

ANNUAL REPORT FOR FEDERAL FISCAL YEAR 2010

FARMER-LENDER MEDIATION PROGRAM
University of Minnesota Extension



UNIVERSITY OF MINNESOTA
EXTENSION

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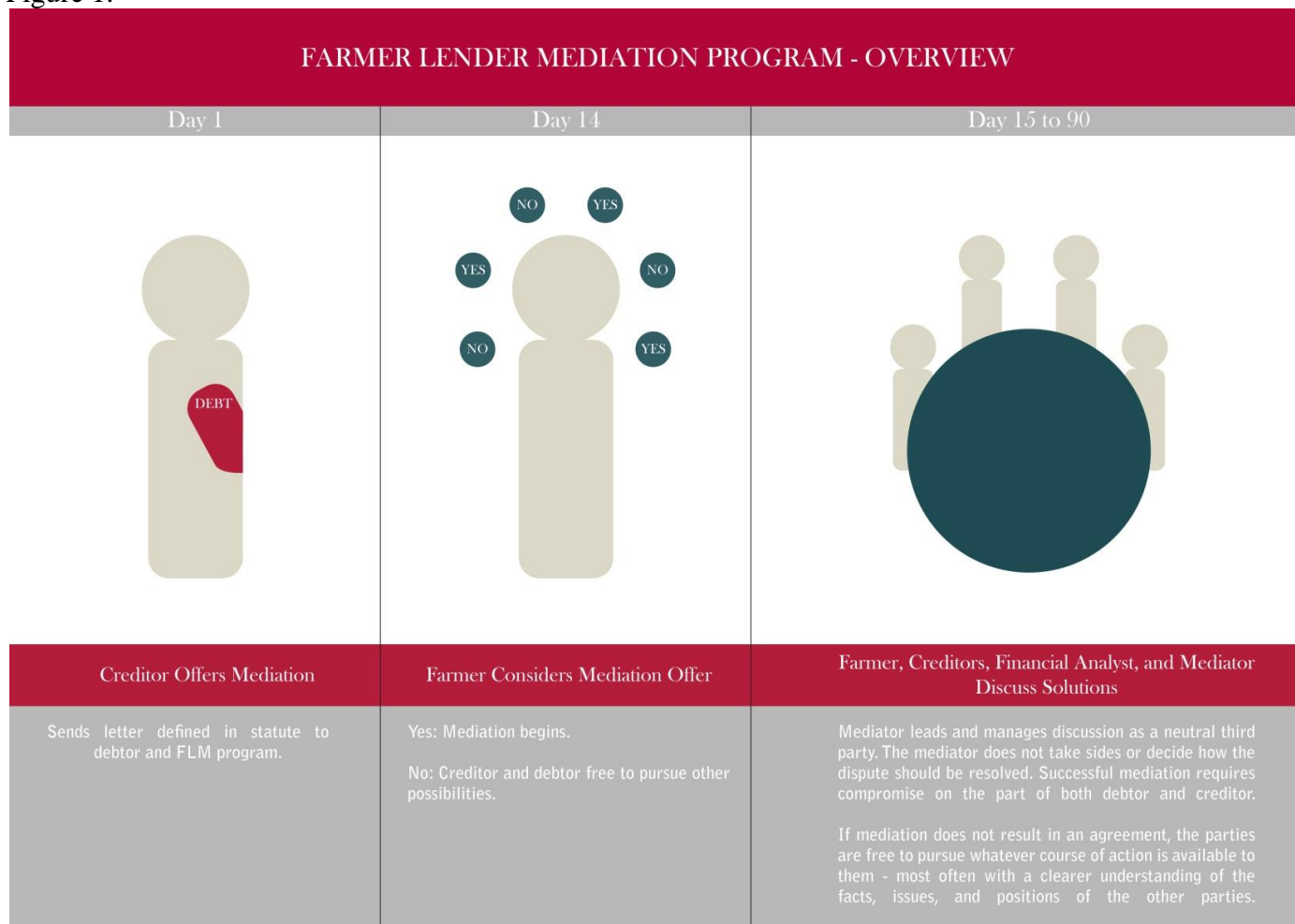
www.extension.umn.edu/mediation

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Process Overview

The Farmer-Lender Mediation Program exists to offer mediation, as required by state law, for situations where a creditor seeks to take action on an eligible agriculturally-related debt that has fallen past due. Under federal and state law, the debtor has the right to request mediation through our program and must decide in 14 days (see figure 1). Practically, a creditor sends a notice of the right to pursue mediation to the farmer and copies the Farmer-Lender Mediation Program office. The farmer may choose to waive mediation or to pursue mediation. If the farmer waives their right to mediation, the case is closed and no further information is obtained. If the farmer exercises their right to mediation, further information is gathered and mediation is begun.

Figure 1.



The loan or line-of-credit involved may have multiple entities and/or people obligated for repaying it (co-borrowers). For example, John and Mary may have a number of partnerships or other arrangements with their parents and their children as part of the business structure of their family farm. Credit may be issued to a variety of these business structures, leaving different combinations of family members responsible for the debt (e.g., father & son, father & daughter, etc.) related to different piece of equipment, loans on the land, operating loans, lines of credit for inputs (e.g., seed, fuel, etc.). These loans and lines-of-credit can be under the names of these individuals or the name of the business structure (e.g., J & M Farms). When a creditor wants to take action on a loan or line-of-credit, each co-borrower's obligation becomes a "notice" in terms of the program. Where four people co-signed for a piece of equipment, this means "four notices." This greatly increases the number of notices that may be generated by a single operation that has become late in some credit payments.

Explanation of Terms

This explanation of terms provides more specific information regarding terms used in this report and is intended to assist the reader in understanding the context and meaning of the data provided.

Notice

A *notice* refers to the legal notice creditors are required, by Minnesota law, to provide farm debtors. This notice states that the creditor plans to pursue some collection action for a specific loan or a line-of-credit that is in arrears. The notice also advises the debtor they have a right to have mediation on a secured debt of more than \$5,000 against an agricultural property if the debtor owns or leases 60 acres or has \$20,000 in gross sales of agricultural products. Each loan or line-of-credit may have multiple entities and/or co-borrowers obligated for repaying it. For program reporting purposes, each of these is counted separately and we use the term “notice” for each of these obligations (think of co-borrowers) as well.

Mediation case

A *mediation case* refers to the complete set of debtors, creditors and loans that are mediated together. A *mediation case* may involve one or more farm operations, and therefore should not be used synonymously with the term “farm operation.” The number of mediation cases are equal to or less than the number of individual farm operations.

Mediation requests

Each person who receives a notice from a creditor has the option to renegotiate, restructure, or resolve farm debt through mandatory Farmer-Lender Mediation. The individual debtor has 14 days to decide whether to take the next step and enter mediation. In some cases, individuals listed as co-borrowers on the same credit obligation will reach different decisions about pursuing mediation. Individuals who pursue mediation provide the mediator a list of all outstanding loans and lines-of-credit related to their agricultural operation.

NOTE: In-depth information about individuals who decide not to pursue mediation is not available, because individuals who waive mediation do not provide information about their financial situation, their actions on the debt in question and/or their reasons for not pursuing mediation.

Settlements reached

Once the debtor elects to use mediation, the parties participate in good-faith. They are not, however, required to reach a mediated agreement. If mediation does not result in an agreement, the parties are free to pursue whatever course of action is available to them. Typically, parties leave the process after they have benefitted from a clearer understanding of the facts, the issues, and the positions of the other parties. The parties involved retain control over the outcome of the negotiations in a joint decision-making process, regardless of the specific outcomes of the mediation.

Total debt addressed

One of the first steps in mediation is to get a complete picture of all the farm debt related to the agricultural operation. This includes debt held by all creditors, not just the one who sent the notice. For those who complete mediation, the total amount of debt that was involved in the mediation is tracked. This includes the debt that triggered the original mediation notice as well as all other debt related to the operation. Therefore, a single debt of \$6,000 may have triggered the original mediation notice, but the total debt discussed during mediation would likely be much higher.

Types of Creditors

Banks

Banks include local banks, regional banks, national banks and credit unions.

Farm Service Agency

The United States Department of Agriculture's Farm Service agency (FSA) makes direct and guaranteed farm ownership loans and operating loans to family-size farms and ranches that cannot obtain commercial credit from a bank, Farm Credit System institution, or other lender.

Main street suppliers and small businesses

These debts are for such things as repairs, feed, fuel, veterinary services, seed and supplies.

Farm Credit Agencies

AgCountry Farm Credit Services (FCS), United FCS and AgStar Financial Services are the best-known farm credit agencies in Minnesota. In addition to these sources, debt involved in this category includes such organizations as Agri-Bank and Farm Credit Services of America (Omaha), debt held by Farm Credit agencies in bordering states and debt that originated with another entity and was purchased by a Farm Credit Agency.

Implement companies

This includes local implement dealers as well as national companies that provide financing for large implement purchases.

Overdue taxes

The complete picture of a debtor entering mediation includes unpaid state, federal and local taxes owed.

Primary farm product

Debtors often have multiple farm enterprises. During the information gathering portion of mediation, debtors are asked to list their primary farm product.

Types of business structures

Sole proprietors

A business owned where there is no legal distinction between the owner and the business. This may include one person, a married couple or in some cases multiple family members.

Partnerships

A legal entity created by two or more persons. This may include a general partnership, a Limited Liability Company (LLC) and Limited Liability Partnership (LLP). Most Minnesota farm partnerships are family owned.

Corporations

A corporation is a specific legal business entity that may be organized as a C corporation or a Subchapter S corporation. Most Minnesota farm corporations are family owned.

Initiating debt

In 2009, the Minnesota Legislature renewed the Farmer-Lender Mediation program for another four years and updated the forms lenders use to request mediation. The updated forms provide policy makers additional information about the amount of debt that triggers the first mediation notice. Information about the amount of debt triggering the first mediation notice is included for the first time in the 2010 fiscal year report. This figure only includes the debt involved in the initial notice received and does not indicate the total debt held.

Possible under-reporting error - When reporting the initiating debt on the required forms, creditors will occasionally indicate an amount of debt of less than \$5,000. If the farmer elects mediation, the actual principal owed will be revealed during the mediation process. In all such cases where the initial amount reported was below \$5,000 and the case was mediated, it was later revealed the amount of the initiating debt was greater than \$5,000. In these cases creditors are likely reporting the amount of past-due payments, rather than the principal. Likewise, it is possible that lower values reported, which are above but close to, \$5,000, may reflect past-due amounts and not the total debt owed. No attempts to investigate these are made, however. If mediation is waived, there is no further information gathered. And so, further information about initiating debts reported below \$5,000 is unavailable.

Federal Fiscal Year 2010 Executive Summary by Mediation Notice

FARMER LENDER MEDIATION PROGRAM

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In Federal Fiscal Year (FFY) 2010, the number of notices processed by the program was 3,863, representing an increase of 24% in the volume of notices processed over the prior federal fiscal year (see table 1)¹. This includes notices that were originally received prior to FFY 2010. As shown in Table 1, the program received 3,064 *new* notices during federal fiscal year 2010, which is a 9% increase over the number of new notices received during the prior federal fiscal year.

As Table 1 shows, debtors for 1,692 (44%) notices chose mediation; 1,908 (49%) chose to waive mediation, and 263 (7%) notices remained open at the close of FFY 2010. The percentage of notice for which debtors chose mediation increased in this federal fiscal by 6% from 38% in FFY 2009 (see table 1). Program staff managed an estimated 41,233 individual contacts from participants and others connected to mediation cases, as well as others interested in the program during FFY 2010, as compared to 33,338 in FFY 2009.

Settlements were reached for 936 notices, or 74% of notices mediated, during FFY 2010. This represents a 6% increase from FFY 2009 (see table 1).

Table 1. Volume of notices processed and received FFY 2010 and FFY 2009

Number of notices:	FFY 2010	FFY 2009
Processed	3,863	3,108
Mediation Waived	1,908	1,914
Mediation Started	1,692	1,188
Mediation Completed	1,273	640
Settlement reached	936	432
Received	3,064	2,801

The amount of debt addressed in FFY 2010 for notices mediated totaled over \$623 million (see table 2). While this is nearly twice as much as in FFY 2009, the number of notices mediated in FFY 2010 is also double that from FFY 2009. As in FFY 2009, banks ranked highest in terms of total debt held. As shown in Table 2, FFY 2010 showed a marked increase in the amount of debt held by main street suppliers and small businesses, which cannot be explained by an increase in total notices mediated.

¹ As in past years, this executive summary and report is based on the notices received and processed during Federal Fiscal Year (FFY) 2010. For information based on the number of mediation cases, please see Executive Summary by Mediation Case.

Table 2. Amount and source of debt addressed in mediation

Source	Amount FFY 2010	Amount FFY 2009	Percent Change
Banks	\$189.7M	\$125.5M	51%
Farm Service Agency/USDA	\$115.3M	\$115.2M	0%
Main Street Suppliers and Small Businesses	\$177.3M	\$15.9M	1,015%
Farm Credit Services	\$124.6M	\$48.4M	157%
Contracts	\$7.3M	\$9.5M	-23%
Implement Companies	\$7.5M	\$5.0M	50%
Overdue taxes	\$.2M	\$1.1M	-82%
Other Debt	\$1.9M	\$2.2M	-14%
Total debt addressed	\$623,745,860	\$321,870,000	94%

In 2009, the Minnesota Legislature updated the forms lenders use to request mediation. The updated forms provide policy makers additional information about the amount of debt that triggers the first mediation notice. Information about the amount of debt triggering the first mediation notice is included for the first time in the 2010 fiscal year report.

The total amount of debt reported on initiating notices processed in FFY 2010 (N=3,863) was \$361,920,173. This figure only includes the debt involved in the initial notice received and does not indicate the total debt involved in mediation, which was \$623,745,860 (see table 2). The additional debt is reporting during the mediation process.

As shown in Table 3, the median amount of the initial debt for mediated notices, as reported on notices received and mediated in FFY 2010² (n=1037), was \$156,032. One-fourth of completed mediation cases had an initiating debt of more than \$394,910, while the bottom fourth of completed meditation cases had an initiating debt between \$5,000 and \$49,722.

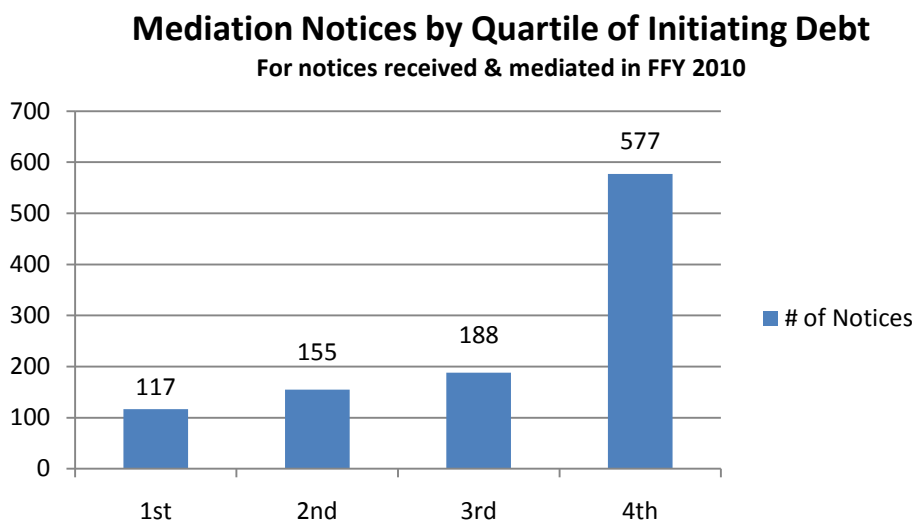
Table 3. Percentile limits of initiating debt for mediations completed

Percentile	Upper limit of percentile
25th percentile	\$49,722
50th percentile	\$156,032
75th percentile	\$394,910

As shown in Figure 2, the first quartile had 117 notices, where the initiating debt was less than or equal to \$49,722. While the number of notices in the second and third quartiles (\$49,723-\$156,032 and \$156,033-\$394,910, respectively) were somewhat higher, 155 and 188, respectively. The number of cases in the fourth quartile, those with initiating debt over \$394,910, was dramatically higher (n=577), owing to the complexity of debt for larger operations.

² Only notices received in FFY 2010 and for which mediation was completed are included in the quartile breakdown because the accuracy of these data is confirmed during the mediation process. Initiating debt amounts on those notices subsequently waived or that remain open are more susceptible to an under-reporting error, which is partially corrected for completed mediations (see *Explanation of Terms*).

Figure 2. Notices by quartile of initiating debt amount



In FFY 2010, dairy and crop operations accounted for over 60% of the notices mediated, which is similar to FFY 2009. It is important to note that data were not available for all cases (see table 4).

Table 4. Type of enterprise in mediation (n=1,550 out of 1,692 mediations started)

Commodity	FFY 2010	FFY 2009	Percent Change
Dairy	32%	31%	1%
Crop	31%	35%	-4%
Cattle	18%	19%	-1%
Hogs	15%	12%	3%
Other	4%	3%	1%

As in FFY 2009, sole proprietorships accounted for over two-thirds of the ownerships structures reported, however, the number of corporation ownership was up (see table 5).

Table 5. Type of ownership (n=1,633 out of 1,692 mediations started)

	FFY 2010	FFY 2009	Percent Change
Sole Proprietorships	67%	68%	-1%
Corporations	23%	9%	14%
Partnerships	11%	23%	-12%
Trusts	0%	>1%	0%

The Farmer-Lender Mediation Program is operated by the University of Minnesota Extension, with funds from USDA, the State of Minnesota and the University of Minnesota. Despite the increase in mediated debt, the program continues to be operated with a lean and effective staff. The cost per notice processed in FFY 2010 was \$104.29. In FFY 2010, the program staff had an FTE of 7.2, including 12 part-time mediators, 4 part-time financial analysts, 2 full-time and 1 part-time administrative staff and a full-time program director. Additional staff involved included the principal investigator for the USDA grant, and administrative, grant, financial and legal support from various University staff and offices.

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FARMER-LENDER MEDIATION PROGRAM
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2010 EXECUTIVE SUMMARY

BY NUMBER OF MEDIATION CASES*

Federal Fiscal Year 2010 Executive Summary by Mediation Case

FARMER LENDER MEDIATION PROGRAM

University of Minnesota Extension

www.extension.umn.edu/mediation

A change in record-keeping procedures in Federal Fiscal Year (FFY) 2010 allows an analysis at the mediation case level. As noted in the *Explanation of Terms*, mediation notices are grouped together so that those related to the same operation(s) can be mediated together. Unlike data based on the number of mediation notices, no year-to-year comparison data are available.

In FFY 2010, the number of mediation cases processed by the program was 1,675. This includes mediation cases for notices that were received prior to FFY 2010.

As Table 6 shows, co-borrowers for 545 (32%) mediation cases chose mediation; 1,002 (60%) chose to waive mediation, and 129 (8%) remained open at the close of FFY 2010. The program served an estimated 41,233 individuals as participants in mediation or as parties interested in the program during FFY 2010, as compared to 33,338 in FFY 2009.

Table 6.

Mediation Status	Mediation Cases	Mediation Notices
Started	545	1,692
Waived	1002	1,908
Open	129	263
Total	1,676*	3,863

* In one case, one co-borrower chose mediation while the other chose to waive mediation leading to a total greater than 1,675.

Of the 545 mediation cases started, 409 (75%) of cases completed mediation. Settlements were reached in 235, or 57% of cases, during FFY 2010. Settlements were reached in just under 75% of all notices mediated. This difference is due to the fact that each mediation case may have any number of notices.

The amount of debt addressed in FFY 2010 for cases mediated totaled over \$623 million (see table 7). While this is nearly twice as much as in FFY 2009, the number of notices mediated in FFY 2010 is also double that from FFY 2009. As in FFY 2009, banks ranked highest in terms of total debt held (see table 7) and first as the source of initiating notices (see table 8). As shown in Table 7, FFY 2010 showed a marked increase in the amount of debt held by main street suppliers and small businesses, which cannot be explained by an increase in total notices mediated.

Table 7. Amount and source of debt addressed in mediation

Source	Amount FFY 2010	Amount FFY 2009	Percent Change
Banks	\$189.7M	\$125.5M	51%
Farm Service Agency/USDA	\$115.3M	\$115.2M	0%
Main Street Suppliers and Small Businesses	\$177.3M	\$15.9M	1015%
Farm Credit Services	\$124.6M	\$48.4M	157%
Contracts	\$7.3M	\$9.5M	-23%
Implement Companies	\$7.5M	\$5.0M	50%
Overdue taxes	\$.2M	\$1.1M	-82%
Other Debt	\$1.9M	\$2.2M	-14%
Total debt addressed	\$623,745,860	\$321,870,000	94%

Table 8.

Source of initiating debt	Mediation Cases
Bank	817
Farm credit services, United FCS, Agribank, AgCountry, AgStar	175
Implement dealers and manufactures	538
Farm service agency/USDA	101
Contract	35
Other farm debt	24
Total	1,690*

*For 15 mediation cases, multiple notices were received for more than one source leading to a total great than 1,675.

In 2009, the Minnesota Legislature updated the forms lenders use to request mediation. The updated forms provide policy makers additional information about the amount of debt that triggers the first mediation notice. Information about the amount of debt triggering the first mediation notice is included for the first time in the 2010 fiscal year report.

The total amount of debt reported on the initiating notice for all mediation cases processed in FFY 2010 (N=1,676) was \$361,920,173. This figure only includes the debt involved in the initial notice received and does not indicate the total debt involved in mediation, which was \$623,745,860 (see table 7). The additional debt is reporting during the mediation process.

As shown in Table 9, the median amount of the initial debt for cases mediated, as reported for mediation cases where the initiating notice was received and the case was mediated in FFY 2010 (n=277 cases), was \$156,032. One-fourth of such cases had an initiating debt of more than \$394,910, while the bottom fourth of mediated notices had an initiating debt between \$5,000 and \$49,722. As shown in Table 9, the number of mediation cases per quartile is roughly equal; the number of notices involved in each quartile differs.

The larger number of notices associated with higher amounts of initiating debt represents the more complex business structures employed by larger operations.

Table 9. Percentile limits of initiating debt for mediations completed³

<u>Quartile</u>	<u>Lower Limit</u>	<u>Upper Limit</u>	<u>Notices</u>	<u>Mediation Cases</u>
1 st	\$5,000	\$49,722	117	70
2 nd	\$49,723	\$156,032	155	68
3 rd	\$156,033	\$394,910	188	69
4 th	\$394,911	And above	577	70

In FFY 2010, dairy and crop operations accounted for 65% of the mediation cases, at 21% and 44% respectively. It is important to note that data were not available for all cases, however (see table 10).

Table 10. Type of enterprise in mediation (n=447 out of 545 mediation cases started)

<u>Commodity</u>	<u>FFY 2010</u>
Dairy	21%
Hogs	12%
Cattle	19%
Crop	44%
Other	4%

As in FFY 2009, sole proprietorships accounted for over the vast majority of the ownership structures reported (see table 11). The lower percentage of corporations reported by mediation case (9%) as opposed to when reported by mediation notice (23%), indicates that corporate ownership structures account for a large number of the overall notices processed in FFY 2010.

Table 11. Type of ownership (n=487 out of 545 mediation cases started)

	<u>FFY 2010</u>
Sole Proprietorships	89%
Partnerships	8%
Corporations	9%

The Farmer-Lender Mediation Program is operated by the University of Minnesota Extension, with funds from USDA, the State of Minnesota and the University of Minnesota. Despite the increase in mediated debt, the program continues to be operated with a lean and effective staff. The cost per notice processed in FFY 2010 was \$104.29. Program staff has an FTE of 7.2, with 12 part-time mediators, 4 part-time financial analysts, 2 full-time and 1 part-time administrative staff and a full-time program director. Additional staff involved included the principal investigator for the USDA grant, and administrative, grant, financial and legal support from various University staff and offices.

³ Only notices received in FFY 2010 and for which mediation was completed are included in the quartile breakdown because the accuracy of these data is confirmed during the mediation process. Initiating debt amounts on those notices subsequently waived or that remain open are more susceptible to an under-reporting error, which is partially corrected for completed mediations (see *Explanation of Terms*).