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## Trustee Talk

BY LAURA J. GENOVICH

### Good News for Family Farmers

#### Congress Raised the Debt Ceiling in Chapter 12

Last August, President Donald Trump signed into law the Family Farmer Relief Act of 2019. It amends § 101(18) of the Bankruptcy Code to increase the maximum debt for a family farmer from approximately \$4.4 million<sup>1</sup> to \$10 million. This amendment greatly expands chapter 12 eligibility and comes on the heels of a difficult period for family farmers.

#### Chapter 12: A Primer

Family farmers have long received special treatment under bankruptcy law, dating back to the National Bankruptcy Act of 1898, which protected farm debtors against involuntary bankruptcy.<sup>2</sup> Early bankruptcy laws recognized that farmers face unique challenges beyond their control, including natural disasters and crop failure.<sup>3</sup> The Bankruptcy Act of 1933 (as amended in 1934) offered additional protections to farmers by allowing them to remain in possession of farm assets for a five-year period while paying reasonable annual rent.<sup>4</sup>

Similar protections are still afforded to farm debtors today under chapter 12 of the Bankruptcy Code. Chapter 12 was created through the adoption of the Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986.<sup>5</sup> This act was an emergency response to the agricultural credit crisis of the mid-1980s.<sup>6</sup> Through the Bankruptcy Abuse Prevention and Consumer Protection Act

of 2005 (BAPCPA), chapter 12 was extended to include family fishermen.<sup>7</sup>

Chapter 12 offers relief to “family farmers” with regular annual income. The definition of “family farmer” hinges on the amount of the farmer’s debt, which, until August 2019, was about \$4.4 million, adjusted for inflation.<sup>8</sup> Fifty percent of the family farmer’s income for the preceding tax year (or for the second and third prior tax years) must have been earned from a farming operation.<sup>9</sup>

Chapter 12 shares similarities with chapters 11 and 13, with some critical differences. Like chapter 11, a chapter 12 debtor proposes a reorganization plan, but creditors do not vote on the plan (although they may object). No unsecured creditors’ committee is appointed. The plan must propose to pay debts over a period of three to five years, except that payments to secured creditors can extend beyond the life of the plan.

Like chapter 13, a trustee is appointed in a chapter 12 case to oversee its administration, negotiate a confirmable plan with the debtor and creditors, and disburse payments made through the confirmed plan. Chapter 12 debtors also enjoy the co-debtor stay, like chapter 13 debtors, and have a greater ability to “cram down” secured debts. Chapter 12 debtors receive a discharge upon plan completion.

Unlike chapter 13, chapter 12 is available to both individuals and family-owned corporations and partnerships that meet the eligibility requirements. Chapter 12 also offers tax advantages that are unavailable to debtors in chapters 11 and 13. Chapter 12 is generally viewed as far less complicated and expensive than chapter 11, thus it is highly desirable for small farmers who wish to reorganize.



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1 “Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed under Section 104(a) of the Code,” Fed. Register Notice (Feb. 12, 2019), available at [federalregister.gov/documents/2019/02/12/2019-01903/revision-of-certain-dollar-amounts-in-the-bankruptcy-code-prescribed-under-section-104a-of-the-code](https://www.federalregister.gov/documents/2019/02/12/2019-01903/revision-of-certain-dollar-amounts-in-the-bankruptcy-code-prescribed-under-section-104a-of-the-code) (indicating debt limit of \$4,411,400, effective April 1, 2019; unless otherwise specified, all links in this article were last visited on Dec. 23, 2019).

2 Jerome M. Stam & Bruce L. Dixon, “Farmer Bankruptcies and Farm Exits in the United States, 1899-2002,” U.S. Dep’t of Agriculture (Information Bulletin No. 788), available at [ers.usda.gov/webdocs/publications/42532/17750\\_aib788\\_1\\_.pdf?v=41233](https://ers.usda.gov/webdocs/publications/42532/17750_aib788_1_.pdf?v=41233).

3 *Id.*

4 *Collier on Bankruptcy*, 16th ed., § 1200.01.

5 *Id.*

6 *Id.*

7 *Id.*

8 11 U.S.C. § 101(18); 11 U.S.C. § 104(a).

9 11 U.S.C. § 101(18).

## Trends in Chapter 12

Chapter 12 filings reached a historical high in the 1980s,<sup>10</sup> but filings in recent years have trended upward as well. The 12-month period ending Sept. 30, 2018, saw 468 chapter 12 cases filed nationwide.<sup>11</sup> That number jumped 24 percent in the 12-month period ending Sept. 30, 2019, with 580 chapter 12 filings.<sup>12</sup> This represents the highest number of filings since 2011, when 676 family farmers sought chapter 12 relief.<sup>13</sup> These numbers do not reflect farmers who sought relief under other Bankruptcy Code chapters, including chapter 11.

This increase is unsurprising to those following agricultural economic trends. According to the American Farm Bureau Federation, farm debt was projected to reach a record high of \$416 billion in 2019.<sup>14</sup> Net farm income has declined overall since 2013. Farmers are also taking longer to service their debts than in previous years, thanks in part to low interest rates, with average loan maturity also increasing to record-high levels.<sup>15</sup> The added challenges of unpredictable (and disastrous) weather events, crop overproduction and low commodity prices have resulted in especially difficult times for family farmers. Flooding and an early frost hit corn and soybean crops hard in the Midwest this fall.<sup>16</sup> As one farmer in a small Wisconsin town said, “It’s going to be a tough year, there are no two ways about it.”<sup>17</sup>

Chapter 12’s debt limit was viewed by some as adding to this crisis, as it rendered some family farmers ineligible for chapter 12 relief. Prior to August 2019, a family farmer could not file under chapter 12 unless its debts were less than about \$4.4 million (a number adjusted for inflation every three years under § 104(a)). Increasing the debt limit would logically expand eligibility — although exactly how many family farmers would qualify under an increased debt limit is unclear.

Jim Monke, an agricultural policy analyst for the Congressional Research Service, noted in March 2019 that “if the debt limit were raised to \$10 million per farm, about an additional 5,000 farms nationwide would become eligible for Chapter 12, based on their total debt and their ratios of farm-to-nonfarm debt and income.”<sup>18</sup> However, this is based on an estimated 2 million family farms in the U.S. In a similar regard, Monke also observed that “7,700 (0.4 percent) [of family farmers] have debt greater than the \$4.153 million, which is above the initial threshold for Chapter 12 bankruptcy. Farms in this debt range hold 17 percent of total farm debt and account for about 12 percent of the value of production.”<sup>19</sup>

## Family Farmer Relief Act of 2019

After prior failed attempts to increase the debt limit in chapter 12, Rep. Antonio Delgado (D-N.Y.) introduced H.R. 2336 in April 2019. The bill made a one-sentence amendment to replace the existing debt limit in § 101(18) (the definition of “family farmer”) with \$10 million. The amendment does not affect the debt limit for family fishermen.

**Chapter 12 has long provided unique advantages in bankruptcy to family farmers, and the increased debt limit will certainly open the doors to family farmers who previously were ineligible based on total debt.**

Proponents of the bill, including the American Farm Bureau Federation and National Farmers Union, argued that “[l]ifting the liability cap [would] expand access to the restructuring and seasonal repayment flexibility that many farmers need in today’s lagging farm economy, which is being further affected by trade disputes, projections for below average farm income over the next decade and rising interest rates.”<sup>20</sup> The bill was also supported by ABI and the American College of Bankruptcy. **Robert J. Keach** (Bernstein Shur; Portland, Maine), a past ABI president and co-chair of the ABI Commission to Study the Reform of Chapter 11, testified before Congress on ABI’s behalf in support of its passage.<sup>21</sup>

Opponents of the bill, such as the American Bankers Association (ABA), cautioned that the increase could be “detrimental to the costs of credit for farmers in the long run” and questioned the need for the increase in light of the adjustments for inflation.<sup>22</sup> The ABA noted that banks that lend regularly to farmers have increased credit to meet farmers’ needs and now provide more than \$108 billion in total farm loans — meaning that banks stand ready to meet farmers’ credit demands.<sup>23</sup> The ABA also pointed to the 2018 Farm Bill and record-low interest rates as strengthening the agricultural economy. The ABA concluded its opposition to H.R. 2336 with the following prediction:

The current \$4.3 million debt limit (indexed for inflation) already covers most farmers and there is no need for a dramatic increase to \$10 million. If H.R. 2336 were to become law, credit terms would tighten considerably for many family farms, with a disproportionate impact on the most distressed farms most in need of credit. Therefore, the proposed increase in the Chapter 12 debt limit to \$10 million in H.R. 2336 is not needed and would increase bor-

10 “Farm Bankruptcies Rise Again,” Am. Farm Bureau Fed’n (Oct. 30, 2019), available at [fb.org/market-intel/farm-bankruptcies-rise-again](http://fb.org/market-intel/farm-bankruptcies-rise-again).

11 “U.S. Bankruptcy Courts — Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending September 30, 2018,” U.S. Courts Data Table F-2 (2018), available at [uscourts.gov/sites/default/files/data\\_tables/bf\\_f2\\_0930.2018.pdf](http://uscourts.gov/sites/default/files/data_tables/bf_f2_0930.2018.pdf).

12 “U.S. Bankruptcy Courts — Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending September 30, 2019,” U.S. Courts Data Table F-2 (2019), available at [uscourts.gov/sites/default/files/data\\_tables/bf\\_f2\\_0930.2019.pdf](http://uscourts.gov/sites/default/files/data_tables/bf_f2_0930.2019.pdf).

13 “Farm Bankruptcies Rise Again,” *supra* n.10.

14 *Id.*

15 *Id.*

16 Joy Wiltermuth, “U.S. Farmers, Battered by Low Commodity Prices and Trade War, Brace for Things to Get Worse,” *MarketWatch* (Sept. 11, 2019), available at [marketwatch.com/story/us-farmers-battered-by-low-commodity-prices-and-trade-war-brace-for-things-to-get-much-worse-2019-09-11](http://marketwatch.com/story/us-farmers-battered-by-low-commodity-prices-and-trade-war-brace-for-things-to-get-much-worse-2019-09-11).

17 *Id.*

18 Jim Monke, “Farm Debt and Chapter 12 Bankruptcy Eligibility,” CRS Insight (March 15, 2019), available at [fas.org/spp/crs/misc/IN11073.pdf](http://fas.org/spp/crs/misc/IN11073.pdf).

19 *Id.*

20 “Farm Bureau, Farmers Union Unite on Bankruptcy Bill,” Am. Farm Bureau Fed’n (May 13, 2019), available at [fb.org/news/farm-bureau-farmers-union-unite-on-bankruptcy-bill](http://fb.org/news/farm-bureau-farmers-union-unite-on-bankruptcy-bill).

21 House Report 116-182: Family Farmer Relief Act, available at [congress.gov/congressional-report/116th-congress/house-report/182](http://congress.gov/congressional-report/116th-congress/house-report/182) (text of bill).

22 Statement for the Record, Am. Bankers Ass’n (June 25, 2019), available at [aba.com/-/media/documents/testimonies-and-speeches/statement-record-house-judiciary-subcommittee-chapter12-bankruptcy.pdf](http://aba.com/-/media/documents/testimonies-and-speeches/statement-record-house-judiciary-subcommittee-chapter12-bankruptcy.pdf).

23 *Id.*

rowing costs and decrease the availability of credit for farmers in need of credit.<sup>24</sup>

The bill received bipartisan support and ultimately passed in the House in July 2019 and the Senate in August 2019. President Trump signed it into law on Aug. 23, 2019, and the law took effect immediately.

The American Farm Bureau Federation lauded its passage and predicted that the increased debt limit will “reliev[e] some of the uncertainty [that] farmers are facing due to export market disruptions, weather events and declining farm income.”<sup>25</sup> Sen. Amy Klobuchar (D-Minn.), who supported the legislation, added that the reforms “aren’t just good for farmers, they are good for small towns and rural areas throughout our country.”<sup>26</sup>

## Impact on Chapter 12 Filings

It is too soon to know how many debtors will seek relief under the new \$10 million debt limit. In the Western District of Wisconsin, which has historically been the district with the highest number of such filings, 21 chapter 12 cases were filed between Aug. 23 and Dec. 20, 2019. Of those cases, only *one* debtor listed debts in excess of the prior \$4.4 million debt limit.<sup>27</sup> Similarly, of the 12 chapter 12 cases filed in the Sixth Circuit since the law took effect, only one case scheduled debts in excess of \$4.4 million.<sup>28</sup>

These early numbers line up with Monke’s figures. As previously discussed, the analyst had estimated that an additional 5,000 family farms out of 2 million total family farms would become eligible for chapter 12 based on the increased debt limit, which represents about 0.25 percent of family farms.

Chapter 12 has long provided unique advantages in bankruptcy to family farmers, and the increased debt limit will certainly open doors to family farmers who previously were ineligible based on total debt. The effect on credit terms, if any, also remains to be seen. For now, though, farmers are welcoming the prospect of expanded relief amid challenging economic times. **abi**

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<sup>24</sup> *Id.*

<sup>25</sup> “New Bankruptcy Law Provides Debt Relief,” Am. Farm Bureau Fed’n (Aug. 23, 2019), available at [fb.org/newsroom/new-bankruptcy-law-provides-debt-relief](http://fb.org/newsroom/new-bankruptcy-law-provides-debt-relief).

<sup>26</sup> “Klobuchar, Grassley Legislation to Help Family Farms Reorganize After Falling on Hard Times Signed into Law,” News Release (Aug. 27, 2019), available at [klobuchar.senate.gov/public/index.cfm/2019/8/klobuchar-grassley-legislation-to-help-family-farms-reorganize-after-falling-on-hard-times-signed-into-law](http://klobuchar.senate.gov/public/index.cfm/2019/8/klobuchar-grassley-legislation-to-help-family-farms-reorganize-after-falling-on-hard-times-signed-into-law).

<sup>27</sup> In two cases, the debtors’ petitions indicated debts of between \$1 million and \$10 million, but the schedules have not yet been filed.

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