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Fact Sheet for the Chairman, Subcommittee on Conservation, Credit, and Rural Development, Committee on Agriculture, House of Representatives

June 1987

FARM FINANCE

Minnesota and North Dakota Assistance Programs Available to Farmers

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Resources, Community, and
Economic Development Division

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June 9, 1987

The Honorable Ed Jones
Chairman, Subcommittee on Conservation,
Credit, and Rural Development
Committee on Agriculture
House of Representatives

Dear Mr. Chairman:

In your September 25, 1986, letter, you requested information regarding actions affecting agriculture finance at the state and local levels. As a result of subsequent discussions with your office, we agreed to provide you with information on Minnesota and North Dakota financial assistance programs and property protection measures available to farmers. The information is contained in this fact sheet, which is divided into four sections.

Section 1 contains descriptions of the Minnesota financial assistance programs available to farmers. These programs provide, either singly or in combination, financial assistance in restructuring existing debt, subsidized interest rates or deferral of interest due, and state guarantees of farmer loans and contracts. Generally, state officials perceive the programs to be targeted to farmers who would be considered poor to medium credit risks. Minnesota's beginning farmer program was authorized in 1976; the debt restructure program and the interest buy-down program were enacted by the 1986 legislature in response to the agricultural financial crisis.

Section 2 contains descriptions of Minnesota's property protection measures. Under some conditions, these measures can delay foreclosure and repossession actions and allow farmers to return to farming after foreclosure, to rent land, to obtain services while under financial stress, and to maintain a security interest in farm production. For example, mandatory mediation can delay foreclosure for up to 104 days while the farmer and creditor(s) examine debt restructure alternatives. State officials also perceive these measures to be targeted to farmers who would be considered poor to medium credit risks. Of the 12 measures described, 10 were initiated by the 1986 Minnesota legislature in response to the financial condition of Minnesota's farm operators.

Section 3 contains descriptions of the North Dakota financial assistance programs available to farmers. These programs provide direct loans, financial assistance in restructuring existing debt, deferral of interest payments, and a linked deposit system which enables financial institutions to lend to agricultural borrowers at lower interest rates. Except for direct loans from State Land Department funds, state officials perceive the programs to be targeted to farmers who would be considered poor to medium credit risks. A state direct loan program dates from before the turn of the century to aid North Dakota farmers with real estate purchases. A state-linked deposit program with provisions for loan purchases was established in 1981 to make lower cost agricultural loans available. Additional direct lending, interest deferral, and debt restructure programs were authorized in later years to aid farmers experiencing financial crisis. Most of these programs are administered by the Bank of North Dakota, a state-owned bank.

Section 4 contains descriptions of North Dakota's property protection measures. Unlike Minnesota, most of the measures were enacted at least 30 years ago and some date from before the turn of the century. A voluntary mediation program and a farm credit counseling program went into effect in 1985 to assist with farm foreclosure settlements and other financial problems. The "anti-deficiency judgment law" became effective in 1951, the confiscatory price defense in 1933, and the five other property protection measures predate 1900. These property protection measures are, for the most part, perceived by state officials to be targeted to poor to medium credit risks.

In developing the descriptions of state financial assistance programs and property protection measures, we relied on the state officials who were instrumental in drafting, analyzing, or managing them. State officials provided us with enabling legislation, descriptive material, and summary data, which we combined with interview information in preparing the descriptions. They are formatted to include title, effective and expiration dates, funding levels, objective(s), description, eligibility (target groups), summary data, program evaluations, and future plans. Future plans, where available, represent program status as of March 15, 1987. We submitted our descriptions to state officials for concurrence and/or modification. State comments were incorporated into the descriptions, which were resubmitted for a final check as to accuracy. We also asked the state officials to check our listing of assistance programs and protective measures for completeness.

As requested, we determined whether any formal evaluations had been made of the impact that these state programs and measures have had on credit flow to agriculture and interest rates for agricultural loans. The Minnesota Extension Service, University of Minnesota, evaluated the Farm Credit Mediation Program by reporting insights, opinions, and observations from all parties participating in the process through an examination of records, interviews, and a mail survey. According to the report, 64 percent of the lenders who responded to the survey said the program should be terminated because, among other things, it seriously affects the availability of credit for other farmers. However, with the exception of the lenders, most respondents said the program should be continued. The program is scheduled to expire on July 1, 1988.

North Dakota State University published a report in January 1987 estimating that North Dakota laws that delay or permit partial repayment of delinquent farm debt will cost creditors about $112 million. The estimate is based on $466 million of delinquent farm debt as of July 1, 1986. The study also estimated that negotiated settlements with debtors for the period January 1, 1985, to July 1, 1986, cost creditors about an additional $60 million. The report concluded that the economic impact to nondelinquent farm borrowers was to increase interest rates by 143 basis points and lower capital availability.

We did not assess the merit of the Minnesota and North Dakota reports' methodologies or verify the accuracy of the findings. Information from each report is included as appropriate in section 2 and section 4, respectively. We are not aware of any other formal efforts to evaluate the impact of state programs and measures on credit availability and interest rates.

We plan to send copies of this fact sheet to the Secretary of Agriculture; the Director, Office of Management and Budget; the Governor of Minnesota; the Governor of North Dakota; selected state officials in Minnesota and North Dakota; and other interested parties. Copies will be available to others upon request. Should you need further information, please contact me at (202) 275-5138.

Sincerely yours,

Brian P. Crowley

Brian P. Crowley
Senior Associate Director

Contents

ABBREVIATIONS

FCS	Farm Credit System
FDIC	Federal Deposit Insurance Corporation
FLB	Federal Land Bank
FmHA	Farmers Home Administration
GAO	General Accounting Office
RCED	Resources, Community, and Economic Development Division
RFA	Minnesota Rural Finance Administration
UCC	Uniform Commercial Code

SECTION 1

MINNESOTA FINANCIAL ASSISTANCE PROGRAMS

AVAILABLE TO FARMERS

FARM LOAN INTEREST BUY-DOWN PROGRAM

Effective Date: March 22, 1986

Expiration Date: December 30, 1986

Funding Levels: The legislature appropriated $5 million for 1986.

Objective(s): The objectives are to provide low-interest operating loans to financially troubled farmers and to provide an interest subsidy on existing farm operating and real estate loans that will be submitted to the Farmers Home Administration (FmHA) for restructuring.

Description: The program provides for the state paying to a participating lender, for the first $100,000 of a farm operating loan made to an eligible borrower, an amount equal to 37.5 percent of the contract interest rate to be paid during the term of the operating loan. The participating lender must also provide a reduction in interest rate for the first $100,000 of a farm operating loan in an amount equivalent to 12.5 percent of the contract interest rate. Under the program, the participating lender may charge a rate of interest not higher than the rate of interest charged to other farmers having a similar financial situation or 300 basis points above the current lending rate of the Federal Intermediate Credit Bank, whichever is less. The participating lender must also pay one half of the enrollment and tuition costs of an approved adult farm management program if a condition of the loan or if the farmer elects to enroll in the course.

The program also provides for the payment of contract interest on up to $25,000 of existing ownership or operating farm debt for 60 days if the lender agrees to submit the loan to FmHA for debt restructuring and agrees to forego interest payments for an additional 60 days. (See the program description Foreclosure Delay on Loans Submitted to the FmHA for Restructuring in section 2 for additional details.)

Eligibility: The program is available to farmers who are Minnesota residents, have debt-to-asset ratios exceeding 50 percent, have a reasonable opportunity to become financially viable, and agree to enroll in approved adult farm management classes if required.

Summary Data: In addition to 1986 summary data, results from the state's 1985 interest rate buy-down program are provided for comparative purposes

1985 Program--About 1,900 applications were approved with interest subsidies of $2.6 million.

1986 Program--About 6,400 applications were approved with interest subsidies of $18.9 million.

Table 1.1: 1985 Program Statistics

Operating loan applications with principal from	Number	Percent
$ 0 - $ 20,000	387	20
20,001 - 40,000	442	23
40,001 - 60,000	336	18
60,001 - 120,000	730	39
Total	1,895[a]	100

Applications with a debt-to-asset ratio of (percent)		
50 - 60	495	28
61 - 70	486	27
71 - 80	395	22
81 and over	398	23
Total	1,774[a]	100

[a]According to a state official, the totals are not in agreement because of errors that occurred while manually extracting data from computer listings. However, the table does present loan distribution by size and debt-to-asset ratio.

In the 1985 program, 153 state banks, 54 national banks, 52 production credit associations 1 federal land bank, and 1 savings and loan institution participated.

The approximately $3 million state commitment in 1985 supported about $84 million in reduced cost farm loans. The average size of loan subsidized was about $47 000, and the average interest to be paid by the state for each farmer borrower was about $1,400.

Table 1.2: 1986 Program Statistics,[a] as of October 31, 1986

Operating loan applications with principal from	Number	Percent
$ 0 - $ 20,000	921	14
20,001 - 40,000	1,199	19
40,001 - 60,000	1,158	18
60,001 - 80,000	753	12
80,001 - 100,000	1,586	25
100,001 or more	757	12
Total	6,374	100

[a]Debt-to-asset ratio stratification was not available for the 1986 program.

In the 1986 program, 257 state banks, 82 national banks, 68 production credit associations, 7 out-of-state banks, 3 agricultural credit companies, 2 credit unions, and 1 savings and loan institution participated.

The approximately $19 million state commitment in 1986 supported about $395 million in reduced cost farm loans. The average size of loan subsidized was about $62,000, and the average interest to be paid by the state for each farmer borrower was about $2,900.

Program Evaluations: No program evaluations performed or information available on the 1986 program as of March 15, 1987. However, the previously mentioned 1985 program was evaluated by means of survey. The state sent out 2,025 survey forms and received 1,090 responses. Some of the data gathered showed that

--44 percent of the respondents farmed from 180 to 499 acres, and 33 percent farmed from 500 to 999 acres.

--94 percent of the respondents were still engaged in farming.

--273 of the respondents were enrolled in farm management classes.

--83 percent of the respondents obtained operating credit for 1986. Of the respondents identifying the source, 89 percent got credit from a lending institution while only 4 percent listed private sources, such as relatives or friends.

--63 percent of the respondents participated in the 1986 interest buy-down program.

Future Plans: The 1986 program ran up a deficit of almost $14 million. Bills have been introduced in both houses of the Minnesota Legislature authorizing payment of the deficit. However, the house bill included an additional $20 million to extend the 1986 program through 1987. The senate rejected the house bill. A bill was introduced in the senate that provides for a revised program designed to encourage farmers to take advantage of a federal interest subsidy program, reduce the state's contribution per loan and, in some cases, increase the lender's contribution. Under part one of this proposed program, the Farmers Home Administration would subsidize 200 basis points of interest, the state 200 basis points, and the lender 100 basis points; thus, the farmer s loan would be reduced by 500 basis points.

Under a second part of the proposed program, the state would provide a subsidy of 200 basis points, and the lender would write off 300 basis points. This would also reduce the farmer's interest rate by 500 basis points According to a state commerce department official, funding the 1986 deficit and formulating a 1987 program will require the efforts of a conference committee. As of March 15, 1987, the Minnesota Legislature was still in session.

MINNESOTA RURAL FINANCE ADMINISTRATION DEBT RESTRUCTURING PROGRAM

Effective Date: March 22, 1986

Expiration Date: No expiration date specified in the law.

Funding Levels: The state participates with willing lenders in the voluntary restructuring of first-mortgage, farm real estate loans by buying a portion of the restructured loan In order to provide financing for the purchase of loan participations, the legislature authorized the issuance of an unspecified level of Minnesota Rural Finance Administration (RFA) revenue bonds. The primary security for these bonds is the loan participations purchased with the bond proceeds. In addition, up to $50 million of Minnesota General Obligation Bonds was authorized to further secure the RFA revenue bonds and increase the bond's rating. The state has prepared for the issuance of both sets of bonds but will not issue them until program demand is better defined.

Objective(s): The program objective is to assist eligible farmers who are struggling with low cash flow and high real estate debt burdens by suspending principal payments and reducing interest expense for a set period of time. To qualify, farmers must be able to show a reasonable probability of future financial success. The RFA program seeks to aid both farmers and farm lenders.

Description: One of the initial steps in loan restructuring is to determine the current market value of the real estate covered by the loan. The appraised value of the real estate, if less than the principal amount owed, becomes the "primary principal," and the remainder due on the loan the "secondary principal." RFA may purchase from the lender a 25-percent participation interest in the primary principal portion of a restructured loan up to a maximum of $50,000. If the restructured loan pertains to only land designated as homestead, the participation level is the lesser of 50 percent of the primary principal, or $25,000. (The homestead redemption aspect of the program is not currently operational.) The lender retains the rest of the primary principal and sets aside the secondary principal for the duration of the loan agreement.

The secondary principal accrues interest at a below-market rate for the duration of the agreement The farmer makes neither principal reduction payments nor interest payments on the secondary principal for the duration of the agreement The farmer's only payments during the loan period are interest payments on the primary principal which are at below market rates established by RFA and agreed to by the lender. Interest payments received from the borrower are split on a pro-rata basis between the lender and the state.

At the end of the loan period, the real estate is reappraised and if its value has risen to the amount of the debt the lender can write a new loan using the real estate as full security, or the borrower may find a new lender and repay the loan (primary and secondary principal plus any accrued interest). If the value does not equal the amount of the debt but does cover the primary principal, the lender must write off the excess so that a new loan can be written to cover just the value of the property as established by the new appraisal. If the value is less than the primary principal the lender and the state must write off the deficiency in proportion to their participation in the restructured loan's primary principal.

Eligibility: To be eligible, an applicant must be a Minnesota resident, whose principal occupation is farming, and meet the following financial criteria:

--At least 50 percent of gross annual income over the past 3 years is from farming.

--Current debts must be at least 50 percent of current assets.

--Operating and living expenses will not exceed 95 percent of income after restructuring.

--The farmer be able to demonstrate an ability to obtain an operating loan if needed.

Summary Data: Specific summary data were not available as of March 15, 1987, because the state had not issued the bonds. However, by law, the state must submit a biennial report of its activities, projected activities, receipts, and expenditures to the governor and legislature. The first such report is due in January 1989.

The program is structured to provide maximum feasible benefits to those eligible borrowers who can demonstrate long-term viability. The state has received indications from the largest real estate lender that there is a potential for up to 1,300 farmer borrowers to apply for the program. However, according to state officials, far fewer are expected to ultimately qualify and participate. Beyond this, the state has no firm data on the number of farmers who might be served. In November 1986, the first lender was approved to participate in the program, and by February 1987, the state was receiving an average of one application each day.

Program Evaluations: The state has not prepared any formal evaluations of the program as of March 15, 1987. However, it did survey a number of lending institutions to gauge the extent of potential program participation. It has also surveyed a limited number of farmers to ascertain whether they had received program information and were interested in participating. The survey results showed that substantial interest existed among both farmers and lenders

<u>Future Plans</u>: As of March 15, 1987, the state was working to change certain aspects of the program and had gone to the legislature to clarify and broaden the enabling language. In so doing, it hopes to be allowed to enter into agreements with lenders to implement the homestead redemption program as well as other assistance plans that may develop in the future.

RFA is developing a data base computer system to track program participants and financial information.

MINNESOTA FAMILY FARM SECURITY PROGRAM FOR BEGINNING FARMERS

Effective Date: April 8, 1976

Expiration Date: No expiration date specified in the law. However, the legislature mandated that no new program applications would be accepted between January 1, 1986, and June 30, 1987.

Funding Levels: The law created a special account in the state treasury for financing the program. Appropriations are to be made by the legislature as needed.

Objective(s): The objective is to provide financial assistance to beginning farmers who meet the eligibility requirements so that they can purchase farm real estate.

Description: This program provides a 90-percent guarantee on loans made through any lender or on a contract for deed purchase. It may also provide a temporary 400 basis point reduction subsidy to the borrower on the outstanding principal balance of the loan. In order to qualify for this temporary interest reduction, the loan must be completely amortized in 20 years or less with even payments of interest and principal and no "balloon payment" at the end, or be amortized for 20 years with a balloon payment in 10 years or less. The applicant becomes ineligible for this temporary reduction at such time as his/her net worth exceeds $135,000. This temporary interest reduction is treated as a loan and must be repaid by the borrower to the state within 1 year of the maturity date of the original loan, or at the time of sale, if the land is sold.

The initial agreement between the state and applicant for the interest adjustment is for 10 years, but may be extended for an additional 10 years upon petition from the applicant.

Amendments by the 1985 legislature raised the loan guarantee to 100 percent from 90 percent in those instances in which the seller would agree to reduce the principal balance by 10 percent or more. Additionally, a program participant experiencing cash flow problems can ask the state to make the payments on the note or contract for deed for up to 2 years. The participant must repay the state within 8 years. Interest accrues at 400 basis points less than the current Federal Land Bank loan rate.

From 1978 through 1984, interest received by the seller on a seller-sponsored loan was exempt from Minnesota income tax. In 1986, this was replaced by a direct state payment to the seller (effective for the 1985 tax year). However, the seller had to reduce the loan principal by 300 basis points and reamortize the loan. The net effect of the 1986 change was to reduce the seller's tax payment by about 60 percent on these types of transactions.

Eligibility: Applicants must be creditworthy, demonstrate a need, intend to have farming as their principal occupation, agree to participate in a farm management program, and have a current net worth of less than $75,000. In addition, applicants must be residents of the state of Minnesota, possess the ability to manage and operate the proposed farm, prepare a cash flow statement which shows the ability to repay the proposed farm loan, and have machinery and equipment available plus operating capital or a line of credit to operate the proposed farm.

Summary Data: The first applicants for this program were approved in March 1977. From then through 1985, there were 489 applications approved in the program for guarantees totaling $81.6 million.

On June 30, 1986, there were 392 participants in the program, with a total outstanding loan balance of nearly $53 million. As of March 1987, the state had paid out about $15.8 million for the guaranteed portion on defaulted loans. Through December 1986, there had been 90 defaults since program inception as follows:

Year	Number of defaults
1980	1
1981	1
1982	1
1983	6
1984	8
1985	27
1986	46
Total	90

Most early defaults (through 1983) were for noneconomic reasons. By contrast, the state estimated that 95 percent of the defaults in 1986 can be attributed to the farm economy, the extreme drop in land values being the main reason. Through June 30, 1986, the state had sold 11 defaulted properties and recovered about two thirds of the $1.8 million paid out for the guaranteed portion of the defaulted loans.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: As of March 15, 1987, the Minnesota Legislature was in session, and it was uncertain whether the acceptance of applications would continue after June 30, 1987.

A bill has been introduced to amend the Family Farm Security Program so that lenders would be able to sell acquired properties to eligible farmers at reasonable terms. Eligibility requirements would remain basically the same except the applicant's net worth limitation would be raised to $150,000. The applicant would make a

10- to 15-percent down payment, and the lender would offer a preferred interest rate. For 1987 contracts, the interest rate offered would be 6.9 percent for the first 5 years and 8.9 percent for the second 5 years, or the applicable Federal Land Bank (FLB) variable rate, whichever is lower. Amortization of the mortgage or contract would be based on no more than 30 years and no less than 20 years with a balloon payment due at the end of 10 years. The state would guarantee payment of 85 percent of any experienced loss.

SECTION 2

MINNESOTA'S PROPERTY

PROTECTION MEASURES

FARM CREDIT MEDIATION PROGRAM

Effective Date: March 22, 1986

Expiration Date: July 1, 1988

Funding Levels: The 1986 legislature appropriated $360,000 for the program.

Objective(s): The objective of mandatory mediation is to delay foreclosure or repossession action while the farm debtor and creditor(s) come to an agreement on restructuring the debt or terminating the farm business.

Description: A creditor may not foreclose a mortgage on secured debt of more than $5,000 unless a mediation notice is served on the mortgagor and a copy is filed with the Director of the Minnesota Extension Service. The debtor has 14 days after receiving notice to request mediation by filing a request form with the Minnesota Extension Service. Failure to respond within 2 weeks permits the creditor to immediately begin foreclosure or other legal action against the farmer.

The debtor must list all creditors with secured debt of $5,000 or more on his/her mediation request form. The director must provide a credit analyst to meet with the debtor and assure preparation of the necessary financial materials and must notify the debtor that a "farm advocate" may be available at no charge. Within 10 days after receiving the mediation request, the director must send notice of the first mediation meeting to the debtor and all creditors and the first meeting must be held within 20 days of the meeting notice. If a creditor receives a mediation meeting notice, collection actions must stop for 90 days in the case of banks (180 days in the case of U.S. agencies) or until an agreement is reached, whichever occurs first.

The mediation period may last as long as 60 days. Therefore, foreclosure action may be delayed up to 104 days from the debtor's receipt of mediation notice. Mediation does not necessarily have to end in agreement; however, all parties must mediate in good faith. Lack of good faith includes such activities as (1) failure of the creditor to release funds from the sale of farm products for "necessary living and farm operating expenses" of the debtor, (2) failure to attend meetings without cause, (3) failure to provide full information regarding financial obligations, (4) failure to designate a representative who can participate and make binding commitments, and (5) lack of a written statement of debt restructuring alternatives and a statement of reasons why alternatives are unacceptable. If a creditor does not mediate in good faith, the debtor can receive court-supervised mediation for up to 60 days and if a lack of good faith continues, the court can suspend the creditor s remedies for an additional 180 days.

A voluntary mediation program, as specified in the 1986 Minnesota laws is also available to farmers and lenders.

Eligibility: Any Minnesota farmer subject to a debt enforcement proceeding in excess of $5,000, to acquire agricultural property, both personal and real, is eligible for mandatory mediation. Debt collection proceedings include

(1) foreclosure against agricultural property;

(2) termination of contract for deed on agricultural property;

(3) garnishment, levies, executions, or seizure of agricultural property; and

(4) judgments for $5,000 or more.

Summary Data: From March 22, 1986, through November 1986, the University of Minnesota Extension Service received 2,966 requests for mandatory mediation from farmers. The cost of the program was $568,000 through November. Mediated settlements were reached in 673 cases and another 488 cases were settled after the debtor requested mediation but before the first session was held.

Program Evaluations: The Extension Service conducted a mail survey of 915 farmers, lenders, mediators, and extension agents and received 726 responses. It concluded that the program fulfilled its mandate, which was to bring debtors and creditors together in an orderly process to discuss debt restructuring actions. Mediation resulted in farmers' being better able to make decisions as to measures they should take to maintain a viable farming operation or leave farming. In addition, communications between farmers and their lenders improved, and community tensions lessened.

However, the Extension Service's survey provided that the mediation process was not without problems. Each case required financial analysis, completing of forms, and preparing for and attending meetings which consumed about 37 hours of mediator, extension agent, and creditor time. The initial start-up process was aggravated by a lack of participation by Farmers Home Administration and a reluctance to negotiate by the lending components of the Farm Credit System. In some instances, farmers were using the program as a stalling technique, deadlines were not being met and farmers and creditors were not adequately prepared. Sixty-four percent of the lenders responding to the mid-September survey called for terminating the program because they claimed (1) the program seriously affects the availability of credit for other farmers, (2) time spent in mediation is wasted when farmers do not perform after settlement has been reached, (3) many debtors not in mediation are questioning their obligation to lenders and (4) most farmers cannot survive anyway. However, with the exception of the lenders, most respondents said the program should be continued.

About 20 percent of the respondent farmers completing mediation anticipated leaving the farm in 3 to 5 years, although many saw a need to supplement farm income. Mediators, extension agents, and lenders were less optimistic, estimating that from 27 to 50 percent of those completing mediation would continue in farming. The University of Minnesota is currently studying several hundred mediation cases that concluded with agreements. An analysis will be made of changes in financial factors, such as debt-to-asset ratios, cash flow, net worth, etc., in order to determine if the mediation process has enhanced long-term survivability. Results should be available by early summer 1987.

The mediation program is costly, both in terms of human and financial resources. Although most of the extension agents (65 percent) favored the program, they found they had to scale down, postpone, or cancel their traditional farmer assistance programs. In order to continue the program, funds had to be shifted from other extension programs. Costs reached $568,000 by December 1986 (this exceeded the $360,000 originally appropriated for the program) and were projected to reach $1.7 million by June 1987.

In spite of the costs and problems with the program, there has been an attitudinal change and increasing support for the mediation process. Many lenders who first opposed the program now recognize that it is an orderly process that benefits all of the participants, according to the program administrator.

Future Plans: Bills have been introduced in both houses of the Minnesota Legislature to amend the mandatory mediation law. The senate proposal would shorten the period that foreclosure can be delayed from 104 to 90 days. The loan amount for which notification of the mediation option is required would be raised from $5,000 to $20,000. During mediation, farmers would be required to make loan payments to equipment dealers during the season the equipment is in use. The house proposal would create an orientation session for farmers to meet with a financial analyst and a mediator at least 5 days before the first mediation meeting, prevent lenders from requiring the waiver of a farmer s future rights as a condition of a loan agreement, specify that the fraudulent transfer or removal of property by debtors during the mediation period may disqualify the farmer from further mediation, and prevent debts subject to bankruptcy in the future from being mediated.

The differing amendments are to be sent to a conference committee for resolution. As of March 15, 1987, the Minnesota Legislature was still in session.

DEFICIENCY JUDGMENTS

Effective Date: March 22, 1986

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): Changes in the law applying to deficiency judgments have made it more difficult to obtain these judgments and have placed restrictions on time periods and attachable assets. The objectives of the changes were to limit the financial burdens for farmers in foreclosure situations and to allow them to return to farming and consequently to get on with their lives.

Description: When a farm is sold under foreclosure to satisfy a debt and the sale price of the farm is less than the amount of the debt, the creditor may obtain a deficiency judgment. A deficiency judgment is a personal judgment against the farmer and can be enforced against the farmer s unencumbered property.

This act provides that for foreclosures of mortgages on agricultural production property entered into after March 21, 1986, a deficiency judgment may be obtained only by filing a separate action within 90 days after the foreclosure sale. The amount of a judgment is limited to the difference between the amount of the obligation outstanding and the fair market value of the property as determined by a jury. There is no presumption that the foreclosure sale price is the fair market value of the land. The same rules apply to mortgages on agricultural production property entered into before March 22, 1986 except that a deficiency judgment or personal judgment to enforce the mortgage debt may not be executed until March 22, 1987.

On all deficiency judgments or personal judgments, a 3-year time limit on executions is imposed. Previously, the judgment stood for 10 years, with a 10-year extension. Furthermore, the judgments do not attach to real or personal property acquired after the judgment is entered.

Eligibility: Farm foreclosure sales in which the proceeds do not satisfy the outstanding obligation. The limitations apply to any farmer whose agricultural production property is foreclosed upon after March 21, 1986.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: No program evaluations performed as of March 15, 1987. However, legislative counsel advised us that few if any judgments are now being filed because the jury normally establishes a fair market value of the property equal to the amount of the outstanding obligation.

Future Plans: No information on future plans available as of March 15, 1987.

RIGHT OF FIRST REFUSAL

Effective Date: March 22, 1986

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to assist those farmers who lose their agricultural land, through foreclosure or deed-back, to return to farming the property they formerly owned. The law seeks to keep the farmer on the farm at an affordable price.

Description: A state or federal agency or corporation other than a family farm corporation, when leasing or selling farmland, must offer the land for sale or lease to the former owner at a price no higher than the highest price offered by a third party. A former owner must exercise the right to lease farmland within 30 days or exercise the right to buy farmland within 90 days.

Eligibility: Any farmer who has been foreclosed on has the right of first refusal if the land is available for sale or lease.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

PROPERTY EXEMPTION

Effective Date: August 1, 1985

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to provide a farm family with the basic necessities to live on while seeking a new livelihood or to continue farming on a smaller scale.

Description: A farmer undergoing bankruptcy or foreclosure may shelter from creditors farm machines and implements used in farming operations with a value of $10,000. The exemption was formerly $5,000 but was increased to reflect the effects of inflation. A farmer's spouse is entitled to a like exemption.

Eligibility: Any resident farm family undergoing bankruptcy, foreclosure, or any debt collection action.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

160-ACRE HOMESTEAD DECLARATION

Effective Date: March 22, 1986

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective of the law is to increase the size of the homestead declaration so that it is more feasible for the farmer to continue farming.

Description: The size of rural homesteads that are exempt from certain seizures or sales was increased from 80 to 160 acres. A rural homestead is any homestead not included within the platted portion of a city.

Eligibility: Any farmer whose agricultural property is to be sold in order to satisfy indebtedness.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

REDEMPTION OF AGRICULTURAL HOMESTEAD

Effective Date: March 22, 1986

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to afford farmers who are going through debt restructure or foreclosure an opportunity to retain their homes and a small acreage so that they can continue farming. According to a state legislative attorney, the law's intent, in conjunction with the right of first refusal, is to keep farmers on the farm.

Description: A farmer has the right to a separate sale and redemption of homestead property under either an enforcement of a judgment or foreclosure. The farmer will receive a notice that a portion of the farm, which includes the house, may be designated to be sold and redeemed separately. The farmer may then redeem the designated homestead or the remaining property or both. According to a state legislative attorney, farm homesteads have little value on the real estate market, so the farmer normally acquires the property at a low price. Additionally, the farmer has the flexibility to designate as many acres as can be afforded, up to a 160-acre limitation.

Eligibility: Any farmer whose agricultural property is to be sold in order to satisfy indebtedness.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

FAMILY FARM LEGAL ASSISTANCE PROGRAM

Effective Date: March 22, 1986

Expiration Date: No expiration date specified in the law.

Funding Levels: The 1986 legislature appropriated $650,000.

Objective(s): The program objectives are to provide

--advice and representation to farmers and small business operators whose loans are held by the Federal Deposit Insurance Corporation (FDIC);

--backup research support to attorneys representing financially distressed farmers;

--legal information to individual farmers;

--advice and representation to eligible farmers with special emphasis to enforcement of legal rights affecting large numbers of farmers;

--farm-related legal education and training for farmers, attorneys, legal services staff, and the public; and

--a toll-free telephone line for advice and referral.

Description: This program, which provides legal assistance to qualifying family farmers, is administered by the Minnesota Supreme Court. The court administrator contracts with nonprofit corporations to provide the legal assistance. The program is directed at farm financial problems including bankruptcy, discharge of debt, general debtor-creditor relations, and tax considerations.

Eligibility: Those receiving the legal assistance must be a state resident, have been a farmer within the last 2 years, have a debt-to-asset ratio in excess of 50 percent, have a reportable federal adjusted gross income of $15,000 or less in the previous tax year, and be unable to afford legal assistance.

Summary Data: In the first 6 months of operation, July 1 through December 31, 1986, the program assisted 1,278 farmers and rejected requests from 164.

About half of the rejections were because (1) the farmer was ineligible, (2) the request was not of sufficient priority, or (3) the request was not a legal problem. According to an evaluation report, many of the cases and advice involved farm loan defaults (27 percent); mortgage foreclosure or cancellation of a contract for deed (20 percent); and farm bankruptcies, repossession of or security interests in farm machinery and equipment, crops or livestock, and other farm financial matters (21 percent). Nearly 60 percent of the cases in which ongoing representation was provided involved mediation. About 20 percent of the information and advice contacts concerned mediation questions.

The program sponsored or participated in 38 workshops or meetings for farmers. Subjects included debt restructuring, farm mediation, mortgage foreclosures, public benefits for farmers, bankruptcy, farm laws, FDIC, and debtor-creditor law. Since inception, seven cases have been opened that involve class actions or otherwise affect large numbers of financially distressed farmers. Subjects include cutting off of credit, denying the right to appeal property appraisals, interpreting "lack of good faith," converting bankruptcies from Chapter 13 to Chapter 12, challenging the election of a county committee, and challenging an agency's liquidation/foreclosure process.

Program Evaluations: The program was evaluated and a report submitted to the Minnesota Supreme Court in March 1987. Information from the report was included in the summary data above. In addition, the report included information on priorities, program costs, and other activities.

Future Plans: Additional funding will be required to maintain the program after June 30, 1987. The Minnesota Supreme Court included an additional $200,000 in funding over the 1986 level of $650,000 in its 1987 appropriation request for this program. As of March 15, 1987, the legislature had not acted on the appropriation.

FORECLOSURE DELAY ON LOANS SUBMITTED TO THE FARMERS HOME ADMINISTRATION FOR RESTRUCTURING[1]

Effective Date: March 22, 1986

Expiration Date: December 30, 1986--last date for submitting applications.

Funding Levels: The legislature appropriated $5 million for the farm loan interest buy-down program. In addition, the legislature made available $72,500 for grants to FmHA to continue its capability on the University of Minnesota computer and upgrade its farm financial analysis software.

Objective(s): The objective is to delay possible foreclosure actions for those farmers who submit existing farm ownership or operating loans to the FmHA for debt restructure.

Description: The state of Minnesota pays the interest on a loan for the first 60 days of a 120-day period during which a loan is submitted for restructuring approval to FmHA. The lender cannot foreclose on the loan unless FmHA has approved or denied the application or 90 days have expired, whichever comes first. The state pays interest on the first 60 days of a 120-day period on the first $25,000 of farm operating loans and the first $25,000 of farm ownership loans submitted for debt restructuring. The second 60 days' interest can be rolled into the principal of the restructured loan.

Eligibility: To be eligible to participate, the farmer-borrower must have a debt-to-asset ratio exceeding 50 percent at the time of application, have a reasonable opportunity for long-term financial viability, and agree to enroll in a farm management program if this is a condition to receiving an operating loan from a participating lender. In addition, the farmer must be a state resident (individual) or a domestic family farm corporation engaged in farming property in Minnesota.

Summary Data: As of December 31, 1985, the state had received 402 applications and incurred a liability for $254,089 for interest. The 1986 appropriation of $5 million for this and the interest buy-down program was exhausted during the first 7 days of the program. Therefore, the state accepted and processed only 22 applications and incurred a liability for $11,711 for interest for the FmHA debt restructure program.

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[1]This program is part of the legislation that established the Farm Loan Interest Buy-Down Program discussed in section 1.

Program Evaluations: The state evaluated the 1985 Minnesota Emergency Farm Operating Loan Act by means of a survey. However, the evaluation results did not address the loan restructure program separately. (A discussion of what this evaluation did show is provided under the Farm Loan Interest Buy-Down Program.)

Future Plans: The Minnesota Legislature, as of March 15, 1987, was considering various proposals for extending the interest buy-down program.

STATE AMENDMENTS TO THE UNIFORM COMMERCIAL CODE[2]

Effective Date: August 1, 1985

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to prevent a lender from obtaining a security interest on crops grown in successive years in perpetuity.

Description: The Uniform Commercial Code (UCC) contains broad commercial policies in relation to credit. It permits a lender to secure a lien against the current and all successive crop years. Under Minnesota amendments to the UCC, a lender may secure a loan with the current year's crop as well as crops grown in the next 4 years. However, the years involved must be specifically stated in the loan agreement.

Eligibility: Any crop farmer.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

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[2]Must list years of crops to be used as collateral.

CROP RIGHTS ON FORECLOSED LAND

Effective Date: March 22, 1986

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to grant farmers who have planted crops on foreclosed land, or land where a contract for deed or lease has been terminated, a lien for the value attached to the crop or crop products. The program is to assure that the farmer receives the value of the planted crops while the creditor retains the value of the land.

Description: The person with a property right to plant crops, including a leasehold interest, the interest of the buyer of a contract for deed, and the redemption interest of a foreclosed mortgagor, is defined as the planting crop owner. When the planting crop owner's right to harvest the crops is involuntarily terminated before the crops are harvested, the person buying or leasing the property must satisfy the planting crop owner's lien by either providing compensation for the crop value or by allowing entrance to the property for harvesting the crops. The planting crop owner may be charged the fair market rental value of the property for the remainder of the crop-growing period.

Eligibility: Farmers who have planted crops on foreclosed land or land where a contract for deed or lease has been terminated.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

LANDLORD LIEN

Effective Date: March 22, 1986

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to give landowners more confidence that they will be compensated for renting land to farmers who are going through debt adjustment and restructuring. The lien allows landowners to obtain a priority interest in crops raised on the land up to the amount of the unpaid rent.

Description: This act creates a landlord lien for unpaid rent on crops produced on farmland leased in that crop year and on the crop products and their proceeds. A secured landlord lien is prior to all other liens on the crops, crop products, and proceeds. The lien is perfected by filing a lien statement. The lien may be enforced for 18 months after the date it is filed, and it must be filed within 30 days after the crops become growing crops. No language on a security agreement may waive the landlord lien.

Eligibility: Landowners who rent their land to farmers for the purpose of growing crops.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

VETERINARIAN LIEN

Effective Date: March 22, 1986

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objectives are to protect human health, prevent the spread of animal diseases, or preserve the health of the animal treated. The lien was intended to allow veterinarians to have security in animals when a farmer is having credit problems and is not otherwise able to pay for the services.

Description: This act gives veterinarians who perform emergency services costing more than $25 a first priority lien on the animals so treated for the amount of such services. The veterinarian must file a lien statement with the county recorder within 180 days after the services are performed. The statement must specify the fraction of the veterinary services performed, which are primarily for purposes of protecting human health, preventing the spread of animal diseases, or preserving the health of animals treated. It is only this fraction that has first priority over other liens and security interests in the animals treated.

Eligibility: Any licensed veterinarian who performs emergency veterinary services, at the request of the owners, that cost more than $25.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

SECTION 3

NORTH DAKOTA FINANCIAL ASSISTANCE PROGRAMS

AVAILABLE TO FARMERS

STATE LAND DEPARTMENT FARM LOANS

Effective Date: July 1, 1897

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to make real estate loans available to North Dakota farmers when there is a demand.

Description: Loans are made to farmers for the purchase of real estate. Maximum loans are for $200,000; a first mortgage is required. The loan policies and rates are set by the Board of University and School Lands, whose funds are used for making the loans. Presently, the policy states that there can be but one loan to a borrower, the loan cannot exceed 65 percent of the appraised value of the security, and loans are to be amortized over 30 years. Interest rates vary by type of loan and by credit risk, from a low of 10 percent to a high of 13 percent. Loan types available are a fixed-rate and 3- or 5-year adjustable loan.

The loans are made and serviced by a loan officer at the Bank of North Dakota (Bank)[1] who uses normal Bank loan criteria and determines the risk category of the borrower. Any loan of over 50 percent of appraised value must be approved by the Bank's credit committee. Repayments of principal are kept by the Bank for relending, but interest and penalties are returned to the State Land Department. The Bank receives a fee for its services.

Eligibility: Borrowers must use the loans for purchase of farm or grazing land. They must receive at least 50 percent of their income from farming.

Summary Data: The Bank currently has a $50 million fund transferred to it from the State Land Department. The law requires the Department to make available up to one half of its permanent

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[1]The Bank of North Dakota was established in 1919 as a state-owned bank. One of its main purposes is to promote agriculture.

trust funds for this program. This could be as much as $125 million, based on current trust balances.

At January 1987 there were 924 loans ($43.7 million) outstanding. Several new loans were made in 1986.

Program Evaluations: No program evaluation performed or information available as of March 15, 1987.

Future Plans: Two bills now before the legislature propose to revise current restrictions on renegotiation of the State Land Department Farm loans and restrictions on sale of foreclosed mortgages. The Commissioner of University and School Lands states that these proposed changes will help farmers who are under credit stress to remain on the farm. These bills have been passed in their respective legislative chamber. As of March 15, 1987, the North Dakota legislature was still in session.

HOME QUARTER PURCHASE FUND

Effective Date: July 1, 1985

Expiration Date: No expiration date specified in the law.

Funding Levels: The law authorized $2 million for the fund by transfer from the accumulated and undivided profits of the Bank of North Dakota

Objective(s): The objective is to provide an interest rate deferral for farmers to purchase that portion of their farm containing their residence; not to exceed 160 acres of land.

Description: This program assists farmers who are in a foreclosure situation to retain at least their home quarter, that is, their home and up to 160 acres of land. If the farmer can obtain a financing source, the Farm Credit Review Board can provide a subsidy by means of deferring interest for a period of years.

The subsidy is limited to the first $50,000 of borrowed principal. The subsidy can be up to 10 percent the first year and up to 6 percent each of the next 2 years. The maximum subsidy is $11,000.

At the end of the first 3 years of payments, the subsidy is added to the remaining principal and amortized over the remaining life of the loan. The subsidy is interest free.

The lender services the loan and collects payments from the debtor. The repaid subsidy is returned to the Home Quarter Purchase Fund.

Eligibility: Participants must be North Dakota farmers who receive at least half of their income from farming. The farmer must be in a foreclosure situation and have petitioned the Farm Credit Review Board for assistance. The farmer must also show financial ability to repay the loan and interest subsidy.

Summary Data: The Executive Secretary of the Farm Credit Review Board told us that as of February 27, 1987, 12 loan applications were approved by the Board. According to the loan administrator at the Bank of North Dakota, only one loan, involving an interest deferral of $7,700, had been completely processed and no disbursements had been made as of March 15, 1987. The 12 applications approved were for total mortgage amounts of $585,000.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: A bill has been passed by the legislature and signed by the governor to continue the operation of the Board for the next biennium, from July 1, 1987, to June 30, 1989. But the governor has proposed that the Board (and presumably the Home Quarter Purchase Fund) be discontinued by July 1, 1988.

FARM OPERATING LOAN PARTICIPATIONS UNDER THE FAMILY FARM SURVIVAL ACT

Effective Date: April 15, 1985

Expiration Date: June 30, 1987

Funding Levels: The act provided a transfer appropriation of up to $4 million per year for each of the 2 years of the biennium ending June 30, 1987, from the Fire and Tornado Fund. These funds were for the interest subsidy only.

Objective(s): The objective is to provide participation in operating loans to resident farmers and a limited number of agribusinesses.

Description: The program provides operating loans on a participating basis between the Bank of North Dakota (Bank) and nongovernmental banks. Agribusiness loans may not exceed 20 percent of the total lending.

The loans are for a 1-year period or less.

The Bank can participate up to 65 percent (not more than $200,000) of the loan. Interest rates on the Bank portion are 8 percent, but the borrower can defer up to 500 basis points. This deferral must be carried on a separate note with the Bank and paid in full by July 1, 1991. The nongovernmental bank's portion can be variable but may not exceed 150 basis points less than the usury rate established by the Commissioner of Banking. The interest rate must be adjusted quarterly.

Loans must be secured and crops, if they are part of the security, must be insured.

The nongovernmental bank services the loan and pays the Bank its portion. The borrower pays the deferred interest directly to the Bank. The deferred interest is a noninterest loan, until and unless payments of the subsidy are not made by the 1991 due date.

Eligibility: Farmers must be residents of the state and receive at least half of their income from farming. Agribusinesses must operate within the state. Borrowers must have a 50-percent or more debt-to-asset ratio or meet financial or natural hardship requirements.

Summary Data: Five hundred thirty-four applications and 429 loans were made during the first 2 years of the program. Buy-down interest paid by the state was about $159,000 for the first year and $183,000 the second year.

Sixty-seven lenders participated in the program for the 1985 crop year and 59 participated during the 1986 crop year.

The 1985 loans were all repaid except two that are in a nonaccrual status and three loans that were written off by the Bank in the amount of $40,600.

According to the Bank officials responsible for administering this program, about 90 percent of the loans were made to borrowers who met the 50-percent debt-to-asset ratio, with the balance qualifying because of a recent natural or financial hardship.

Program Evaluations: No evaluation of the program has taken place to determine impacts. However, Bank loan officers said they believe that 95 percent of the farmers getting these loans would probably have gotten credit for their needs even if the program were not available One lender who participated in 47 of the loans said that all of his borrowers would have been able to satisfy their credit needs without using the program.

Future Plans: Legislation has been passed to continue this program for the next biennium. Under the new act, qualifying due to financial or natural hardship was dropped. Also, the maximum interest rate allowed to be charged by the participating nongovernmental lender is to be set by the Industrial Commission, not tied to the usury rate. Loans for 1987 are to be funded from the current appropriation.

BEGINNING FARMER LOAN PROGRAM

Effective Date: June 28, 1978

Expiration Date: No expiration date specified by the administrative policy that established the program.

Funding Levels: The administrative policy did not set a funding level but did authorize the use of Bank of North Dakota (Bank) funds for the program.

Objective(s): The objective is to assist beginning farmers in financing the purchase of farm land.

Description: The program provides for maximum 25-year first mortgage loans to beginning farmers in the state. The loans are not to exceed $100,000 each and are limited to 50 percent of the appraised value of the real estate to be purchased with the borrowed funds. Loan rates are 250 basis points below the Bank's base rate for the first 3 years of the loan, then a variable rate is set at the Bank's base rate, with increases limited to 200 basis points per year and no more than a 550 basis point increase over the life of the loan.

Borrowers are limited to one loan under this program.

Eligibility: The borrower must be a state resident, borrowing the funds for purchase of land to begin farming, and have, along with dependents, a total net worth of under $100,000. Prior to 1986 the borrower was also required to be an FmHA borrower.

Summary Data: The funds for the program come from the Bank. The Bank originally had 498 loans that were purchased from the Bank with proceeds of agriculture bonds sold by the state. These loans, which had a principal balance of $32 million in December 1986, are still being administered by the Bank.

After the secondary market financing provided by the bonds, the Bank continued to make loans from its own resources. There were 90 loans in this category at the end of 1986 with a principal of over $4.7 million. At least 11 new loans were made in the last 9 months of 1986.

Program Evaluations: A 1982 survey of all active loans was conducted along with an evaluation of program policies and lending procedures. Information was obtained on 478 active beginning farmer loan accounts. Some significant findings were that:

--In the opinion of county FmHA officials, 407 borrowers were likely to succeed, 24 were likely to fail, 39 were "uncertain," and 8 were either out of business or phasing out.

--FmHA farm ownership loans were used by at least 455 of the 478 borrowers and over one half were currently using operating loans other than FmHA's.

--Grain and row crops were the sole or partial production of 430 of the borrowers.

--Average acreage purchased with the loans was 418 acres. The "likely-to-succeed" borrowers had the lowest average acreage purchased.

--Over one third of all borrowers had off-farm income of over $5,000 per year.

Future Plans: According to a representative of the governor's office, an additional beginning farmer loan program is being discussed. It would probably use Bank funds to give preferential interest rates for the purchase of farm properties acquired by lending institutions. The program being discussed was proposed by the lending components of the FCS and is similar to a program now being considered by the Minnesota State Legislature.

BEGINNING FARMER LOAN FUND

Effective Date: July 1, 1983

Expiration Date: No expiration date specified in the law.

Funding Levels: Five million dollars was appropriated from the Bank of North Dakota's earned and undistributed profits in 1983 and an additional $2.5 million was transferred to the fund by an amendment to the act in 1985.

Objective(s): The objective is to provide funds to beginning farmers for farm land purchases at preferential interest rates.

Description: The loans can be made with first or second mortgages, but the amounts loaned are limited to 50 percent of the land value for first mortgages and 35 percent on a second mortgage. Loan amounts are limited to $75,000 for a first mortgage and $50,000 on a second mortgage. Total loans against the property cannot exceed 100 percent of appraised value.

Loan interest rates have varied, but current provisions set the loan rate at 4 percent for a period of 10 years. An additional 5 years can be added with the approval of the Commissioner of Agriculture, but the interest rate after 10 years is increased to 6 percent.

Eligibility: The borrower must be a beginning farmer and state resident, have a family net worth of no more than $100,000, earn one half or more of total income from farming, and intend to work the land purchased. The borrower must have completed a specified farm management educational program or its equivalent.

Summary Data: At January 1987, 222 loans with a principal amount of $7.2 million were outstanding. The program loan officer at the Bank of North Dakota told us most of the loans were second mortgage loans.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

CONTINUING LOAN PARTICIPATION AGREEMENT[2]

Effective Date: April 1, 1986

Expiration Date: July 1, 1987

Funding Levels: In the agreement, the state agreed to provide $30 million to purchase participations and stated it would provide another $70 million, if needed, after obtaining agreement from the Board of University and School Lands. The $30 million comes from the Bank of North Dakota.

Objective(s): The objective is to provide state participation with willing lenders (primarily the FCS) to restructure real estate loans of eligible farmers unable to meet their current loan terms.

Description: The state will purchase 25 percent of the "primary principal" of a restructured loan up to a maximum of $150,000.

The first step is to determine the current market value of the real estate covered by the loan. This appraised value, if less than the principal amount owed, becomes the "primary principal" amount and the remainder, the "secondary principal."

The state buys 25 percent (or $150 000, if less) of the primary principal. The lender sets aside the secondary principal for the restructure period, which can be up to 8 years. The secondary principal accrues interest at the rate of 6 percent for the loan period; however, the borrower makes no payment of principal or interest on this secondary portion. Further, the borrower makes no principal payments on the primary principal amount during the period. The borrower does pay interest on the primary principal, but the interest payments are to be at rates less than the accrual rate, which is set at 12 percent, or the highest current variable interest rate charged to borrowers not in default, whichever is lower. Interest payment rates vary during the 8-year period. The first 3 years the rate is the lower of 8 percent or the highest FLB rate for borrowers not in default at that time. Over the next 3 years, the rate is the lower of 9-1/2 percent or the highest FLB rate for borrowers not in default. Over the last 2 years, the rate is at the highest FLB rate for borrowers not in default. The interest received is divided between the lender and the state on the basis of their participation.

At the end of the restructure period, the borrower is obligated to make a balloon payment of the entire debt; however, the amount owed

[2]Agreement between the state and the FCS.

is limited to the then current appraised value of the collateral or the total amount of the debt, whichever is less. If the current value does not equal the full debt, but does cover the primary principal, the lender must write off the excess amount. If the current value does not cover the primary principal, then the lender and the state participate in the loss.

Eligibility: The borrower must be a North Dakota farmer with a debt-to-asset ratio of at least 50 percent and having difficulty in meeting projected expenses without a loan restructuring. After considering the restructuring, the farmer's projected expenses (including loan servicing, living expenses, and operating expenses) cannot exceed 95 percent of projected income.

Originally, the borrower was required to pay the first year interest in advance and have no arrearages on the loan. This requirement was changed in October 1986 to require prepayment of 6 months interest and to "make an effort" to pay all arrearages.

Summary Data: As of February 27, 1987, the Bank of North Dakota, administrator of the loans, had closed 17 restructuring purchases under this agreement, totaling about $1.2 million in state participation. Another 24 loans had been committed and 6 applications rejected. A total of 74 applications were received. All but two applications were received from FCS.

A survey was conducted in January 1987 by FCS of those farmers who had obtained applications for the restructuring but had not submitted them. The survey document asked for opinions about the program and reasons why applications were not submitted. About 1,178 farmers were queried and 225 (19 percent) responded. Of the respondents, 58 said they were ineligible for the program, 43 said they had found a better alternative, and 79 said the program failed to meet their needs. Further, many respondents cited objections to some terms of the program or stated that the application and the program itself was too complicated or that they had been advised by others not to apply. Regardless, 128 of those responding said they still might decide to apply for the program.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: Since this agreement was signed, FCS has announced a similar program for restructuring their borrowers' loans. According to a representative of the governor's office, there is no indication that the agreement between the state and FCS will be extended. He also said it is possible that the agreement could be continued for lenders other than FCS; however, its use by other lenders to date has been very limited.

AGRICULTURAL DEVELOPMENT ACT LOANS

Effective Date: July 1, 1981

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law. The law did provide, however, that the costs involved in the issuance of bonds were to be paid from bond proceeds.

Objective(s): The objective is to make lower cost agricultural loans available to agricultural commodity producers, agriculturally related businesses, and certain other agriculturally related soil and water conservation and pollution control enterprises.

Description: Proceeds of agricultural bonds issued by the state--through its Industrial Commission--were used to provide funds to lending institutions which in turn agreed to make lower-than-normal interest rate loans--a linked deposit program--to agricultural producers and certain qualified related businesses. In some instances the loans were purchased by the state, which used bond proceeds. (The procedure used depended on the bond issue and the federal restrictions that had to be followed to make the bonds exempt from federal taxation.)

There were two bond issues, one in 1983 and the second in 1985. Under procedures in the first issue (the larger of the two), proceeds were deposited with banks in Certificates of Deposit, which were insured by the FDIC. The banks then made loans at low interest rates up to the amount of the deposits. The loan rates were set at 150 basis points above the rates on the deposits with the banks--about 8.8 percent for equipment loans and 9.6 percent for real estate loans.

The second bond issue was revised because federal law was changed to prohibit the use of FDIC-insured accounts for money received from a federally exempt bond issue. With this bond issue, the state purchased loans made at favorable interest rates, but the banks had to pledge federal securities to ensure repayment. The rate on equipment loans was about 10.1 percent and the rate on real estate loans was 10.5 percent.

The law provided that interest on the bonds was exempt from state and local taxes

Eligibility: Borrowers must meet the definition of farm producers or related farm businesses, defined in the authorizing legislation.

Summary Data: The two bond issues provided about $17 million for lending to qualified borrowers. There was a total of 420 loans.

Thirty-nine lending institutions participated in the first bond issue, and 6 participated in the second.

Statistics on loans made under the first bond issue:

Loan size	Equipment	Land	Total
$ 0 - 50,000	280	25	305
50,001 - 100,000	43	18	61
100,001 and more	5	17	22
Total	328	60	388

Average loan size: About $31,000 for equipment and $93,000 for land.

Range of loan sizes: $4,800 to $630,000.

The second bond issue financed the purchase of 32 loans. Loan amounts ranged from $10,000 to $132,000. The loans were made for the purchase of equipment (19), buildings (12), and land (1).

Program Evaluations: No program evaluation performed or information available as of March 15, 1987.

Future Plans: The law authorizing the issuance of bonds is still in effect, and future bond issues could be made. However, a Bank of North Dakota official told us that the procedures now required make this program unattractive to lenders.

A law recently enacted provides purposes for which proceeds of these agricultural bonds can be used in making loans up to $50,000 to experienced farmers having a net worth of no more than $150,000. Loan purposes include purchasing, refinancing, and improving real estate; and purchasing livestock and equipment. Home Quarter Purchase Fund loans are also included.

SECTION 4

NORTH DAKOTA'S PROPERTY

PROTECTION MEASURES

VOLUNTARY MEDIATION AND FARM CREDIT COUNSELING

Effective Date: March 29, and July 1, 1985

Expiration Date: June 30, 1989

Funding Levels: The laws appropriated $50,000 from the general fund to pay administrative expenses of the Farm Credit Review Board (Board) and $460,000 for expenses of Farm Credit Counseling. The law also authorized the Board to use funds from the Home Quarter Purchase Fund for expenses.

Objective(s): The objectives are to help farmers in danger of foreclosure to negotiate settlements with lenders that would allow them to retain the farm residence and continue to produce agricultural commodities and to provide information, advice, and counseling regarding farm credit problems.

Description: Farmers who are in danger of foreclosure can petition the Farm Credit Review Board for assistance. The Board provides negotiators to help the lender and debtor negotiate a settlement that can achieve the objective or negotiate some other settlement satisfactory to both parties. The process is voluntary on the part of the farmer and the lender.

The counseling provides assistance in evaluating financial condition and methods to alleviate problems and may attempt to alleviate the financial problems by helping to get new loans or negotiate with existing creditors.

Farm Credit Counseling was done by a separate group under a counseling coordinator until about August 1986. At that time, the counseling and voluntary mediation programs were merged

Eligibility: Farmers petitioning the Board must be in danger of immediate foreclosure to make the petition. The procedure was less formal for requesting counseling services prior to August 1986, when only a telephone call was required.

Summary Data: Through July 1986, the Board had accepted 105 petitions for voluntary mediation. Of these, 34 had reached negotiated settlements and 71 were still pending.

According to the Board's Executive Secretary, 22 of the cases were settled by (1) a voluntary conveyance of real estate to the lender, with the borrower retaining some land free and clear, (2) new financing, (3) a land lease including voluntarily conveyed land, or (4) a combination of these. In the 12 other cases, the Board approved assistance from the Home Quarter Purchase Fund.

In August 1986, records of the Board and Farm Credit Counseling were merged. In November, the Board surveyed all active negotiators as to what actions and results occurred from their servicing of clients. Survey responses were received on 734 of the 1,415 clients served during the period July 1, 1985, to the date of the survey. The survey included the following statistics:

Number of clients who have quit farming:	138
Number of clients who have left state:	8

The study concludes that, except for the 138 who have quit farming, the remaining 596 (about 80 percent) had been helped to stay in farming. Major methods cited to solve the problems were debt restructuring, FmHA interest buy-down or set-asides, selling land or chattels or voluntarily conveying land or chattels to lenders, and finding a new lender.

The program costs of the Board through December 1986 were $38,000 from the appropriated funds, and another $194,000 from funds made available from the Home Quarter Purchase Fund.

Programs costs of the counseling through December 31, 1986, were $643,364. The excess costs over the $460,000 appropriated came from the Home Quarter Purchase Fund.

Program Evaluations: A study by the Department of Agricultural Economics, North Dakota State University, cosponsored by the North Dakota Agricultural Experiment Station and several financial institutions throughout the state, concluded that various property protection laws served to delay or permit only partial repayment of indebtedness.

That study was based on data from 80 of 208 credit providers solicited in the state. From the data, the study estimated that $466.1 million of delinquent farm debt existed on July 1, 1986, and that various property protection laws will cost the lenders $111.8 million because of delayed or partial repayments on the delinquent debt. The study concluded that, because of this economic impact, nondelinquent borrowers and other customers of credit institutions are affected through higher fees and interest rates (143 basis points) as well as reduced credit availability.

The study found that repayment delays, while temporarily beneficial, did not change the long-run financial viability of delinquent borrowers.

The study also discussed the economic impact of negotiated settlements on creditors. Data received from the credit providers covering the period between January 1, 1985, and July 1, 1986, were used to estimate that negotiated settlements of delinquent debt during the 18-month period cost creditors $60.4 million. The voluntary mediation law was not discussed in the study; however, the purpose of the mediation is to negotiate settlements.

Future Plans: A law was recently passed to continue the combined voluntary mediation and counseling service with program direction from the Board and administration by the Commissioner of Agriculture. The new law eliminates the eligibility requirement that a farmer must be in a foreclosure situation. It also provides that the Board may charge a reasonable fee to the farmer for assistance; such funds are to be used to continue the program to June 30, 1989. Appropriations had not been passed for the Board as of March 15, 1987. On that date, the North Dakota Legislature was still in session. The governor has proposed that the program be phased out by July 1 1988.

DEFICIENCY JUDGMENTS

Effective Date: February 21, 1951

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to limit the remedies for creditors if the proceeds from a foreclosure sale are not sufficient to fully repay the debt.

Description: The law allows a creditor to seek and obtain deficiency judgments when secured property is foreclosed and sold, but limits recovery to the lesser of the amount of debt minus the amount the creditor received from the sale, or the amount of debt minus the market value as determined by a jury.

The law provides that to obtain any deficiency judgment on a real estate foreclosure and sale, the creditor must give notice of intent to seek a deficiency judgment. After the sale, the creditor must file a court action for the judgment. The law requires that for such action, a jury must determine the market value of the property so that a deficiency amount can be determined.

The result of these requirements is that deficiency judgments are seldom sought. This appears to be because of the costs involved in pursuing a deficiency judgment and the likelihood that the market value will be determined to be greater than the proceeds from the sale. (Because of these factors, the law is generally referred to as the "anti-deficiency judgment law.")

Prior to 1951, the law did not allow for any deficiency judgment upon foreclosure of a real estate mortgage.

Eligibility: Any instance where real estate is foreclosed upon and the foreclosure sale proceeds do not satisfy the outstanding debt.

Summary data: No data collected or information available as of March 15, 1987.

Program Evaluations: The study by the Department of Agricultural Economics (discussed in more detail under the voluntary mediation and counseling programs) discussed the economic impact on lenders of this law. The study concluded that this law, as well as other factors such as exemption laws and the amount of borrower's equity, cause an economic loss because they result in only partial repayment of debt. The study concluded that the loss associated with the partial repayment of debt was $25.7 million of the total $111.8 million loss estimated by the study.

Future Plans: No information on future plans as of March 15, 1987.

RIGHT OF REDEMPTION

Effective Date: April 17, 1877

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to allow a period of time in which foreclosed debtors may repurchase their land and continue ownership benefits.

Description: The law takes effect 1 day after a foreclosure sale of real property. The law provides that the debtor will have 1 year in which to repurchase or redeem the property sold by paying the sale price plus costs of the sale and any other costs incurred by the purchaser during the redemption period.

Further, the law provides that the debtor has a right to stay on the land and operate the farm during the 1-year period, with the right of retaining all income received from the land during the period. There is no requirement in the law that the possessor must pay any costs involved with the land during the period, such as insurance, taxes, or maintenance. The law does provide that the purchaser may pay such costs and include the recovery of such costs in the redemption if the debtor does redeem the property. The law also provides that foreclosed property may be designated in more than one parcel for both sale and redemption upon request.

There are certain exceptions to the general applicability of this law. Mortgages covering land less than 40 acres (10 acres prior to 1985), written under a special short-term mortgage instrument, have only a 6-month redemption period. Also, the 1-year period has not been applied to FmHA foreclosures, which are adjudicated in federal courts. FmHA has normally requested that only a 60-day redemption period be allowed, and this has generally been granted by the court.

Eligibility: Any farmer whose real estate mortgage is foreclosed and the property sold by court order.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: The study by the Department of Agricultural Economics (discussed in more detail under the voluntary mediation and counseling programs) discussed the economic impact on lenders of this law. The study concluded that this law and others were responsible for a $62.2-million economic cost impact to lending institutions because of lost interest, incurred maintenance costs, and the loss of collateral value during the period that repayment delays occurred. This was a portion of the total $111.8-million cost impact estimated by the study.

Future Plans: A recently enacted law clarifies the provision on separate sale and redemption of property being foreclosed, particularly in regard to the farm home and some surrounding property. A provision requiring that written notice of the right to request separate sale of designated parcels must be given to the debtor was also included in this new law. This new law has an expiration date of June 30, 1989.

RELIEF FROM DEFAULTS AND HARDSHIPS (CONFISCATORY PRICE DEFENSE)

Effective Date: July 1, 1933

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to provide for the best interest of litigants in foreclosure proceedings when farm prices are less than the cost of production.

Description: The law provides that until farm product prices rise to a point equal to at least the cost of production, courts in the state shall have power, when it is deemed for the best interest of litigants, to extend the time for taking foreclosure action. Likewise, these courts may defer judgments or execution of such judgments where the court believes the legal procedure will confiscate or tend to confiscate the property of any litigant by forcing the sale of agricultural products upon a ruinous market.

The law further states that foreclosure actions may be delayed when the amount of the debt is less than the value of the property involved and when any order for judgment will have the force and effect of depriving a defendant of his/her home and confiscating his/her property, if the court construes such proceeding to be unconscionable.

Eligibility: Any farmer who has been given notice of an intent to foreclose by a creditor may cite this law as a defense.

Summary Data: According to an Assistant Attorney General of the state, there is no known case where the courts have used the powers granted to them under this law.

Program Evaluations: The study by the Department of Agricultural Economics (discussed in more detail under the voluntary mediation and counseling programs) estimated the economic impact of this law on lenders. The study not only recognizes that the law has not been used by the courts but also states that foreclosures have been delayed by the citing of this law as a defense. As such, the study concludes that it does have some impact on delaying payments, and may be a partial cause of the loss from delayed payments of $23.9 million that is cited in the study as part of the overall $111.8 million economic impact.

Future Plans: No information on future plans available as of March 15, 1987.

NORTH DAKOTA EXEMPTIONS

Effective Date: April 17, 1877

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to leave an indebted person with sufficient resources to survive and financially rebuild.

Description: By law, certain property may not be taken by operation of a foreclosure, deficiency judgment, or other judgment.

The major exemption is the person's dwelling house and the land upon which it is situated. This exemption does not apply, however, if the house and land are encumbered by the mortgage that is being foreclosed upon.

Other property exempted includes various items of personal property, such as pictures, the Bible, clothing, other books, a 1-year supply of provisions, and insurance covering these items. Crops from 160 acres may be exempt except for the production costs, a vehicle of up to $1,200 in value, cash value of life insurance, and the right to receive limited payments from specified pension programs and certain legal actions.

Most of the exemption items have remained much the same since the original law, but pension benefit exemptions were added in 1981.

Eligibility: Any resident of the state.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: The study by the Department of Agricultural Economics (discussed in more detail under the voluntary mediation and counseling programs) discussed the economic impact of this law on lenders. The study concludes that this law has an impact because it allows for only partial repayment. The study assumed an $80,000 homestead exemption where applicable and $20,000 as the value of other exemptions in estimating a $25.7-million overall economic impact of partial repayments.

Future Plans: A recently enacted law adds exemptions for certain other pensions and insurance benefits of up to $100,000 for each pension, insurance policy, or other type of account. The maximum exemption generally allowed is $200,000.

STATUTORY LIEN LAWS

Effective Date: Various, dating from April 17, 1877.

Expiration Date: No expiration date cited in the laws.

Objective(s): The objective is to provide a procedure whereby farmers can obtain goods and services when there is otherwise no security available for the providers.

Description: Several liens have been accorded a priority position over the liens of prior security holders by various laws. Goods or services where such lien preferences have been accorded include

--threshing or drying;

--crop production (only available to government entities);

--fertilizer, farm chemicals, and seed;

--sugar beet production;

--repairman services;

--livestock care and feeding;

--motor fuel; and

--mechanics.

These liens have stated priorities among themselves--the threshing or drying lien taking first preference when applicable.

The liens must be recorded within a specified time, usually 30 to 90 days depending on the type of lien.

Eligibility: Any farmer in the state and any creditor supplying goods or services.

Summary Data: No data collected or information available as of March 15 1987.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

FORECLOSURE OF MORTGAGES OF REAL PROPERTY BY ADVERTISEMENT

Effective Date: March 6, 1883

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to provide debtors an opportunity to present defenses against foreclosure to a court.

Description: State law provides that only mortgages of real property held by the state or any of its agencies, departments, or municipalities, may foreclose on the property by advertising, that is, without taking the issue to a court and requesting legal approval of the foreclosure (known as foreclosure by action). All other lenders are prohibited from the advertisement method.

Courts have ruled, however, that the state can be forced to use the foreclosure by action process by the debtor. The debtor may submit an affidavit raising a defense or counterclaim, and regardless of the merits of such, the foreclosure action must then be heard in court.

Eligibility: Any debtor on a real estate mortgage who has been notified of an intent to foreclose by the creditor.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

PROHIBITION ON COLLECTION OF ATTORNEY FEES BY CREDITORS

Effective Date: March 7, 1889

Expiration Date: No expiration date specified in the law.

Funding Levels: No funds appropriated in the law.

Objective(s): The objective is to prevent the burden of attorney costs in pursuing a default action from being passed on to the debtor, as this would be against public policy.

Description: The law specifically states that any provision contained in any note, mortgage, bond, security agreement, or other evidence of debt for the payment of attorney fees in cases of default in payment or in proceeding to collect such debt to foreclose is against public policy and void.

According to an Assistant Attorney General of the state, the law prohibits a creditor from collecting such attorney fees, even by court action.

Another provision does allow for a "tax" of $25 to be assessed when a mortgage or security interest action against personal property is processed through the court by a qualified attorney. This does not extend to the collection of a lien against personal property.

Eligibility: All debtors in the state, notwithstanding the location of the creditor.

Summary Data: No data collected or information available as of March 15, 1987.

Program Evaluations: No program evaluations performed or information available as of March 15, 1987.

Future Plans: No information on future plans available as of March 15, 1987.

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