be deposited in the Farm Credit Administration Administrative Expense Account. The Expense Account shall be maintained in the Treasury of the United States and shall be available, without regard to the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 note) or any other law, to pay the expenses of the Farm Credit Administration.

"(2) **NONGOVERNMENT FUNDS.**—The funds contained in the Expense Account shall not be construed to be Federal government funds or appropriated monies.

"(3) **INVESTMENT.**—

"(A) **AUTHORITY.**—On request of the Farm Credit Administration, the Secretary of the Treasury shall invest and reinvest such amounts contained in the Expense Account as, in the determination of the Farm Credit Administration, are in excess of the amounts necessary for current expenses of the Farm Credit Administration.

"(B) **RETURNS.**—All income earned from such investments and reinvestments shall be deposited in the Expense Account.

"(C) **TYPE.**—Such investments shall be made in public debt securities with maturities suitable to the needs of the Expense Account, as determined by the Farm Credit Administration, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities."

(b) **EXAMINATION OF FEDERAL LAND BANK ASSOCIATIONS.**—Section 5.19(a) (12 U.S.C. 2253(a)) is amended—

(1) in the first sentence, by striking out "Each" and inserting in lieu thereof "Except for Federal land bank associations, each";

(2) by inserting after the first sentence the following new sentence: "Each Federal land bank association shall be examined by Farm Credit Administration examiners at such times as the Farm Credit Administration Board may determine, except that each such association shall be examined at least once every 5 years."; and

(3) by striking out "the Chairman of" each place it appears in such subsection.

(c) **POWER TO REMOVE DIRECTORS AND OFFICERS.**—Part C of title V (12 U.S.C. 2260) is amended by adding at the end thereof the following new section:

"SEC. 5.38. **POWER TO REMOVE DIRECTORS AND OFFICERS.**

"Notwithstanding any other provision of this Act, a farm credit district board, bank board, or bank officer or employee shall not remove any director or officer of any production credit association or Federal land bank association."

SEC. 433. REASSIGNMENT OF ASSOCIATIONS TO ADJOINING DISTRICTS.

(a) **PETITION OF BANK.**—Notwithstanding any other provision of this Act, effective for the 12-month period beginning on the date of

bank association or production credit association, whose chartered territory adjoins the territory of another district, may petition the Farm Credit Administration to amend the charters of the association and the adjoining district bank to provide that the territory of the association is part of the adjoining district.

(b) **REQUIREMENTS OF PETITION.**—To be considered under this section, the petition must be signed by not less than 15 percent of the stockholders of the association. Only one such petition may be filed by an association under this subsection.

(c) **FCA ACTION.**—The Farm Credit Administration shall take any action necessary—

(1) to amend the charters of the association and the district bank; and

(2) to incorporate the petitioning association into the adjoining district if the reassignment is approved by—

(A) a majority of the stockholders of the association voting, in person or by proxy, at a duly authorized stockholders' meeting held for such purpose;

(B) the board of directors of such adjoining district;

(C) the Assistance Board; and

(D) the Farm Credit Administration Board.

SEC. 434. CONFORMING AMENDMENT.

Effective 6 months after the date of the enactment of this Act, section 1.2 (12 U.S.C. 2002) is amended to read as follows:

"**SEC. 1.2. THE FARM CREDIT SYSTEM.**

"The Farm Credit System shall include the Farm Credit Banks, the Federal land bank associations, the production credit associations, the banks for cooperatives, and such other institutions as may be made a part of the System, all of which shall be chartered by and subject to the regulation by the Farm Credit Administration."

TITLE V—STATE MEDIATION PROGRAMS

Subtitle A—Matching Grants for State Mediation Programs

SEC. 501. QUALIFYING STATES.

(a) **IN GENERAL.**—A State is a qualifying State if the Secretary of Agriculture (hereinafter in this subtitle referred to as the "Secretary") determines that the State has in effect an agricultural loan mediation program that meets the requirements of subsection (c).

(b) **DETERMINATION BY SECRETARY.**—Within 15 days after the Secretary receives from the Governor of a State, a description of the agricultural loan mediation program of the State and a statement certifying that the State has met all of the requirements of subsection (c), the Secretary shall determine whether the State is a qualifying State.

(c) **REQUIREMENTS OF STATE PROGRAMS.**—Within 15 days after the Secretary receives a description of a State agricultural loan mediation program, the Secretary shall certify the State as a qualifying State if the State 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 an agricultural loan mediation 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 the mediation sessions shall be confidential; and

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

SEC. 502. MATCHING GRANTS TO STATES.

(a) **MATCHING GRANTS.**—Within 60 days after the Secretary certifies the State as a qualifying State under section 501(b), the Secretary shall provide financial assistance to the State, in accordance with subsection (b), for the operation and administration of the agricultural loan mediation program.

(b) AMOUNT OF GRANT.—

(1) **IN GENERAL.**—Subject to paragraph (2), the Secretary shall pay to a State under subsection (a) not more than 50 percent of the cost of the operation and administration of the agricultural loan mediation program within the State.

(2) **MAXIMUM AMOUNT.**—The Secretary shall not pay more than \$500,000 per year to a single State under subsection (a).

(c) **USE OF GRANT.**—Each State that receives an amount paid under subsection (a) shall use that amount only for the operation and administration of the agricultural loan mediation program of the State.

(d) **PENALTY.**—If the Secretary determines that a State has not complied with subsection (c), such State shall not be eligible for additional financial assistance under this subtitle.

SEC. 503. PARTICIPATION OF FEDERAL AGENCIES.

(a) DUTIES OF THE SECRETARY OF AGRICULTURE.—

(1) **IN GENERAL.**—The Secretary, with respect to each program under the jurisdiction of the Secretary that makes, guarantees, or insures agricultural loans—

(A) shall prescribe rules requiring each such program to participate in good faith in any State agricultural loan mediation program;

(B) shall, on the date of the enactment of this Act, participate in agricultural loan mediation programs; and

(C) shall—

(i) cooperate in good faith with requests for information or analysis of information made in the course of mediation under any agricultural loan mediation program described in section 501; and

(ii) present and explore debt restructuring proposals advanced in the course of such mediation.

(2) **NONBINDING ON SECRETARY.**—The Secretary shall not be bound by any determination made in a program described in paragraph (1) if the Secretary has not agreed to such determination.

(b) **DUTIES OF THE FARM CREDIT ADMINISTRATION.**—The Farm Credit Administration shall prescribe rules requiring the institutions of the Farm Credit System—

(1) to cooperate in good faith with requests for information or analysis of information made in the course of mediation under any agricultural loan mediation program described in section 501; and

(2) to present and explore debt restructuring proposals advanced in the course of such mediation.

SEC. 504. REGULATIONS.

Within 150 days after the date of the enactment of this Act, the Secretary and the Farm Credit Administration shall prescribe such regulations as may be necessary to carry out this subtitle.

SEC. 505. REPORT.

Not later than January 1, 1990, the Secretary of Agriculture shall report to Congress on—

(1) the effectiveness of the State agricultural loan mediation programs receiving matching grants under this subtitle;

(2) recommendations for improving the delivery of mediation services to producers; and

(3) the savings to the States as a result of having an agricultural loan mediation program.

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subtitle \$7,500,000 for each of the fiscal years 1988 through 1991.

Subtitle B—Waiver of Mediation Rights

SEC. 511. WAIVER OF MEDIATION RIGHTS BY FARM CREDIT SYSTEM BORROWERS.

Part C of Title IV (12 U.S.C. 2151 et seq.) is amended by inserting after the section added by section 107 the following new section:

“SEC. 414E. WAIVER OF MEDIATION RIGHTS BY BORROWERS.

“No System institution may make a loan secured by a mortgage or lien on agricultural property to a borrower on the condition that the borrower waive any right under the agricultural loan mediation program of any State.”.

SEC. 512. WAIVER OF MEDIATION RIGHTS BY FmHA BORROWERS.

Subtitle D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 et seq.) is amended by adding after the section added by section 619 of this Act the following new section:

“SEC. 358. WAIVER OF MEDIATION RIGHTS BY BORROWERS.

“The Secretary may not make, insure, or guarantee any farmer program loan to a farm borrower on the condition that the borrower waive any right under the agricultural loan mediation program of any State.”.

**Wichita District
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February 26, 1988

The Honorable Cliff Campbell, Chairman
House Committee on Agriculture and Small Business
Kansas House of Representatives
State Capitol
Topeka, Kansas 66612

Dear Mr. Chairman:

I am writing in support of H.B. 2966, the legislation to provide for mediation through the FACTS program and the State Board of Agriculture. H.B. 2966 will be used to position the Kansas mediation program to qualify for federal matching grants authorized by the federal Agricultural Credit Act of 1987.

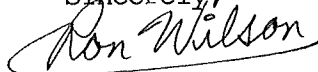
We believe mediation can be a useful tool to help resolve troubled loans. H.B. 2966 would not appear to change the voluntary mediation program now being operated in Kansas. The current program is working. If state legislation will help the program qualify for federal funds, we can support H.B. 2966.

Mediation is one of several tools to help distressed farmers resolve their problems. Within our four-state district, we set up a team of specialists to resolve troubled loans. As of December 31, 1987, they had completed work on more than 5,000 cases. These involve our most troubled borrowers, who might have all been in foreclosure a year ago. In nearly 3,300 of these cases, the farmer or rancher was kept on the land through either his ability to bring the loan current or a restructuring of the loan. In nearly 4,200 cases, an agreement was reached with the borrower outside of court and both the borrower and FCS saved legal fees and avoided foreclosure. We estimate Kansas has approximately one-third of these cases, with essentially the same success rate.

In order for mediation to be successful, it is important that the program be voluntary, cost-effective, and absolutely factual and objective. Another important element is the preparation of the borrower's financial records by a qualified financial specialist which must be done prior to mediation.

We commend Secretary of Agriculture Sam Brownback, Director of the FACTS program Stan Ward, and Director of the Mediation Program Penny Geis for their efforts on mediation. We support the current Kansas mediation program, and we appreciate your work for agriculture.

Sincerely,



Ron Wilson
Executive Director

/ss