CHOOSING THE RIGHT APPROACH FOR FARM, RANCH AND SMALL BUSINESS REORGANIZATIONS

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I. History of Chapter 12

Chapter 12 was first introduced in 1986 when Congress passed the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, in response to the "Farm Crisis."[1] The Farm Crisis led to a massive dissolution of family farms in the 1980s as a result of multiple market forces: depleted commodity prices after an agricultural boom in the 1970s, increasing production costs, high interest rates on loans, and plummeting farmland prices. Farmers were unable to pay the large loans taken out during the agricultural boom secured by then-valuable farmland.[2] The massive dissolution signaled to Congress that then-available provisions of the Bankruptcy Code were inadequate to enable small family farmers to reorganize.

The following features of Chapter 11 make the reorganization of a family farm or ranch exceedingly difficult: the absolute priority rule, the requirement of a disclosure statement, voting by creditor classes, and allowance of creditor's committees. Chapter 11 is procedurally complicated, lengthy, and expensive. These features are hostile to individual debtors and family-owned farms and ranches.

Chapter 12 was originally scheduled to sunset on October 1, 1993, but Congress periodically extended the deadline. Between its creation in 1986 and the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), which made Chapter 12 permanent, Congress extended Chapter 12 eleven times, often for six months or less than a year, sometimes causing a lapse in Chapter 12.

A. The Current Agricultural Economy

i. Outlook for 2021

The financial outlook for agriculture in 2021 is one in which net farm income compared to 2020 is expected to decline even though commodity prices are up. A greater proportion of farm income will come from the market sector as government farm program payments are expected to decrease, contributing a lower proportion of gross income.

In 2020, cash receipts accounted for $370.4 billion (79 percent of gross farm income) and government payments $46.3 billion (10 percent). In 2021, cash receipts are expected to increase to $390.8 billion (84 percent of gross income) and government payments decline to $25.3 billion (5 percent). The net change in these contributions to farm income is an increase of $20.4 billion in cash receipts and a decrease in government farm support payments of $21.0 billion for a decline of -$0.6 billion. Total gross income (which includes nonmoney income and the value of inventory adjustments) is expected to decline from $466.3 billion to $465.1 billion, a change of -$1.2 billion.

Total farm expenses are expected to be higher in 2021. Total expenses in 2020 were $345.2 billion and are expected to increase to $353.7 billion in 2021, an increase of $8.6 billion and the highest since 2015. Increased expenses and a decline in gross farm income lowers

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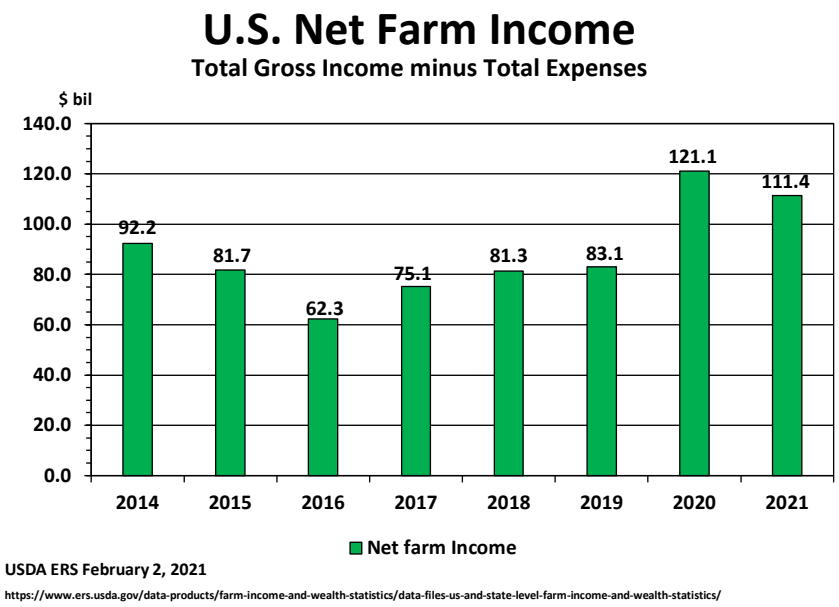
[1] Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088, 3105–16 (1986).

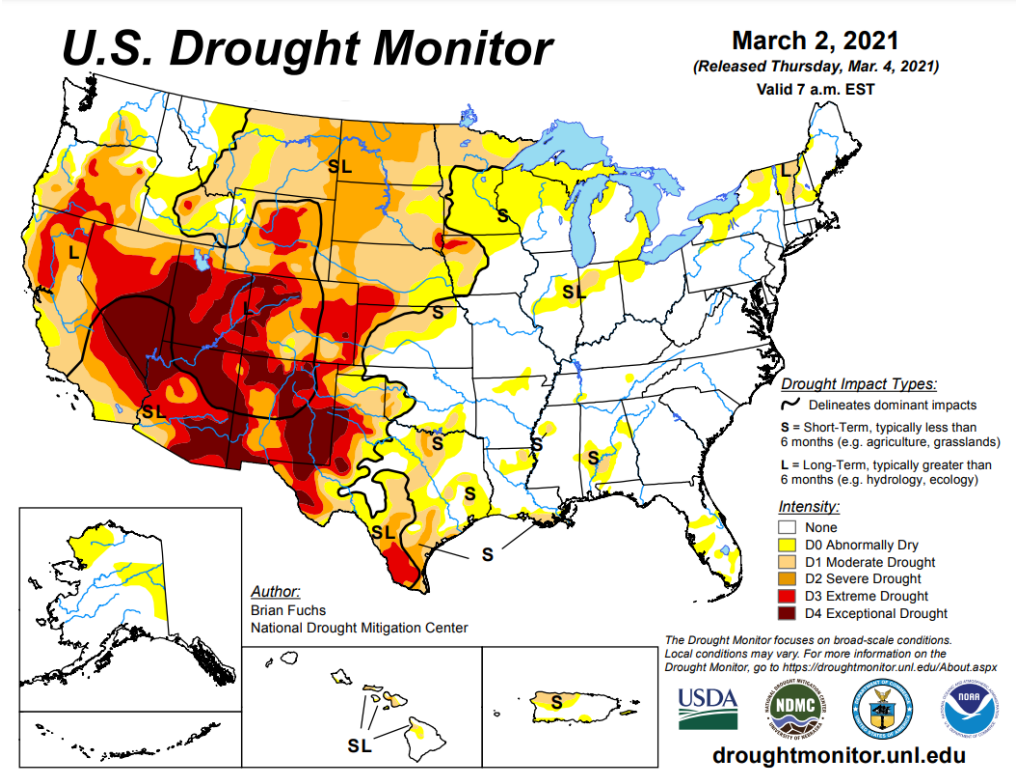
[2] Sara Kathryn Mayson, *Grapes of Impact: The Family Farmer Relief Act of 2019 and Chapter 12*, 10 WAKE FOREST L. REV. ONLINE 55, 56–57 (2020).

estimated net farm income in 2021 by $9.8 billion compared to 2020. However, even though lower year to year, net farm income is still expected to be the second highest of the last seven years and above the average from 2000 to 2019 of $92.1 billion (Meyer, 2021).

U.S. farm sector financial indicators, 2014-21F									
United States			Data as of:	2/5/2021					
	2014	2015	2016	2017	2018	2019	2020F	2021F	Change 2020 to 2021
				$ billion					
Cash income statement									
a. Cash receipts	424.0	377.4	358.5	370.4	371.4	369.3	370.4	390.8	20.4
Crops 1/	211.7	187.9	195.8	194.9	195.1	193.3	203.9	215.7	11.8
Animals and products	212.3	189.5	162.7	175.6	176.3	176.0	166.5	175.0	8.6
b. Federal Government direct farm program payments 2/	9.8	10.8	13.0	11.5	13.7	22.4	46.3	25.3	(21.0)
c. Cash farm-related income 3/	36.6	34.4	27.9	31.2	29.1	34.7	34.2	34.9	0.7
d. Gross cash income (a+b+c)	470.3	422.6	399.4	413.2	414.2	426.5	450.8	451.0	0.2
									0.0
e. Cash expenses 4/, 5/	339.0	315.8	303.8	311.9	311.4	317.5	314.6	322.6	8.1
									0.0
f. Net cash income (d-e)	131.3	106.8	95.6	101.3	102.8	109.0	136.2	128.3	(7.9)
									0.0
Farm income statement									0.0
g. Gross cash income (a+b+c)	470.3	422.6	399.4	413.2	414.2	426.5	450.8	451.0	0.2
h. Nonmoney income 6/	16.9	17.8	17.1	18.3	19.1	18.4	19.7	21.2	1.4
i. Value of inventory adjustment	-3.9	0.4	-4.2	-6.0	-8.2	-13.0	-4.2	-7.0	(2.8)
j. Total gross income (g+h+i)	483.3	440.8	412.3	425.4	425.1	431.9	466.3	465.1	(1.2)
									0.0
k. Total expenses	391.0	359.1	349.9	350.3	343.8	348.7	345.2	353.7	8.6
									0.0
l. Net farm income (j-k)	92.2	81.7	62.3	75.1	81.3	83.1	121.1	111.4	(9.8)

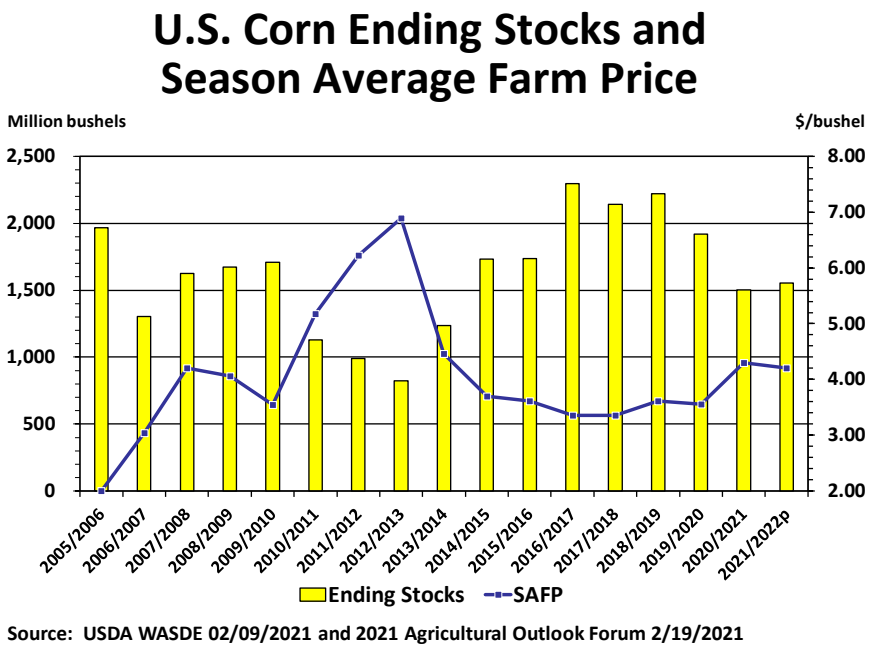


Drought. Even as the current La Nina weather phenomenon appears to have peaked and sea surface temperatures are once again trending toward neutral readings (between La Nina and El Nino), drought is forecast to remain a serious issue for many areas of the west/southwest. Production losses, increased costs, and higher break-evens are expected to continue where this impact is most persistent. While the possibility of storms will still exist, their frequency and potency will be greater farther east (Bledsoe, 2021).

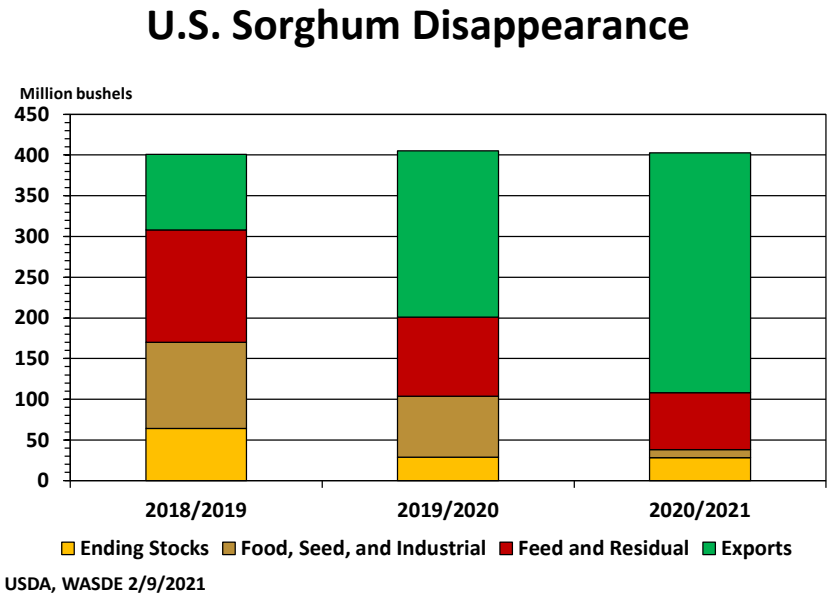


Grain Outlook. Corn production shortfalls in 2020 and unprecedented imports by China have pushed U.S. ending stocks of corn to their lowest levels since 2013 and the season average farm price to its highest level since that same year.

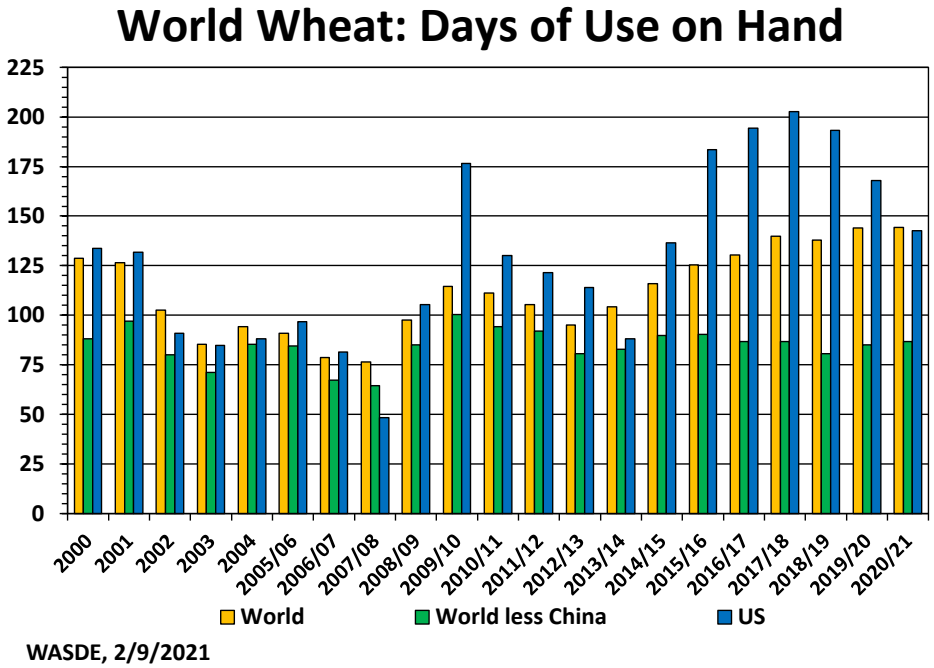
Early estimates from USDA project an increase in corn acres and average yield in 2021. But increases in domestic use (feed, food, and fuel) and steady exports keep ending stocks and the estimated season average farm price virtually unchanged.

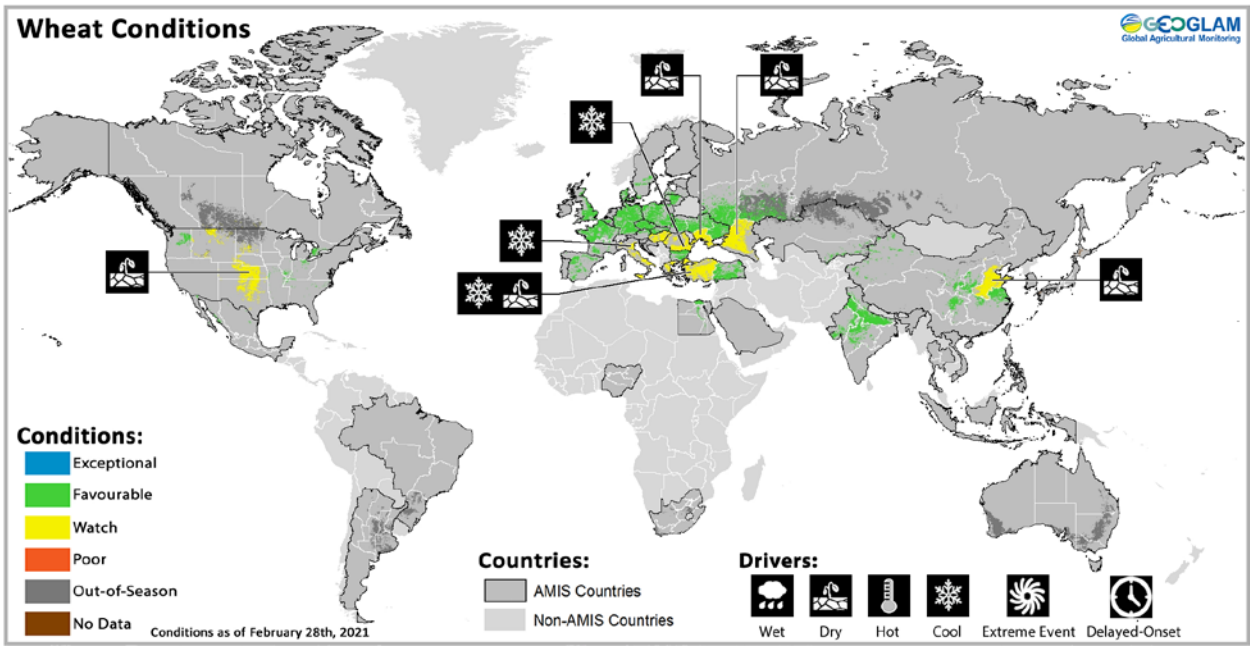


China has resumed its role as the world's largest importer of grain sorghum. The U.S. is the world's largest exporter. Exports now account for almost 80 percent of U.S. sorghum use. Grain sorghum typically trades at a discount to corn of about 20 cents per bushel. In the current environment, cash prices paid to farmers for sorghum are a $1.00 per bushel premium to corn.



For wheat, U.S. stocks to use levels (measured by days of use on hand at the end of the marketing year) are on the decline but remain well above the average of the last 20 years. Globally, wheat stocks are projected to be at record high levels at the end of 2020/21 marketing year, days of use on hand about steady with the year before. Looking at the 2021 crop, production concerns and trade restrictions from major wheat export sources like Russia and Ukraine are driving wheat prices higher.



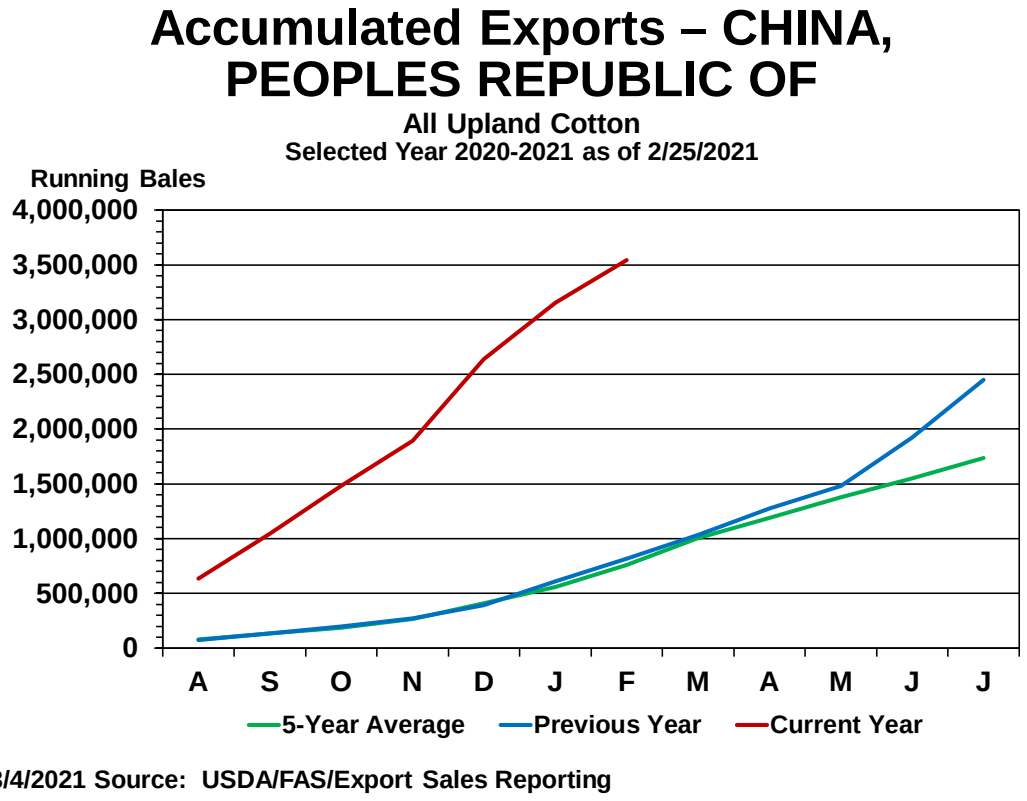


https://cropmonitor.org/index.php/cmreports/amis-report/

Cotton Outlook. In the 2020/21 marketing year, USDA projects global cotton mill use at 114.2 million bales, 12% above last year, with China leading the rebound. The global economy continues to recover from the impacts of COVID-19 and with promises of a vaccine available this year, additional raw cotton demand by textile-producing countries, including China, appears likely. China is forecast to spin 37.5 million bales of raw cotton, approximately 13.5% (4.5 million bales) above 2019/20. And some of that fiber will come from imports, forecast at 9.5 million bales as China adds foreign cotton to the national reserve for rotational

purposes and for re-export in the form of textile and apparel products. We have seen an improvement in accumulated U.S. exports to China.

The cotton outlook for 2021 is particularly sensitive to the drought outlook since Texas is the nation's largest cotton producer, planting 6.8 million of the 12.1 million U.S. cotton acres in 2020. In drought years, not only do we see lower yields but also higher rates of abandonment further reducing production.



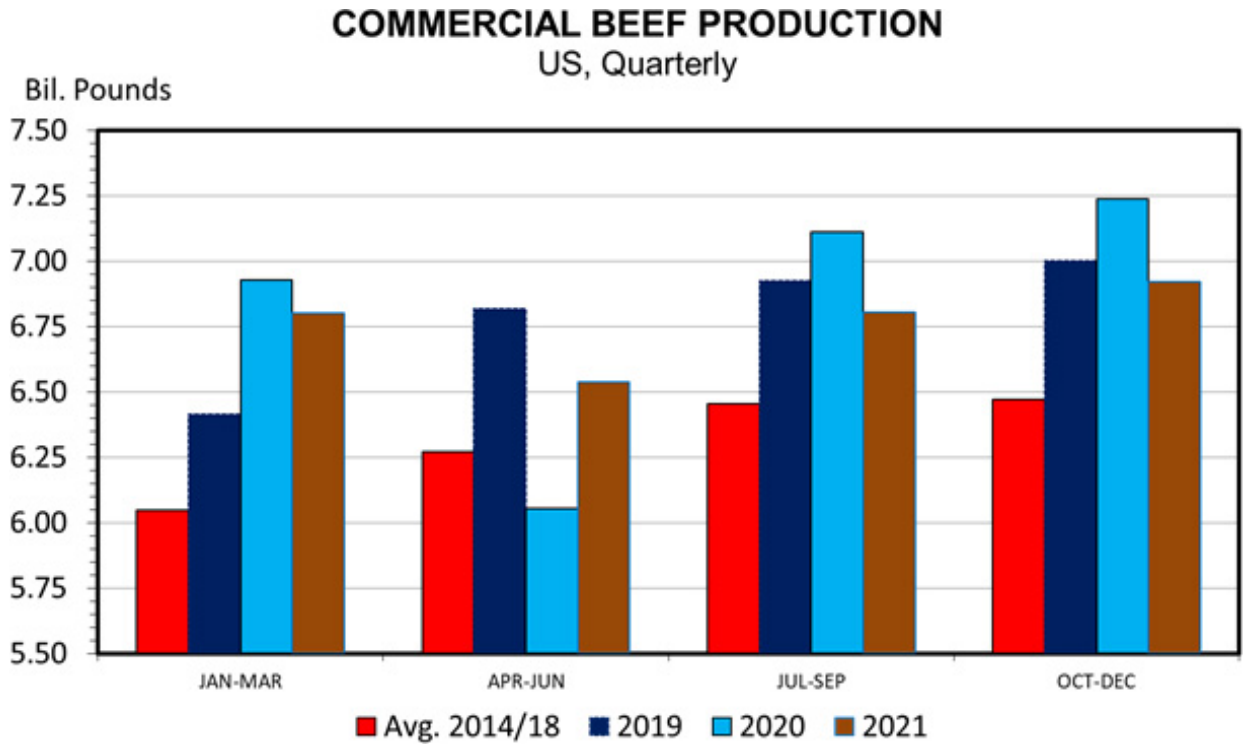
Livestock Outlook. Beef demand was rocked in 2020 by the severe disruptions in food service that persisted through the end of the year. Despite massive economic shocks that impacted all of agriculture as well as the broader U.S. and global economy, beef demand remained remarkably strong in 2020.

Uncertainty is expected to persist as 2021 begins but conditions may improve and stabilize in the second half of the year. The availability of a COVID-19 vaccine is expected to bring the public health crisis under control in the coming months. The U.S. and global economies begin the year fragile and face many challenges but with significantly improved prospects as the year progresses. With cautious optimism, cattle prices are expected to average modestly higher in 2021.

Cattle inventories will likely be modestly smaller in 2021 due to limited herd liquidation in 2020. Feeder cattle supplies will be smaller, leading to reduced feedlot production. However, carryover drought conditions could provoke additional herd liquidation in 2021. Beef production

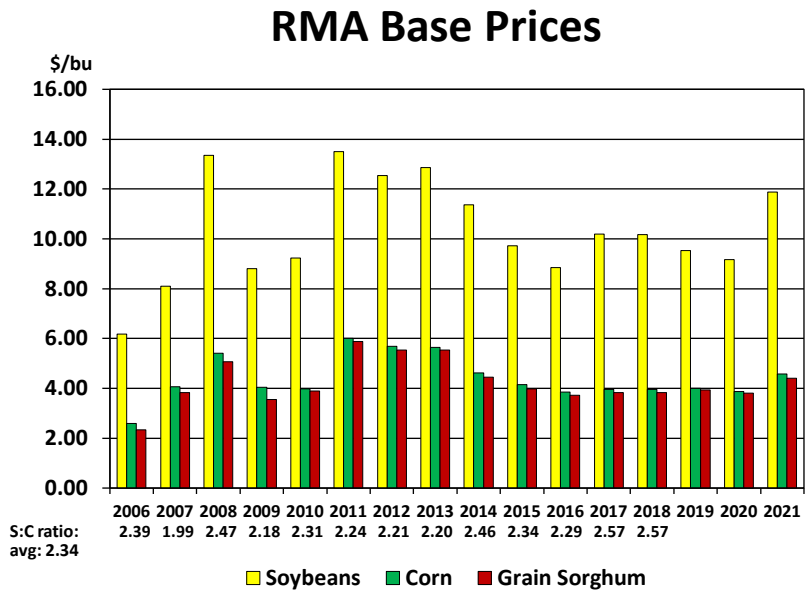
is forecast to decline in 2021 with cyclically smaller cattle slaughter and carcass weights pulling back from record 2020 levels.

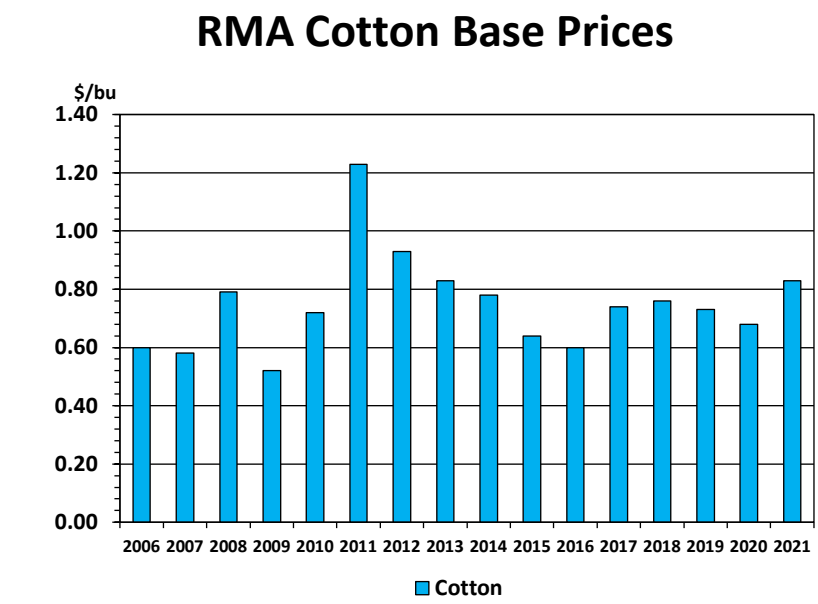
There is considerable promise for 2021 as cattle producers will likely see some improvement in profit potential compared to 2020. However, risks remain elevated do the possibility of continued high feed costs squeezing profit margins. High feed costs would cause feeders to put downward pressure on calf prices. Maintaining cow condition and calf weights in drought areas will push costs up for those producers.



Crop Insurance. The base prices for grain and cotton for 2021 are the highest since 2013 or 2014, offering producers the opportunity to lock in a revenue safety net much higher than recent years. Compared to spring 2020, the base price of soybeans is up $2.70, corn is up 70 cents, sorghum up 60 cents, and cotton up 15 cents.

In addition, multiple product choices (such as coverage level, unit structure, yield adjustments, and supplemental coverages) are available for producers to customize an insurance program that either protects a higher level of yield or revenue or provides the same level of protection at lower coverage levels and lower costs.





Farm Policy. The surge in net farm income in 2020 compared to the previous few years was driven by increased farm program benefits. Several ad hoc programs were required to counterbalance the impacts of adverse events like retaliatory tariffs, disastrous weather, and COVID-19-related market disruptions. Programs like the Market Facilitation Program (MFP), the Coronavirus Food Assistance Program (CFAP), and the Wildfire & Hurricane Indemnity Program Plus (WHIP+) provided approximately $50 billion in assistance for farms and ranches. This aid was absolutely vital in helping producers weather the economic downturn.

Looking ahead to 2021, the significant increase in government payments experienced in the unprecedented year of 2020 is unlikely to continue. With farm prices above the reference

price, the safety net provided by programs such as ARC and PLC are much less likely to pay. A positive feature of the current farm bill is flexibility producers have to make the ARC/PLC election annually (beginning with the 2021 crop year), in response to changing prices and economic conditions. Further, between the Midwest Derecho (August 2020) and Winter Storm Uri (February 2021), there is growing pressure on Capitol Hill to extend WHIP+ to cover 2020 and 2021 losses.

Summary. Higher commodity prices and an infusion of government support helped improve the financial situation of agriculture in 2020. However, producers who struggled with drought or sold their 2020 crops prior to the rapid escalation of prices late in the year participated less in that financial recovery. The outlook for 2021 is for higher commodity prices and less in the way of government support. Commodity prices are supported by improving economic conditions related to recovery from the global coronavirus pandemic and positive export news, most of that from one customer, China. Current budget projections based on average yields, current price forecasts, and current projected major input prices suggest some room for positive margins for many agricultural producers. The onus will be on producers to craft their own risk management safety net through their crop insurance choices and commodity marketing. Persistent drought will make production conditions difficult in many areas.

ii. 2020 and Prior

In 2019, and the years since 2013, the agriculture sector has faced several hurdles that have made it difficult for farmers to make a profit. Like the 1980s Farm Crisis, there was an agricultural boom at the beginning of this century that started to decline in 2013.[3] While farm land prices have remained steady, unlike the Farm Crisis in the 1980s, production costs have increased and commodity prices have decreased.[4] Additionally, many harvests have been destroyed by unprecedented natural disasters attributable to climate change,[5] and the trade war with China displaced a large market of consumers.[6] While farm income decreased, the national farm debt reached a record-high $415 billion in 2019, almost triple the 2011 amount.[7] These conditions manifested themselves in higher delinquency rates for commercial agricultural loans in both the real estate and non-real estate lending sectors, which were at a six-year high after the

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[3] Alana Semuels, *'They're Trying to Wipe Us Off the Map.' Small American Farmers Are Nearing Extinction*, TIME (Nov. 27, 2019), https://time.com/5736789/small-american-farmers-debt-crisis-extinction/. There was a minor interruption in this "boom" during the Great Recession.

[4] P.J. Huffstutter & Jason Lange, *Wall Street Banks Bailing on Troubled U.S. Farm Sector*, REUTERS (July 11, 2019), https://www.reuters.com/article/us-usa-farmers-lending-insight/wall-street-banks-bailing-on-troubled-u-s-farm-sector-idUSKCN1U618F.

[5] 165 CONG. REC. H7438 (daily ed. July 25, 2019) (statement of Rep. Cicilline).

[6] Humeyra Pamuk & Julie Ingwersen, *Farm Real Estate Prices Holding Up, But USDA Worried About a Fall*, REUTERS (Feb. 21, 2019), https://www.reuters.com/article/us-usa-trade-farm/farm-real-estate-prices-holding-up-but-usda-worried-about-a-fall-idUSKCN1QA2MB.

[7] Newton & Pascoe, *supra* note 2; JENNIFER IFFT ET AL., U.S. DEPT. AGRIC.: ECON. RES. SERV., DEBT USE BY U.S. FARM BUSINESSES, 1992-2011, at 6 (2014), https://www.ers.usda.gov/webdocs/publications/43840/44987_eib122.pdf. (national farm debt in 2011 was 139 billion dollars); *see also* U.S. DEPT. AGRIC.: ECON. RES. SERV., FARM SECTOR BALANCE SHEET AND SELECTED FINANCIAL RATIOS, https://data.ers.usda.gov/reports.aspx?ID=17835 (last update Feb. 5, 2020) (projecting national farm debt to be $415,533,281).

second quarter of 2019.[8] Experts have commented that these conditions, before the Covid-19 crisis, resembled the agriculture environment that farmers faced in the 1980s.[9] It is these economic conditions that likely forced more family farmers to seek Chapter 12 bankruptcy protection in 2019.

B. Chapter 12 Filings

Chapter 12 filings increased nearly twenty percent for the 2019 calendar year,[10] which marked an eight-year high for farm bankruptcy filings.[11] The increase in farm bankruptcies evidences the difficult agricultural economic climate before COVID-19, in addition to the large number of farm closures over the past couple of years.[12] Farm difficulties also got the attention of Congress, which passed the Family Farmer Relief Act of 2019 to increase the Chapter 12 debt limit.[13] The bill was signed into law and made effective August 23, 2019, and increased the debt limit for eligibility to file Chapter 12 from $4,411,400 to $10 million.[14]

Although Chapter 12 filings increased by 20% in 2019, the number of filings is still modest when compared to Chapter 13 or even Chapter 11 filings.

	2018	**2019**	**2020**
Chapter 11	7,095	6,808	8,113
Chapter 12	498	595	552
Chapter 13	290,146	283,413	154,341

In the early months of the COVID-19 pandemic, Chapter 12 filings were increasing at a rate that projected yet another significant increase. The first quarter of 2020 was the sixth

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[8] John Newton & Allison Wilton, *Farm Loan Delinquencies and Bankruptcies are Rising*, AM. FARM BUREAU FED'N (July 31, 2019), https://www.fb.org/market-intel/farm-loan-delinquencies-and-bankruptcies-are-rising.

[9] Huffstutter & Lange, *supra* note 12 (quoting Michelle Bowman, a governor at the U.S. Federal Reserve, that farm decline was a "troubling echo" of the 1980s farm crisis).

[10] ADMIN. OFFICE OF U.S. COURTS, U.S. BANKRUPTCY COURTS – BUSINESS AND NONBUSINESS CASES FILED, BY CHAPTER OF BANKRUPTCY CODE, DURING THE 12-MONTH PERIOD ENDING DEC. 31, 2019; ADMIN. OFFICE OF U.S. COURTS, U.S. BANKRUPTCY COURTS – BUSINESS AND NONBUSINESS CASES FILED, BY CHAPTER OF BANKRUPTCY CODE, DURING THE 12-MONTH PERIOD ENDING DEC. 31, 2018; ADMIN. OFFICE OF U.S. COURTS, U.S. BANKRUPTCY COURTS – BUSINESS AND NONBUSINESS CASES FILED, BY CHAPTER OF BANKRUPTCY CODE, DURING THE 12-MONTH PERIOD ENDING DEC. 31, 2017 (counting 498 Chapter 12 cases filed in 2018, while 595 were filed in 2019).

[11] John Newton & Caleb Pascoe, *The Verdict is In: Farm Bankruptcies Up in 2019*, AM. FARM BUREAU FED'N (Jan. 29, 2020), https://www.fb.org/market-intel/the-verdict-is-in-farm-bankruptcies-up-in-2019.

[12] Alana Semuels, *'They're Trying to Wipe Us Off the Map.' Small American Farmers Are Nearing Extinction*, TIME (Nov. 27, 2019), https://time.com/5736789/small-american-farmers-debt-crisis-extinction/ (over 100,000 closed down between 2011 and 2018).

[13] *See* Family Farmer Relief Act of 2019, Pub. L. No. 116-51, 133 Stat. 1075.

[14] Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed under Section 104(a) of the Code, 84 Fed. Reg. 3488 (proposed Feb. 21, 2019) (noticing the debt limit of $4,411,400, effective April 1, 2019); Family Farmer Relief Act of 2019, Pub. L. No. 116-51, 133 Stat. 1075.

consecutive quarter of increased filings year-over-year. In the first quarter of 2019, 130 Chapter 12 petitions were filed, while 170 Chapter 12 petitions were filed during the first quarter of 2020.[15] But then filings slowed down during the second half of 2020. The total Chapter 12 filings for 2020 was 552.

C. Looking Ahead

Even before COVID-19 hit the United States, the agriculture market entered 2020 with an increase in farm loan delinquencies and farm-lending growth slowing down.[16] Both indicate a weak market and lack of confidence from lenders of future performance. In addition to these conditions, the Family Farmer Relief Act of 2019 increased the Chapter 12 debt limit, which will allow more farmers to file for Chapter 12. And, then, the unprecedented COVID-19 pandemic, which has already caused cataclysmic events in the Ag sector, will no doubt cause a near total market disruption that may negatively impact agriculture for years, potentially causing Chapter 12 filings to continue to climb.

In addition to increasing loan delinquencies at the end of 2019,[17] farm lending continued to slow its growth in the first quarter of 2020 and delinquency rates on non-real estate farm loans reached two percent for the first time since 2011.[18] COVID-19 essentially shut down the country and dramatically changed how agriculture products are consumed. Prior to the pandemic, Americans spent more than half of their food dollars outside the home.[19] With the stay-at-home orders and closing of all non-essential businesses, the majority of food and food dollars have been spent from home.[20] Just as the trade war with China displaced a large market of consumers for farm products, COVID-19 displaced a large market of sales, as restaurants, schools, sporting events, festivals, and other events have been closed or canceled because of the virus.[21] This market disruption asked many farmers to completely change their supply chain, which is difficult when production and resources are set-up to serve a different end user.[22] The dramatic shift in

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[15] ADMIN. OFFICE OF U.S. COURTS, U.S. BANKRUPTCY COURTS – BUSINESS AND NONBUSINESS CASES FILED, BY CHAPTER OF BANKRUPTCY CODE, DURING THE THREE-MONTH PERIOD ENDING MAR. 31, 2019 (130 Chapter 12 petitions filed in the first quarter); Bloomberg Law Docket search for Chapter 12 filings between Jan. 1, 2020 through Mar. 31, 2020 yielded 170 results.

[16] Cortney Cowley & Ty Kreitman, *Farm Lending Activity Slowed in the First Quarter*, FED. RESERVE BANK OF KANSAS CITY (Apr. 16, 2020), https://www.kansascityfed.org/research/indicatorsdata/agfinancedatabook/articles/2020/4-16-20/ag-finance-dbk-4-16-2020.

[17] No data has been released on this for the first quarter of 2020 (yet, as of Apr. 30, 2020), if the increase in Chapter 12 filings is any indication, loan delinquencies will probably have increased as well.

[18] Cowley & Kreitman, *supra* note 18.

[19] Michelle J. Saksena, et al, U.S. Dept. Agric.: Econ. Res, Serv., *American's Eating Habits: Food Away From Home*, report summary (Sept. 2018), https://www.ers.usda.gov/webdocs/publications/90228/eib-196.pdf.

[20] Sean Ellis, *Farmers Say Ag Recovery From Covid-19 will be Long and Slow*, POST REGISTER (Apr. 29, 2020), https://www.postregister.com/farmandranch/idaho/farmers-say-ag-recovery-from-covid-19-will-be-long-and-slow/article_c7b289d4-7437-53f6-85a0-d3280ee1344b.html.

[21] Rick Barrett, *Wisconsin Farm Bankruptcies Rising Rapidly as Coronavirus Weighs Heavily on Agriculture*, MILWAUKEE J. SENTINEL (Apr. 14, 2020), https://www.jsonline.com/story/money/2020/04/14/wisconsin-farm-bankruptcies-rise-coronavirus-devastates-food-service/2984444001/ (stating that about a third of Wisconsin's dairy products are sold in the food-service trade that has effectively shut down because of Covid-19).

[22] Chase Purdy, *Covid-19 has Introduced Chaos to Food Commodity Prices*, QUARTZ (Apr. 24, 2020), https://qz.com/1845491/covid-19-has-destabilized-us-food-commodity-prices/ ("'Farmers are pretty agile, but to completely pivot a supply chain like that when you've dedicated resources for a specific end user is difficult,' says Shelby Myers, an economist at the American Farm Bureau Federation.").

consumption patterns was illustrated by the dramatic decrease in commodity prices. For example, between January 14, 2020 and April 23, 2020, the price of corn decreased by 19%, live cattle by 30%, and lean hogs by 45%.[23] Fluctuations in commodity prices generally stayed within single digits.[24]

In the first quarter of 2020, the Trump Administration announced a $19 billion package for farmers and ranchers, with $16 billion in direct payments to farmers and agricultural producers and $3 billion in purchases of fresh produce, dairy, and meat over the next six months for distribution to food banks and other non-profits servicing Americans in need.[25] Despite this financial assistance, leaders in local agricultural groups in Idaho predicted that recovery from COVID-19 will take at least six months, if not two years.[26] In the meantime, the vice president of the National Farmers Union, Parry Edelburg, predicted that "a lot more family-sized farms [will] go out of business" because of the pandemic and the poor agricultural economic conditions over the past few years.[27]

D. Chapter 12 Filings in Texas

Chapter 12 filings in Texas for 2019 and 2020 did not reflect the national trends. Filings remain modest. There were 22 Chapter 12 filings in 2019 and 16 in 2020.

Despite the modest filing numbers in Texas, experts are predicting difficult times ahead. A report by the Agricultural and Food Policy Center at Texas A&M University estimates Texas' agricultural losses resulting from the pandemic could be as much as $6 billion to $8 billion.[28] To put this in perspective, the total agricultural receipts from sales of Ag commodities in 2018 was about $22 billion. The Ag sector has experienced supply chain issues and labor shortages; instability in commodities markets; and a change in where people are now spending their food dollars.

The commodities most affected by the COVID-19 pandemic are cattle, sheep and goats, fruits and vegetables, and dairy products. Row crops such as corn, cotton, wheat, sorghum, rice, and soybeans have been "especially hard hit."[29] Protection from crop insurance has also diminished: farmers may lose as much as 20%-30% of their crops before getting any benefit from insurance.[30]

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[23] *Id.*
[24] *Id.*
[25] Jerry Hagstrom, *Pandemic Exposes Inefficiencies in Agriculture*, NAT'L J. (Apr. 22, 2020), https://www.nationaljournal.com/s/706257?unlock=15QSZDQTE4TPKRSS.
[26] *Id.* (quoting Idaho Barley Commission Executive Director Laura Wilder, CEO of the National Potato Council Kam Quarles, production manager of Treasure Valley Seed Co. Don Tolmie, and Vice President of Idaho Farm Bureau Federation Richard Durrant).
[27] Justin Worland, *American Farmers Were Already Hurting. Now the Coronavirus Slowdown Might Do Them In*, TIME (Apr. 21, 2020), https://time.com/5823489/coronavirus-covid-farmers/.
[28] Paul Schattenburg, *New report estimates Texas' agricultural losses from pandemic could be $6-8 billion*, AGRILIFE TODAY (May 7, 2020), https://agrilifetoday.tamu.edu/2020/05/07/new-report-estimates-texas-agricultural-losses-from-pandemic-could-be-6-8-billion/.
[29] *Id.*
[30] *Id.*

Assistance from the federal government has no doubt softened the impact on farmers and ranchers, but these are arguably short-term fixes for a longer-term problem.

II. The Basics of Chapter 12

A. Eligibility for Chapter 12

A chapter 12 debtor must meet the farming operation test as described in § 101(21).

A "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production of crops, poultry or livestock, and production of poultry or livestock products in an unmanufactured state."

Also, must qualify under the "family farmer" test found in §§ 101(18)(A) and 101(18)(B) meaning:

> A. An individual or individual and spouse engaged in a "farming operation" whose aggregate debts do not exceed $10 million and not less than 50% of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence unless the debt arises out of a farming operation) on the petition date arise out of a farming operation owned by the debtor(s), and the debtor(s) received more than 50% of their gross income for the taxable year preceding, or the 2d and 3d taxable years preceding the taxable year in which the case is filed.
>
> B. A corporation or partnership in which more than 50% of the stock or equity is held by one family, or by one family and the relatives of the members of the family, and such family or relatives conduct the farming operation; and more than 80% of the value of its assets relate to the farming operation; and its aggregate debts do not exceed $10 million, and not less than 50% of its aggregate noncontingent, liquidated debts (excluding the debt against a dwelling that serves as the principal residence of a shareholder or partner, unless the debt arose from the farming operation) on the petition date, arise out of the farming operation owned or operated by the corporation or partnership; and the corporation's stock is not publicly traded.

Finally, the debtor must be a "family farmer with regular annual income" such that the annual income must be sufficiently stable and regular to enable the family farmer to make payments pursuant to a chapter 12 plan.

B. The Process of Analyzing the Claims and the Collateral

The success of a chapter 12 plan is tied to an early and accurate analysis of the claims and the collateral. A typical farm plan will provide for a valuation of the collateral securing the claims and "writing down" of the secured debt to the value of the collateral.

Pre-petition appraisals of farmland and machinery and equipment, if possible, are important because of the abbreviated nature of the proceeding. This allows the debtor to use the valuations in the preparation of the plan, and, if necessary file a motion under Bankruptcy Rule

3012 requesting the court, after notice and hearing, to determine the value of property which secures the claim. Rule 3012 simply implements § 506(a) which provides for a determination of the extent to which claims are secured or unsecured. These motions often spur negotiations with lenders to avoid a contest of experts at a valuation hearing.

Once the amount of secured claims are determined the plan can be drafted such that each holder of an allowed secured claim retains its lien against its collateral, and receives deferred cash payments at an interest rate which provides a value equal to the amount of the claim as of the effective date of the plan. Generally, these claims are paid an interest rate tied to the prevailing market rate for a similar loan of an equal term with due consideration for the quality of the security and the risk of subsequent default.[31]

C. The Role of the Chapter 12 Trustee

All chapter 12 cases are subject to the oversight of a chapter 12 Trustee. The Trustee is charged with

- Being accountable for all property received;
- Ensuring the debtor performs his intention with respect to property to be retained or surrendered which is claimed as exempt and whether the property will be redeemed or the debt reaffirmed;
- Investigate the financial affairs of the debtor;
- If appropriate examine proofs of claim and object to the allowance of any claim that is improper;
- If advisable, oppose the discharge of the debtor;
- Furnish information concerning the estate and the estate's administration as is requested by a party in interest;
- Make a final report and file a final account of the administration of the estate with the court and the U.S. Trustee.[32]

The Trustee must appear and be heard at any hearing which concerns:

- The value of property subject to a lien;
- Confirmation of a plan;
- Modification of the plan after confirmation; or
- The sale of property of the estate.[33]

In most chapter 12 cases the Trustee acts as a mediator between the debtor and the creditors, and ensures the debtor commences to timely make plan payments pursuant to a confirmed plan.[34]

The Trustee also acts to enforce any domestic support obligations of the debtor.[35]

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[31] *See* 11 U.S.C. § 1225(a)(5)(B).
[32] *See generally* § 1202.
[33] § 1202(b)(3).
[34] § 1202(b)(4).
[35] § 1202(b)(6).

D. Commissions due the Chapter 12 Trustee

While the language of sections 1225(a)(5)(B)(ii) –(payments by *the trustee or the debtor*) and 1226(c) -- (trustee shall make distributions to creditors *unless otherwise provided by the plan*) allow for plan payments to be made directly by the debtor, questions have arisen over whether such payments can avoid the commissions due the trustee. The cases seem to turn on how much the treatment of the secured creditor's claim is altered from its pre-petition status, and how responsible and sophisticated the debtors and creditors are which are being affected by the payments. The issue is not insignificant because the payment of trustee's fees in a district having a standing chapter 12 trustee results in an interest factor of an additional 9%. The decisions in the 5th circuit seem to lean toward adopting an analysis on a case-by-case basis using the *Pianoski* factors to determine whether payments should be allowed to be made directly to impaired creditors. The Michigan bankruptcy court wrote in the case of *In re Pianoski*, 92 B.R. 225 (Bankr. W.D. Mich. 1988) that the following factors are appropriate to consider:

- Past history of debtor;
- Business acumen of debtor;
- Debtor's post-petition compliance with statutory and court-imposed duties;
- Good-faith of debtor;
- Consent, or lack thereof, by affected creditor of plan treatment;
- Legal sophistication and ability of affected creditor to monitor compliance;
- Ability of trustee and court to monitor future payments;
- Potential burden on the trustee;
- Possible effect on trustee's salary or funding of U.S. trustee system;
- Potential for abuse of bankruptcy system; and
- Existence of other unique or special circumstances.[36]

E. Tax Advantages of Chapter 12

Effective October 26, 2017, 11 USC § 1232(a), provides that any unsecured claim of a governmental unit against the debtor or the estate that arises before the filing of the petition, or that arises after the filing of the petition and before the debtor's discharge under 11 USC § 1228, as a result of the sale, transfer, exchange, or other disposition of any property used in the debtor's farming operation:

> (a) will be treated as an unsecured claim arising before the date on which the petition is filed;
> (b) will not be entitled to priority under 11 USC § 507;
> (c) will be provided for under a plan;
> (d) and will be discharged in accordance with 11 USC § 1228.[37]

Clearly, the de-prioritization of income taxes is very important for family farmers. It allows them to have claims of governmental units that arise because of the sale, transfer of other disposition of farm assets used in the farming operation whether sold before or after filing a

[36] *In re Pianoski*, 92 B.R. 225, 233-34 (Bankr. W.D. Mich. 1988).
[37] 11 U.S.C. § 1232(a).

Chapter 12 bankruptcy as well as pursuant to a confirmed Chapter 12 Plan of Reorganization, treated as a pre-petition unsecured claim that will be discharged in the Chapter 12 bankruptcy.

In order to take advantage of these provisions, tax preparers should utilize the procedures set out in IRS Revenue Procedure 2006-24 ("Rev Proc 2006-24") which establishes the procedure for requests for prompt determination of any unpaid tax liability of a bankruptcy estate.

According to Rev Proc 2006-24, to request a prompt determination of any unpaid tax liability of a bankruptcy estate, the trustee (or in this instance "debtor in possession") files a signed written request, in duplicate, with the Centralized Insolvency Operation, Post Office Box 7346, Philadelphia, PA 19101-7346 (marked, "Request for Prompt Determination"). To be effective, the request must be filed with an exact copy of the return (or returns) for a completed taxable period filed by the debtor with IRS and must contain listed information (1) through (7) of Section 2 of Rev Proc 2006-24 which provides:

- State the debtor has filed a chapter 12 bankruptcy
- Provide the case number;
- Provide style of the case
- Provide location of the court where the case is pending;
- State the amount of the claim;
- Include a copy of the return;
- Documentation supporting the calculation of the claim.[38]

It is imperative that the copy of the return(s) submitted with the request be an exact copy of a valid return. A request will be considered incomplete and returned to the trustee if it is filed with a copy of a document that does not qualify as a valid return. A document that does not qualify as a valid return includes a return form filed by the trustee with the jurat stricken, deleted, or modified. A return must be signed under penalty of perjury to qualify as a return.

Further, to be effective the return should be served on the U.S. Attorney for the district where the bankruptcy is pending, along with a copy of the letter requesting the prompt determination. Additional copies should be sent to the address of the governmental unit maintained by the bankruptcy clerk for the district as required by section 505(b), and, if known, to the IRS Insolvency Specialist assigned to the case.

The following are the mechanics of preparing the actual tax returns to send along with the Request for Prompt Determination.

<u>Step 1: Prepare a Traditional Return:</u>
Calculate the tax due if all income is reported as being taxable. (Prepare federal returns just like you would normally prepare them).

<u>Step 2: Prepare a Pro-forma Return:</u>
Calculate the tax due if income from sale of property used in the debtor's farming operation is excluded. This is called the Pro-Forma Return. It is sent to the IRS

[38] *See* Internal Revenue Manual 5.17.11.20

and any applicable state department of revenue along with the Traditional Return as well as the calculations set forth below showing how much tax is deprioritized and is therefore dischargeable through the Chapter 12 Plan of Reorganization. Do not hesitate to contact the lawyer handling the Chapter 12 case for the taxpayer to make sure which assets are to be excluded when preparing the Pro-forma Return.

Step 3: Subtract the tax due as found under Step 2 from the tax due under Step 1: The difference between the tax shown on the Traditional Return and the Pro-Forma Return is the tax treatable under Section 1232, which is de-prioritized and is dischargeable. The tax shown on the Pro-Forma Return is the priority tax that must be paid by the debtor.[39]

A bankruptcy court decision from the U.S. Bankruptcy Court for the Northern District of Iowa holds that taxes created as the result of a crop insurance claim are de-prioritized under Section 1232. It is worth reading because it gives background information on the history of section 1232 and what its passage was intended to accomplish for family farmers. It also serves as authority for treating any taxes created by the sale of any property used in the debtor's farming operation as receiving de-prioritized treatment under the provisions of section 1232.[40]

F. Options to Finance Operations During Chapter 12

A family farmer who has lost his conventional operating lender can use the statutory provisions of Chapter 12 to finance the production of crops and livestock:

i. Cash Collateral

Attention should be given to the timing of the filing of the case. If the petition is filed following the harvest when crop proceeds and farm program benefits are available the debtor can seek the use of the proceeds as cash collateral and grant the secured lender under the adequate protection provisions of section 1205 an additional or replacement lien in future crops, crop insurance proceeds and USDA farm program benefits to the extent there is any decrease in the value of the property securing the claim.

ii. *Post-Petition Financing*

If proceeds of crops or livestock are not available or are not sufficient to finance the production of the next year's crops or the maintenance of the livestock the provisions of section 364 allow the debtor to obtain secured financing by the use of liens against future crops, crop insurance proceeds and USDA farm program payments. Once again the adequate protection provisions of section 1205 allow flexibility to compensate for any loss of secured creditors for any diminution in collateral values.

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[39] *See* Internal Revenue Manual 5.9.9.10.3(1); 11 U.S.C. § 1232.
[40] *In re Pedersen*, 593 B.R. 785 (Bankr. N.D. Ia. 2018).

G. Drafting and Obtaining Confirmation of the Plan

i. Abbreviated Time Periods:

The debtor in a Chapter 12 must file a plan within 90 days from the order of relief; however, the period may be extended for cause attributable to circumstances for which the debtor should not justly be held accountable. [41]

After expedited notice of the confirmation hearing and hearing must be concluded not later than 45 days – unless for cause. Rule 2002(a)(8) requires no less than 21 days' notice of the confirmation hearing to creditors, the trustee and interested parties. [42]

ii. *Contents of a Chapter 12 Plan:*

There is no requirement for a disclosure statement to accompany a Chapter 12 plan, and no solicitation or voting requirements are necessary to confirm the plan, but an unsecured creditor or the trustee can object to confirmation.

Section 1222 provides a listing of provisions that must be included in a Chapter 12 plan:

- Submission of all or such portion of future earnings or other income to the trustee as necessary for execution of plan;

- Provide for full payment in deferred cash payments for all claims entitled priority under Section 507, unless the creditor agrees to different treatment;

- If claims are classified provide for equal treatment of all claims in a particular class unless the holder agrees to less favorable treatment;

- If all of the debtor's projected disposable income for a 5-year period is devoted to plan payments then the plan can provide for less than full payment of domestic support obligations;

- Provide for the treatment of claims of governmental units for taxes created by the disposition of farm assets as general unsecured claims;

- Provide for the creation of an administrative convenience class of holders of unsecured claims as provided in Section 1122, and provide for a different treatment for consumer debt for which the debtor is liable;

- Modify or leave unaffected the rights of holders of secured or unsecured claims;

- Provide for the waiving or curing of any default;

[41] 11 U.S.C. § 1205
[42] 11 U.S.C. § 1224

- Provide for payments of unsecured claims concurrently with secured claims;

- Provide for the curing of any default in plan payments within a reasonable time for holders of unsecured claims or secured claims on which the final payment is due after the conclusion of the plan;

- In accord with Section 365, provide for the rejection, assumption or assignment of executory contracts or unexpired leases;

- Provide for the payment of a portion or all of a claim by the transfer of property of the estate or debtor;

- Provide for the sale of property of the estate or distribution of property of the estate to those having an interest in such property;

- Provide for the payment of secured claims for a period longer than the Plan (3 to 5 years);

- Provide for vesting of property in the debtor or in any other entity upon confirmation or at a later date;

- Provide for the payment of interest on domestic support obligations if the debtor has disposable income to pay such interest after the payment in full of all allowed claims; and

- Include other appropriate provisions not inconsistent with other provisions of the Code.

iii. Statutory Requirements for Confirmation of Plan:

The major advantage Chapter 12 offers to family farmers and fishermen is the absence of the absolute priorities rule which allows the largest secured creditor in the case – who is often the largest unsecured creditor as well due to the bifurcation of its claim under the provisions of Section 506(a) – to block confirmation of the plan by insisting that the debtor retain nothing under the terms of the plan unless all unsecured claims are paid in full.[43] Of course, in such a situation the under secured creditor votes its unsecured deficiency claim, which more often than not is more than 33.33% of the claims voting in the class of general unsecured claims, preventing confirmation through the claims voting process provided in Section 1129(a)(8), and then objects to the cram-down provisions of Section 1129(b) by raising the absolute priorities rule.

The requirements for confirmation of a Chapter 12 plan as set out in 11 U.S.C. § 1225 do not include an objection to confirmation based upon the absolute priorities rule.

Instead it provides the court shall confirm a plan if the plan:

[43] 11 U.S.C. § 1129(b)(2)(B)

- Complies with all applicable chapters of Title 11;

- All filing fees have been paid;

- Is proposed in good faith and not by any means forbidden by law;

- Pays unsecured claims not less than what they would receive in Chapter 7;

- Secured creditors either accept the treatment in the plan or are paid the present value of their claim;

- Unsecured creditors are paid at least as much as much as they would receive in a Chapter 7 liquidation;

- The plan is feasible because the debtor demonstrates it can make all payments under the plan; and

- Provides for the payment of all domestic support obligations.

iv. Practice Tips:

Perhaps the most important elements of evidence at a the confirmation hearing for a Chapter 12 plan are the cash flow projections and a solid, evidence-based liquidation analysis.

Cash Flow Projections: Cash flow projections showing sources and uses of funds over the term of the plan should be prepared by a cash flow consultant familiar with the farming operations of the debtor. The projections will reflect the income available to make the payments specified in the plan and the amount paid to holders of general unsecured claims equal to at least the amount of dividends they would receive in a hypothetical Chapter 7 case. These cash flow projections should be based upon historical prices and expenses for the crops the debtors grow or the livestock they produce. Credibility is added if the expense and income projections can be compared to an objective source such as the agriculture extension service. These cash flow projections substantiate that the proposed restructuring arrangement is feasible and can be performed by the Debtors.

Liquidation Analysis: An accurate liquidation analysis backed-up by recent appraisals of land, machinery and equipment, crops and livestock is an essential tool for the debtor in Chapter 12 reorganizations. Section 1225(a)(4) provides that the dividends over the life of the Plan paid to unsecured creditors must be paid "*the value, as of the effective date of the plan, . . . not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date.* Thus, the measuring date is the effective date of the plan. This means projected administrative expenses of the Chapter 7 (i.e. real estate and auctioneer commissions, property taxes, legal and accounting fees, etc.) and administrative expenses incurred by

the Chapter 12 estate, along with any administrative tax claims under Section 503(b), must be taken into account in the calculation.

v. Response to Objections to Confirmation

Upon objection to confirmation by the Trustee or an unsecured creditor under Section 1225(b)(1), then the court may still confirm the plan if the plan provides:

- For the payment of creditor in full,
- or the debtor dedicates all disposable income to plan, or
- the plan provide for payments that are not less than the debtor's projected disposable income.

Section 1225(b)(2) defines "disposable income" as income not reasonably necessary for:

- Maintenance or support of debtor or dependents;
- Payment of a domestic support obligation;
- Necessary for payment of expenditures to continue, preserve or operate the debtor's business.

H. Ability to Modify Plan After Confirmation to Complete Payments or Obtain Hardship Discharge

Section 1229 provides for modifications of the plan after confirmation but before completion of payments on request of the debtor, the trustee of the holder of an unsecured claim, but the plan as modified must:

- Pay at least the amount unsecured creditors would receive in Chapter 7 liquidation; and
- The modifications cannot provide for the plan to be extended beyond 5 years measured from date of first payment.

Discharge can be granted without completing plan payments if the failure is due to circumstances for which the debtor should not justly be held accountable, and modification is not practicable.[44]

III. Alternatives to Chapter 12

Chapter 12 typically provides agricultural businesses the best method to restructure and reorganize under the Bankruptcy Code. Nonetheless, situations will arise that either prevent the

[44] 11 U.S.C. § 1228(b)

business from qualifying for Chapter 12 protection or Chapter 11 provides a better opportunity to reorganize on account of some of the limitations that Chapter 12 creates. Additionally, with the new Subchapter V provisions of Chapter 11, an agricultural business may want to consider whether Subchapter V provides it with the best tools to reach its financial restructuring.

A. Chapter 11

i. Large Agricultural Operations

As has been discussed, to qualify as a family farmer, the debtor must not have more than $10 million in aggregate debts.[45] Some agricultural businesses, however, will have debts greater than $10 million preventing them from filing a Chapter 12. Typically this is seen in agricultural operations which require significant amounts of land, machinery, and equipment to operate. Dairy operations require significant capital expenditures relating to the milking process, including, but not limited to, milking equipment, milk storage equipment, and the herd. These capital expenditures are in addition to the land and improvements necessary to care for the herd, new born calves, and to grow feed and dispose of waste for the dairy operation.

In situations where the agricultural business is too large to qualify for Chapter 12 relief, the debtor must then file for Chapter 11 relief to restructure its operations. In these cases, the agricultural business will be required to navigate a Chapter 11 similar to all other businesses that file for Chapter 11.

ii. Land Rich, Cash Poor

Agricultural businesses often find themselves in the situation where the debtor has valuable land used in the agricultural business, but the farming or ranching operations do not provide or have not provided the debtor with the cash flow necessary to meet its annual operating expenses. This could arise due to poor crop years, poor commodity prices, weather events, or other unforeseen events that cause for the debtor to not realize sufficient cash flow from its operations. These events leave the debtor will large amounts of unsecured debts, but sufficient equity in land that a liquidation analysis would show that the unsecured creditors would be paid in full or close to full in a Chapter 7 bankruptcy.

As with Chapter 11, Chapter 12 of the Bankruptcy Code requires the debtor's plan of reorganization to pay general unsecured creditors as much as they would receive if the case was one under Chapter 7 of the Bankruptcy Code.[46] Chapter 12, however, restricts the length of a plan that can be confirmed to no more than five years.[47] This restriction can create significant problems for a debtor with equity in land sufficient to require payment in full to the debtor's general unsecured creditors, but cash flows that will not support such payment in no more than five years.[48]

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[45] 11 U.S.C. § 101(18)(A).
[46] 11 U.S.C. § 1225(a)(4).
[47] 11 U.S.C. § 1222(c).
[48] *See* 11 U.S.C. § 1225(a)(6) (requiring evidence the debtor will be able to make all payments required under the plan, i.e. feasibility test).

In these situations, the debtor will either have to sell off its land to realize the equity in the land to pay towards the general unsecured creditors, or the debtor can choose to file a Chapter 11 where the debtor can propose a plan of reorganization that stretches out the plan payments to general unsecured creditors over a longer period of time (greater than five years) which are supported by the debtor's projected cash flows.

B. Subchapter V

With the recent passage of Subchapter V of Chapter 11 and the increase in the debt limit brought on by the CARES Act[49] to $7.5 million, Subchapter V provides an alternative for a debtor that brings with it several similar components to Chapter 12. For example, Subchapter V, similar to Chapter 12, eliminates the absolute priority rule, eliminates a separate disclosure statement requirement, eliminates a quarterly U.S. Trustee's fees, and uses a case trustee to oversee the case. However, Subchapter V does provide some alternatives to debtors that may be more advantageous than Chapter 12.

i. Administratively Less Expensive

a. Administration of Plan Payments

Under Chapter 12, the Chapter 12 Trustee administers payments to creditors under the debtor's confirmed Chapter 12 plan. The Chapter 12 Trustee is entitled to a statutory fee for the payments administered. This fee is typically ten percent of the amount of the payment to creditors up to the first $450,000 administered.[50] Thereafter, the fee is reduced to three percent of the amount of the payment to creditors.[51] If the debtor's margins are extremely slim, the added ten percent cost of the Chapter 12 Trustee may create a burden on the debtor it cannot support. Even when plans are confirmed without objection, i.e. consensually, Chapter 12 still requires the Chapter 12 Trustee to act as plan administrator for payments. And, with Chapter 12 plans typically lasting between three to five years, the debtor will have this added administrative cost to its farming or ranching operation for several years.

Therefore, if the debtor believes a consensual plan of reorganization can be reached with its creditors, Subchapter V provides a means to avoid the administrative costs of a Chapter 12 Trustee. Once a plan is confirmed under 11 U.S.C. § 1191(a) and substantially consummated, the duties of the Subchapter V Trustee are terminated.[52] Payments under the plan, no matter how long the plan is, do not have to go through the Subchapter V Trustee.[53] Even when the plan is confirmed under 11 U.S.C. § 1191(b), the debtor might be able to avoid the administrative costs of the Subchapter V Trustee acting as a plan administrator. Section 1194(b) provides the default situation is the Subchapter V trustee shall make plan payments to creditors.[54] Nonetheless, the

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[49] The CARES Act increased the debt limit for small business debtors under Subchapter V to $7.5 million. This amount was scheduled to sunset on March 27, 2021 and return to $2.7 million. On March 26, 2021, an act extending the increased debt limit was passed and signed into law by President Biden. The extension now provides for the $7.5 million to sunset on March 27, 2022.
[50] 28 U.S.C. § 586(e)(1)(B)(i)-(ii).
[51] *Id.*
[52] 11 U.S.C. § 1183(c)(1).
[53] *See* 11 U.S.C. § 1194(a).
[54] 11 U.S.C. § 1194(b).

debtor can provide in the plan or the order confirming the plan that the debtor or a different third party will act as payment administrator under the plan.[55] This flexibility gives the debtor the ability to reduce its administrative costs and avoid payment of trustee's fees as part of the plan.

b. Continued Need for Court Approval

Under Chapter 12, a debtor will remain in bankruptcy throughout the life of the Chapter 12 plan. Again, typically Chapter 12 plans will last between three to five years. While this might have some advantages, like ability to modify the plan post confirmation, it also creates situations where the debtor will be required to continue to seek bankruptcy court approval for operational needs the debtor would not otherwise be required to do outside of bankruptcy. It is very common in the agricultural industry for farmers to get annual crop loans in order to plant and harvest their crops. Each year, the debtor in Chapter 12 will be required to seek court approval pursuant to § 364 of the Bankruptcy Code to enter into these lending transactions. Additionally, the debtor may be required to seek court approval for purchase of farm machinery and equipment, especially when such equipment is going to be financed. Each of these events adds to the administrative costs for the debtor.

Under Subchapter V, these administrative costs might be avoided if the debtor is able to confirm a plan of reorganization under § 1191(a). As discussed above, once the plan is confirmed under § 1191(a) and substantially consummated, the Subchapter V Trustee is terminated.[56] The debtor may also seek to have the bankruptcy case closed. While the debtor will still be operating under the confirmed plan, the debtor will be out of bankruptcy and will not be required to seek court approval for annual crop loans or other financing to purchase farm machinery and equipment.

c. Continued Monthly Operating Reports

Post confirmation in Chapter 12 cases the debtor is required to continue to file monthly operating reports with the court.[57] These monthly operating reports are used by the Chapter 12 Trustee to assure debtor is paying to its general unsecured creditors its projected disposable income as required by the plan and the Bankruptcy Code.[58] This administrative requirement under Chapter 12 will add to the administrative costs experienced by the debtor under Chapter 12.

Post confirmation in Chapter 11 cases proceeding under Subchapter V the debtor who has confirmed a plan under § 1191(a) will most likely not have to file any post confirmation operating reports unless for some reason the debtor has not substantially consummated the plan within the time frame that a quarterly operating report becomes due.[59] In cases confirmed under § 1191(b) the debtor will be required to file quarterly operating reports during the three to five years under the plan. While quarterly reports are still due, administrative expenses for filing quarterly reports should be less than monthly operating reports required under Chapter 12.

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[55] *Id.*
[56] 11 U.S.C. § 1183(c).
[57] FED. R. BANKR. P. 2015(b); *see* Interim Rule 2015(c).
[58] *See* 11 U.S.C. § 1225(b)(1); *see* FED. R. BANKR. P. 2015(b).
[59] *See* Interim Rule 2015, FED. R. BANKR. P.

ii. Quicker Exit From Bankruptcy

As mentioned previously, under Chapter 12 a debtor will remain in bankruptcy throughout the life of the Chapter 12 plan. Typically Chapter 12 Plans will last between three to five years. As discussed above, during this time the debtor will remain under the supervision of the bankruptcy court and be required to continue to seek court approval for operational needs like continued financing.

Under the Subchapter V provisions of Chapter 11, the debtor has the ability to exit bankruptcy upon the confirmation of a plan confirmed under § 1191(a) and substantial confirmation. This allows the debtor to exit bankruptcy typically within 15 to 45 days after the confirmation order has been entered by the court.

iii. Quicker Discharge

Under Chapter 12 the debtor is usually not able to get a discharge under Chapter 12 until the debtor has completed all plan payments called for under the confirmed plan. The debtor will typically have to wait for three to five years before discharge can be granted.

Under the Subchapter V provisions of Chapter 11, the debtor, who has confirmed a plan under § 1191(a) of the Bankruptcy Code, receives a discharge of the debts not otherwise dealt with in the plan pursuant to the provisions of § 1141(d), other than § 1141(d)(5), upon the effective date of the confirmed plan.[60]

IV. Summary and Conclusion

The current economic outlook for American agriculture is mixed. While grain and cotton prices have increased substantially over the first quarter of 2021, the future of federal government programs are uncertain and trade relations with the nation's largest consumer, China, lack stability.

Chapter 12 filings have not substantially increased during the pandemic, but projections are for increased filings once the economy opens up again, and farmers and ranchers are able to assess their current financial status.

Bankruptcy practitioners who familiarize themselves with the tools available to them through the provisions of Chapter 12 and Chapter 11, including subchapter V of Chapter 11, will be better prepared to serve their clients who own and operate farms and livestock operations or small businesses in restructuring their finances to improve cash flow and operations, and address and minimize tax obligations owed to state and federal taxing authorities.

[60] *See* 11 U.S.C. §§ 1191(a); 1141(d).