

## Bankruptcy Code Changes, Part 1: Family Farmer Relief Act

PUBLISHED ON

**August 29, 2019**

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*Recent amendments to the U.S. Bankruptcy Code will likely increase bankruptcy filings by small businesses and farmers.*

*Two of the changes in particular will be of high interest to those who work in agriculture and small business lending: the Family Farmer Relief Act of 2019 and the Small Business Reorganization Act of 2019.*

*This is part 1 of a two-part series dealing with the amendments, looking at the basics of the [Family Farmer Relief Act of 2019](#) and its effects on the lending industry:*

The Family Farmer Relief Act of 2019 comes at a critical time in agriculture. [You may have heard this at our LendiCon 2019 event](#), but agriculture has been experiencing a recession and dairy farmers have been experiencing a depression.

The new act is expected to address the rising tide of economic hardship in the farming industry, as it increases the debt threshold for a family farmer that will be eligible to apply for Chapter 12 bankruptcy protection. Chapter 12 protection is universally considered a much more small farm-friendly form of bankruptcy protection.

The act raises the debt threshold of those eligible for Chapter 12 protection from about \$4.4 million to \$10 million.

The change goes into effect immediately.

The U.S. Department of Agriculture Economic Research Service has noted that inflation-adjusted net farm income in 2019 is likely to be 49% below its highest level in 2013. The ongoing trade dispute between the U.S. and China is helping to exacerbate economic conditions by further depressing domestic commodity prices. In Pennsylvania, Ag Choice Farm Credit noted in an account appearing on its website in 2017 that the average number of cows held by dairy farmers in Pennsylvania was 266 in 2016, with a high of 1,920 cows. Debt on such farms was then \$5,100 per cow or \$1,356,600 on average or \$9,792,000 at the highest level. In 2017, the debt per cow rose to \$5,414. These financial hardships pushed Mid-Atlantic region Chapter 12 farmer bankruptcy filings up 15 percent in fiscal year 2019, [according to the U.S. Department of Agriculture's Farm Service Agency](#).

The change means both family farmers and agricultural lenders will want to revisit the terms of Chapter 12 of the Bankruptcy Code. The increased debt limit significantly changes the availability of Chapter 12, which was first enacted in 1986 during the 1980s farm crisis and has been extended, made permanent and expanded over time.

Some in the industry believe the prior debt threshold limited the number of Chapter 12 filings. Chapter 12 contains a number of features that are quite different than Chapter 11 or Chapter 13, such as:

- Providing a co-debtor stay
- Shortened plan timelines and the elimination of the absolute priority rule

- Enhanced asset sale capabilities
- Different adequate protection standards and particularly favorable treatment of capital gains tax claims (thanks to the Family Farmer Bank Clarification Act of 2017, which added a new Section 1232 treating such tax claims as pre-petition unsecured claims which are dischargeable)

Throughout the agribusiness community, parties will do well to carefully consider credit risk that may be presented by the potential for a higher number of Chapter 12 filings. If anyone has any questions on the Family Farmer Relief Act of 2019 can [reach out to me](#) or anyone in Barley Snyder's [Finance & Creditors' Rights Practice Group](#).

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