

## **N.D.A.G. Letter to Kirshenheiter (Aug. 24, 1988)**

August 24, 1988

Mr. Frank Kirshenheiter  
Chairman  
Credit Review Board  
State Capitol  
Bismarck, ND 58505

Dear Mr. Kirshenheiter:

Thank you for your letter of August 8, 1988, concerning the Farm Credit Counseling Program.

Your first question concerns the possible implementation of a user fee. You ask whether a user fee would jeopardize the availability of federal matching funds for the North Dakota Farm Credit Counseling program.

The relevant federal statute discussing matching funds for state agricultural loan mediation programs is found at 7 U.S.C.A. §§ 5101, 5102 (West 1988). Federal law provides that a state may be determined to be a qualifying state by the Secretary of Agriculture if that state has in effect an agricultural loan mediation program that meets the requirements of 7 U.S.C.A. § 5101(c) (West 1988). Where a state is considered a qualifying state, matching grants are available for the operation and administration of that state's agricultural loan mediation program. 7 U.S.C.A. § 5102(a) (West 1988). Where a state is not considered a qualifying state, the state is not eligible for financial assistance pursuant to the federal program. 7 U.S.C.A. § 5102(d) (West 1988).

The requirements for a qualifying state, found at 7 U.S.C.A. § 5101(c) (West 1988), are as follows:

1. The state program must provide for mediation services to be provided to producers and their creditors. Where decisions are reached, they must be the result of mediated, mutually agreeable decisions between the parties under an agricultural loan mediation program.
2. The state program is authorized or administered by a agency of the state government or by the governor of the state.
3. The state program provides for the training of mediators.
4. The state program provides that the mediation sessions shall be confidential.

5. The state program insures that all lenders and borrowers of agricultural loans receive adequate notice of the mediation program.

The five requirements which need to be satisfied before a state is considered a qualifying state do not discuss the issue of user fees. Thus, the eligibility to receive federal matching funds for a state agricultural loan mediation program appears not to be affected by the presence of a user fee charged to parties using the mediation services. Naturally, an opinion of a state attorney general is not binding upon agencies of the federal government. For this reason, you may wish to pursue your inquiry with the Secretary of Agriculture.

Your second question concerns the proper term to be used in referring to persons disseminating information to farmers concerning farm credit problems and providing advice and counseling regarding farm credit problems. You ask whether such persons should be called negotiators or counselors.

The Farm Credit Counseling Program is established by N.D.C.C. § 6-09.10-03. Within this section, provision is made for the Commissioner of Agriculture to hire staff and "negotiators" to mediate between a farmer who has requested assistance and the farmer's creditors. The Credit Review Board is authorized to adopt policies governing the "negotiators" and staff hired pursuant to this section.

Other provisions of N.D.C.C. ch. 6-09.10 use the term "negotiator." For example, any farmer may request the assistance of a "negotiator." N.D.C.C. § 6-09.10-04. Most importantly, N.D.C.C. § 6-09.10-04.1 states that the Credit Review Board, staff, and "negotiators" are not subject to any liability arising from actions undertaken on behalf of a farmer in attempting to reach a settlement with a lender.

The term used by N.D.C.C. ch. 6-09.10 is "negotiator." Thus, I would recommend the use of this term by those person carrying on these responsibilities.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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