



AMERICAN
BANKRUPTCY
INSTITUTE

Central States Bankruptcy Workshop

Agricultural and Chapter 12 Issues

Mark A. Bogdanowicz

Spencer Fane LLP | Kansas City, Mo.

Rebecca R. DeMarb

Kali Resolutions Partners LLC & Swanson Sweet LLP | Madison, Wis.

Hon. Shon Hastings

U.S. Bankruptcy Court (D. N.D.) | Fargo

Austin Peiffer

Ag & Business Legal Strategies | Hiawatha, Iowa

Jeffrey Peterson

Winthrop & Weinstine, PA | Minneapolis

ARTICLE: Betting on the Farm: Feasible Chapter 12 Plans

2021

Reporter

95 Am. Bankr. L.J. 279 *

Length: 37860 words**Author:** by Alexandra Power Everhart Sickler*

* Associate Professor, University of North Dakota School of Law.

Text

[*279]

INTRODUCTION

The tradition of the small family farmer persists in the United States against all odds. These businesses, which constitute about 90 percent of U.S. farms,¹ are often highly leveraged. They have substantial debt service payments to finance their operations² but narrow profit margins.³ Moreover, they operate subject to the perils of extreme weather, market fluctuations, and government policy changes, all variables beyond their control. Any one of

¹ Christine E. Whitt, Jessica E. Todd, & James M. MacDonald, U.S. Dep't. of Agric., Econ. Res. Svc., *America's Diverse Family Farms: 2020 Edition* (2020), <https://www.ers.usda.gov/webdocs/publications/100012/ejb-220.pdf?v=5181.5> [hereinafter Whitt, Todd, & Macdonald, *America's Diverse Family Farms*]. According to this report, "family-owned farms," those where the "majority of the business is owned by the principal operator - the person who is most responsible for making day-to-day decisions for the farm - and by individuals" related to him, "accounted for 98 percent of farms and 86 percent of production in the United States in 2019. *Id.* at 2. In addition, approximately "90 percent of the farms are small," where farm size is measured by "gross cash farm income" (GCFI), a revenue calculation that includes "sale of crops and livestock, Government payments, and other farm-related income, including fees from production contracts." *Id.* at 3-4. According to those measurements, a small family farm has a GCFI less than \$ 350,000, a mid-size family farm has GCFI between \$ 350,000 and \$ 999,999 (accounting for 111,486 farms, or 5.5 percent of U.S. farms), and a large-scale family farm has a GCFI of \$ 1 million or more (accounting for 50,034 farms or 2.5 percent of U.S. farms). *Id.* at 3. A farm that qualifies as a small family farmer using these definitions is not necessarily eligible to file for chapter 12 under the Bankruptcy Code's eligibility requirements, *see* 11 U.S.C. § 101(18), though there is overlap.

² Jesse Newman, *More Farmers Declare Bankruptcy Despite Record Levels of Federal Aid*, Wall Street Journal (Aug. 6, 2020) <https://www.wsj.com/articles/more-farmers-declare-bankruptcy-despite-record-levels-of-federal-aid-11596706201>; ("U.S. farm debt has grown steadily ... to more than \$ 425 billion this year, the U.S. Department of Agriculture estimates. That is the largest sum since a farm crisis in the 1980s that pushed many farmers and lenders out of business.").

³ *See* Whitt, Todd, & MacDonald, *Americans Diverse Family Farms*, *supra* note 1, at 7-8 (noting that between 62 and 81 percent of small family farms have operating profit margins that indicate a higher risk of financial problems, but do not consider farming their primary occupation).

these stressors inflicts financial harm, but when they combine, as they have in recent history, America's smaller farms face a risk of extinction.⁴

Chapter 12 of the U.S. Bankruptcy Code provides a solution for this [*280] special category of honest but unfortunate debtors.⁵ Congress created chapter 12 as a temporary, emergency response to the 1980s farm crisis,⁶ and made it permanent in 2005.⁷ It is a restructuring tool designed to "give [family] farmers a fighting chance to reorganize their debts and to keep their land" through a repayment plan.⁸ But only farms that meet the Bankruptcy Code's debt and income eligibility requirements qualify for chapter 12.⁹ Initially, farms with \$ 1.5 million or less in aggregate debts could file a chapter 12 case,¹⁰ an amount Congress later increased to \$ 3.2 million and prescribed periodic adjustments for inflation.¹¹ But in the intervening years, farmers took on record levels of farm debt because the capital requirements for farming (land, equipment and inputs) are higher than the 1980s. Meanwhile, their net farm income, a key measure of farm financial wellbeing,¹² declined from around 2014 to 2018.¹³ More farmers struggled to service higher debt payments with lower net income, and chapter 12 filing rates rose.¹⁴ In response, Congress raised the

⁴ *Id.*; Jesse Newman & Jacob Runge, *This One Here Is Gonna Kick My Butt*, Wall Street Journal, (Feb. 6, 2019), <https://www.wsj.com/articles/this-one-here-is-gonna-kick-my-butt-farm-belt-bankruptcies-are-soaring-11549468759>.

⁵ 11 U.S.C. §§1201-1232 (2018).

⁶ Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3105 (1986).

⁷ Chapter 12 came with a seven-year sunset provision, which Congress extended several times until 2005, when it became a permanent part of the Bankruptcy Code via the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. See Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. N. 109-8, 199 Stat. 23 (2005).

⁸ H.R. Rep. No. 958, 99th Cong. 2d Sess., 48-49 (1986).

⁹ 11 U.S.C. § 101(18).

¹⁰ Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. N. 00-554, 100 Stat. 3105 (1986).

¹¹ 11 U.S.C. § 104.

¹² U.S. Farm Outlook for 2018, Cong. Res. Svc. 1 (Dec. 11, 2018), <https://crsreports.congress.gov/product/pdf/R/R45117> (defining net farm income as measuring "the farm operator's share of the net value added to the national economy within a calendar year independent of whether it is received in cash or noncash form. As a result, net farm income includes the value of home consumption, changes in inventories, capital replacement, and implicit rent and expenses related to the farm operator's dwelling that are not reflected in cash transactions").

¹³ *Id.* at 2 (stating that the 2018 net farm income forecast was substantially below the 10-year average); see also U.S. Farm Outlook: Forecast for August 2019, Cong. Res. Svc. (Sept. 19, 2019), <https://crsreports.congress.gov/product/pdf/R/R45924> (noting that net farm income was increasing largely due to government support payments); U.S. Farm Outlook: Forecast for September 2020, Cong. Res. Svc. (Sept. 23, 2020), <https://crsreports.congress.gov/product/pdf/R/R46539> (same).

¹⁴ Laura Genovich, *Good News for Family Farmers*, 39 Am Bankr. Inst. J. 22-23 (Feb. 2020) (describing the upward trend in Chapter 12 filing rates in 2018 and 2019 and its precipitating factors).

aggregate debt thresholds again to \$ 10 million in 2019, ¹⁵making about 5,000 more family farmers eligible to file for chapter 12 relief. ¹⁶

The ability to file a chapter 12 case does not guarantee a successful outcome. **[*281]** The Bankruptcy Code's eligibility restrictions are only the first of many hurdles debtors must clear to receive a discharge. Chapter 12 debtors also must file the required paperwork, obtain confirmation of a reorganization plan, and complete plan payments, all while the continued viability of their farming operations remain susceptible to external factors largely beyond their control.

Among the requirements for plan confirmation is a feasibility test. Pursuant to section 1225(a)(6) of the Bankruptcy Code, chapter 12 debtors must demonstrate that their plans are feasible, meaning that they "will be able to make all payments under the plan and to comply with the plan." ¹⁷Feasibility is bankruptcy law's shorthand for the court's assessment of the probability of actual performance of the debtor's proposed plan. It is a prediction about the continued financial viability of a farm business. The feasibility assessment is not a rigid, mathematical formula. ¹⁸Rather, it requires bankruptcy courts to consider and weigh objective evidence about whether chapter 12 debtors realistically can achieve their reorganization plans while accounting for the risks inherent in farming. ¹⁹

Feasibility merits scrutiny because family farms continue to face cyclical financial pressures, which lead to higher chapter 12 filing rates alongside increasing consolidation in the U.S. agricultural sector. Feasibility was commonly litigated in early chapter 12 cases ²⁰and remains a challenging issue to navigate in contemporary chapter 12 cases. ²¹Even when feasibility is not contested at confirmation, secured creditors can use it as leverage in negotiating plan terms.

This paper qualitatively examines the feasibility requirement and provides insight about formulating feasible chapter 12 plans. When bankruptcy courts resolve feasibility disputes, they make key findings about whether chapter 12 debtors can perform their proposed plans. These

¹⁵ Family Farmer Relief Act of 2019, Pub. L. N. 116-51, **133 Stat. 1075** (2019) (Increasing the aggregate debt limits for a family farmer or family fisherman who files for bankruptcy under chapter 12).

¹⁶ Jim Monke, *Farm Debt and Chapter 12 Bankruptcy Eligibility*, Cong. Res. Svc. (Mar. 15, 2019), <https://crsreports.congress.gov/product/pdf/IN/IN11073> (noting that approximately 5,000 more U.S. farms would be eligible to file chapter 12 bankruptcy if the debt limits were increased to \$ 10 million).

¹⁷ 11 U.S.C. § 1225(a)(6); 8 Collier on Bankruptcy P 1225.02[5] (Richard Levin & Henry J. Sommer eds., 16th ed. 2018).

¹⁸ See Parts II and III, *infra*.

¹⁹ See *id.*

²⁰ See, e.g., *Farmers Home Admin. v. Rape* (*In re Rape*), **104 B.R. 741, 748 (W.D.N.C. 1989)**. ("Regrettably, the issue of feasibility is - and was below - sharply contested, as is typical in Chapter 12 cases."); *In re Kloberdanz*, **83 B.R. 767, 772 (Bankr. D.Colo. 1988)**.

²¹ See, e.g., *In re Wise*, No. 12-07535, 2013 WL 2421984, at 3 (Bankr. D.S.C. May 13, 2013) (noting that "bankruptcy Courts wrestle with feasibility in debt adjustment and reorganization cases; perhaps nowhere more so than in farm cases.").

findings, when viewed in the aggregate, provide debtors and their attorneys guidance for structuring feasible plans and navigating feasibility challenges. This paper reviews the chapter 12 feasibility caselaw, catalogs plan features that impact the feasibility assessment, and provides insight about how to formulate feasible chapter 12 plans.

[*282] Admittedly, this paper is not a comprehensive review of every chapter 12 feasibility determination. Bankruptcy judges often issue feasibility determinations orally that do not find their way to electronic research databases. But there are more than 150 written decisions available in Westlaw that touch on feasibility and date from chapter 12's early days to recent months.

Part I explains some of the features and advantages of chapter 12 as a restructuring tool that distinguish it from chapters 11 and 13. Part II unpacks the feasibility requirement and synthesizes the standards courts use to test plan feasibility. Part III categorizes plan features that impact the feasibility assessment and uses case illustrations to provide guidance to chapter 12 debtors and their attorneys about how to satisfy the feasibility requirement. Part IV concludes by summarizing the feasibility guidance and noting observations about feasibility in contemporary chapter 12 cases.

I. KEY FEATURES OF CHAPTER 12

In the 1980s, the U.S. agricultural sector experienced its worst economic crisis since the Great Depression.²² Farmers carried staggering debt loads that they could not refinance.²³ The Federal Reserve had lowered interest rates to combat inflation, leading to substantially depressed farmland values in the Midwest from 1981 to 1985.²⁴ Meanwhile, surplus production drove down commodity prices, U.S. exports declined, and a new presidential administration tried to cut back on government support.²⁵ Droughts in the Midwest compounded these problems.²⁶ There were many farm foreclosures and bankruptcies while banks and other businesses closed and rural towns died off.²⁷

At that time, farmers had too much to debt to satisfy chapter 13's eligibility requirements, but found chapter 11 too complicated, time-consuming, and expensive.²⁸ In 1986, Congress enacted chapter 12 of the Bankruptcy Code to respond to the farm crisis.²⁹ Chapter 12

²² Iowa Public Television created a 90-minute documentary called *The Farm Crisis* on this topic: <http://www.iowapbs.org/iowapathways/artifact/causes-1980s-farm-crisis>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ 132 Cong. Rec. H8999 (daily ed. Oct. 2, 1986) (Joint explanatory statement of the Committee of Conference).

²⁹ Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. N. 00-554, *100 Stat. 3105* (1986).

allows family farmers and family fisherman who meet the Code's eligibility requirements to restructure their debt and continue operating. It "balances the Congressional policy of preserving and fostering American family farms with the rights of creditors to [*283] payment."

³⁰Chapter 12 has been characterized as a hybrid of chapters 11 and 13 ³¹that accounts for the unique context in which the U.S. family farmer operates by making bankruptcy restructuring more accessible than chapter 13 and less complicated than chapter 11. ³²

Chapter 12's eligibility requirements have much higher debt limits than chapter 13, which is designed for regular wage earners with smaller aggregate debt amounts. ³³Yet many features of chapter 12 resemble chapter 13. ³⁴For instance, a chapter 12 debtor similarly must commit all disposable income to pay creditors during a three-to-five-year plan. ³⁵And a standing chapter 12 trustee supervises and administers cases with powers similar to those of standing chapter 13 trustees. ³⁶Also, only the debtor may propose a plan in both chapters 12 and 13, but the respective timeframes for submitting a plan and confirmation are different. ³⁷

Moreover, chapter 12 is more streamlined than chapter 11 because it does not subject debtors to some key chapter 11 requirements for plan confirmation. Unlike in chapter 11, creditors do not vote on chapter 12 plans, ³⁸though they may object to confirmation of the plan. ³⁹No disclosure statement accompanies chapter 12 plans. ⁴⁰And because chapter 12

Moreover, chapter 12 is more streamlined than chapter 11 because it does not subject debtors to some key chapter 11 requirements for plan confirmation. Unlike in chapter 11, creditors do not vote on chapter 12 plans, ³⁸though they may object to confirmation of the plan. ³⁹No disclosure statement accompanies chapter 12 plans. ⁴⁰And because chapter 12

³⁹No disclosure statement accompanies chapter 12 plans. ⁴⁰And because chapter 12

³⁰ *In re Wise*, No. 12-07535, 2013 WL 2421984, at 3 (Bankr. D.S.C. May 31, 2013).

³¹ Katherine M. Porter, *Phantom Farmers: Chapter 12 of the Bankruptcy Code*, 79 Am. Bankr. L.J. 729, 731 (2005) [hereinafter Porter, *Phantom Farmers*].

³² See Charles J. Tabb, *The Law of Bankruptcy* 957-983 (4th ed. 2016) (describing Chapter 12 and comparing Chapter 12 with Chapter 11 and Chapter 13).

³³ Compare 11 U.S.C. § 101(18) with, 11 U.S.C. § 109(e).

³⁴ *In re Snider Farms, Inc.*, 83 B.R. 1003, 1006 (Bankr. N.D. Ind. 1988) ("Chapter 12 is modeled on Chapter 13.") (citing H.R. 5316, 99th Cong. 2nd Sess. 132, Cong. Rec. H. 8999 (1986)).

³⁵ 11 U.S.C. § 1222(c) (allowing for a three-to-five-year plan); 11 U.S.C. § 1322(d) (same but with restrictions).

³⁶ 11 U.S.C. § 1202 (enumerating standing trustee duties in chapter 12 cases).

³⁷ Chapter 12 debtors must file a plan within 90 days of the petition while chapter 13 debtors must file within 14 days after the petition. Compare 11 U.S.C. § 1221 ("The debtor shall file a plan not later than 90 days after the order for relief under this chapter" unless the court grants an extension) with 11 U.S.C. § 1321 (providing that "the debtor shall file a plan" but without specifying a time period) and *Fed. R. Bankr. Pro.* 3015(b) (providing that chapter 13 debtors must file a plan within 14 days after filing the petition unless the court grants an extension). The timeframe for confirmation in chapter 13 is 45 days after the section 341 meeting of creditors, see 11 U.S.C. § 1324(b), but in Chapter 12, the confirmation hearing must occur within 45 days after filing the plan, see 11 U.S.C. § 1224.

³⁸ See 11 U.S.C. § 1126.

³⁹ Creditors who receive 20 days' notice may appear at the hearing and object to confirmation. 11 U.S.C. § 1224; *Fed. R. Bankr. P.* 2002(a)(8).

⁴⁰ 11 U.S.C. §§ 1121, 1125.

presumes debtors will maintain ownership of farm assets, the absolute priority rule does not apply - classes of claims do not need to be paid in full before debtors can retain ownership.⁴¹

Chapter 12 "offers debtors more powerful debt restructuring tools" than **[*284]** chapters 13 and 11 to promote family farmer rehabilitation.⁴² For instance, chapter 12 debtors have expanded cramdown rights as compared with chapter 13 debtors. Chapter 12 debtors may modify secured creditors' rights, including loans secured by primary residences, the latter of which is prohibited in chapter 13.⁴³ As a result, in chapter 12, secured creditors are entitled to a secured claim only in the amount of the collateral's fair market value as of the effective date of the plan.⁴⁴ The remaining debt is an unsecured claim that is discharged upon completion of plan payments.⁴⁵ This ability to strip down home mortgage debt in chapter 12 helps debtors retain their homestead. In addition, courts allow lengthy cramdown terms that exceed the plan period and apply to real estate loans and to fully matured, prepetition short-term equipment loans to save the family farm.⁴⁶

Chapter 12 applies a different adequate protection standard to account for the uniqueness of farm restructuring. Specifically, section 1205 negates application of section 361, the adequate protection standard that applies in other kinds of bankruptcy cases.⁴⁷ Instead, family farmers may satisfy the requirement of adequate protection by paying reasonable market rent.⁴⁸ Also, section 1205 does not include the "indubitable equivalent" alternative for satisfying the requirement of adequate protection.⁴⁹ This separate test exists because at the time Congress created chapter 12, farmland values were severely depressed and many lenders were

⁴¹ 11 U.S.C. § 1129(b)(2)(B)(ii).

⁴² Porter, *Phantom Farmers*, *supra* note 31, at 731-33.

⁴³ See 11 U.S.C. § 1322(b)(2) (barring chapter 13 debtors from modifying security interests in a debtor's principal residence).

⁴⁴ 11 U.S.C. § 1225(a)(5)(B).

⁴⁵ *Id.*

⁴⁶ 11 U.S.C. § 1222(c) (limiting chapter 12 plans to five years, except as provided in subsections 1222(b)(5) and (b)(9), which allow for extending a plan beyond that date in order to cure a default and/or for maintenance payments on claims for which the final payment is due after the plan duration); *In re Perkins, No. 13-31277, 2013 WL 5863732, at 7 (Bankr. E.D. Tenn. Oct. 30, 2013)* ("The latitude to extend payments beyond five years "is one of the Code's 'most significant' provisions affecting secured creditors in Chapter 12." (quoting *In re Elk Creek Salers, Ltd., 286 B.R. 387, 391 (Bankr. W.D. Mo. 2002)*)).

⁴⁷ 11 U.S.C. § 1205(a) ("Section 361 does not apply in a case under this chapter.").

⁴⁸ 11 U.S.C. § 1205(b)(3) ("[Adequate protection may be provided by ... paying to such entity for the use of farmland the reasonable rent customary in the community where the property is located, based upon the rental value, net income, and earning capacity of the property.]).

⁴⁹ See 11 U.S.C. § 1205.

undercollateralized. Without a different test, farm restructurings would be thwarted by secured creditors' early motions to lift the stay due to lack of adequate protection. ⁵⁰

Chapter 12 debtors also enjoy tax advantages that do not exist in chapters 13 and 11. In bankruptcy, federal and state taxes generally are classified **[*285]** as priority unsecured debts, which must be paid in full under the plan. ⁵¹Chapter 12 contains an exception for qualifying capital gains tax liabilities that arise when farmers downsize their operations by selling or transferring assets they use to farm. Specifically, section 1232 deprioritizes government claims for capital gains taxes due on sales of assets used in the debtor's farming operation, demoting these claims to general unsecured status. ⁵²Under section 1232, such a claim is treated as pre-petition regardless of whether the sale occurred pre-or post-petition, and the debtor may treat the claim as unsecured, as long as the claim arises before a chapter 12 debtor's discharge and is provided for in the plan. ⁵³

Collectively, these chapter 12 features are designed to make bankruptcy more accessible to family farmers than chapter 13 and more streamlined and less expensive than chapter 11. But there are requirements for plan confirmation common among the three chapters. Among them is plan feasibility. Part II explains chapter 12's feasibility requirement and delineates the guiding principles bankruptcy courts use to assess feasibility in chapter 12 cases.

II. CHAPTER 12 PLANS & FEASIBILITY

A. Chapter 12 Plans Generally

A chapter 12 debtor must file a proposed reorganization plan with the petition or within ninety days thereafter unless the court grants an extension. ⁵⁴The plan, which the court must approve, provides for payments of fixed amounts to the standing chapter 12 trustee for three to five years. Within forty-five days after filing the plan, the bankruptcy court convenes a hearing to decide whether the plan meets the Bankruptcy Code's standards for confirmation. ⁵⁵Creditors, the U.S. Trustee, the chapter 12 trustee, and any other parties in interest may appear at the hearing and object to confirmation. ⁵⁶If the bankruptcy court confirms the

⁵⁰ 132 Cong. Rec. H8999 (daily ed. Oct. 2, 1986) (Joint explanatory statement of the Committee of Conference).

⁵¹ See 11 U.S.C. § 507(a)(8).

⁵² 11 U.S.C. § 1232.

⁵³ *Id.*; Section 1232, enacted in 2017, responds to Hall v. United States, 566 U.S. 506, 132 S. Ct. 1882, 182 L. Ed. 2d 840 (2012), in which the U.S. Supreme Court held that the capital gains tax liability arising from the post-petition sale of the debtor's land is not a tax liability "incurred by the estate" within the meaning of § 503, as required for debtors to deprioritize the tax claim. That decision made it more difficult for farmers to discharge a capital gains tax arising from a post-petition sale of property, in turn negatively impacting the ability of farmers to successfully reorganize where they faced a large post-petition tax liability they could not discharge.

⁵⁴ 11 U.S.C. § 1221.

⁵⁵ 11 U.S.C. §§ 1224, 1225.

⁵⁶ 11 U.S.C. § 1224.

plan, the trustee then distributes the funds to creditors according to the terms of the plan.⁵⁷

Most chapter 12 plans leverage one or more of three strategies: traditional [*286] debt restructuring; downsizing or converting operations; and asset sales.⁵⁸ In a traditional reorganization plan, the debtors intend to farm the same land, plant substantially similar crops, and generally conduct their farming operation as they have in previous years.⁵⁹ But if the operation's expenses exceed its income, debt restructuring will not make it profitable without downsizing or converting the operation, or selling assets such as land, livestock, or equipment.⁶⁰ Thus, a chapter 12 debtor may combine these strategies; for instance, an operation that is downsizing or converting commonly sells assets.⁶¹

Section 1225 of the Bankruptcy Code sets forth seven requirements for confirmation of a chapter 12 plan.⁶² Some of these requirements are clearly defined and objectively ascertainable with relative ease, such as whether the debtor has paid all fees and domestic support obligations and complied with all requirements of Title 11.⁶³ But other requirements entail deeper factual inquiry and the exercise of judgment. These requirements are more frequently disputed and include whether the plan has been proposed in good faith,⁶⁴ contains acceptable cramdown terms,⁶⁵ and is feasible.⁶⁶

As noted above, feasibility is bankruptcy law's shorthand for the court's assessment of the probability of actual performance of the debtor's proposed plan.⁶⁷ Plan feasibility was commonly litigated in early chapter 12 cases.⁶⁸ At the time, feasibility was not a new concept in reorganization cases as it was required for confirmation in chapters 11 and 13.

⁵⁷ 11 U.S.C. § 1226(a).

⁵⁸ Rebecca R. Garcia and Jan M. Sensenich, *Chapter 12 and the Challenge of the New Farm Crisis*, 38 Am. Bankr. Inst. J. 14, 54-56 (2019) [hereinafter Garcia & Sensenich, *New Farm Crisis*].

⁵⁹ *Id.*; see *In re Foertsch*, 167 B.R. 555, 567 (Bankr. D.N.D. 1994) (describing a traditional reorganization plan).

⁶⁰ Garcia & Sensenich, *New Farm Crisis*, *supra* note 58, at 55.

⁶¹ See *id.* at 54-55 (explaining that chapter 12 plans may fall into more than one of the categories).

⁶² 11 U.S.C. § 1225(a).

⁶³ 11 U.S.C. § 1225(a)(1), (7).

⁶⁴ 11 U.S.C. § 1225(a)(3).

⁶⁵ 11 U.S.C. § 1225(a)(5) (requirements for treatment of secured creditors' claims in confirmable plans).

⁶⁶ 11 U.S.C. § 1225(a)(6).

⁶⁷ *In re Konzak*, 78 B.R. 990, 993 (Bankr. D.N.D. 1987) (explaining that "the concept of feasibility contemplates the probability of actual performance of the provisions of the plan") (citations omitted).

⁶⁸ See, e.g., *Farmers Home Admin. v. Rape* (*In re Rape*), 104 B.R. 741, 748 (W.D.N.C. 1989) ("Regrettably, the issue of feasibility is - and was below - sharply contested, as is typical in Chapter 12 cases."); *In re Kloberdanz*, 83 B.R. 767, 772 (Bankr. D. Colo. 1988).

⁶⁹But applying it to the [*287] unique context of family farm restructuring was novel. ⁷⁰When the bankruptcy court confirms a plan as feasible, it the bankruptcy system's bet that the farm's reorganization plan is reasonably likely to succeed. Resolving feasibility challenges is exacting work because a chapter 12 plan's success partially depends on variables that "are beyond the parties' control and/or not susceptible to prediction with certainty." ⁷¹

Feasibility remains a challenging factual issue for bankruptcy stakeholders in contemporary chapter 12 cases. ⁷²It is a tension point in the restructuring process. Before confirmation, secured creditors can leverage the feasibility requirement in negotiating plan terms, foreshadowing a possible objection on feasibility and other grounds. And of course, they can object to confirmation, arguing that the proposed plan is not feasible. ⁷³If the bankruptcy court sustains that objection, the farmer likely loses its shot at reorganization. This is because feasibility determinations are factual and thus reviewed on appeal for clear error, ⁷⁴suggesting that chapter 12 debtors must propose a feasible plan to the bankruptcy court and do not have a realistic shot at reversal on appeal. Indeed, this study did not unearth a single feasibility decision overturned on appeal.

In addition, bankruptcy courts must evaluate a plan's likelihood of success even when feasibility is uncontested. When a chapter 12 plan is consensual, the bankruptcy court is inclined to confirm it, consistent with the Bankruptcy Code's policy goal - giving family farmers a chance to reorganize. ⁷⁵When contested, the court weighs the competing evidence, including any available expert testimony, ⁷⁶to determine whether the debtors have met [*288] their

⁶⁹ See 11 U.S.C. § 1129(a)(11) (a chapter 11 a plan may be confirmed only if "confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan"); 11 U.S.C. § 1191(c)(3)(A) (applies in small business reorganizations) ("(i) The debtor will be able to make all payments under the plan; or >(ii) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and (B) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made"); 11 U.S.C. § 1325(a)(6) ("the court shall confirm a plan if ... the debtor will be able to make all payments under the plan and to comply with the plan").

⁷⁰ A bankruptcy court may consider cases interpreting and applying those parallel provisions when evaluating plan feasibility in a chapter 12 case. In re Pressley, 502 B.R. 196, 202-03 (Bankr. D.S.C. 2013) ("Courts often resort to cases construing the similar feasibility requirements of chapters 11 and 13 of the Bankruptcy Code when faced with the issue of feasibility in a chapter 12 case ... Merging the factors which Courts look to in the more complicated chapters 11 business cases and the sometimes simpler consumer 13 cases is often necessary when considering the feasibility of a chapter 12 plan proposed by a family farmer."); In re Wise, No. 12-07535, 2013 WL 2421984, at 3 (Bankr. D.S.C. May 31, 2013) (same); In re Snider Farms, Inc., 83 B.R. 1003, 1006 (Bankr. N.D. Ind. 1988) (explaining that chapter 13 and 11 precedents are useful tools for interpreting chapter 12's feasibility requirement).

⁷¹ In re Simpson, No. 17-10442, 2020 WL 2844383, at 2 (Bankr. D.Vt. June 1, 2020).

⁷² See, e.g., In re Wise, No. 12-07535, 2013 WL 2421984, at 3 (Bankr. D.S.C. May 13, 2013) (noting that "bankruptcy Courts wrestle with feasibility in debt adjustment and reorganization cases; perhaps nowhere more so than in farm cases.").

⁷³ See Part III.E, *infra*.

⁷⁴ See, e.g., In re Perkins, 581 B.R. 822, 827 (B.A.P. 6th Cir. 2018) (explaining further that "[a] finding is 'clearly erroneous' when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.").

⁷⁵ See Part II.B *infra* (giving debtors the benefit of the doubt).

burden to establish that the plan is feasible. Either way, the bankruptcy court must be given adequate evidence to demonstrate a reasonable likelihood that the debtor will complete plan payments. In chapter 12 cases - as contrasted with large, complex chapter 11 cases - the court's feasibility assessment ensures that the debtor has performed the requisite planning and analysis.⁷⁷ In these cases, where the debtors and creditors often do not employ financial advisors, courts scrutinize the debtors' explanations and assumptions that form the foundation of their plan projections.⁷⁸

The next section explains the guiding principles bankruptcy courts have developed to assess feasibility in chapter 12 cases. Three themes emerge. First, these principles reflect chapter 12's foundational policy goal - promoting family farmer reorganization. Bankruptcy courts interpret and apply the feasibility requirement to give family farmers a chance to restructure. Second, the general approach or methodology for testing feasibility is consistent across jurisdictions. Disputes about what feasibility means or requires in chapter 12 do not exist.⁷⁹ And finally, the feasibility determination is a fact-intensive, calculated risk assessment that varies from case to case.

B. The Feasibility Test

As explained above, among the requirements for plan confirmation in chapter 12 is a feasibility test.⁸⁰ This test requires that chapter 12 debtors establish the ability to make all payments under plan, and to otherwise comply with plan.⁸¹ The requirement is a pragmatic one, designed to prohibit "confirmation of overly optimistic reorganization plans clearly destined to fail."⁸²

⁷⁶ *In re Tate*, 217 B.R. 518, 520 (Bankr. E.D. Tex. 1997) (quoting *In re Crowley*, 85 B.R. 76, 78-79 (Bankr. W.D. Wis. 1988)) (noting that resolving feasibility disputes entails a determination of the "comparative credibility of experts, as well as the credibility of the debtor.").

⁷⁷ Daniel Winikka, *Focus on Feasibility*, 2 Pratt's J. Bankr. L. 731 (Apr./May 2007).

⁷⁸ *Id.* In large chapter 11 cases, multiple participants, including the debtor's retained financial advisors and those employed by various creditor constituencies, have evaluated plan feasibility by the time the plan is before the court for confirmation. *Id.* If confirmation is not challenged, the court is presented with uncontested expert testimony about plan feasibility, the court reviews that testimony and if necessary, requests additional explanation or clarification. *Id.* The court does not independently assess the uncontested testimony's reliability and accuracy, and rarely would the court conclude that the plan is not feasible. *Id.*

⁷⁹ A few early chapter 12 cases interpreted feasibility as requiring that the operation's projections include an equity cushion to address unexpected circumstances, but that interpretation has disappeared from the decisional law. See, e.g., *In re Snider Farms, Inc.*, 83 B.R. 1003 (Bankr. N.D. Ind. 1988) (denying confirmation due to proposed plan's lack of feasibility because no "cushion" of money to cover unexpected shortfalls or expenses).

⁸⁰ 11 U.S.C. § 1225(a)(6).

⁸¹ *Id.*

⁸² *In re Foertsch*, 167 B.R. 555, 565 (Bankr. D. N.D. 1994).

Feasibility is an "element of confirmation that is difficult to prove [and] [*289] equally difficult to decide."⁸³ Bankruptcy courts wrestle with feasibility in chapter 12 cases because the success of a farming operation turns on many variables, some of which are difficult to predict with certainty and beyond debtors' control.⁸⁴ Even though the contours of the feasibility requirement appear imprecise, the caselaw delineating the standards used to assess feasibility is mostly uniform. Bankruptcy courts agree on several tenets.

First, under the Code, chapter 12 debtors bear the burden of proving feasibility.⁸⁵ As explained more below, they satisfy this burden by providing specific and detailed information about their ability to make plan payments.⁸⁶

Second, bankruptcy courts extend some deference to chapter 12 debtors' plans. Many decisions recite an inclination to give debtors the benefit of the doubt on the question of feasibility to promote the reorganization attempts of family farmers.⁸⁷ Such deference is tied to legislative history stating that chapter 12 is designed "to give farmers a fighting chance to reorganize their debts and to keep their land."⁸⁸ Bankruptcy courts have noted, however, that deferential inclinations are not a "license to ignore the hard numbers altogether."⁸⁹

Third, bankruptcy courts agree that proving feasibility does not call for chapter 12 debtors to guarantee future success.⁹⁰ The assessment does not require an "iron clad guarantee" because projecting future income and expenses is not a precise exercise, especially for farming operations subject to factors beyond farmers' control, such as the weather, tariffs, and other

⁸³ *In re Wise*, No. 12-07535, 2013 WL 2421984, at 3 (Bankr. D.S.C. May 31, 2013) (citing *In re Kloberdanz*, 83 B.R. 767, 773 (Bankr. D. Co. 1988) and *Matter of Bluridg Farms, Inc.*, 93 B.R. 648, 656 (Bankr. S.D. Iowa 1988)); see also *In re Snider Farms, Inc.*, 83 B.R. 1003, 1006 (Bankr. N.D. Ind. 1988) (describing the feasibility determination as "the most difficult task").

⁸⁴ See *Wise*, 2013 WL 2421984, at 3 (Bankr. D.S.C. May 31, 2013) ("Bankruptcy Courts wrestle with feasibility in debt adjustment and reorganization cases; perhaps nowhere more so than in farm cases.").

⁸⁵ See, e.g., *In re Tate*, 217 B.R. 518, 520 (Bankr. E.D. Tex. 1997); *Farmers Home Admin. v. Rape* (*In re Rape*), 104 B.R. 741, 748 (W.D.N.C. 1989).

⁸⁶ See Part III, *infra*.

⁸⁷ See, e.g., *Keith's Tree Farms v. Grayson Nat. Bank* (*In re Keith's Tree Farms*), 535 B.R. 647, 652 (W.D. Va. 2015); *In re Hughes*, No. 06-80219, 2006 WL 2620438, at 3 (Bankr. M.D.N.C. Sept. 11, 2006); *In re Tate*, 217 B.R. at 520; *In re Gough*, 190 B.R. 455 (Bankr. M.D. Fla. 1995); *In re Foertsch*, 167 B.R. 555, 566 (Bankr. D.N.D. 1994); *In re Hopwood*, 124 B.R. 82, 86 (Bankr. E.D. Mo. 1991); *In re Rape*, 104 B.R. at 748; *In re Rott*, 94 B.R. 163, 169 (Bankr. D.N.D. 1988); *In re Konzak*, 78 B.R. 990, 993 (Bankr. D.N.D. 1987).

⁸⁸ H.R. Rep. No. 958, 99th Cong. 2d Sess., 48-49 (1986); see, e.g., *In re Foertsch*, 167 B.R. at 566 (referring to the legislative history creating Chapter 12); *In re Konzak*, 78 B.R. at 994 (same).

⁸⁹ *In re Keith's Tree Farms*, 535 B.R. at 653.

⁹⁰ *In re Akers*, 594 B.R. 362, 370 (Bankr. W.D. Va., 2019); *In re Pressley*, 502 B.R. 196, 202-203 (Bankr. D.S.C. 2013) (quoting *In re Om Shival, Inc.*, 447 B.R. 459, 462 (Bankr. D.S.C. 2011)) (in a chapter 11 context) (citations omitted); *In re Wise*, No. 12-07535, 2013 WL 2421984, at 3 (Bankr. D.S.C. May 31, 2013); *In re Howard*, 212 B.R. 864, 879 (Bankr. E.D. Tenn. 1997).

economic factors. ⁹¹Instead, chapter 12 debtors must demonstrate a reasonable [*290] probability or reasonable expectation of successful reorganization. ⁹²

Fourth, because feasibility "is fundamentally a fact question," ⁹³the feasibility determination must be based on objective and realistic facts ⁹⁴as opposed to visionary promises or overly optimistic projections. ⁹⁵Sincerity, honesty, and willingness are not sufficient to make the plan feasible. ⁹⁶

As such, courts examine the record, looking at key factors that emphasize the operation's past performance to assess feasibility. The determination is not formulaic. Rather, it is a multi-factored, predictive exercise based on a totality of the circumstances. ⁹⁷One bankruptcy court delineated the contours of the inquiry best by conceptualizing feasibility as a continuum:

"the question of whether a Chapter 12 plan is feasible is not typically a simple yes-or-no question but rather an analysis of where, on a continuum of feasibility, a particular plan falls. On one end of the continuum are the plans that rely exclusively on a single, clear event, such as a

⁹¹ *In re Monnier Bros*, 755 F.2d 1336, 1341 (8th Cir. 1985) (observing that projecting income and expenses in the farm context is not an exact science); *In re Fursman Ranch*, 38 B.R. 907, 912 (Bankr. W.D. Mo. 1984) ("Labile markets, unpredictable weather and changes in government programs preclude precise forecasting.").

⁹² *In re Akers*, 594 B.R. 362, 370 (Bankr. W.D. Va. 2019); *In re Wise*, 2013 WL 2421984, at 3; *In re Hughes*, No. 06-80219, 2006 WL 2620438, at 3 (Bankr. M.D.N.C. Sept. 11, 2006) (citing *In re Rape*, 104 B.R. at 749); *In re Hopwood*, 124 B.R. 82, 86 (Bankr. E.D. Mo. 1991); *In re Rape*, 104 B.R. at 749 (quoting *In re Kloberdanz*, 83 B.R. 767, 773 (Bankr. D. Colo. 1988)).

⁹³ *In re Tate*, 217 B.R. 518, 520 (Bankr. E.D. Tex. 1997) (quoting *In re Crowley*, 85 B.R. 76, 78-79 (Bankr. W.D. Wis. 1988)) ("Feasibility, which depends on a determination of the reasonable probability of payment, is fundamentally a fact question."); *In re Keith's Tree Farms*, 535 B.R. at 652 (citing *In re Rape*, 104 B.R. at 748); *In re Rape*, 104 B.R. at 748 (same).

⁹⁴ *In re Ames*, 973 F.2d 849, 851 (10th Cir. 1992) ("A plan's 'income projections must be based on concrete evidence and must not be speculative or conjectural.'" (quoting *In re Novak*, 102 B.R. 22, 24 (Bankr. E.D.N.Y. 1989))); *In re Blake*, 585 B.R. 539, 550 (Bankr. S.D. Ill. 2018); *In re Szudera*, 269 B.R. 837, 842 (Bankr. D.N.D. 2001); *In re Tate*, 217 B.R. at 520 (Bankr. E.D. Tex. 1997) (citing *In re Honeyman*, 201 B.R. 533, 537 (Bankr. D.N.D. 1996)); *In re Harper*, 157 B.R. 858, 866 (Bankr. E.D. Ark. 1993); *In re Honeyman*, 201 B.R. 533, 537 (Bankr. D.N.D. 1996) ("The Court must be persuaded of the ability of the plan to cash flow "based upon realistic and objective facts (as opposed to visionary or overly optimistic projections)"; *In re Konzack*, 78 B.R. 990, 994 (Bankr. D.N.D. 1987).

⁹⁵ *In re Tate*, 217 B.R. at 520 (citing *In re Honeyman*, 201 B.R. 533, 537 (Bankr. D.N.D. 1996)); *In re Reitz*, 79 B.R. 934, 938 (Bankr. D. Kan. 1987) (finding plan not feasible because its success depended on speculative ability of debtor to build a dike to stop flooding on farmland, but dike required state approval).

⁹⁶ *In re Terry Properties, LLC*, 569 B.R. 76 (Bankr. W.D. Va. 2017); *In re Standley*, No. 11-62373, 2013 WL 1191261, at 7 (Bankr. D. Mont. Mar. 22, 2013); *In re Rape*, 104 B.R. at 751.

⁹⁷ *Toso v. Bank of Stockton* (*In re Toso*), Nos. 05-1290, 05-1389, 06-1148, 06-1149, 2007 WL 7540985, at 10 (9th Cir. B.A.P. 2007) (noting that "projections submitted by a chapter 12 debtor to support feasibility of a proposed plan will, of necessity, include assumptions and educated guesses about factors beyond the debtor's control"); *In re Simpson*, No. 17-10442, 2020 WL 2844383, at 2-3 (Bankr. D. Vt. Jun. 1, 2020); *In re Pressley*, 502 B.R. 196, 202-03 (Bankr. D.S.C. 2013) (quoting *In re Harrison*, 203 B.R. 253, 256 (Bankr. E.D. Va. 1996) (a chapter 13 case)); *In re Konzack*, 78 B.R. 990, 994 (Bankr. D.N.D. 1987) (explaining that chapter 12 plan feasibility must be established based upon "presently existing" information, because "no one can predict what prices will be in the future and it is folly to peg feasibility upon future yields and market prices which are at best often unpredictable and at worst even imaginary.").

sale contract **[*291]** that will produce a fixed amount of cash that is at least equal to the sum needed to fund the plan. The Court need only compare the proposed plan to the sale contract and proposed closing statement to determine - or verify - that the plan is feasible. At the other end of the continuum are the cases in which the plan is so woefully vague, or the record is so insufficient or internally inconsistent, that the Court can easily determine the Plan is not feasible. Most cases, however, fall somewhere in between those two ends of the feasibility continuum, and compel the Court to reach a determination based on careful analysis and weighing of the totality of facts and circumstances of the case In this middle region of the continuum, the Court is not engaged in a mathematical computation of fixed components. Rather, it is making a judgment based on an assessment of myriad moving and mutable parts." ⁹⁸

Across jurisdictions, bankruptcy courts generally apply the same methodology to assess feasibility. At a minimum, feasibility requires a bankruptcy court to scrutinize a debtor's projected income and expenses as compared with the farm's current and historical performance and anticipated market conditions. ⁹⁹The debtor's historical financial performance weighs heavily, particularly if there isn't much evidence about the current condition of the farm. ¹⁰⁰Courts measure this evidence against the plan's income and expense projections to ascertain whether it is reasonably probable, not merely technically possible, that the plan will cash flow. ¹⁰¹

[*292] Beyond the reasonableness of the cash flow projections and historical performance of the debtors, other relevant facts and circumstances might include "the value and equity of the debtor's assets, the nature and amount of the debtor's liabilities, the efficiency of the debtor's operations, the debtor's pre-petition transactions with creditors," the current state of the economy, and any another evidence showing the likelihood of success in chapter 12. ¹⁰²"How much weight the Court assigns to each of these factors will vary from case to case and

⁹⁸ *In re Simpson*, 2020 WL 2844383, at 2-3.

⁹⁹ *In re Blake*, 585 B.R. 539, 550 (Bankr. S.D. Ill. 2018); *In re Szudera*, 269 B.R. 837, 842 (Bankr. D.N.D. 2001); *In re Foertsch*, 167 B.R. 555, 565 (Bankr. D.N.D. 1994); *In re Cluck*, 101 B.R. 691, 694 (Bankr. E.D. Okl. 1989); *Matter of Bluridg Farms, Inc.*, 93 B.R. 648, 656 (Bankr. S.D. Iowa 1988).

¹⁰⁰ *In re Akers*, 594 B.R. 362, 370 (Bankr. W.D. Va. 2019); *In re Torelli*, 338 B.R. 390, 397 (Bankr. E.D. Ark. 2006) ("To determine whether a plan is feasible, the court should analyze the debtor's projected income and expenses in relation to actual past performance." (citing *Euerle Farms, Inc. v. State Bank in Eden Valley* (*In re Euerle Farms, Inc.*), 861 F.2d 1089, 1092 (8th Cir.1988))); *In re Foertsch*, 167 B.R. 555, 565 (Bankr. D.N.D. 1994); *In re Terry Properties, LLC*, 569 B.R. 76, 86 (Bankr. W.D. Va. 2017) (citations omitted); *In re Euerle Farms, Inc.*, 861 F.2d at 1090 ("The debtors' income and expense projections are considered in conjunction with their actual past performance to determine feasibility"); *In re Weber*, 297 B.R. 567, 571 (Bankr. N.D. Iowa 2003) ("Because past behavior and productivity are excellent indicators of future production, courts have frequently rejected plans which are premised on highly optimistic projections of increased production." (quoting *In re Crowley* , 85 B.R. 76, 79 (W.D. Wis. 1988))); *In re Kuether*, 158 B.R. 151, 154 (Bankr. D.N.D. 1993) (denying confirmation due to lack of feasibility because the debtors' future income and expense projections are inconsistent with past performance to a point where they are unreliable.")

¹⁰¹ *In re Keith's Tree Farms*, 535 B.R. at 652; *In re Hughes*, No. 06-80219, 2006 WL 2620438, at 3 (Bankr. M.D.N.C. Sept. 11, 2006); *In re Szudera*, 269 B.R. 837, 842 (Bankr. D.N.D. 2001); *In re Alvstad* , 223 B.R. 733, 745 (Bankr. D.N.D. 1998); *In re Tate*, 217 B.R. 518, 520 (Bankr. E.D. Tex. 1997) (citing *In re Rape*, 104 B.R. 741, 748 (Bankr.W.D.N.C.1989)); *In re Foertsch* , 167 B.R. 555, 565 (Bankr. D.N.D.1994); *In re Rott* , 94 B.R. 163, 169 (Bankr. D.N.D. 1988) (citing *In re Konzak* , 78 B.R. 990, 993 (Bankr. D.N.D. 1987)).

depend, in part, on whether there are objections to confirmation and the basis for each objection."¹⁰³

This section describes the general tenets and methodology bankruptcy courts employ to assess feasibility in chapter 12 cases. For chapter 12 plans that will not clearly fail or succeed, but fall in the middle of the feasibility continuum, it is a fact-intensive, predictive exercise. Bankruptcy courts examine the salient facts and circumstances and exercise discretion in weighing them, all with a view toward forecasting the debtors' reasonable likelihood of successful reorganization.

Part III delves into the caselaw and qualitatively examines feasibility in chapter 12 cases. When bankruptcy courts resolve feasibility challenges, they make findings about key features in chapter 12 plans. These findings, when categorized and viewed in the aggregate, provide debtors and their attorneys guidance for formulating feasible plans and navigating feasibility disputes.

III. FACTORS THAT AFFECT PLAN FEASIBILITY

This paper reviews bankruptcy court decisions available in Westlaw that address plan feasibility.¹⁰⁴ Not every case is relevant to this paper's feasibility inquiry. A small number mention feasibility tangentially rather than address it squarely. The vast majority resolve feasibility challenges against the debtors. The bankruptcy courts rendered affirmative feasibility decisions in only some of these decisions. And another small handful are appellate decisions reviewing lower court feasibility decisions for clear error and affirming [*293] them. Finally, as noted earlier, bankruptcy courts also rule on feasibility challenges from the bench, but those decisions do not find their way to legal research databases. Accordingly, this paper's examination is not an exhaustive exercise.

That said, the caselaw reveals common plan deficiencies that defeat feasibility. This section categorizes these deficiencies, explains how they affect plan feasibility, and uses case illustrations to guide chapter 12 debtors and their attorneys in formulating plans around these concerns. Even though this paper isolates and categorizes plan deficiencies, infeasible plans often have more than one of these deficiencies, compounding their unlikelihood of success.

A. Documentary Evidence

¹⁰² *In re Simpson*, No. 17-10442, 2020 WL 2844383, at 2-3 (Bankr. D.Vt. Jun. 1, 2020); see also *In re Keith's Tree Farms*, 535 B.R. at 652 (Courts "consider the farm's earning power, capital structure, managerial efficiency, past performance, and whether the same management will continue to operate the farm."); *In re Pressley*, 502 B.R. 196, 202-03 (Bankr. D.S.C. 2013) (quoting *In re Om Shivai, Inc.*, 447 B.R. 459, 462 (Bankr. D.S.C. 2011) (in a chapter 11 context) (same)); *In re Tate*, 217 B.R. 518, 520 (Bankr. E.D.Tex. 1997) (citing *In re Rape*, 104 B.R. 741, 749 (W.D. N.C. 1989)) (same); *In re Honeyman*, 201 B.R. 533, 537 (Bankr. D.N.D. 1996).

¹⁰³ *In re Simpson*, 2020 WL 2844383, at 2-3.

¹⁰⁴ The search parameters were "chapter 12" /p (feas!) /p 1225 and as of January 10, 2021. The search yielded 165 results that referenced feasibility in some manner.

Chapter 12 debtors must submit documentary evidence that supports plan feasibility. Bankruptcy courts will not confirm a chapter 12 plan that relies only on the debtor's oral testimony.¹⁰⁵ A mere assertion of feasibility without documented evidence to support the plan is fatal to confirmation.¹⁰⁶ After all, plan feasibility depends on a determination of reasonable probability of payment that, in turn depends on specific information a debtor provides about their ability to complete plan payments.

Chapter 12 debtors should propose specific plan terms that are supported by at least one layer of documentary evidence - cash flow statements projecting anticipated income and expenses over the life of the plan.¹⁰⁷ Some jurisdictions, **[*294]** through the bankruptcy court,¹⁰⁸ the U.S. Trustee Program's regional office,¹⁰⁹ or a chapter 12 standing trustee's office,¹¹⁰ require that debtors submit cash flow projections as exhibits to their chapter 12 plans. For example, Rule 3015-1 of the Local Bankruptcy Rules for the U.S. Bankruptcy Court for the

¹⁰⁵ See, e.g., *In re Morris*, 590 B.R. 753, 758 (Bankr. N.D. Miss. 2018) (court could not make informed decision on feasibility where the only evidence was debtor's oral testimony and a plan without written cash flow statements or projections based on assumed yields, prices, and expenses); *In re Ellis*, 478 B.R. 132, 139-40 (Bankr. N.D. N.Y. 2012) (court did not confirm plan where record consisted only of debtor's oral testimony).

¹⁰⁶ *In re Chickosky*, 498 B.R. 4, 15 (Bankr. D. Conn. 2013) (debtor's assertions lacked evidentiary support); *In re Pertuset*, 492 B.R. 232, 249 (Bankr. S.D. Ohio 2012), (debtors failed to satisfy burden to establish feasibility because they failed to provide history of expenses or details of oral contracts of timber operation while submitting inconsistent historical income figures) *aff'd*, *In re Pertuset*, No. 12-8014, 2012 WL 6598444, at 14 (B.A.P. 6th Cir. 2012); *In re Kowalzyk*, No. 06-60010, 2006 WL 3032145, at 3-4 (Bankr. D. Minn. Oct. 24, 2006) (concluding plan infeasible due to lack of specificity and record evidence about actual past performance of hog operation's financials that could be used to test or justify the projected income and expenses); *In re Creviston*, 157 B.R. 380, 385 (Bankr. S.D. Ohio 1993) (debtors failed to submit completed monthly operating reports from which the court could ascertain feasibility).

¹⁰⁷ *In re Morris*, 590 B.R. 753, 756 (Bankr. N.D. Miss. 2018) (internal citations omitted) ("Sufficient evidence for farming operations typically includes a monthly cash flow showing the timing of receipts and expenditures and indicating the debtor's ability to service the debtor's anticipated operating expenses and to make the required plan payments."); *In re Penick*, 2017 WL 3772620, at 3-4 (Bankr. E.D. Ky. 2017) ("Debtors did not introduce documentary evidence at the hearing, such as a monthly budget to spell out their projected income and expenses to show that their plan is feasible."); *In re Pertuset*, 492 B.R. 232, 249-50 (Bankr. S.D. Ohio 2012), *aff'd*, *In re Pertuset*, 2012 WL 6598444, at 14 (6th Cir. B.A.P. Dec. 18, 2012) ("The Proposed Plan does not include any current or projected income and expense figures to determine what cash flow will be available to fund the Proposed Plan, nor (as discussed subsequently in this Court's consideration of the Motions to Dismiss) can this Court glean such knowledge from the financial information otherwise in the record.").

¹⁰⁸ See, e.g. Local Bankr. R. 3015-1 (Bankr. D. Neb.) (Jan. 1, 2019), <https://www.neb.uscourts.gov/rule-3015-1-chapter-12-general> (outlining information chapter 12 debtors must submit before confirmation); see also Debtor's Chapter 12 Plan Of Reorganization And Motion For Valuation (Bankr. W.D. La.) (with the notation "THIS IS PROVIDED AS A FORM OF A CHAPTER 12 PLAN. THIS IS FOR ILLUSTRATION PURPOSES ONLY. THE COURT HAS NOT ADOPTED A FORM CHAPTER 12 PLAN"), <https://www.lawb.uscourts.gov/sites/lawb/files/Model%20Chapter%2012%20Plan%20Shreveport%20%28PDF%29.pdf>.

¹⁰⁹ Office of the U.S. Trustee, S.D. Cal., Operating and Reporting Requirements for Chapter 12 Cases (June 2003), https://www.justice.gov/sites/default/files/ust-regions/legacy/2012/12/12/chapter_12_orr.pdf ("The debtor must attach to the proposed chapter 12 plan, cash flow statements projecting income and expenses over the life of the plan. In the absence of such cash flow statements, feasibility under Section 1225(a)(6) cannot be established and the plan cannot be confirmed.").

¹¹⁰ Chapter 12 Trustee Guidelines, U.S. Bankr. Court., N.D. Tex. P 11 (Feb. 24, 2014), <https://www.txnb.uscourts.gov/sites/txnb/files/basic/CHAPTER12GUIDELINES.pdf> (enumerating required plan contents, including monthly cash projections for the life of the plan).

District of Nebraska enumerates a detailed list of documentation that the court requires to facilitate confirmation review, including "a cash-flow projection for the year immediately following confirmation of the proposed plan."¹¹¹ And bankruptcy courts agree that, without them, debtors fail to carry their burden to establish feasibility, and their plans cannot be confirmed.¹¹²

Cash flow projections alone may be insufficient to establish feasibility. A plan that "cash flows" on its face appears feasible as a mathematical proposition, but such "technical feasibility" does not satisfy chapter 12's confirmation requirement.¹¹³ Rather, the cash flow projections must be supported by additional objective evidence that show the debtors will be able to do what they propose.¹¹⁴ This second layer of documentation consists of assumptions and sources that constitute the basis of the cash flow projections combined [*295] with historical or other data that justify the assumptions.¹¹⁵ In this context, evidence of the operation's pre-petition and post-petition performance is persuasive. The court then compares the historical performance data with the plan projections to test the plan's assumptions about income and expenses and the debtor's ability to make plan payments.¹¹⁶ The debtor may have already submitted some of this evidence to the court via Schedules I and J and their tax returns.¹¹⁷

Newer businesses are special cases. Historical performance data for more recently established ventures is scant or nonexistent.¹¹⁸ Here, courts want to see detailed written business plans demonstrating that projections are sound.¹¹⁹ In *In re Ellis* and *In re C&F Beet*

¹¹¹ Local R. Bankr. P. 3015-1 (Bankr. D. Neb. Jan. 1, 2019), s *upra* note 108.

¹¹² See note 97, *supra*.

¹¹³ *Miller v. Nauman (In re Nauman)*, 213 B.R. 355, 358 (9th Cir. B.A.P. 1997) (stating that a reasonable likelihood of successful reorganization must rise above "bare agronomic feasibility." (quoting *In re Crowley*, 85 B.R. 76, 79 (W.D.Wis.1988))); *In re Chickosky*, 498 B.R. 4, 12 (Bankr. D. Conn. 2013); *In re Stallings*, 290 B.R. 777, 791 (Bankr. D. Idaho 2003); *In re Howard*, 212 B.R. 864, 880 (Bankr. E.D. Tenn. 1997) (observing that even though a plan will "cash flow" mathematically, such "technical feasibility is insufficient.").

¹¹⁴ *In re Kowalzyk*, No. 06-60010, 2006 WL 3032145, at 3-4 (Bankr. D. Minn. Oct. 24, 2006) (record lacked evidence about the farming operation's actual past performance, so there was nothing to justify the debtor's projected income and expenses except their own testimony); *In re Fenske*, 96 B.R. 244, 248 (Bankr. D.N.D. 1988) ("A debtor presenting a Chapter 12 plan bears the burden of proving that the proposal is both realistic and will cash flow."); *In re Howard*, 212 B.R. 864, 880 (Bankr. E.D. Tenn. 1997).

¹¹⁵ Local R. Bankr. P. Rule 3015-1, *supra* note 108 (requiring "assumptions and sources upon which the cash flow projections are based, with historical or other data justifying such assumptions").

¹¹⁶ See, e.g., *In re Tate*, 217 B.R. 518, 520 (Bankr. E.D. Tex. 1997) (denying confirmation because "the assumptions, as to greatly increased revenue and lower expenses, [were] not supported by any competent evidence.").

¹¹⁷ See, e.g., *In re Wise*, No. 12-07535, 2013 WL 2421984, at 3 (Bankr. D.S.C. May 31, 2013) ("The evidence presented at confirmation by Debtor and Bank comes in part from Debtor's records in the form of tax returns, and is supplemented by Schedules I and J and by projections based on changes or additions to the historical operation.").

¹¹⁸ See, e.g., *In re Ellis*, 478 B.R. 132, 139-40 (Bankr. N.D.N.Y. 2012) ("[Debtor's] comparatively modest harvest of two acres of pumpkins, first undertaken during the pendency of this proceeding, provides too little precedent to establish a track record predictive of success for the much larger and different venture proposed.").

Grain, bankruptcy courts denied feasibility in part out of concerns about relying on speculative income from new business ventures to fund the plan. ¹²⁰

But as a general proposition, when chapter 12 debtors formulate the plan, they should consider the extent to which their operation's historical performance supports the cash flow projections. And they should be prepared with documentary evidence that establishes that such projections are reasonable, not just mathematically possible. As explained next, overly optimistic projections commonly defeat plan feasibility, and bankruptcy courts discern such optimism by scrutinizing other evidence in the record.

B. Overly Optimistic Projections

Overly optimistic projections will not pass the feasibility test. There is a surfeit of cases on this point. Plans projections are overly optimistic when the net operating income - the income that will fund the plan after accounting for expenses - is too high for one or more of the following reasons: overstating gross income, understating expenses, and failing to account for risks inherent in farming.

[*296] Sometimes a proposed plan obviously cannot cash flow as a mathematical proposition, such as when the operation's cash receipts will not cover average monthly farming expenses. ¹²¹These plans clearly are not feasible. But many case decisions involve proposed plans that superficially cash flow, but other documentary evidence - to the extent it exists - contradicts those projections.

As explained above, bankruptcy courts will test the reasonableness of the cash flow projections to ascertain whether the plan is feasible. Reasonable projections are ones that are "consistent with the debtor's prepetition performance" and "[contain] reasonable assumptions." ¹²²Historical performance data is probably the most persuasive, particularly if recent financial information is not sufficiently determinative. ¹²³

¹¹⁹ *Id.* ("[A] strong record of independent evidence was required to shore up her projections and prove through a detailed, written business plan that her projections are sound.")

¹²⁰ See *id.*; *In re CF Beef & Grain, LLC*, 590 B.R. 849, 857-58 (Bankr. E.D. Wisc. 2018).

¹²¹ See, e.g., *In re Bartlett*, 92 B.R. 142, 144 (E.D.N.C. 1988) (projected income would not cover the plan expenses); *In re Reitz*, 79 B.R. 934, 938 (Bankr. D. Kan. 1987) (same).

¹²² *In re Melcher*, 416 B.R. 666 (Bankr. D. Neb. 2009) (Proposed chapter 12 plan not feasible because reorganization depended on debtor's ability to meet income projections from his hog farming operation that he had not met for several years); *In re Sine*, No. J08-00152, 2009 WL 8413039, at 3 (Bankr. D. Alaska Jan. 9, 2009) (past years' operating losses evidenced by tax returns combined with overly optimistic projections meant plan was infeasible); *In re Hughes*, No. 06-80219, 2006 WL 2620438, at 3 (Bankr. M.D.N.C. Sept. 11, 2006) (Chapter 12 plan infeasible because it was premised upon projections for farm income and profit that far exceeded the debtor's past performance).

¹²³ See note 106, *supra*; *In re Chickosky*, 498 B.R. 4, 15 (Bankr. D. Conn. 2013) ("The projections and expenses should be based on the debtor's past experience as supplemented by current market information."); *In re Howard*, 212 B.R. 864, 880 (Bankr. E.D. Tenn. 1997).

In re Howard illustrates bankruptcy courts' emphasis on pre-petition performance data to assess feasibility.¹²⁴ In that case, the debtors projected they would earn annual net farm income greater than their annual gross farm income for any of the previous eight operating years, the latter of which had in fact experienced a sustained decline.¹²⁵ Moreover, they failed to adduce evidence that would have justified ignoring the pre-petition income and expense figures and adopting the optimistic projections.¹²⁶ Thus, the plan was not feasible.¹²⁷

Similarly, in *In re Foertsch*, the bankruptcy court declined to confirm a plan as feasible where the debtors' six-year, pre-petition income history showed they had failed to produce anywhere near the level of income they projected under the plan and conceded was necessary to successfully reorganize.¹²⁸ And like *Howard*, the *Foertsch* debtors could not adequately explain [*297] how they would produce the substantially higher income they would need to make plan payments.¹²⁹ This plan too was not feasible.¹³⁰

Beyond an operation's historical performance records, market data may also help a bankruptcy court assess whether the cash flow projections are reasonable.¹³¹ Relevant market data might include prices obtained for yields produced (income) and prices paid for inputs (expenses). As explained more below, when relying on market data, prudent guidance suggests incorporating more conservative estimates in chapter 12 plans.

1. Projected Gross Income

The gross income predictions must be reasonable for a plan to satisfy the feasibility requirement. Gross operating income is tied to productivity and yields. A debtor's gross income projections might be too high because the debtor overestimates productivity or the prices they can obtain for what they produce. Chapter 12 debtors should not premise gross income projections upon overly optimistic yield numbers or market prices without evidence to support the higher numbers.

Often chapter 12 plans rely on debtors' intent to increase production to generate more revenue by planting additional acreage or increasing livestock numbers. But "courts have frequently rejected plans which are premised on highly optimistic projections of increased production," and

¹²⁴ *In re Howard*, 212 B.R. at 880 ("The historical financial data of a debtor's farming operations is highly instructive in evaluating 'doability.'"); see also *In re Taylor*, No. 08-60493-12, 2008 WL 4723243, at 3 (Bankr. D. Mont. Oct. 23, 2008) (finding plan not feasible because debtors' "evidence lacks historic support and current reality").

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *In re Foertsch*, 167 B.R. 555, 567 (Bankr. D.N.D. 1994).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *In re Chickosky*, 498 B.R. 4, 15 (Bankr. D. Conn. 2013) ("The projections and expenses should be based on the debtor's past experience as supplemented by current market information.").

prefer to use prepetition productivity as an indicator of future productivity.¹³² The inquiry is whether the projected yields are reasonable based on past yields.¹³³ A debtors' reasons for historically low production are relevant to the analysis.¹³⁴ Past low production might be due to a major weather disruption, for instance, and therefore not indicative of a typical year's production. Or, it might arise out of managerial incompetence.¹³⁵ Either way, the guidance remains [*298] the same. If the proposed plan relies on increased production to meet income targets, a debtor should have specific, non-speculative evidence demonstrating an ability to do so.

Chapter 12 debtors may also misstep in formulating projections that rely on overly optimistic market prices for their yields.¹³⁶ To be sure, the agricultural economy is unpredictable, making it difficult to anticipate future market prices with certainty.¹³⁷ But bankruptcy courts will examine evidence of current market prices at the time of confirmation to ascertain whether the gross income projections are reasonable.¹³⁸ They also will consider evidence about whether those market conditions are likely to change. Sound practical guidance suggests income projections should incorporate the more conservative or lower end of the range of market prices for crop yields or livestock. Thus, in formulating a plan that relies on higher gross income from increased production or, chapter 12 debtors should be prepared to present evidence that supports those figures.¹³⁹

¹³² *In re Standley*, No. 11-62373, 2013 WL 1191261, at 7 (Bankr. D. Mont. Mar. 22, 2013) (citing *Miller v. Nauman* (*In re Nauman*), 213 B.R. 355, 358 (9th Cir. B.A.P. 1997)); *In re Butler*, 101 B.R. 566, 568 (Bankr. E.D. Ark. 1989) (debtor's figures were overly optimistic because they were not supported by historical production figures"); *In re Crowley*, 85 B.R. 76 (W.D. Wis. 1988) (stating "speculative predictions of future yields need not be accepted by the court without question"); *In re Konzak*, 78 B.R. 990, 993-94 (Bankr. D.N.D. 1987) ("A debtor should not premise future plan cash flows upon heightened yield or market data for successive plan years unless there is some objective base for such data.").

¹³³ See, e.g., *In re Chickosky*, 498 B.R. at 15; *In re Jubilee Farms*, 595 B.R. 546, (Bankr. E.D. Ky. 2018) (finding the debtor's projections were overly optimistic because they overstated yields (bushels-per-acre) and court substituted the yield and price per acre supported by the operation's historical record).

¹³⁴ See *In re Crowley*, 85 B.R. at 80 (Reasons for past low production of dairy farmers could be considered in assessing feasibility of chapter 12 plan, where success of plan, while technically feasible, depended upon doubling of past production).

¹³⁵ See, e.g., *id.* (concluding that "where plan feasibility depends on doubled productivity, and testimony demonstrates a consistent history of poor management, it was not erroneous for the bankruptcy court to find the plan not feasible").

¹³⁶ See, e.g., *In re Blake*, 585 B.R. 539, 550 (Bankr. S.D. Ill. 2018) ("Historical performance evidence indicates that the debtor's projected yields or current crop (soybean) prices are overly optimistic.").

¹³⁷ *In re Foertsch*, 167 B.R. 555, 567 (Bankr. D.N.D. 1994); *In re Crowley*, 85 B.R. at 79 (quoting *In re Konzak*, 78 B.R. at 994 ("The plan must, to the extent possible, be based on known inputs including yields [and income] as presently existing. No one can predict what prices will be in the future and it is folly to peg feasibility upon future yields and market prices which are at best often unpredictable and at worst even imaginary... .")).

¹³⁸ See *In re Tate*, 217 B.R. 518, 520 (Bankr. E.D. Tex. 1997) (finding the plan not feasible because, among other reasons, "the estimated profits on the sale of cattle in the futures market are unrealistic based on the selling price of cattle at the time of confirmation"); *In re Honeyman*, 201 B.R. 533 (Bankr. D.N.D. 1996) (finding plan not feasible partly because "recent grain and cattle prices did not reflect plan's proposed income flow").

¹³⁹ See, e.g. *In re Zerr*, 167 B.R. 953, 959-60 (Bankr. D. Kan. 1994) ("Their plan is based on assumptions that they will have gross income from crop sales well in excess of \$ 100,000 each year; yet their 1992 tax return showed gross crop income of

2. Projected Expenses

Another common misstep is understating or massaging expenses in order to formulate a plan that will cash flow. ¹⁴⁰Like gross income, an operation's projected expenses must be reasonable and based on objective facts. ¹⁴¹Bankruptcy courts will verify that the proposed expenses in the cash flow projections **[*299]** are justified by other evidence in the record. This line of inquiry examines whether the projected expenses are consistent with historical expenses. ¹⁴²If they are not, the bankruptcy court will substitute historical expenditure figures supported by the record and calculate whether the plan can nevertheless cash flow. ¹⁴³

For instance, in *In re Hughes*, a bankruptcy court determined that a plan was not feasible where the debtor projected an income-to-expense ratio that was lower than it had ever been and omitted key expense categories included in previous years, such as rent, tools, insurance, and real estate taxes. ¹⁴⁴Once those historical expense figures were factored into the projections, the plan was not feasible. ¹⁴⁵In *In re Sauer*, the debtors' historical farm expense figures exceeded their plans' future farm expense projections by 175% to 220%, but they failed to explain "how they (would) effect such a remarkable transformation in their farming expenses." ¹⁴⁶In contrast, where chapter 12 debtors' projected expenses were consistent with past expenses, as demonstrated by three years of prior tax returns, the plan was feasible. ¹⁴⁷

In addition, where the plan relies on increased production, debtors should account for any concomitant expense increases in their projections. For instance, if the debtors intend to plant more acreage, then key input expenses, such as the costs of seed and fertilizer, likely would not

\$ 37,361 and their 1993 return showed gross crop income of \$ 42,723. The debtors offered no explanation as to why their income will increase so dramatically.").

¹⁴⁰ *In re Taylor*, No. 08-60493, 2008 WL 4723243, at 4 (Bankr. D. Mont. Oct. 23, 2008) (noting that debtors' projected expenses were massaged to support the proposed chapter 12 plan payment); *In re Tate*, 217 B.R. at 520 ("The estimated expenses are well below the actual expenses shown on the Debtors' 1994 and 1995 Schedule F, Profit or Loss from Farming.").

¹⁴¹ See, e.g., *In re Gough*, 190 B.R. 455, 459 (Bankr. M.D. Fla. 1995) ("the Court finds that it is highly impractical to assume debtors can support themselves, two residences, and two automobiles on \$ 480 a month for the next three years. Debtors' plan leaves them no flexibility for health or other emergencies and erroneously assumes that the cost of living will not increase over the next three years.").

¹⁴² *In re Chickosky*, 498 B.R. 4, 15 (Bankr. D. Conn. 2013); *In re Sauer*, 223 B.R. 715 (Bankr. D.N.D. 1998); *In re Honeyman*, 201 B.R. 533, 537 (Bankr. D.N.D. 1996); *In re Zerr*, 167 B.R. at 953.

¹⁴³ *In re Sauer*, 223 B.R. 715, 727 (Bankr. D.N.D. 1998) (using historical expense figures because the debtors dramatically understated projected expenses without explanation or evidence to support significantly lower figures).

¹⁴⁴ *In re Hughes*, No. 06-80219, 2006 WL 2620438, at 3-4 (Bankr. M.D.N.C. Sept. 11, 2006).

¹⁴⁵ *Id.*

¹⁴⁶ *In re Sauer*, 223 B.R. at 717.

¹⁴⁷ *In re Fowler*, 83 B.R. 39, 44 (Bankr. D. Mont. 1987).

hold steady or go down. In *In re Torelli*, the debtor failed to account for higher costs associated with a larger herd. ¹⁴⁸

Chapter 12 debtors should meticulously account for expense categories in their projections, using prepetition data as general guideposts for these figures. If the debtors submit expense numbers that deviate significantly from the historic figures, they should be prepared with evidence and explanations that justify the lower numbers. ¹⁴⁹

3. Accounting for Risk

The agricultural economy is inherently unpredictable and poses significant [*300] risk to farming operations. Since chapter 12's inception, bankruptcy courts have acknowledged that many variables affect production and commodity prices, including the weather, foreign production, interest rates, the value of the dollar, government policy, and make operating forecasts challenging. ¹⁵⁰As explained above, bankruptcy courts grapple with feasibility determinations in chapter 12 cases partly because these exogenous variables are unpredictable enough to thwart reorganization plans.

Even so, bankruptcy courts will not confirm as feasible a plan that fails to account for possible crop or livestock loss, unfavorable price fluctuations, or otherwise assumes a farming operation will not face adversity. ¹⁵¹Chapter 12 debtors operate in financial precarity, and any adverse change in these variables could impede successful reorganization. They cannot expect to experience ideal production and market conditions throughout each year of their plan. ¹⁵²

Thus, a feasible chapter 12 plan reasonably accounts for the risks inherent in farming, at least those that might lead to crop failure or loss of livestock. Debtors can mitigate the risk of loss in a couple of ways. First, Debtors can purchase crop insurance, which assuages to some degree court and creditor concerns about risks of loss that would impact plan feasibility. Debtors also

¹⁴⁸ *In re Torelli*, 338 B.R. 390 (Bankr. E.D. Ark. 2006) (plan not feasible for many reasons including because the debtor failed to adduce evidence about expenses generally and about higher costs associated with larger herd).

¹⁴⁹ See, e.g., *In re Foertsch*, 167 B.R. 555, 567 (Bankr. D.N.D. 1994) "(History showed that actual repair expenses in recent history eclipsed projected repair & maintenance expenses and debtors offered no explanation for lower projected expenses on same and aged equipment.)".

¹⁵⁰ *In re Doud*, No. 86-3396, 1987 WL 1416927, at 4 (Bankr. S.D. Iowa Jun. 10, 1987).

¹⁵¹ See, e.g., *In re Fuelling*, 601 B.R. 665 (Bankr. N.D. Iowa 2019); *In re Johnson*, 581 B.R. 289, 297 (Bankr. W.D. Wis. 2018) (determining the plan was not feasible because, among other reasons, "the Debtor's projections make no allowance for possible crop loss"); *In re Butler*, 101 B.R. 566, 568 (Bankr. E.D. Ark. 1989) ("A plan based on unduly optimistic and highly speculative assumptions, with no cushion for adversity, would not survive a negative swing in any variable"); *In re Konzak*, 78 B.R. 990, 993 (Bankr. N.D. 1987) (declining to confirm plan as feasible in part because "the margin for error [was] absolutely nonexistent").

¹⁵² See *In re Stallings*, 290 B.R. 777, 791-92 (Bankr. D. Idaho 2003) ("A plan that relies upon only the best growing and market conditions may succeed in the short term but is surely not a feasible approach to an effective reorganization.").

can account for risk by using more conservative estimates in their plan projections informed by yields and prices in past years and current market data. ¹⁵³

C. Off-Farm & Non-Operating Income

Many small family farms use non-farm or off-farm income to cover farm expenses. ¹⁵⁴Such income comes from a variety of sources, such as businesses [*301] related to, but separate from, the farming operation, other off-farm employment, and equipment or land leases. Chapter 12 debtors may use non-operating or off-farm income to fund their plans, but bankruptcy courts will verify that the income is reasonably likely to be available during the plan and accurately stated. If not, the plan is not feasible.

For instance, in *In re CF Beef & Grain, LLC*, the bankruptcy court held that a plan was not feasible because the chapter 12 debtors would have relied on non-farm income not reliably available from a different but related business to cover nearly half of the plan's annual payments. ¹⁵⁵The court was concerned that this related business was a new venture with little historical evidence of success and therefore no demonstrated ability to fund the plan while paying its own secured debt. ¹⁵⁶Thus, the proposed non-operating income source was not reliable. Similarly, in *In re Tate*, the debtor failed to show any evidence to support their projections for future income from their trucking business, which they intended to use to fund the plan. ¹⁵⁷

Chapter 12 debtors also may rely on income from equipment or land leases to cover plan payments. Again, bankruptcy courts scrutinize whether the income projected from the leases will likely be available. They look for evidence that addresses the terms agreed between the parties, the ability of the lessee to pay, and if no lessee exists, the likelihood the debtor will be able to find one. Moreover, the decisional law suggests that written leases are preferable to oral agreements, and actual lessees are preferable to potential ones.

For instance, in *In re Furman*, the debtor proposed using an advance lease payment - based on an oral agreement - to fund two semi-annual plan payments to a secured creditor for

¹⁵³ See *id.* (without ruling on feasibility pending submission of an amended proposed plan, the bankruptcy court provided the following guidance for accounting for crop loss: "While Debtors' proposed plan need not anticipate a major crop failure, to give meaning to § 1225(a)(6), the Court will require that Debtors' estimates be appropriately conservative based upon past years to account for those obstacles to optimum yields that always seem to occur to one degree or another in farming. In other words, if Debtors' historical production of sugar beets under normal circumstances averaged from twenty tons per acre to twenty-five tons per acre over the years, to be credible, Debtors' Chapter 12 plan budget should probably rely upon projections in the lower end of that range, not the higher.").

¹⁵⁴ Whitt, Todd, & MacDonald, *Americans Diverse Family Farms*, *supra* note 1, at 12 ("Farm households often use off-farm income to cover farm expenses. While self-employment and wage/salary jobs are the primary sources of off-farm income for farm households, public and private pensions, interest and dividend payments, asset sales, Social Security payments, and other sources of income provide a significant share of off-farm income, particularly for retirement farms.").

¹⁵⁵ *In re CF Beef & Grain, LLC*, 590 B.R. 849, 857-58 (Bankr. E.D. Wisc. 2018).

¹⁵⁶ *Id.*

¹⁵⁷ *In re Tate*, 217 B.R. 518, 520 (Bank. E.D. Tex. 1997) (holding the plan was not feasible in part because "debtors failed to show any evidence to support their projections for future income from their trucking business").

equipment.¹⁵⁸The bankruptcy court had concerns about the reliability of the income because the debtor failed to adduce evidence of the lessee's ability to make those payments.¹⁵⁹Consider also *In re Ellis*, where the debtor similarly failed to provide reliable evidence of a lease with a neighbor who purportedly agreed to pay for water use.¹⁶⁰The bankruptcy court was concerned about the absence of a written agreement articulating the terms agreed upon or any evidence about the purported [*302] lessee's willingness and ability to make the payments.¹⁶¹Because the lease payments were essential to funding the plan, the evidence was crucial to the feasibility assessment.¹⁶²In addition, the debtor in *In re Zerr* projected \$ 10,000 income from leasing 1,000 acres of pastureland but "failed to demonstrate the feasibility of likelihood of finding a lessee."¹⁶³

Finally, bankruptcy courts will confirm that the projected amounts are accurately stated. The debtor in *In re Blake* overstated projected non-operating income, which the court ascertained because the debtor's monthly operating reports and plan projections were inconsistent.¹⁶⁴Chapter 12 debtors should be careful not to overstate non-operating or off-farm income that they intend to use to fund the plan.

D. The Human Factor

Bankruptcy courts do not focus exclusively on hard numbers. They consider the ability of management or the "human factor."¹⁶⁵Even when the income projections and market conditions suggest feasibility hovers between possible and probable, the farmer's experience and expertise may tip the scales in favor of feasibility. But because feasibility is a fact-intensive, line-drawing exercise, discerning when the "human factor" redistributes the risk enough to count is difficult.

In re Wilson best illustrates when the human factor favors an affirmative feasibility determination.¹⁶⁶These chapter 12 debtors owned and operated a Montana cattle ranch, and the bankruptcy court observed that they had a "tight budget" and depended on off-farm

¹⁵⁸ *In re Furman*, No. 17-10790, 2017 WL 6520721, at 5 (Bankr. D. Kan. Dec. 15, 2017).

¹⁵⁹ *Id.*

¹⁶⁰ *In re Ellis*, 478 B.R. 132, 139-40 (Bankr. N.D.N.Y. 2012).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *In re Zerr*, 167 B.R. 953, 959-60 (Bankr. D. Kan. 1994).

¹⁶⁴ *In re Blake*, 585 B.R. 539, 550 (Bankr. S.D. Ill. 2018) (finding the debtors' plan not feasible because the income projections, even if accurately stated could not cover their expenses, including their debt service payments, unpaid tax liability, and any dividend to unsecured creditors)

¹⁶⁵ *In re Wise*, No. 12-07535, 2013 WL 2421984, at 3 (Bankr. D.S.C. May 31, 2013) (quoting *In re Rape*, 104 B.R. at 751 ("It is true that, when weighing evidence of feasibility, "it is not error for a [bankruptcy] court to consider, along with the hard numbers, the human factor.")).

¹⁶⁶ *In re Wilson*, 378 B.R. 862 (Bankr. D. Mont. 2007).

income to cover some of the ranching operation's ongoing losses.¹⁶⁷In addition, market conditions weighed against feasibility because cattle prices appeared to be "at the start of a prolonged downturn."¹⁶⁸Nonetheless, the bankruptcy court determined that the plan was feasible because the debtors - a husband and wife - were "highly educated and experienced at animal science."¹⁶⁹The husband used "cutting edge embryo transfer technology" in the breeding operation, which **[*303]** yielded exceptionally high prices for some of their bulls.¹⁷⁰These debtors also were able to sell some real property, and the chapter 12 trustee enthusiastically supported the plan.¹⁷¹This case suggests that chapter 12 debtors should emphasize any particular technical expertise that impacts plan feasibility.

On the other end of the feasibility continuum, a debtor's lack of business acumen could defeat plan feasibility, especially where other factors weigh against confirmation. In *In re Crowley*, plan feasibility depended on doubling production, but expert testimony, which the bankruptcy court found credible, pointed to a "consistent history" of inept management, making successful reorganization unlikely.¹⁷²Similarly, in *In re Cluck*, the debtors' business ineptitude defeated plan feasibility - they turned away prospective clients and failed to collect outstanding accounts receivable, both of which were necessary "lifeblood" for the farm's continued operations.¹⁷³

These latter cases suggest that chapter 12 debtors should anticipate feasibility challenges where their operation's financial struggles arise at least in part out of managerial incompetence even where external agricultural or market events are contributing factors. And they should be prepared to articulate how such incompetence will not persist during the reorganization.

E. Collateral Consequences of Other Confirmation Requirements

Chapter 12 plans must comply with the Bankruptcy Code's requirements for the treatment of secured and unsecured claims to obtain confirmation.¹⁷⁴Here, the Bankruptcy Code balances creditors' interests with chapter 12's primary policy goal - promoting family farmer rehabilitation. Failure to satisfy these confirmation requirements negates plan feasibility. Moreover, even where a debtor has leave to amend the proposed plan with terms that would

¹⁶⁷ *Id.* at 891.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 892.

¹⁷¹ *Id.*

¹⁷² *In re Crowley*, 85 B.R. 76, 80 (W.D. Wisc. 1988) (affirming bankruptcy court's decision that plan was not feasible, observing that "where plan feasibility depends on doubled productivity, and testimony demonstrates a consistent history of poor management, it was not erroneous for the bankruptcy court to find the plan not feasible").

¹⁷³ *In re Cluck*, 101 B.R. 691, 694 (Bankr. E.D. Okla. 1989).

¹⁷⁴ See 11 U.S.C. §§1225(a)(4), (a)(5).

pass muster at confirmation, the plan may remain infeasible because the amended plan does not cash flow.

1. Secured Claims & Feasibility

Family farmers often file chapter 12 because their relationship with their operating lender has disintegrated. Successful plan confirmation depends on a debtor's ability to restructure this secured debt through chapter 12. As explained [*304] above, Congress enacted chapter 12 to give family farmer-debtors greater flexibility to do so than in other chapters.¹⁷⁵ Chapter 12 allows a debtor to modify secured debt terms, even for a debtor's principal residence,¹⁷⁶ and extend the repayment term for secured debt beyond the debtor's five-year plan.¹⁷⁷ But chapter 12 protects secured creditors' interests through confirmation requirements. To obtain confirmation, secured creditors must consent to the plan, including any modified terms, or, if they do not, the debtor must pay the present value of the allowed secured claim for the court to confirm the plan.¹⁷⁸ Either way, the debtor must have sufficient income to service the debt,¹⁷⁹ meaning the plan must be feasible.¹⁸⁰

Additional context is relevant here. Secured creditors receive most of the distributions in chapter 12 cases as compared with unsecured creditors.¹⁸¹ Data from chapter 12 cases closed between fiscal years 2009 and 2014 reveals that the primary difference between chapter 12 and chapter 13 plan distributions is that secured creditors receive "nearly three-quarters of total distributions" in chapter 12 cases while they "receive only a little more than one-half of distributions" in chapter 13 cases.¹⁸² And while chapter 12's broader secured debt

¹⁷⁵ See Part II, *supra*.

¹⁷⁶ 11 U.S.C. § 1222(b)(2) ("Subject to subsections (a) and (c) of this section the plan may - modify the rights of holders of secured claims, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims").

¹⁷⁷ 11 U.S.C. § 1222(b)(9) ("Subject to subsections (a) and (c) of this section the plan may - provide for payment of allowed secured claims consistent with section 1225(a)(5) of this title, over a period exceeding the period permitted under section 1222(c)").

¹⁷⁸ 11 U.S.C. § 1225(a)(5) ("The court shall confirm the plan if with respect to each allowed secured claim provided for by the plan - (A) the holder of such claim has accepted the plan; (B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and (ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or (C) the debtor surrenders the property securing such claim to such holder.").

¹⁷⁹ *In re Mortellite*, Nos. 17-21818, 17-21820, 2018 WL 388966, at 4-5 (Bankr. D.N.J. Jan. 11, 2018) ("Whenever a plan proposes to pay the present value of a secured claim, whether the secured claim is being paid in full or being reduced under section 506(a) of the Bankruptcy Code, there must be a likelihood that the debtor has sufficient disposable income to pay the claim as required by the Code.").

¹⁸⁰ See *In re Torelli*, 338 B.R. 390 (Bankr. E.D. Ark. 2006); see also *In re Mortellite*, 2018 WL 388966, at 7 (finding the plan not feasible because the debtor could not pay secured creditor the allowed amount of its claim in full); *In re Fenske*, 96 B.R. 244, 248 (Bankr. D.N.D. 1988) ("The necessity of preserving a secured creditor's interest impacts upon the second relevant confirmation element which is that the debtor must be able to make all payments under the plan.").

¹⁸¹ See Ed Flynn, *Chapter 12: Outcomes for Family Farmers and Fishermen*, 34 Am. Bankr. Inst. J. 36, 72 (Sept. 2015) [hereinafter Flynn, *Chapter 12 Outcomes*] (reporting that "priority and general unsecured creditors receive a much smaller proportion of the total distributions in chapter 12 cases compared to chapter 13 cases").

restructuring tools have been criticized as a wealth transfer from debtors to creditors, ¹⁸³secured creditors have substantial pre- [*305] confirmation leverage negotiating and objecting to plan terms, knowing that feasibility and therefore confirmation depend on how the plan treats their claims.

Thus, a chapter 12 plan must comport with both of the Bankruptcy Code's requirements for the treatment of secured claims and cash flow. The first impacts the second. Debtors risk denial of confirmation if the proposed plan includes objectionable repayment terms on secured debt. But by adjusting the repayment terms in an amended plan, the plan may become unfeasible because it no longer cash flows.

Secured creditors may object to plan terms arguing that they do not comport with bankruptcy law. Objections to the proposed plan's interest rate and repayment term are common. Here, decisional law fills in the Bankruptcy Code's gaps. Most bankruptcy courts apply the *Till* interest rate, ¹⁸⁴applying its prime-plus formula approach. ¹⁸⁵Relevant to repayment terms, several cases suggest courts should consider the term of the original note and customary repayment methods in deciding whether the proposed payment term is reasonable. ¹⁸⁶

2. Unsecured Claims & Feasibility

Chapter 12 plans must also satisfy the "best interests of creditors" test for unsecured claims. ¹⁸⁷A bankruptcy court may confirm a plan only if unsecured creditors receive at least as much under a chapter 12 plan as they would receive ¹⁸⁸in a chapter 7 liquidation. ¹⁸⁶Failure to

¹⁸² *Id.*

¹⁸³ James J. White, *Taking from Farm Lenders and Farm Debtors: Chapter 12 of the Bankruptcy Code*, 13 J. Corp. L. 1, 22 (1987) ("One is left with a final and discouraging explanation for the enactment of Chapter 12. In its baldest form this is the idea that Chapter 12 is designed to take money from creditors and give it to debtors, to make farmers richer and banks poorer. Few major changes in the law are completely cost free, yet seldom does one see a law that is not a tax or government subsidy program which is designed explicitly to transfer wealth between two groups of private individuals in our society.").

¹⁸⁴ See *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) (holding that in a chapter 13 case the appropriate method for determining the cramdown interest rate is the formula approach, which is the prime rate plus an upward adjustment to account for risk of nonpayment).

¹⁸⁵ See, e.g., *In re Johnson*, 581 B.R. 289 (Bankr. W.D. Wis. 2018) (holding that the plan was not feasible because the plan's 5.5% proposed interest rate for secured creditor in the plan was inadequate to account for risk of nonpayment under *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004)).

¹⁸⁶ See *In Matter of Elkhorn Crossing, LLC*, No. 16-80782, 2016 WL 6875893, at 2 (Bankr. D. Neb. Nov. 21, 2016) (explaining that the court may consider the length of the original note and the creditor's customary repayment periods for similar loans); *In re Whitten*, Nos. 10-43548, 10-43545, 2012 WL 4839119, at 3 (Bankr. D. Neb. Oct. 10, 2012) (same); *In re Torelli*, 338 B.R. 390, 397 (Bankr. E.D. Ark. 2006) (same).

¹⁸⁷ See 11 U.S.C. § 1225(a)(4) ("Except as provided in subsection (b), the court shall confirm a plan if... (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is 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.").

accurately account for [*306] the "best interests" test may be fatal to plan feasibility because the revised accounting affects cash flow. A chapter 12 plan may become impossible to cash flow after correctly applying the "best interests" test.

In re Novak illustrates the feasibility consequences for failure to properly account for unsecured claims in the plan. ¹⁸⁹The debtors had to either sell the current year's crops and unencumbered land and distribute those proceeds to the unsecured creditors, or retain that property and make a distribution to the unsecured creditors over the term of the plan in an amount at least equal to the value of that property. ¹⁹⁰The bankruptcy court explained that the plan could not cash flow under either scenario and, thus, the plan was not feasible. ¹⁹¹

F. Balloon Payments

Balloon payment terms, while common in chapter 12 plans, also will be subject to scrutiny. A balloon payment is a final payment "that discharges the principal balance of the loan." ¹⁹²Where the proposed plan calls for a balloon payment, the debtors must provide evidence that supports a reasonable likelihood of repayment either through future accumulation of funds or the ability to refinance the loan. ¹⁹³Merely asserting a belief that either funds or financing will be available to make the balloon payment at the end of the plan is not sufficient. ¹⁹⁴

Many bankruptcy courts have expressed reluctance to confirm plans that include balloon payment terms unless the debtor proves "circumstances likely to produce a bucket of cash at just the right time to make the payment." ¹⁹⁵They evaluate future income projections and existing and projected equity in the subject property to assess the likelihood the debtor will be able to refinance [*307] a balloon payment at the end of the plan. ¹⁹⁶For instance, a

¹⁸⁸ *Id.*; see also *In re Novak*, 252 B.R. 487, 492 (Bankr. D.N.D. 2000) ("This requires performing a hypothetical liquidation analysis taking into account the value of the property available to creditors as of the effective date of the plan and then comparing that value to what each creditor will be receiving under the plan as proposed.").

¹⁸⁹ *In re Novak*, 252 B.R. at 492.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Payment*, Black's Law Dictionary (10th ed. 2014).

¹⁹³ *Euerle Farms, Inc. v. State Bank* (*In re Euerle Farms, Inc.*, 861 F.2d 1089, 1090 (8th Cir.1988); *In re Fuelling*, 601 B.R. 665, 675 (Bankr. N.D. Iowa 2019); *In re Perkins*, No. 13-31277, 2013 WL 5863732, at 7 (Bankr. E.D. Tenn. Oct. 30, 2013); *In re Hudson*, No. 208-09480, 2011 WL 1004630, at 8 (Bankr. M.D. Tenn. Mar. 16, 2011); *In re Pratt Vineyards, LLC*, No. 10-35071, 2010 WL 9488472, at 3 (Bankr. E.D. Cal. Dec. 9, 2010); *In re Field*, No. 04-00028, 2005 WL 3148287, at 8 (Bankr. D. Idaho Oct.17, 2005) (citations omitted).

¹⁹⁴ *In re Melcher*, 416 B.R. 666, 669 (Bankr. D. Neb. 2009) (balloon payment terms infeasible because debtor merely speculated that they would be able to refinance the property); *In re Chambers*, No. 08-31399, 2008 WL 5649690, at 11-12 (Bankr. E.D. Tenn. Nov. 20, 2008); *In re Foertsch*, 167 B.R. 555, 568 (Bankr. D.N.D. 1994); *In re Borg*, 88 B.R. 288, 292 (Bankr. D. Mont. 1988).

¹⁹⁵ *In re Fuelling*, 601 B.R. at 675 (quoting *In re Michels*, 301 B.R. at 17 (chapter 13 case) (internal quotations omitted)); *In re Foertsch*, 167 B.R. 555, 568 (Bankr. D.N.D. 1994) (debtors "had no prospects whatsoever for obtaining commitment of funds with which to finance the balloon payment" at the end of the five-year plan.").

balloon payments is likely feasible where the debtor has substantial equity in the farm.¹⁹⁷ A balloon payment also might be acceptable where the chapter 12 debtor has submitted detailed projections showing that when payment comes due, "they will have significantly reduced the principal owed to [the bank] on subject property, giving them sufficient equity the necessary upgrades, and hopefully be able to refinance the entire debt."¹⁹⁸ In addition, balloon payment terms might be feasible where the debtor shows that they will have access to other lenders for refinancing.¹⁹⁹

Chapter 12 debtors that include balloon payment terms in their plans should be prepared to show that they will be able to repay the balance of the obligation either from their own resources or by obtaining a loan from another party.²⁰⁰

G. Debtor's Age

The advanced age of the debtor also may be relevant to the feasibility assessment. Where plan terms include balloon payments or regular installment payments on secured debt a decade or more into the future, and the debtor's age is over 60, the plan may fail the feasibility test.²⁰¹ Bankruptcy courts explain that a chapter 12 debtor's advanced age is a salient factor in such circumstances because it is not reasonable to expect that they would continue to farm for decades after confirmation.²⁰²

Consider *In re Howard*, where the bankruptcy court denied feasibility of a plan that called for 10- and 20-year repayment terms to secured creditors because the debtors were 62 and 57 at the time of the confirmation hearing.²⁰³ The bankruptcy court acknowledged that most other claims would be paid under the plan within five years, but was skeptical the debtors would be able to farm for the twenty years required to meet plan projections and [*308] terms.²⁰⁴ Even so, this court indicated it would find acceptable an amended plan with a 15-year

¹⁹⁶ *In re Euerle Farms, Inc.*, 861 F.2d at 1090 (finding that there was no realistic possibility that the debtor could make balloon payments from future income); *In re Perkins*, 2013 WL 5863732, at 7; *In re Hudson*, 2011 WL 1004630, at 8; *In re Field*, 2005 WL 3148287, at 8.

¹⁹⁷ *In re Howard*, 212 B.R. 864, 882 (Bankr. E.D. Tenn. 1997).

¹⁹⁸ *In re Hudson*, 2011 WL 1004630, at 8.

¹⁹⁹ *Id.* *In re Rose*, 135 B.R. 603, 608 (Bankr. N.D. Ind. 1991).

²⁰⁰ *In re Rose*, 135 B.R. at 608.

²⁰¹ *In re Tucker Brothers, L.L.C.*, No. 13-224622014, WL 6435817, at 7 (Bankr. D. Kan. Nov. 13, 2014) (finding no reasonable expectation that the balloon payments can be refinanced when they become due, citing the advanced age debtor's management as contributing factors); *In re Lockard*, 234 B.R. 484, 495-96 (Bankr. W.D. Mo. 1999); *In re Howard*, 212 B.R. 864, 882 (Bankr. E.D. Tenn. 1997).

²⁰² *In re Lockard*, 234 B.R. 484, 495-96 (D. Me. 1999) (plan term establishing 20-year repayment term for 69-year-old farmer whose testimony admitted he was unlikely to farm that long is not feasible and would be inequitable to confirm a plan with such a term); *In re Rose*, 135 B.R. at 608 (Bankr. N.D. Ind. 1991) (finding a 30-year repayment term on secured debt not feasible given the age of the debtors and creditors).

²⁰³ *In re Howard*, 212 B.R. at 882.

repayment term in part because the debtors' children intended to take over the farming operation.²⁰⁵

The age of the debtor's management was also relevant to the bankruptcy court's feasibility assessment in *In re Tucker Brothers, L.L.C.*²⁰⁶ That plan included projected balloon payments at ten and twenty years from confirmation, at which time the operation's management would be in their seventies and eighties, respectively, and failed to demonstrate that they would have sufficient equity in the personal and real property or the ability to refinance the debts.²⁰⁷

H. Adverse Witnesses

Adverse witnesses, particularly those designated as experts, may play a role in negative feasibility determinations. Their testimony may reveal vulnerabilities in the debtor's plan projections that render them unreasonable. These witnesses supply key testimony about the debtors' ability to produce the size and quality of the yields projected and the amount and type of expenses projected, among others.

For instance, when orange grove operators proposed a plan projecting a higher crop yield by planting additional acreage and increasing maintenance on existing acreage, an adverse expert witness testified that the debtors' groves were in poor condition, and that the young trees on the recently added acreage would not be capable of producing fruit in time to meet the plan's first projected increase.²⁰⁸ These objective realities, brought to light by the adverse witness, were among the facts that defeated feasibility.²⁰⁹ In another case, an agricultural lender, who grew up farming in the same region as the debtor, challenged feasibility and supplied testimony that the quality of the debtor's crop yield was low.²¹⁰ In another case, a secured creditor, a bank, successfully challenged the feasibility of the debtors' chapter 12 plan through the testimony of one of its executives and his decades of experience.²¹¹ The witness credibly demonstrated how the debtors' projected expenses were impossibly low, particularly when compared with the actual [*309] expenses reflected on the debtors' schedules.²¹²

²⁰⁴ *Id.* ("To this court, it is simply not credible that farmers the ages of the debtors can continue for twenty years the level of farming activity which the debtors concede is required for this plan to succeed.").

²⁰⁵ *Id.*

²⁰⁶ *In re Tucker Brothers, LLC*, No. 13-22462, 2014 WL 6435817, at 7 (Bankr. D. Kan. Nov. 13, 2014).

²⁰⁷ *Id.*

²⁰⁸ *In re Gough*, 190 B.R. 455, 458 (Bankr. M.D. Fla. 1995).

²⁰⁹ *Id.*

²¹⁰ *In re Tofsrud*, 230 B.R. 862, 868 (Bankr. D.N.D. 1999).

²¹¹ *In re Tate*, 217 B.R. 518, 520-21 (Bankr. E.D. Tex. 1997).

²¹² *Id.*

Adverse witnesses are not always successful, particularly where a debtor can demonstrate shortcomings in the witness's testimony,²¹³ or establish that a witness lacks the expertise to assess the financial viability of the debtors' projected operations.²¹⁴

I. Plan Modifications & Feasibility

A chapter 12 debtor who wants to modify the plan post-confirmation must establish that the plan as modified is feasible.²¹⁵ They must demonstrate that the modified plan will cash flow. Bankruptcy courts will scrutinize the amended cash flow projections and any supporting evidence to ensure that a debtor can realistically perform the modified plan.²¹⁶

Before seeking plan modification, chapter 12 debtors should weigh several considerations. First, the bankruptcy court may require chapter 12 debtors to demonstrate that they seek a modification due to unforeseen or unanticipated circumstances that affect plan implementation.²¹⁷ Often some significant changed circumstance beyond the debtor's control prompts the motion to modify the plan. Examples include a severe weather event like a drought,²¹⁸ a lottery windfall,²¹⁹ and the Coronavirus pandemic.²²⁰ However, not all courts agree on this threshold matter, and some may entertain a **[*310]** motion to modify without any unanticipated triggering event.²²¹

²¹³ See, e.g., *In re Chaney*, 87 B.R. 131, 135-36 (Bankr. D. Mont. 1988).

²¹⁴ *In re Simpson*, No. 17-10442, 2020 WL 2844383, at 2-3 (Bankr. D. Vt. Jun. 1, 2020) (in connection with debtor's motion to modify previously confirmed plan, bankruptcy court found that the contesting creditor's witness, an accountant, lacked the expertise to assess the financial viability of the debtors' projected operations).

²¹⁵ Chapter 12 debtors may move to modify their plans "at any time after the confirmation of the plan but before the completion of payments under such plan, the plan may be modified upon request of the debtor, the trustee or the holder of an allowed unsecured claim." 11 U.S.C. § 1229(a). A modification must meet the Code's confirmation requirements. 11 U.S.C. § 1229(b)(1) ("the requirements of section 1225(a) of this title apply to any modification under subsection (a) of this section."); see, e.g., *In re Cooper*, 94 B.R. 550 (Bankr. S.D. Ill. 1989) (a debtor seeking to modify confirmed chapter 12 plan bears the burden of proving that the modification meets confirmation requirements).

²¹⁶ See *In re Dittmer*, 82 B.R. 1019 (Bankr. D.N.D. 1988) (declining to approve chapter 12 debtor's proposed plan modification based upon cash crop income projections that exceeded actual experience by 36%); *In re Hagen*, 95 B.R. 708, 711-12 (Bankr. D.N.D. 1989).

²¹⁷ *In re Fennig*, 174 B.R. 475, 479 (Bankr. N.D. Ohio 1994) (Chapter 12 debtors not permitted to modify their chapter 12 plan because they failed to demonstrate an unanticipated change in circumstances warranting it); *In re Wickersheim*, 107 B.R. 177, 181 (Bankr. E.D. Wis. 1989) (noting modification to chapter 12 plan is only warranted where there is unanticipated change in circumstances affecting implementation of confirmed plan); *In re Grogg Farms, Inc.*, 91 B.R. 482, 485 (Bankr. N.D. Ind. 1988) (same); *In re Cooper*, 94 B.R. 550, 552 (Bankr. S.D. Ill. 1989).

²¹⁸ *In re Hagen*, 95 B.R. at 711-12 (observing that the 1988 drought appeared to be primary reason the debtors sought modification post-confirmation).

²¹⁹ *In re Cook*, 148 B.R. 273, 282 (Bankr. W.D. Mich. 1992) (holding that plan, as modified, was feasible because the debtors, who won millions in the lottery, were able to pay creditors in full).

²²⁰ *In re Simpson*, No. 17-10442, 2020 WL 2844383, at 2 (Bankr. D. Vt. Jun. 1, 2020).

²²¹ *Id.*

Second, bankruptcy courts approach the feasibility inquiry with more caution and skepticism when considering a plan modification,²²² particularly if the modification is contested or a post-confirmation default has occurred. Under these circumstances, they do not extend farmer-debtors the benefit of the doubt.²²³ And they are more concerned about frustrating the expectations of other parties to the bankruptcy case.²²⁴ Indeed, a motion to modify the plan may put in stark relief the confirmed plan's defects.²²⁵ Chapter 12 debtors will face difficulty persuading bankruptcy courts that their modified plans are feasible if they have failed to meet the projections for previously confirmed plans.²²⁶ For instance, a post-confirmation default due to significant budget overruns reveals that a debtor underestimated expenses, which weighs against the debtor's estimates in connection with the modified plan.²²⁷

IV. CONCLUSION

This paper provides guidance for chapter 12 debtors and their attorneys in formulating plans that bankruptcy courts will confirm as feasible. Even though bankruptcy courts initially give chapter 12 debtors the benefit of the doubt when it comes to plan feasibility, the caselaw is clear that they will not confirm reorganization plans that are not reasonably likely to succeed. Judicial decisions addressing chapter 12 plan feasibility, when viewed in the aggregate, indicate that a prudent chapter 12 debtor should propose a plan accompanied by realistic cash flow projections informed by their operation's pre-petition performance, any reliably certain off-farm income, and conservative forecasts of relevant market data. Moreover, when formulating chapter 12 plan terms, a chapter 12 debtor should also consider other facts and circumstances that may be relevant to the feasibility assessment, such as the ability and age of the debtor and valuation issues that impact plan funding. [*311] Finally, they should ensure the plan complies with other confirmation requirements for secured and unsecured creditor treatment where failure to do so affects plan feasibility.

Unfortunately, this guidance is incomplete. As chapter 12 attorneys and their farmer-clients are aware, there is no guarantee of success, which, in bankruptcy, is often defined as obtaining a discharge. Bankruptcy courts confirm many feasible plans, but chapter 12 debtors often do not

²²² *In re Wruck*, 183 B.R. 862, 865 (Bankr. D.N.D. 1995) ("A bankruptcy court should, however, generally approach the issue of post-confirmation modifications cautiously in light of the fact that such modifications cut against the grain of finality and may operate to frustrate the legitimate expectations of parties to the bankruptcy proceeding." (citing *In re Grogg Farms, Inc.*, 91 B.R. 482, 484-85 (Bankr. N.D. Ind. 1988))).

²²³ *In re Hagen*, 95 B.R. at 711-12.

²²⁴ *In re Wruck*, 183 B.R. at 865.

²²⁵ See, e.g., *In re Hagen*, 95 B.R. at 711-12 (declining to approve chapter 12 debtor's proposed plan modification because the debtor understated fuel and living expenses by 38% in previously confirmed plan).

²²⁶ *In re Tofsrud*, 230 B.R. 862, 872-73 (Bankr. 1999) (finding that the chapter 12 debtor's failure to meet projections for previously confirmed plan means the modification is not feasible).

²²⁷ *In re Dittmer*, 82 B.R. 1019 (Bankr. D.N.D. 1988) (declining to approve chapter 12 debtor's proposed plan modification based upon cash crop income projections that exceeded actual experience by 36%).

complete them. One study on chapter 12 outcomes, using data from the Executive Office for U.S. Trustees for fiscal years 2009 through 2014, reports that "about 35 percent" of chapter 12 cases closed during that six-year period had completed plans. ²²⁸Unfortunately, there is not a great deal of data available on failed plans. ²²⁹

In the gap between completed and uncompleted plans, there may be useful information for bankruptcy participants and policymakers about why some plans fail when others succeed. Recall that the feasibility assessment only weighs probabilities - it only predicts a reasonable likelihood of success, a standard that leaves room for failed plans. But research that aggregates the circumstances that correlate with successful and failed plans may provide more meaningful insight about when chapter 12 will work. Such additional research may help farmers make better pre-filing assessments about whether to file a chapter 12 case. It might also assist Congress in assessing whether chapter 12 is functioning as intended in the face of increasing consolidation in the farm industry sector. ²³⁰

American Bankruptcy Law Journal
Copyright (c) 2021 National Conference of Bankruptcy Judges

End of Document

²²⁸ Flynn, *Chapter 12 Outcomes*, *supra* note 181 at 72.

²²⁹ *Id.*

²³⁰ See generally James M. MacDonald, *Tracking the Consolidation of U.S. Agriculture*, 42 Applied Econ. Perspectives & Pol. 361 (2020) (finding that consolidation has been "large, widespread across crop and livestock commodities, and persistent over time").

Agricultural Insolvency and Chapter 12 Overview

ABI Central States Workshop
Lake Geneva, Wisconsin
June 5, 2026

Hon. Shon Hastings
Chief Bankruptcy Judge
United States Bankruptcy Court
District of North Dakota

Mark Bogdanowicz
Spencer Fane LLP
Kansas City, Missouri 64106
Phone: 816.292.8843
mbogdanowicz@spencerfane.com

Rebecca R. DeMarb
Kali Resolution Partners LLC
Swanson Sweet LLP
Phone: (872) 365-4343
rdemarb@kali-rp.com
rdemarb@swansonsweet.com

Austin J. Peiffer
Ag & Business Legal Strategies
Cedar Rapids, Iowa
Phone: (319) 363-1641
austin@ablsonline.com

Jeffrey A. Peterson (Jeff)
Winthrop & Weinstine
Minneapolis, Minnesota
Phone: (612) 604-6509
jeffpeterson@winthrop.com

COMPARISON OF BANKRUPTCIES AVAILABLE TO FARMERS

1. Traditional Chapter 11

- 1.1. Who may file? Debtors, excluding stockbrokers and commodity brokers, un-insured State member bank and domestic insurance companies, can file Chapter 11. The term Debtor includes individuals, corporations, partnerships (both general and limited), trusts, limited liability companies, and limited liability partnerships. The term Debtor is deliberately very broad.
- 1.2. Debtor has a 120-day exclusive time period to file plan of reorganization, unless Debtor is a single asset real estate or a small business debtor. This can be extended to no more than 18 months after filing the case. Small business debtors are allowed the exclusive period of 180 days to file their plan. This cannot be extended beyond 300 days after filing the case.
- 1.3. Cash collateral, adequate protection issues:
 - 1.3.1. Is the collateral insured?
 - 1.3.2. Is it declining in value?
 - 1.3.3. Is the debtor willing to provide a replacement lien in post-petition assets such as accounts receivable, or post-petition crops?
 - 1.3.4. If livestock, is it being properly fed?
- 1.4. Contents of Plan:
 - 1.4.1. Creditors are placed in different classes—those with substantially similar claims are to be placed in same class, but each secured creditor is placed in a separate class.
 - 1.4.2. Some creditors may be unimpaired (their claims will be treated exactly as if the case had not been filed)—they are deemed to have accepted the Plan.
 - 1.4.3. Defaults can be cured or waived.
 - 1.4.4. Debtor can retain some or all their property.
 - 1.4.5. Collateral can be sold or returned to creditor.
 - 1.4.6. Interest rates can be modified.
 - 1.4.7. Maturity dates can be extended far beyond loan terms.
 - 1.4.8. Votes for Plan cannot be solicited except pursuant to court-approved Disclosure Statement.
 - 1.4.9. A class of claimants is deemed to have accepted the Plan if it has been accepted by claimants with *allowed claims* who hold at least

2/3rds in amount and more than 1/2 in number of the allowed claims voting within the class.

- 1.4.10. Absolute priority rule (a debtor may not keep or retain the ownership interest unless all creditors are paid in full or have consented to payment of less than all of their claims) may be your best weapon to prevent an unfavorable Plan from being confirmed. The absolute priority rule may not apply in individual Chapter 11 cases. The Eighth Circuit has not ruled on this important issue, however, two Bankruptcy Courts on the Eighth Circuit have held that the absolute priority rule does not apply to individual Chapter 11 cases. However, several courts have recently taken the position that the absolute priority rule does apply in individual Chapter 11 cases.

2. Chapter 11 Subchapter V Small Business Bankruptcy

- 2.1. Who may file? Applies to business debtors with debt not more than \$3,424,000 excluding debts owed to 1 or more affiliates or insiders with not less than 50 percent of the debt arising from the commercial or business activities of the Debtor.
- 2.2. Trustee is appointed: A Subchapter V trustee is appointed at the outset of the case to assist the Debtor and counsel to negotiate a plan. As in a traditional Chapter 11 the Debtor maintains its role as Debtor-in-Possession. Trustee services terminate when the plan is substantially consummated. Debtor files a notice of substantial consummation within 14 days of the confirmed plan being substantially consummated.
- 2.3. Status conference: Within 60 days of the filing, the Court shall hold a status conference. Fourteen days before the status conference the Debtor shall file its report outlining its efforts to attain a consensual plan of reorganization.
- 2.4. Time to file plan: Debtor has 90 days to file its initial plan. The Court may extend the time to file a plan if the need is attributable to circumstances for which the debtor should not justly be held accountable.
 - 2.4.1. Only the Debtor may file a plan.
- 2.5. No absolute priority rule, so a Debtor can retain property without paying all creditors in full.
- 2.6. No creditors committees, so less expense than a traditional Chapter 11.
- 2.7. Plan period of three years but up to five years.
- 2.8. Not all confirmed plans are consensual, but consensual confirmations are superior for debtors.

3. Chapter 12 Bankruptcy

- 3.1. Only available for “family farmers” (husband and wife are treated as one debtor):
 - 3.1.1. That are engaged in a farming operation;
 - 3.1.2. Whose aggregate debts on the date the bankruptcy is filed do not exceed \$12,562,250, and, not less than 50% of aggregate non-contingent, liquidated debts (excluding debt for homestead unless it arises out of a farming operation) arise out of a debtor’s farming operation;
 - 3.1.3. More than 50% of the debtor’s gross income must come from the farming operation for either the tax year immediately preceding year of filing or, both the second and third taxable years prior to filing; and
 - 3.1.4. Who have regular annual income.
- 3.2. If the Debtor is a corporation or partnership, more than 50% of the stock or equity must be held by one family, or by one family and the relatives of the members of such family who conduct the farming operation, and (i) more than 80% of the value of the assets must be related to the farming operation and (ii) whose aggregate debts on the date the bankruptcy is filed do not exceed \$4,411,40010,000,000.00, and not less than 50% of aggregate non-contingent, liquidated debts (excluding debt for one dwelling which a shareholder or partner maintains as a homestead, unless it arises out of a farming operation) arise out of a debtor’s farming operation.
- 3.3. Voluntary: Debtor cannot be forced into Chapter 12.
- 3.4. Contemplates the repayment of some or all of debts from Debtor’s future disposable income, without mandating liquidation of the Debtor’s assets. Plan is usually for 3 years but can be extended to a maximum of 5 years. Plan must be feasible and give creditors no less than if Debtor was liquidated under Chapter 7.
- 3.5. Extraordinary tax relief is available in Chapter 12:
 - 3.5.1. Taxes due to the sale of farm assets used in the Debtor’s farming operation are treated as unsecured claims. For example, credit cards are discharged when the farmer receives the Chapter 12 discharge.
 - 3.5.2. From May 14, 2012 through October 26, 2017 the tax relief was only available to transactions in the tax year prior to filing the bankruptcy petition. *Hall v. U.S.*, 566 U.S. 506 (2012). On October 26, 2017, President Trump signed S.1408, a Congressional revocation of *Hall v.*

U.S. Since the revocation of *Hall*, it does not matter whether the farm assets are sold in the tax year prior to filing the bankruptcy petition, or after filing the bankruptcy.

- 3.5.3. May apply to sales of farm assets that would produce ordinary income such as the sale of fat hogs. *See Knudsen v. IRS*, 581 F.3d 696 (8th Cir. 2009).
- 3.6. Opportunity for creditors: Realizing that many beleaguered farmers are ready to cease farming operations, the savvy ag banker may encourage the farmer to quit farming and offer him some financial assistance to retain a bankruptcy counsel to assist him in discharging the taxes using a Chapter 12 bankruptcy.

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

Comparison of Chapter 11, Chapter 11 Subchapter V, and Chapter 12 for Family Farmers (Updated through April 1, 2025)

	Chapter 11		Chapter 11 Subchapter V		Chapter 12	
	Individual	Non-Individual	Individual	Non-Individual	Individual	Non-Individual
Debt Limit	None ¹		\$3,424,000 ²		\$12,562,250 ³	
Income Limits	None		None		>50% from farming in the tax year before filing, or in both the 2d and 3d tax years before filing ⁴	None
Asset Composition	None		Cannot be primarily engaged in owning single asset real estate ⁵		None	>80% of asset value must relate to the farming operation ⁶
Ownership Restrictions	None		None		NA ⁷	>50% of stock or equity held by one family (or one family and relatives), and the family or relatives con-

1. See 11 U.S.C. § 109(d).

2. For cases filed on or after Apr. 1, 2025, the subchapter V debt cap is \$3,424,000. Section 1182(1) now incorporates the “small business debtor” definition in 11 U.S.C. § 101(51D); the temporary \$7.5 million cap sunset on June 21, 2024. See 11 U.S.C. § 104 and 90 Fed. Reg. 8,941 (Jan. 30, 2025), corrected at 90 Fed. Reg. 10,643 (Feb. 6, 2025).

3. For cases filed on or after Apr. 1, 2025, the chapter 12 family-farmer debt limit is \$12,562,250. See 11 U.S.C. §§ 101(18) & 104 and 90 Fed. Reg. 8,941 (Jan. 30, 2025), corrected at 90 Fed. Reg. 10,643 (Feb. 6, 2025).

4. See 11 U.S.C. § 101(18)(A)(i)–(ii).

5. Subchapter V debtor eligibility currently turns on the “small business debtor” definition, which excludes a person whose primary activity is owning single asset real estate and excludes reporting companies and their affiliates. See 11 U.S.C. §§ 101(51D), 1182(1). For a family farmer, this might apply if the debtor is a cash rent landlord.

6. See 11 U.S.C. § 101(18)(B).

7. U.S. Const. amend. XIII.

AMERICAN BANKRUPTCY INSTITUTE

	Chapter 11		Chapter 11 Subchapter V		Chapter 12	
	Individual	Non-Individual	Individual	Non-Individual	Individual	Non-Individual
						duct the farming operation ⁸
Publicly Traded Stock	N/A	Allowed	N/A	Not allowed ⁹	N/A	Not allowed ¹⁰
Farming Operation Required	No		No		Yes ¹¹	
Class Voting	Yes ¹²		Yes for a consensual plan, no for a nonconsensual plan ¹³		No ¹⁴	
Absolute Priority Applies	Not always ¹⁵	Yes ¹⁶	No ¹⁷		No ¹⁸	
Discharges Priority Taxes on Sale of Farm Assets	No		No		Yes ¹⁹	

8. See 11 U.S.C. § 101(18)(B).

9. Subchapter V debtor eligibility currently turns on the “small business debtor” definition, which excludes a person whose primary activity is owning single asset real estate and excludes reporting companies and their affiliates. See 11 U.S.C. §§ 101(51D), 1182(1).

10. See 11 U.S.C. § 101(18)(B).

11. Only a “family farmer with regular annual income” may be a chapter 12 debtor. See 11 U.S.C. §§ 101(18), 101(19), 109(f).

12. In ordinary chapter 11, impaired classes vote under 11 U.S.C. § 1126.

13. In subchapter V, a consensual plan still proceeds under 11 U.S.C. § 1191(a), but a nonconsensual plan may be confirmed without satisfying 11 U.S.C. § 1129(a)(8) or (10). See 11 U.S.C. § 1191(b).

14. Chapter 12 does not require chapter 11-style class acceptance. 11 U.S.C. § 1225 governs confirmation.

15. See 11 U.S.C. §§ 1115, 1129(a)(15), and 1129(b)(2)(B)(ii).

16. For non-individual chapter 11 debtors, the absolute-priority rule remains part of cramdown under 11 U.S.C. § 1129(b)(2)(B)(ii).

17. Subchapter V makes 11 U.S.C. § 1129(b) inapplicable and substitutes the “fair and equitable” standards in 11 U.S.C. § 1191(c).

18. Chapter 12 has no chapter 11 absolute-priority requirement. Individual chapter 11 debtors remain subject to the BAPCPA-modified framework in 11 U.S.C. §§ 1115 and 1129(b)(2)(B)(ii).

19. See 11 U.S.C. § 1232.

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

	Chapter 11		Chapter 11 Subchapter V		Chapter 12	
	Individual	Non-Individual	Individual	Non-Individual	Individual	Non-Individual
Estate Includes Post-Petition Earnings	Yes ²⁰	No	No for a consensual plan, yes for a nonconsensual plan ²¹		Yes ²²	
Exclusive Period to File Plan	120 days post-filing; extendable up to 18 months ²³		90 days; extendable if delay is not justly attributable to debtor ²⁴		90 days; extendable if delay is not justly attributable to debtor ²⁵	
Period to Obtain Confirmation	No statutory deadline		No statutory deadline		Confirmation hearing to conclude within 45 days after plan filing ²⁶	

20. See 11 U.S.C. § 1115(a).

21. See 11 U.S.C. § 1186(a).

22. See 11 U.S.C. § 1207(a).

23. See 11 U.S.C. § 1121(b), (d)(2)(A).

24. See 11 U.S.C. § 1189(b).

25. See 11 U.S.C. § 1221.

26. See 11 U.S.C. § 1224.

NCBJ BEHIND THE BENCH

Chapter 12 Bankruptcy: Debt or Alive?

November 12, 2024
1 p.m. ET

Virtual

Panelists:

Honorable Heather Z. Cooper, Chief Bankruptcy Judge, District of Vermont

Honorable Brian T. Fenimore, Chief Bankruptcy Judge, Western District of Missouri

Honorable Catherine J. Furay, Chief Bankruptcy Judge, Western District of Wisconsin

Donald L. Swanson, Koley Jessen, Omaha

Moderator: Krystal Mikkilineni, Dentons Davis Brown, Des Moines

Chapter 12 v. Subchapter V: Which Should a Farmer Choose?

By Donald L. Swanson

Chapter 12 is for farmers.

Subchapter V is for main street businesses.

But in many circumstances, a farmer could be eligible for relief under both Chapter 12 and Subchapter V. In such circumstances, the question is this:

- Which should the farmer choose—Chapter 12 or Subchapter V?

What follows is a three-part discussion on, (i) Chapter 12 is Better—Almost Always, (ii) Neutral Considerations, and (iii) When Subchapter V is the *Only* Option.

I. Chapter 12 is Better—Almost Always

The answer in the vast majority of such cases is this:

- Choose Chapter 12.

And it's not a close call. Here's why.

--Capital Gains Taxes

First and foremost, the Chapter 12 tax benefits in § 1232 cannot be matched in Subchapter V.

In its essence, § 1232 allows capital gains taxes from liquidation of farm assets to be treated under a Chapter 12 plan as a general unsecured claim that can be discharged—instead of as a priority claim or administrative claim that cannot.

Such a tax benefit for farmers is huge, especially since many farmers have, (i) farmland with a low tax basis, and (ii) fully depreciated equipment.

And the § 1232 tax benefit arises whether the liquidation of farm assets occurs pre-petition, post-petition, or under a confirmed Chapter 12 plan. And that beats the heck out of addressing those same capital gains taxes as pre-petition priority claims or post-petition administrative claims under Subchapter V.

--Time Length of Plan

Statutory language on the time length of a plan, for paying general unsecured claims, varies slightly between Chapter 12 and Subchapter V:

- Chapter 12—not longer than 3 years “unless the court for cause approves a longer period” that is less than 5 years, in § 1222(c); and
- Subchapter V—between 3 and 5 years “as the court may fix,” in § 1191(c)(2).

But the effects of those slight language variations can be huge:

- the same circumstance that would unquestionably limit the length of a Chapter 12 plan to 3 years could easily end up as a 5 years plan under Subchapter V.

--Filing Fees

The court fees for filing a Chapter 12 petition are much less than the corresponding court fees for filing a Subchapter V petition. The filing fees are:

- Chapter 12—\$278; and
- Subchapter V—\$1,738.

--Trustee Fees

Chapter 12 trustees are standing trustees under 28 U.S.C. § 586(b); whereas, Subchapter V trustees are case-by-case trustees.

And their compensation schemes are different too, with Chapter 12 trustee fees likely to be much less than Subchapter V trustee fees:

- Subchapter V trustees are compensated on an hourly basis, with no specific limitation; whereas,
- Chapter 12 trustees are compensated by a percentage of the debtor's funds that they handle—and with a cap on fees in some districts.

The Bankruptcy Court for the District of Nebraska (where I am located), for example, has a Local Rule Appendix H on “Trustee Fees in Subchapter V of Chapter 11 and in Chapter 12 Cases.” Here are the differences it provides for compensating Chapter 12 trustees and Subchapter V trustees:

- Chapter 12—“debtor must pay the trustee a fee, for each year of the plan, equal to 10% of all payments under the plan . . . or \$6,000, whichever is less,” and the debtor “must also pay an initial payment of \$200.00” for the trustee's fee; but
- Subchapter V—debtor must (i) pay \$1,000 to the trustee “Within 5 days of the Petition Date” and must pay an additional \$500 per month to the trustee “until the total amount held by the trustee is \$3,000.”

--Debt Limit for Eligibility

The debt limit for Chapter 12 eligibility is \$11,097,350 (adjusted for inflation from \$10 million).

The debt limit for Subchapter V eligibility is currently at only \$3,024,725 (adjusted for inflation from \$2,750,000) with a likelihood of returning to its former \$7,500,000 amount, if-and-when Congress can get around to acting on it.

--Voluntary Dismissal Opportunity

Chapter 12 grants an unfettered right, to a family farmer debtor, to voluntarily dismiss debtor's Chapter 12 case. 11 U.S.C. § 1208(b) provides (emphasis added):

(b) *On request of the debtor at any time*, if the case has not been converted under section 706 pr 1112 of this title, *the court shall dismiss* a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

Subchapter V has no corresponding, unfettered right of dismissal for the debtor (*see* § 1112).

II. Neutral Considerations

Here are some considerations that may affect a debtor's analysis on whether to file Chapter 12 or Subchapter V—but none of these considerations necessarily prefers one over the other. In other words, these considerations tend to be neutral.

--When Chapter 12 Tax Benefits Do Not Apply

Some Chapter 12 debtors are unable to take advantage of the § 1232 tax benefits. Examples include:

- when debtor's plan does not involve a liquidation of farm assets beyond selling the farm products being produced—there are no capital gains taxes to be addressed by § 1232; or
- when debtor is solvent (or nearly so)—under the Chapter 7 liquidation standard for plan confirmation (§ 1225(a)(4)), the capital gains taxes will still have to be paid in a Chapter 12 plan.

When the special tax benefits of Chapter 12 do not apply, § 1232 becomes a neutral factor in the choice between Chapter 12 and Subchapter V.

--Discharge Timing & Plan Amendment

In a Chapter 12, (i) discharge does not occur until all payments under a confirmed plan are completed (§ 1228(a)), and (ii) a confirmed plan can be modified at any time before all payments are completed thereunder (§ 1229).

Subchapter V is more complicated on both items—depending on whether the plan confirmation is:

- consensual under § 11921(a)—*i.e.*, with all classes of claims voting for the plan; or
- non-consensual under § 1191(b)—*i.e.*, not all classes of claims have voted for the plan.

If the Subchapter V plan confirmation is consensual:

- discharge happens upon confirmation (§ 1141(d)); but
- under § 1193(b) the confirmed plan cannot be modified after substantial consummation (which typically occurs soon after confirmation—*see* § 110(2)).

Whereas, if the Subchapter V plan confirmation is non-consensual:

- discharge happens only after all plan payments are made (§ 1192); but
- the confirmed plan can be modified at any time before all plan payments are made (§ 1193(c)).

Since creditors control whether a plan confirmation is consensual or not, a debtor cannot count upon receiving either type of confirmation. That’s why the discharge timing and plan amendment considerations are neutral.

III. When Subchapter V is the *Only* Option

You’d think that every career farmer and his/her farming entity would qualify for Chapter 12. But that’s not the case.

There are many circumstances when such a person can’t qualify for Chapter 12—in which case, the debtor will be hoping that Subchapter V is a viable option.

Here are some of those circumstances.

--“Engaged in” Eligibility

The “engaged in” eligibility standards are materially different between Chapter 12 and Subchapter V. Here is the operative language for each:

- Subchapter V—“engaged in commercial or business activities” (§ 1191(1)(A)); and
- Chapter 12—an individual “engaged in a farming operation” or an entity in which family members “conduct the farming operation” (§ 109(18)(A)&(B)).

The effect of such differing language is that Chapter 12 eligibility requires a continuing farming operation, while Subchapter V does not:

- the difference is in the statutory words “operation” (Chapter 12) and “activities” (Subchapter V); and
- the practical difference can be huge for a debtor whose business operations are already shutting down but the debtor is still engaged in shut down activities—only Subchapter V is available for this debtor.

--Debt Limit

While the difference in debt limit numbers for eligibility is currently huge (\$11+ million for Chapter 12, compared to \$3+ million for Subchapter V), there is another difference that can entirely flip the analysis.

Here is the statutory language difference:

- Chapter 12—“whose aggregate debts do not exceed \$11,097,350” (§ 101(18)(A)&(B)); and

- Subchapter V—“that has aggregate noncontingent unliquidated secured and unsecured debts . . . in an amount not more than [whatever the current statutory amount might be] . . . (excluding debts owed to 1 or more affiliates or insiders) . . .” (§ 1182(1(A))).

Such differences in debt limit language can have huge practical implications.

It’s entirely possible, for example, that a farmer with too much “aggregate” debt for Chapter 12 eligibility can still be eligible for Subchapter V—such as, when large debt amounts are owed to “affiliates or insiders” or when a large debt amount is contingent (*e.g.*, a guaranteed debt that is not yet in default) or unliquidated (*e.g.*, a tort claim is being asserted in a pending lawsuit).

--Other Eligibility Limitations

Chapter 12 has eligibility standards that simply do not exist in Subchapter V. Examples include:

- an individual farmer must “receive from such farming operation more than 50 percent of such individual’s or such individual and spouse’s gross income” in certain prior taxable years (§ 101(18)(A)); and
- at least 50% of the ownership of a farming entity must be “held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation” (§ 101(18)(B)).

So, it is entirely possible that a career farmer and his/her farming entity could be, (i) disqualified from Chapter 12 eligibility by non-farm income or by a lack of family-purity in farm ownership or operation, but (ii) still eligible for relief under Subchapter V.

Conclusion

If a family farmer is eligible for both Chapter 12 and Subchapter V, that farmer will want (in the vast majority of cases) to proceed under Chapter 12—not under Subchapter V.

Some differences exist between Chapter 12 and Subchapter V that are neutral on the question of which is better for a debtor.

And then there are circumstances where a career farmer and his/her farming entity cannot qualify for Chapter 12. In such circumstances, the debtor will be hoping for Subchapter V eligibility instead.

AMERICAN BANKRUPTCY INSTITUTE

Summary Comparison of U.S. Bankruptcy Code Chapters 11, 12, & 13 Prepared by Mary Jo Heston's Chambers (Updated June. 1, 2023)

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Eligibility Requirements	<p><i>Ch. 11:</i></p> <p>Anyone or any entity that can file for ch. 7 relief, except a stockbroker, commodity broker, or an insured depository institution, may be a debtor. § 109(d).¹</p> <p>No debt limit or income requirement.</p> <p><i>Small Business Debtors:</i></p> <p>Person engaged in commercial or business activities (excludes person whose primary activity is business of owning or operating single asset real estate). § 101(51D).</p> <p>Aggregate noncontingent, liquidated, secured and unsecured debts of \$3,024,725 or less.</p> <p>No member of a group of affiliated debtors has aggregate noncontingent, liquidated secured and unsecured debts over \$3,024,725.</p>	<p>At least 50% of small business debtor's debt is from commercial or business activities.</p> <p>Aggregate noncontingent, liquidated, secured and unsecured debts of not more than \$7,500,000. § 1182; § 101(51D); § 104. On June 21, 2024, the Bankruptcy Threshold Adjustment and Technical Corrections Act ("Corrections Act") will sunset and the debt limit for subchapter V debtors will revert to the small business debtor limit of \$3,024,725, effective through March 31, 2025.</p> <p>Before the Corrections Act, § 1182(B)(ii) excluded "any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934," and § 1182(B)(iii) excluded "any debtor that is an affiliate of an issuer, as defined in</p>	<p><i>For individuals:</i></p> <p>1) family farmer with regular income and aggregate debts up to \$11,097,350 and 50% of the aggregate noncontingent, liquidated debt arises from a farming operation, § 101(18); or 2) family fisherman with regular income and aggregate debts below \$2,268,550 of which 80% constitutes debt from commercial fishing activities, § 101(19A)(i). § 109(f).</p> <p><i>For corporations or partnerships:</i></p> <p>50% of stock or equity is held by one family and/relatives who conduct the farming operation, more than 80% of asset value relates to farming operations, and aggregate noncontingent, liquidated debts are below \$11,097,350 with at least 50% of the debt arises from farming activities. § 101(18)(B). Family farmer must be</p>	<p>Individual (or individual and spouse) with regular income that owes noncontingent, liquidated debts of less than \$2,750,000 determined as of the petition date. Excludes stockbrokers and commodity brokers. A corporation or partnership may not be a debtor under ch. 13. § 109(e).</p> <p>Before the enactment of the Corrections Act, § 109(e) distinguished between unsecured and secured debt for eligibility purposes. Debtors were eligible if their noncontingent, liquidated, unsecured debts were less than \$465,275 and their noncontingent, liquidated, secured debts totaled less than \$1,395,875. The Corrections Act is set to sunset on June 21, 2024, after which § 109(e) will revert to its prior form and the debt limit will decrease.</p>

¹ Unless otherwise indicated, all chapter, section and rule references are to the Federal Bankruptcy Code, 11 U.S.C. §§ 101- 1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<p>Eligibility (cont'd)</p>	<p>No unsecured creditors committee (or committee is sufficiently inactive). Status as a “small business debtor” hinges, at least in part, upon whether a creditor’s committee is appointed, and on how much that creditor’s committee participates in the bankruptcy. A party in interest under § 1102(a)(2) may compel the appointment of a creditor’s committee thereby extinguishing debtor’s small business status. The UST appoints any such committee. <i>Id.</i></p> <p>Debtor must indicate it is a small business debtor by checking appropriate box in Item 13 of voluntary petition. FRBP 1020.</p> <p>In a voluntary case, the debtor must state in the petition whether it is a small business debtor. In an involuntary case, debtor must do so within 14 days of entry of the order for relief. BR 1020(a). Debtor’s statement of eligibility is presumed correct unless a party or the UST timely objects. BR 1020(a), BR 1020(b).</p>	<p>section 3 of the Securities Exchange Act of 1934.” The Corrections Act narrowed the exclusion (thereby broadening eligibility) for affiliates of a debtor in § 1182(B)(iii), to “any debtor that is an affiliate of a corporation described in clause (ii).” This provision will sunset and revert to its original language on June 21, 2024, defining debtor as “a small business debtor.” § 1182(1).</p> <p>Small business debtors must opt in to subchapter V by checking appropriate box in Item 13 of voluntary petition. § 103(i); BR 1020(a).</p> <p>No committee of creditors unless the court orders for cause. § 1102(a)(3).</p>	<p>engaged in a farming operation, including “farming, tillage of the soil, dairy farming, ranching, production of raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.” § 101(21).</p>	

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Asserting Eligibility & Election of Subchapter V Application		Small business debtor wishing to proceed under subchapter V must elect subchapter V application in the petition, or, in an involuntary case, within 14 days after entry of order for relief. BR 1020(a).		
Filing Fees	\$1,738 paid when petition is filed, including \$1,167 filing fee and \$571 administrative fee. 28 U.S.C. § 1930.	Ch. 11 filing fee is paid when petition is filed. No separate fee is due for electing for subchapter V.	\$278, including \$200 filing fee and \$78 administrative fee. 28 U.S.C. § 1930(a)(5). Individual filers may pay the fee in installments. Fee must be paid in full no later than 120 days after the petition is filed.	\$313, including a \$235 filing fee and \$78 in administrative fees. Fee may be paid in installments within 120 days after the petition is filed.
UST Quarterly Fees	UST quarterly fees are based on a sliding scale formula in 28 U.S.C. § 1930(a)(6). Minimum amount is \$325 for disbursements up to \$15,000. Code does not define “disbursements.” Failure to pay UST quarterly fees is “cause” for dismissal. § 1112(b)(4)(K).	None. Subchapter V debtors are exempt from paying UST quarterly fees. 28 U.S.C. § 1930(a)(6)(A).	UST Fees for ch. 12 debtors shall not exceed 10% of the first \$450,000 paid under the plan, and 3% of any payments in excess of \$450,000. 28 U.S.C. § 586(e)(1)(B). 28 U.S.C. § 586(e)(2) further curtails the standing trustee’s salary and estimated expenses. Excess funds are to be deposited in the U.S. Trustee System Fund.	No UST fees.
Reports	Must file monthly/quarterly operating reports. Must file all reports and summaries required of a trustee under § 704(a)(8). Duty ends when duty to pay fees ends, usually when final decree is entered. BR 2015(a).	No separate rule.	Must file monthly/quarterly operating reports. Duty ends only when case is completed. BR 2015(b).	No monthly operating reports required by ch. 13 debtors not engaged in business.

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
	<p><i>Small Business Debtors:</i></p> <p>Must file reports dealing with profitability, projections, receipts, disbursements, etc. § 308, BR 2015(a)(6). Duty ends on effective date of confirmed plan. Additional reporting requirement under § 1116.</p>	<p>BR 2015(b) requires subchapter V DIP (or Trustee, if appointed) to perform the duties prescribed in BR 2015(a)(2)-(4). Debtor must perform requirements of BR 2015(a)(6).</p> <p>subchapter V debtors do not have to file a statement of current monthly income. BR 1007(b)(5).</p>		
<p>Automatic Stay & Co-Debtors</p>	<p>Unlike chs. 12 and 13, ch. 11 does not provide an explicit co-debtor stay and guarantors are only protected if the court grants § 105 relief.</p>	<p>No separate rule.</p>	<p>Same co-debtor stay as in ch. 13. Upon filing, the automatic stay extends only to co-debtors on consumer debts and not to debts incurred in the ordinary course of business. § 1201. Section 1201 is identical to the co-debtor provision applicable to ch. 13. See § 1301. Cases from either chapter are thus instructive. Courts have held that certain debts from farming operations are not consumer debt. See <i>In re SFW, Inc.</i> 83 B.R. 27 (Bankr. S.D. Cal. 1988) (guarantees given by ch. 12 debtor's shareholders for commercial loans for family farm were not related to consumer debt so co-debtor stay did not apply).</p>	<p>Upon filing, the automatic stay extends only to co-debtors on consumer debts and not to debts incurred in the ordinary course of business. § 1301. The term "consumer debt" is defined in § 101(8).</p>

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Trustees	<p>Generally, a trustee is only appointed under § 1104(a) for cause or if the appointment is in the best interest of creditors; this is done if the Debtor in Possession (DIP) falters.</p> <p>Creditors may seek to elect a trustee by requesting an election be convened within 30 days after the court orders the appointment of a trustee. § 1104(b)(1).</p> <p>Unless a court appoints a trustee, there is no disbursement agent for a ch. 11 case.</p> <p>DIP: under § 1107, the DIP retains many of the powers of the trustee; under § 1108, the DIP retains the power to operate the business.</p>	<p>A disinterested trustee is appointed in every subchapter V case. § 1183(a). The trustee has a role similar to a ch. 13 trustee. The trustee is also authorized to operate the debtor's business if the debtor is removed as a DIP.</p> <p>§ 1183(b)(5). Effective Dec. 1, 2022, the subchapter V trustee will be appointed automatically upon removal of the DIP; no separate motion is necessary. BR 2012.</p> <p>The trustee makes all payments to creditors under the confirmed plan. Trustee may make adequate protection payments to secured creditors prior to confirmation. § 1194.</p> <p>The trustee must appear at mandatory status conference; facilitate development of a consensual plan; and perform duties generally consistent with § 1302. § 1183(b).</p> <p>If confirmation is consensual, the trustee's role is terminated upon "substantial consummation" of the confirmed plan. § 1183(c). If confirmation is contested, the trustee serves until completion of payments</p>	<p>A disinterested trustee is appointed in every ch. 12 case. § 1202. Ch. 12 cases are more supervised than ch. 11 cases. This provides additional oversight of the debtor but it comes at a cost of usually 10% in most jurisdictions.</p> <p>A ch. 12 trustee has all the reporting and supervisory duties of a ch. 7 trustee set out by § 704(a). The trustee also shall appear and be heard on confirmation of the plan, matters affecting estate property, and sales. If the court directs for cause, the trustee shall also exercise some ch. 11 trustee powers, like investigating the acts and assets of the debtor. § 1202(b)(1)-(3).</p> <p>The trustee conducts any asset sales of farmland and farm equipment. § 1206.</p> <p>If the debtor is removed as DIP, the trustee assumes operation of the business and succeeds to other ch. 11 trustee powers. § 1202(b)(5).</p> <p>Post-confirmation, the trustee must ensure plan payments are made timely. § 1202(b)(4).</p>	<p>A disinterested trustee is appointed in every ch. 13 case. § 1302.</p> <p>A ch. 13 trustee has all the reporting and supervisory duties of a ch. 7 trustee set out by § 704(a). The trustee shall appear and be heard on plan confirmation and modification, and property values. The trustee must ensure plan payments are made timely. § 1302(b).</p> <p>If the debtor is engaged in business, the trustee also shall perform the ch. 11 trustee duties in § 1106(a)(3) and (4). § 1302(c).</p> <p>The ch. 13 trustee may seek dismissal under § 1307(c) for "cause."</p>

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Estate Property Post-confirmation (cont'd)		then confirmation order triggers § 1186(a), and estate is augmented to include the debtor's: (1) post-petition § 541 property and (2) post-petition earnings.		
Adequate Protection	<p>Section 361 applies.</p> <p>Adequate protection may be provided by 1) cash or periodic cash payments for diminution in the value of the entity's interest in the property; 2) replacement liens; or 3) "such other relief" as will result in the realization of the indubitable equivalent of the entity's interest in the property. § 361.</p>	<p>Section 361 applies.</p> <p>After notice and a hearing, the court may authorize the trustee to make preconfirmation adequate payments to the holder of a secured claim. § 1s194(c).</p>	<p>Section 361's general definition of adequate protection does NOT apply to a ch. 12 case. § 1205(a).</p> <p>Adequate protection may be provided by 1) cash or periodic cash payments for diminution of the value of the collateral; 2) replacement liens; 3) reasonable rental value for the use of farmland; 4) "such other relief" to adequately protect the value of property securing the claim (like the indubitable equivalent test). § 1205(b).</p>	<p>Section 361 applies.</p> <p>The debtor is required to make preconfirmation adequate protection payments to holders of claims secured by a purchase money security interest in personal property. § 1326(a)(1)(C). The amount of periodic payments on a secured claim under a plan must also provide adequate protection payments to the holder of a claim secured by personal property. § 1325(a)(5)(B)(iii)(II).</p>
Avoidance Powers	<p>Pursuant to § 1107, the ch. 11 DIP is the proper party to assert ch. 5 avoidance actions unless removed as DIP, and a trustee is appointed pursuant to § 1104. There is some disagreement as to whether examiners appointed under § 1104 also have the authority to pursue avoidance actions under § 1106. Many courts have also ruled that bankruptcy courts have the power to authorize a creditors committee to bring an avoidance action on behalf of the estate.</p> <p>A ch. 11 plan may also provide for the</p>	<p>Subject to certain limitations, the debtor has all rights of a trustee under § 1184, and therefore presumably has standing to bring ch. 5 avoidance actions unless removed as a DIP pursuant to § 1185.</p>	<p>The ch. 12 DIP has exclusive standing to bring ch. 5 avoidance actions unless removed as a DIP pursuant to § 1204. § 1203.</p>	<p>The ch. 13 standing trustee is authorized to pursue avoidance actions. § 554(a). Courts are divided over whether a ch. 13 debtor also has standing to assert the estate's avoiding powers. Unlike chs. 11 and 12, there is no provision in ch. 13 expressly conferring on debtors the powers of a trustee.</p>

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
	transfer of avoidance powers to a representative of the estate appointed in the confirmation order. § 1123(b)(3)(B).			
Plan Exclusivity	Regular ch. 11 debtors and Small Business Debtors have a 120-day exclusivity period to file a plan.	Only the debtor can file a plan. § 1189(a).	Only the debtor can file a plan. § 1221.	Only the debtor can file a plan. § 1321.
Plan Deadlines	<p><i>Ch. 11:</i></p> <p>No deadline for filing the plan per se, but ch. 11 debtors have 120 days to exclusively file a plan. This period may be extended up to 18 months from the date the order for relief is entered. § 1121(b) & (d).</p> <p><i>Small Business Debtors:</i></p> <p>Debtors have 180 days to exclusively file a plan. This period may be extended up to 20 months from the date the order for relief is entered. § 1121(d)(2)(B) & (e). The plan must be confirmed 45 days after filed unless the time period has been extended. §§ 1121(e)(3), 1129(e).</p>	Similar to ch. 12, the plan must be filed within 90 days of the order for relief, but this period may be extended if it is shown that the need for the extension is due to circumstances for which the debtor should not justly be held accountable. § 1189(b).	The debtor must file a plan within 90 days of the order for relief. To extend the 90-day period, debtor must clearly demonstrate that the inability to file a plan was due to circumstances beyond the debtor's control. § 1221.	The debtor must file a plan within 14 days after the petition is filed, and such time can only extend for cause shown and on notice as the court may direct. BR 3015(b).
Disclosure Statement	<p><i>Ch. 11:</i></p> <p>The debtor must file a disclosure statement that provides adequate information to creditors. § 1125. The court must approve the disclosure statement prior to the debtor's ability to solicit votes.</p>	<p>None required unless otherwise ordered by the court. § 1181(b).</p> <p>Same as in case of small business debtor where court orders that § 1125 applies.</p>	None required.	None required.

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Disclosure Statement (cont'd)	<p><i>Small Business Debtors:</i></p> <p>A Small Business Debtor does not need to file a separate disclosure statement if the court deems the plan to contain adequate information. § 1125(f). Acceptances/rejections of a plan may be solicited based on conditionally approved disclosure statements. § 1125(f).</p> <p>Where court orders that § 1125 applies, court may conditionally approve disclosure statement and fix dates and times for acceptance/rejection, filing objections, and hearings on objections and confirmation.</p>			
Status Conference	None required.	Adds a new requirement, requiring the court to hold a status conference no later than 60 days after the order for relief. § 1188(a). This period may be extended for circumstances for which the debtor should not justly be held accountable. § 1188(b). No later than 14 days prior to such conference the debtor is to file a report detailing its efforts to attain a consensual plan. § 1188(c).	None required.	None required.

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<p>Commencement of Plan Payments</p> <p>Plan Content</p>	<p>Ch. 11 debtor commences making plan payments on the date the first payment is due under the confirmed plan.</p> <p>Plans <i>must</i>: 1) designate classes of claims/interests; 2) specify impaired/unimpaired claims; 3) specify treatment for each unimpaired claim; 4) provide the same treatment for each claim/interest; 5) provide sufficient means of implementing the plan; 6) if applicable, include provision barring the issuance of nonvoting equity securities; 7) contain provisions consistent with the public interest; and 8) in an individual case, provide for debtor's future income to fund plan payments. § 1123.</p> <p>Plans <i>may</i>: 1) impair or leave unimpaired secured/unsecured claims; 2) assume/reject leases & executory contracts; 3) settle/adjust any claim/interest of debtor or the estate; 4) designate a convenience class of claims; 5) sell estate property; 6) modify secured claims except secured interests in a principal residence; and 7) "include any other provision consistent with § 1123."</p> <p>Cannot modify consensual liens on a principal residence.</p>	<p>Plans <i>must</i>: 1) provide a brief history of the business operations of the debtor; 2) provide a liquidation analysis; 3) provide projections with respect to the ability of the debtor to make payments under the proposed plan; and 4) provide for the submission of all or such portion of the future earnings of other future income of the debtor as is necessary for the execution of the plan. § 1190(1) & (2).</p> <p>Plans <i>may</i>: 1) modify the rights of the holder of a claim secured only by a security interest in real property that is the principal residence of the debtor if the new value received in connection with granting the security was i) not used primarily to acquire real property; and (ii) used primarily in connection with the small business of the debtor. § 1190(3).</p>	<p>Ch. 12 debtor has no obligation to make payments to the trustee before confirmation. § 1226; 8 Collier on Bankruptcy P 1226.01 (16th 2019).</p> <p>Mirrors those of ch. 13. ch. 12 plans <i>must</i>: 1) provide future earnings or future income to the trustee; 2) provide all priority claims under § 507 are paid in full; 3) provide the same treatment of all claims if the plan classifies claims and interests; and, 4) if all the debtor's projected disposable income for a 5-year period is committed to the plan, then the plan may provide for less than full payment of amounts owed under § 507(a)(1)(B). § 1222.</p> <p>Under § 1222(b)(1)-(12), the plan <i>may</i> designate classes, modify rights of secured claims, cure defaults, pay unsecured creditors, assume leases and executory contracts, and provide for the sale or distribution of property.</p>	<p>Ch. 13 debtor must commence making payments no later than 30 days after the date of filing the plan or order for relief, whichever is earlier. § 1326(a)(1).</p> <p>Plans <i>must</i>: 1) provide future earnings or future income to the trustee; 2) provide all priority claims under § 507 are paid in full; 3) provide the same treatment for each claim within a particular class; and 4) if all the debtor's projected disposable income for a 5-year period is committed to the plan, then the plan may provide for less than full payment of amounts owed under § 507(a)(1)(B). § 1322.</p> <p>Under § 1322(b)(1)-(11), the plan <i>may</i> designate classes, modify rights of secured claims, cure defaults, pay unsecured creditors, and assume leases and executory contracts.</p> <p>Unlike ch. 12, § 1322 does not contain a provision</p>

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Plan Content (cont'd)			Ch. 12 allows modification of home mortgages, § 1222(b)(2), and discharge of taxes arising from sale of farming assets. § 1232.	authorizing the sale of property in the plan. Cannot modify consensual liens on a principal residence.
Sales Free and Clear of Liens	Ch. 11 <i>debtors in possession</i> may sell assets, other than in the ordinary course of business, free and clear of liens under § 363(f) after notice and a hearing. § 1107(a). Sales free and clear of liens require satisfying one of the following grounds: 1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; 2) the interest holder consents; 3) the property's sale price is greater than the aggregate value of all liens on the property; 4) the interest is in bona fide dispute; or 5) the interest holder could be compelled in a legal or equitable proceeding to accept a money satisfaction for the claim. § 363(f)(1)-(5).		Ch. 12 debtors in possession <i>and</i> trustees retain the right to sell property free and clear of liens under § 363(f). §§ 1203, 1206. In addition, § 1206, which applies only in ch. 12, allows <i>trustees</i> under § 363(b) and (c) after notice and hearing to sell farmland, farm equipment, or any property used to carry out a commercial fishing operation (including a commercial fishing vessel) free and clear of third-party interests even if none of the grounds in § 363(f) are satisfied. Section 1206 "modifies [§] 363(f) to allow family farmers or fishermen to sell assets not needed for the reorganization prior to confirmation without the consent of the secured creditors, subject to approval of the court." 8 Collier on Bankruptcy P 1206.01 (16th 2019). But proceeds of such sales are still subject to those third-party interests. § 1206.	Ch. 13 <i>debtors</i> may sell assets, other than in the ordinary course of business, free and clear of liens under § 363(f) after notice and hearing. § 1303. Sales free and clear of liens require satisfying one of the following grounds: 1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; 2) the interest holder consents; 3) the property's sale price is greater than the aggregate value of all liens on the property; 4) the interest is in bona fide dispute; or 5) the interest holder could be compelled in a legal or equitable proceeding to accept a money satisfaction for the claim. § 363(f)(1)-(5).

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<p>Special Tax Provisions for Chapter 12</p>			<p>Because ch. 12 plans typically sell property to reorganize, to avoid hard tax consequences, § 1232(a) "reclassifies" these government claims as unsecured claims arising before the petition date that shall not be entitled to § 507 priority status and discharged under § 1228.</p> <p>Section 1232 was signed into law on October 26, 2017. Public Law 115-72 provides that the amendments apply to any bankruptcy case pending, but not confirmed, on the effective date of the act.</p> <p>Ch. 12 debtors must include § 1232(a) unsecured claims in their plans. If there is a post-confirmation sale, transfer, exchange, or other disposition on farm property, and a subsequent government unit claim arises, then it will be necessary for the trustee to adjust payments accordingly.</p> <p>Possible plan language: The ch. 12 plan should include language to the effect that any potential claim within the scope of § 1232(a) arising post-petition, but before discharge, shall be included</p>	

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Special Tax Provisions for Chapter 12 (cont'd)			in the class of general unsecured claims. 8 Collier 1232.03. The plan language should account for the trustee's need to include tax claims in the unsecured creditor pool and should time any disbursements to the unsecured creditors only after the tax claims have been filed to avoid a potentially unequal (i.e., not <i>pro rata</i>) distribution amongst unsecured claimants.	
Plan Confirmation Requirements	<p><i>Ch. 11:</i></p> <p>After notice, the court shall hold a hearing on confirmation. 28-days' notice required. BR 2002(b).</p> <p>To be confirmed, plans must satisfy 16 requirements of § 1129(a). Chief among the requirements are feasibility and the best interest of the creditors tests. If all other requirements under § 1129(a) are met but for (a)(8), the debtor may seek to "cram down" the plan over the objections of its creditors. § 1129(b).</p> <p>Absolute priority rule applies. As a component of a § 1129(b) cram down, plans must satisfy the absolute priority rule. At least one court has found the absolute priority rule applies in individual ch. 11s. <i>In re Rogers</i>, 2016 WL</p>	<p>To be confirmed, plan must satisfy the requirements of § 1129(a), § 1191.</p> <p>No consenting impaired class needed for confirmation if 1) plan satisfies § 1129(a) [other than (a)(8), (a)(10), and (a)(15)]; 2) plan does not discriminate unfairly; and 3) plan is fair and equitable, as to each impaired, nonconsenting class. §§ 1181(a), 1191(b).</p> <p>A plan is "fair and equitable" if 1) § 1129(b)(2)(A) is satisfied; 2) it provides for application of all debtor's projected disposable income for 3 years beginning on date first payment is due (or up to 5 years, as ordered) to plan payments; and 3) debtor will</p>	<p>Except for cause, confirmation hearing shall be concluded not later than 45 days after the filing of the plan. 21-days' notice required. BR 2002(a)(8).</p> <p>Plans must satisfy all Code requirements, be proposed in good faith, and pay all admin fees. In addition, the court must find that the debtor's plan is feasible and in the best interest of creditors.</p> <p>With respect to secured claims, § 1225(a)(5) provides three avenues of treatment: 1) the creditor has accepted the plan; 2) the secured creditor retains its lien and receives property having a value, as of the effective date, not less than the allowed</p>	<p>Confirmation hearing must be scheduled not earlier than 21 days but not later than 45 days after the 341 meeting of creditors. 28-days' notice required. BR 2002(b).</p> <p>Plans must satisfy all Code requirements, be proposed in good faith, and pay all admin fees. In addition, the court must find that the debtor's plan is feasible and in the best interest of creditors.</p> <p>With respect to secured claims, § 1325(a)(5) provides three avenues of treatment: 1) the creditor has accepted the plan; 2) the secured creditor retains its lien and receives property having a value, as of the effective date, not less than the allowed</p>

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<p>Plan Confirmation Requirements (cont'd)</p>	<p>3583299 (Bankr. S.D. Ga. June 24, 2016).</p> <p>Creditors must object to the plan or risk forfeiting their objection. BR 3015(f).</p> <p><i>Small Business Debtors:</i></p> <p>Section 1129(e) directs the court to confirm a plan not later than 45 days after the date it was filed. Small business plans follow the same confirmation requirements as their larger ch. 11 counterparts.</p>	<p>be able to make all plan payments or there is a reasonable likelihood debtor will be able to make all plan payments. § 1191(c).</p> <p>The absolute priority rule does not apply. § 1181(a).</p>	<p>amount of the secured claim, i.e., “cramdown;” and 3) debtor surrenders the property.</p> <p>Cramdown for ch. 12 purposes depend on the amount of the claim. § 506(a) and (b).</p> <p>Permissible plan duration is up to 5 years. No “means test” for disposable income.</p> <p>Creditors do not have an opportunity to vote on ch. 12 plans but may object to the plan or risk forfeiting their objection. BR 3015(f).</p>	<p>amount of the secured claim, i.e., “cramdown;” and 3) debtor surrenders the property.</p> <p>Creditors do not have an opportunity to vote on ch. 13 plans but may object to the plan or risk forfeiting their objection. BR 3015(f).</p>
<p>Plan Modifications</p>	<p>The plan proponent may modify a plan any time before confirmation. § 1127(a), (c).</p> <p>After confirmation, the plan proponent or reorganized debtor may modify the plan prior to substantial consummation of the plan. Plan modifications must comply with § 1125. § 1127(b), (c).</p>	<p>The debtor may modify the plan at any time prior to confirmation. § 1193(a).</p> <p>After confirmation and before substantial consummation, the debtor may modify the plan if it complies with §§ 1122 and 1123, confirms the modified plan, <i>and</i> finds that circumstances warrant the modification. § 1193(b).</p> <p>After confirmation and substantial consummation, the debtor may modify the plan at any time within 3 years, or up to 5 years as fixed by the court, but the modified plan must comply</p>	<p>Debtor may modify the plan at any time before confirmation. § 1223.</p> <p>Plans may be modified after confirmation but only before debtor has completed payments under such plan. Plans may be modified by the debtor, trustee, or holder of an allowed unsecured claim. § 1229.</p> <p>Plans may be modified only to: 1) increase/decrease payments; 2) extend/reduce the time for payments; 3) alter the amount of distribution; or 4) provide payment on a</p>	<p>Debtor may modify the plan at any time before confirmation. § 1323.</p> <p>Plans may be modified after confirmation but only before debtor has completed payments under such plan. Plans may be modified by the debtor, trustee, or holder of an allowed unsecured claim. § 1329.</p> <p>Plans may be modified only to: 1) increase/decrease payments; 2) extend/reduce the time for payments; 3) alter the amount of distribution; or 4) reduce amounts paid under plan by</p>

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Plan Modifications (cont'd)		with § 1121(b), <i>and</i> the court must find that circumstances warrant the modification. § 1193(c). A consensually confirmed plan may only be modified by consent. § 1193(b).	§ 1232(a) claim. § 1229. Plan may NOT be modified by anyone except the debtor in the last year of the plan to require payments leaving the debtor with insufficient funds to operate the farm. § 1229(d)(3).	the actual amount expended by debtor to purchase healthcare. § 1329.
Conversion	<p>A ch. 7 debtor may convert to ch. 11 if the case has not been converted under §§ 1112, 1208, or 1307. § 706(a). A party cannot waive the right to convert. <i>Id.</i></p> <p>A ch. 11 debtor may convert a case to ch. 7 unless: 1) the debtor is not a DIP; 2) the case was commenced as an involuntary case; or 3) the case was converted to a ch. 11 case other than on the debtor's request. § 1112(a).</p> <p>The court may only convert to ch. 7 on the request of a party in interest, after notice and a hearing, and for cause. The court will convert or dismiss, whichever is in the best interest of creditors. § 1112(b).</p> <p>The court may not convert to ch. 7 if the debtor is a farmer or a corporation that is not a moneyed, business or commercial operation unless the debtor requests the conversion. § 1112(c).</p> <p>A ch. 11 case may be converted to ch. 12 or ch. 13 only if: 1) the debtor</p>	No separate rule.	<p>A ch. 7 debtor may convert to ch. 12 if the case has not been converted under §§ 1112, 1208, or 1307. § 706(a). A party cannot waive the right to convert. <i>Id.</i></p> <p>A ch. 12 debtor may convert a case to ch. 7 any time. § 1208(a).</p> <p>The court may only convert to ch. 7 on the request of a party in interest, after notice and a hearing, upon a showing the debtor committed fraud. § 1208(d).</p> <p>The applicable law and debtor's eligibility for ch. 12 on the petition date, not the conversion date, governs conversion to ch. 12. <i>See In re Campbell</i>, 313 B.R. 871 (B.A.P. 10th Cir. 2004), <i>and see In re Ridgely</i>, 93 B.R. 683 (Bankr. E.D. Mo. 1988); <i>but cf. In re Feely</i>, 93 B.R. 744 (Bankr. S.D. Ala. 1988) (determining eligibility for</p>	<p>A ch. 7 debtor may convert to ch. 13 if the case has not been converted under §§ 1112, 1208, or 1307. § 706(a). A party cannot waive the right to convert. <i>Id.</i></p> <p>A ch. 13 debtor may convert a case to ch. 7 at any time. § 1307(a).</p> <p>The court may only convert to ch. 7 on the request of a party in interest, after notice and a hearing, and for cause. The court will convert or dismiss, whichever is in the best interest of creditors. § 1307(c).</p> <p>At any time before confirmation, the court may convert a case to ch. 11 or ch. 12, on the request of a party in interest or the U.S. Trustee. § 1307(d).</p> <p>The court may not convert a ch. 13 case to ch. 7, 11 or 12</p>

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Conversion (cont'd)	requests it; 2) the debtor has not been discharged under § 1141(d); and 3) conversion is equitable. § 1112(d).		conversion to ch. 12 based on the motion date, not the petition date. There is no specific provision permitting or prohibiting the conversion of a ch. 12 case to ch. 11 or ch. 13.	if the debtor is a family farmer unless the debtor requests the conversion. § 1307(f).
Debtor Discharge	<p>A confirmed plan binds: 1) the debtor; 2) any entity acquiring property under the plan; and 3) any creditors, among others, whether or not the entities have accepted the plan. § 1141(a).</p> <p>For a non-individual ch. 11 debtor, discharge occurs at confirmation, except as otherwise provided in the plan or confirmation order. This discharges the debtor from any debt that arose prior to the date of confirmation and eliminates all equity interests in the debtor that are provided for in the plan. Debts set forth in § 1141(d)(6) are not discharged (certain debts owed to government units).</p> <p>For an individual ch. 11 debtor, unless ordered otherwise, confirmation does not discharge any debt provided for in the plan until the court grants a discharge upon completion of all payments under the plan. An individual debtor is not discharged from any debt excepted under § 523.</p>	<p>If a plan is consensually confirmed, then the general discharge provisions under §1141(d)(1) – (4) shall apply. Thus, in a non-liquidating subchapter V case, discharge will occur on confirmation.</p> <p>If a plan is non-consensually confirmed, then the timing provision for discharge under § 1141(d) shall not apply. Rather, discharge will be entered after completion of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix. § 1192.</p> <p>Because § 1141(d)(5) does not apply to a case under subchapter V, there is no provision for a hardship discharge in an individual case.</p>	<p>Two types of discharge available: 1) debtor completes all plan payments, other than payments to long-term secured creditors; and 2) debtor qualifies for a “hardship discharge” whether or not debtor has completed all payments. § 1228.</p> <p>To receive a hardship discharge, the debtor’s failure to complete plan payments must be due to circumstances beyond the debtor’s control, creditors must have received at least as much under the plan as they would in a ch. 7 liquidation, and modification of the plan under § 1229 is not practicable. § 1228(b).</p> <p>Ch. 12 allows discharge of taxes arising from the sale of farming assets. § 1232.</p>	<p>Two types of discharge available: 1) full compliance discharge; and 2) hardship discharge. § 1328.</p> <p>To receive a hardship discharge, the debtor’s failure to complete plan payments must be due to circumstances beyond the debtor’s control, creditors must have received at least as much under the plan as they would in a ch. 7 liquidation, and modification of the plan under § 1329 is not practicable. § 1328(b).</p> <p>With some exceptions, the “full compliance” discharge under § 1328(a) discharges a wider swath of debts than its sister chapters. For example: 1) some willful and malicious torts; 2) fines and penalties; 3) marital property settlement debts; 4) debts that were denied discharge in an earlier bankruptcy.</p>

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Debtor Discharge (cont'd)	<p>Section 1141(d)(3) applies to non-individual and individual debtors, barring a discharge if the plan liquidates all of debtor's assets, the debtor suspends business, and the debtor would be denied a discharge under § 727(a).</p> <p>A claim is discharged regardless of whether the creditor filed a proof of claim. § 1141(d)(1)(A). But the plan may supersede § 1141(d) and pay creditors that have not filed a proof of claim. § 1141(d)(1).</p> <p>An individual debtor who has not completed payments under the plan may receive a hardship discharge if the requirements of § 1141(5)(B) are met.</p>			<p>Debts excepted from discharge include: debts provided for under § 1322(b)(5); tax claims under § 507(a)(8)(C); tax claims under § 523(a)(1)(B); debts incurred under false pretenses or misrepresentation; unscheduled debts; debts for fraud or defalcation while in a fiduciary capacity, embezzlement or larceny; domestic support obligations; student loans unless undue hardship; or debts incurred by debtor's operation of a motor vehicle while under the influence. § 1328.</p>

Selling Assets In Chapter 11, Subchapter V & Chapter 12: Under § 363/§ 1206 vs. Under A Confirmed Plan?

By Donald L. Swanson

Bankruptcy may not be very good at a lot of things. But one thing bankruptcy is good at is this: selling assets in bankruptcy sales. Bankruptcy sales outside the ordinary course of business traditionally perform well at achieving top dollar for bankruptcy estate assets.

Two separate procedures are authorized for sales of bankruptcy estate assets free-and-clear of liens in Chapter 11 cases (in both standard Chapter 11 and Subchapter V cases) and in Chapter 12 cases:

1. the first procedure is a sale under § 363 in standard Chapter 11 cases and in Subchapter V cases (and under § 1206 in Chapter 12 cases), prior to confirmation of a bankruptcy plan; and
2. the second procedure is a sale under a confirmed plan.

For some reason, the first of the two procedures (particularly sales under § 363) gets all the publicity—but that procedure has significant limitations under § 363(f).

The second of the two procedures (sales under a confirmed plan) is actually the better . . . and more powerful . . . and less-limited procedure.

I'll try to explain by highlighting the statutes involved.

Selling Assets Under § 363—A Procedure with Limitations

Prior to confirmation of a bankruptcy plan, a debtor may sell its assets outside the ordinary course, under § 363(b).

However, § 363(f) places the following limitations on a § 363(b) sale (emphasis added):

- “The trustee may sell property . . . free and clear of any interest in such property of an entity other than the estate, only if—(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.”

--A § 363 Free-And-Clear Sale Problem

But what happens to a proposed § 363(b) sale outside the ordinary course (under § 363(f)), when an out-of-the-money lienholder, whose lien is not disputable, objects to the sale?

- An early case illustrating the § 363(f) problem with a lienholder's objection to a § 363 free-and-clear sale is *Clear Channel Outdoor, Inc. v. Knupfer* (In re PW, LLC), 391 B.R. 25

(9th Cir. BAP 2008) (§ 363(f) “cannot support transfer of [Debtor’ s] property free and clear of Clear Channel’s lien”).

--Expansion of § 363 Free-And Clear Sale Powers in Chapter 12

§ 1206 is titled, “Sales free of interests” and expands the debtor’s power, beyond the provisions of § 363(f), to sell farm assets free-and-clear of liens in Chapter 12 cases. The § 1206 language is this (emphasis added):

- “. . . in addition to the authorization contained in section 363(f), the trustee in a case under [Chapter 12] may sell property under section 363(b) and (c) free and clear of any interest in such property of an entity other than the estate if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel), except that the proceeds of such sale shall be subject to such interest.”

Such § 1206 language appears to solve, for Chapter 12 cases, the § 363(f) problem of a non-consenting lienholder that won’t be paid in full.

Selling Assets Under a Confirmed Plan

Sales free-and-clear of liens under a confirmed plan, without any § 363(f) limitation, are expressly authorized in Chapter 11 (including Subchapter V) and in Chapter 12. See, e.g., *In re Ditech Holding Corp.*, 606 B.R. 544 (Bankr. S.D.N.Y. August 28, 2019) (a standard Chapter 11 case). Such opinion makes the following points (606 B.R. at 586-87):

- a chapter 11 plan is a contract between the debtor and its creditors;
- through a chapter 11 plan, a debtor can resolve disputed claims and rights to property—that is one way a plan sale differs from an asset sale under § 363:
 - a plan can provide for the distribution of sale proceeds among creditors; while
 - as a general rule, a § 363 sale cannot; and
- a plan confirmation process “is more fulsome” than a § 363 sale process—which only requires a motion and a hearing, with “business judgment” being the primary standard for approval.

Sale Under a Confirmed Plan—Authorizing Statutes

Chapter 11 (including Subchapter V) and Chapter 12 statutes authorize sales free-and-clear of liens under a confirmed plan, which sales are not subject to the § 363(f) limitations.

Here are the statutory provisions.

--For Standard Chapter 11

Statutory provisions, in standard Chapter 11 cases, for selling estate assets under a confirmed plan include:

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

- § 1123 is titled, “Contents of plan” and provides in subpart (b)(4) that a Chapter 11 plan “may . . . (4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests” (emphasis added); and
- § 1129 provides in subsection (b)(2)(A)(ii) that a bankruptcy court “shall confirm” a plan when: “(A) With respect to a class of secured claims, the plan provides—. . . (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph” (emphasis added). As to the “§ 363(k)” and “clause (i) or (iii) of this subparagraph” limitations therein:
 - § 363(k) authorizes a secured creditor to credit bid its lien in a bankruptcy sale; and
 - clauses (i) and (iii) of § 1129(b)(A) provide basic protections for secured claims, like retaining liens and receiving an “indubitable equivalent.”

--For Subchapter V of Chapter 11

The same rules governing sales under confirmed plans in standard Chapter 11 cases also apply in Subchapter V cases. Here is why that is:

- § 1181(a) identifies the sections of the Bankruptcy Code in Chapter 11 that do not apply in Subchapter V, and § 1123(b) is not identified in § 1181(a), which means that the provisions of § 1123(b)(4) on sales of assets under a confirmed plan will apply in Subchapter V; and
- confusingly, § 1181(a) specifically identifies § 1129(b) as not applying in Subchapter V cases, but a different Subchapter V statute, § 1191(c)(1), specifies that § 1129(b)(2)(A) provisions on sales of assets under a confirmed plan do apply in Subchapter V cases.

Here is the § 1129(b)(2)(A) specifying language, contained in § 1191(c)(1):

- “(c) RULE OF CONSTRUCTION.—For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements: (1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title” (emphasis added).

--For Chapter 12

Chapter 12 authorizes sales of estate assets under a confirmed plan. And it does so in a manner similar to the corresponding Chapter 11 rule in § 1123(b)(4).

Here is Chapter 12’s authorizing statute:

- § 1222 is titled, “Contents of plan,” and provides in subsection (b)(8), “the plan may-- . . . (8) provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property” (emphasis added); and

Chapter 12 does not have a provision corresponding to the § 1129(b)(2)(A) discussed above. But caselaw does not see that as a problem. For example:

- “a Chapter 12 debtor is entitled to completely liquidate a farming operation under § 1222(b)(8)”; and
- such Code provision “reflects a recognition by Congress that many family farm reorganizations, to be successful would involve the scaling down of the farm operation.”

In re Mongeau, 633 B.R. 387, 396 (Bankr. Kan. 2021). Presumably, § 1206 fills any gap that might exist thereon.

Editorial Comment on Chapter 12 Sales of Farm Assets

§ 1206 enables a Chapter 12 debtor to sell farm assets free-and-clear of liens, before confirmation of a plan, without being subject to the limitations of § 363(f).

But why would a Chapter 12 debtor do such a thing?

Usually, a sale of assets is something creditors want and would like to see—when the sale is perceived to be conducted in a manner that will maximize value. So, why wouldn’t the debtor, in exchange for a proposed sale of farm assets, try to get some benefits in return?

- Plan provisions are a way to identify and secure such benefits in return, especially when creditors are motivated to support debtor’s efforts toward a sale of assets under the plan.

Conclusion

While § 363 sales can be effective in liquidating assets of a bankruptcy estate free-and-clear of liens, such sales can have a § 363(f) problem with being approved in standard Chapter 11 cases and in Subchapter V cases. That makes sales under a confirmed plan the better way.

Such § 363(f) problems appear to be eliminated in Chapter 12 cases by § 1206, but sales free-and-clear of liens under a confirmed Chapter 12 plan can still be preferable because of the ability of debtors to bargain with creditors for retaining benefits in exchange—and for getting such benefits approved in a confirmed plan.

Selected Chapter 12 Cases 2016-2024

In re Bradshaw, No. 20-40948-12, 2022 WL 1589157 (Bankr. D. Kan. May 19, 2022)

Debtor Rodney Ray Bradshaw filed a Chapter 12 bankruptcy petition and has enjoyed the protection of the Bankruptcy Code for the last 18 months, but he has failed to file a confirmable plan in that time. With no reasonable prospects for rehabilitation in sight, the court grants the motion to dismiss filed by the Chapter 12 Trustee. The court granted the motion finding unreasonable delay prejudicial to creditors under 11 U.S.C. § 1208(c).

In re Las Martas, Inc., No. 22-02380, 2022 WL 17418613 (Bankr. D.P.R. Dec. 5, 2022)

This case is a motion to dismiss under 11 U.S.C. § 1208(c) alleging bad faith filing including a history of nonpayment of a mortgage, serial filings, and insufficient cash flow to fund a Chapter 12 plan. Consideration of the motion also requires the expeditious expectancy of Chapter 12 cases and in particular section 1221 requiring a confirmation hearing within 45 days of the filing of a plan. Delay is unreasonable when it occurs without justification. Debtor was afforded 11 days to show cause why the case should not be dismissed.

In re NRS Properties, LLC, 634 B.R. 395 (Bankr. D. Colo. 2021)

Chapter 12 Debtor, a limited-liability company (LLC) that owned farm and ranch land, sought confirmation of its reorganization plan. Trustee and creditor objected, and creditor moved for dismissal of the bankruptcy case. The court held that Debtor was a “family farmer” as that phrase was used in Chapter 12 of the Bankruptcy Code with regular annual income. There were five types of valuation evidence required based on the various asset categories. While non-farm income might be considered in whether there is stable and regular annual income that can only partially satisfy the requirements for regular annual income to fund a plan, this debtor received no farm related income in the last nine months. Thus, eligibility was not met. The plan was a “dirt for debt” plan, but there were no projections or information that would evidence future receipt of any farming or ranching income. Confirmation denied and the case dismissed.

In re Kapperud, No. 19-bk-60946-BPH, 2023 WL 5421812 (Bankr. D. Mont. Aug. 22, 2023)

In this Chapter 12 bankruptcy case, the trustee filed a “Motion for Order Regarding Debtors' Attorneys' Fees.” Fundamentally, the motion seeks a court order compelling counsel for Debtors to file an application for compensation for the work done by counsel on Debtors' behalf. Debtors argued that on confirmation all property vested in the Debtors thus eliminating the requirement for a fee application. The plan treated any unpaid fees as administrative expenses. In order to be paid, the Code requires approval of the employment of counsel. Before the court may approve the employment of a professional under section 327, an applicant must file an application pursuant to Rule 2014(a). As a prerequisite to compensation under section 330, a professional's employment by the debtor in possession on behalf of the estate must be approved by the court under section 327. Local Rules also require application for approval of fees post-confirmation. The court and parties are bound by the Local Rules, and the provisions of the plan cannot override those Rules.

In re Sternitzky, 635 B.R. 353 (Bankr. W.D. Wis. 2021), *aff'd*, No. 21-cv-822-wmc, 2022 WL 16919240 (W.D. Wis. Nov. 14, 2022)

Debtors filed a motion to stay any actions by creditors in the Chapter 12 proceedings relating to an Order Granting Relief from Stay and Co-Debtor Stay and Dismissal of the Chapter 12 proceeding. A secured creditor objected. The court granted the stay pending appeal pursuant to Rule 8007. Although the Debtors did not show a substantial likelihood of success on appeal, a public interest was implicated, and that parties would be harmed if the stay were imposed, the Debtors would face irreparable injury absent a stay. In particular, the court found that were a stay not imposed, the objecting secured creditor would likely pursue a foreclosure sale on its collateral, causing the Debtors to lose their farm and farming operations and making a Chapter 12 difficult to accomplish. However, the court found it appropriate to impose a conditional stay to balance both the potential harms to the Debtors and the objecting secured creditor. Debtors appealed.

Because the Bankruptcy Court did not clearly err in granting State Bank relief based on the Sternitzkys' lack of good faith in filing their third petition for “family farm” relief under Chapter 12, the District Court affirmed. *See also* for further discussion on the stay: *In re Sternitzky*, 638 B.R. 770 (Bankr. W.D. Wis. 2022).

In re Richardson, No. 24-30431-jda, 2024 WL 3663328 (Bankr. E.D. Mich. July 30, 2024)

Debtors filed their Chapter 12 bankruptcy petition on March 7, 2024. Pursuant to section 1221 of the Bankruptcy Code, Debtors' Chapter 12 plan was required to be filed no later than June 5, 2024. Debtors did not file their plan by June 5, 2024, and, as a result, American Farm Mortgage filed a motion to dismiss case. The court may extend the time to file a Chapter 12 plan "if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable" under 11 U.S.C. § 1221. No evidence of such circumstances was presented and the motion to dismiss was granted.

Vaqueria Las Martas, Inc. v. Condado 5, LLC (In re Vaqueria Las Martas, Inc.), 638 B.R. 482 (B.A.P. 1st Cir. 2022)

Following entry of order denying confirmation of Chapter 12 plan of Debtor, a licensed dairy farm in Puerto Rico, creditor filed motion to dismiss case on basis of unreasonable delay prejudicial to creditors and failure to file a timely confirmable plan. Debtor objected. The United States Bankruptcy Court for the District of Puerto Rico, 2021 WL 8200008, granted motion and ordered dismissal of case. Debtor appealed, and creditor moved to dismiss appeal. The BAP held: 1) the BAP would address the merits of the issues listed in Debtor's appellate brief, even though those issues were not presented in its statement of issues, given the absence of prejudice to creditor, which had fully briefed the issues; 2) the appeal was not equitably moot; and 3) the Bankruptcy Court did not abuse its discretion in dismissing the case for unreasonable delay that was prejudicial to creditors. Issues not briefed were not considered. Dismissal order affirmed; motion to dismiss appeal denied. *See also* 617 B.R. 429.

In re City View Land Dev., LLC, 636 B.R. 793 (Bankr. W.D. Wis. 2021)

Debtors filed a Joint Chapter 12 Plan of Reorganization providing for eight classes of claims. The plan proposed to convert members of the Class 8 Allowed Unsecured Creditors' ("Class 8 Creditors") unsecured claims into secured claims 30 days after the plan was completed and extend payments to the Class 8 Creditors beyond the plan term. A member of the Class 8 Creditor Class and the Standing Chapter 12 Trustee objected to the proposed plan. The court found that the Debtors' proposed treatment of the Class 8 Creditors violated 11 U.S.C. § 1222(c) and 1222(b)(9). By waiting to grant security interests to the Class 8 Creditors until after the Plan is completed, Debtors proposed granting security interests in property that would have reverted in the Debtors. The court determined this would preclude the Class 8 Creditors from being classified as allowed secured claims, because allowed secured claims must be secured by

property in which the estate has an interest. As payments would be impermissibly extended beyond the plan term to creditors who do not hold allowed secured claims, payment to the Class 8 Creditors could not be extended beyond a three-year term.

In re Powell, No. 22-00953-MJC, 2022 WL 10189109 (Bankr. M.D. Pa. Oct. 14, 2022)

The bank moved to dismiss the case alleging it was filed in bad faith and without the present ability to confirm a plan. This was the second Chapter 12 and was filed shortly after the prior case was dismissed. The prior case languished for five years and was litigation filled. The court applied the factors relevant to bad faith in a Chapter 13 (section 1307(c)). Lack of good faith was sufficient ground for dismissal. This included omissions from the schedules, negative monthly income, lack of farm-related income of any type, and the substantial delays in the prior case. The case was dismissed with prejudice.

In re Comeau, 632 B.R. 707 (Bankr. D. Kan. 2021)

Creditor moved to dismiss Chapter 12 petition, arguing that Debtor abandoned farming operations prepetition and did not currently qualify as a “family farmer.” The court held the operative time for determining eligibility is the petition date. Regardless of the operations of his limited liability companies (LLCs), Debtor was “engaged in a farming operation” on the petition date. Further, a debtor may be a “family farmer” under the Bankruptcy Code, and thus eligible for Chapter 12 relief, even though the debtor uses a limited liability company (LLC) to organize the business of his farm. The court also considered the active farm operations of Debtor’s LLCs were an additional factor showing that Debtor was “engaged in a farming operation” on the petition date. The motion to dismiss was denied.

In re Mongeau, 633 B.R. 387 (Bankr. D. Kan. 2021)

Unsecured creditor filed motion to dismiss Chapter 12 case, contending that Debtors ceased farming prepetition and so were not “family farmers” eligible for Chapter 12 relief. Trial was held. Although Debtors ceased growing crops and liquidated most of their farming assets prepetition, on the petition date they were “engaged in a farming operation” as required to be “family farmers” eligible for Chapter 12 relief. Motion denied.

In re Giordano Leonageo, No. 23-35092, 2023 WL 3638053 (Bankr. S.D.N.Y. May 24, 2023)

Creditors moved to dismiss or, in the alternative, for relief from stay. Creditors moved for dismissal arguing that Debtor is not eligible for Chapter 12 relief as defined by sections 109(f) and 101(21). Debtor was late in filing operating reports although the reports were filed. Noting there are few controlling standards under Chapter 12 as to determining a “farming operation,” the court considered both the definition under 101(21) but also whether Debtor bears any of the inherent risks traditionally associated with farming. The Seventh Circuit has found that Chapter 12 relief is specifically designed for those farmers whose activities involved the inherent risks and cyclical uncertainties that are associated with farming. In doing so, the court referenced *In re Hoel*, 617 B.R. 636, 638–639 (Bankr. W.D. Wis. 2020) (citing *In re Armstrong*, 812 F.2d 1024, 1027 (7th Cir. 1987)).

The court also noted a split between rulings in Illinois and Oklahoma on the question. Courts in Illinois and Oklahoma found that horse breeding, boarding, and training was a service-oriented business, not one that produced agricultural goods for consumption like a traditional farm. *In re Cluck*, 101 B.R. 691 (Bankr. E.D. Okla. 1989); *In re McKillips*, 72 B.R. 565 (Bankr. N.D. Ill. 1987). These courts found the debtors to only be marginally affected by the uncontrollable conditions faced by traditional farmers, and that only a farm that bred, raised, and sold horses to maturity would constitute a farming operation.

But courts in Texas and Tennessee found that debtors’ horse business involved the traditional risks inherent in farming, but those debtors were also involved in the growing of feed and the raising of the horses to maturity to sell as livestock. *In re Buchanan*, No. 05-114, 2006 WL 2090213, 2006 U.S. Dist. LEXIS 50968 (M.D. Tenn. July 25, 2006).

Though the approaches of these courts differ, the common denominator is a review of the activities to compare them to the activities required to grow or produce crops or livestock, and then assess the risk factors assumed by the Debtor.

In re Lakeland Planting Co., No. 23-80109, 2024 WL 1424285 (Bankr. W.D. La. Apr. 2, 2024)

The Chapter 12 petition was filed on February 26, 2023. Among the many movable assets of this Debtor is a Ford F350 vehicle securing a debt to creditor. In August the Debtor filed a Motion to Sell Movable Assets at Public Auction. Creditor and Debtor consented to the terms of the auction. The auction was conducted and there was a successful bid for the vehicle. To close, the title was

required. It was in the possession of creditor. Despite repeated requests for the title, the creditor did not produce it. The court entered an order that if it was not produced the creditor must appear to show cause why it should not be sanctioned. Creditor didn't comply or appear. The power to impose sanctions for contempt of an order is an inherent and well-settled power of all federal courts—including bankruptcy courts. Creditor was in contempt and ordered to pay \$100 to the Chapter 12 estate for each of the days it failed to comply with turnover of title.

In re Lundberg, 650 B.R. 1 (Bankr. W.D.N.Y. 2023)

Attorneys for Chapter 12 Debtors filed motion seeking order authorizing their employment nunc pro tunc as of date on which bankruptcy petition was filed and seeking permission to pay \$17,000 from escrowed funds to itself as compensation. Absent a good excuse for delay in seeking retention, approval of nunc pro tunc is not appropriate. Confirmation of the plan mooted attorneys' request for nunc pro tunc appointment. The confirmed plan discharged any entitlement to further payment to Debtors' attorneys on account of uncompensated services. However, the court would authorize attorneys to withdraw \$10,125 from retainer the law firm was holding in escrow for moneys due to firm under confirmed plan.

In re Worden, No. 22-60094-6, 2023 WL 4480358 (Bankr. N.D.N.Y. July 11, 2023)

Creditor moves to dismiss for bad faith filings, for relief from stay, and objects to confirmation of the plan. This was a fourth Chapter 12 within five years. The third case was dismissed in 2020 and relied on a state moratorium on all foreclosures. By the time the fourth case was filed, the Debtor no longer owned cattle or farm equipment. Instead, they undertook a modified type of farming growing crops and boarding and raising beef cattle. They also received payments for whey distribution. Income and expenses changed twice during the case leading up to a confirmation hearing.

The court looked to Chapter 11 cases for factors to analyze bad faith while acknowledging that Chapter 12 debtors have been afforded special consideration by Congress. To establish bad faith, the movant must satisfy a two-pronged test by a preponderance of the evidence. First, the movant must demonstrate the objective futility of the reorganization process such that at the time of filing there was “no reasonable probability that [the debtor] would eventually emerge from bankruptcy proceedings.” *Baker v. Latham Sparrowbush Associates (In re Cohoes Indus. Terminal, Inc.)*, 931 F.2d 222, 227 (2d Cir. 1991). Second, in demonstrating subjective bad faith, the movant must show that there “was no

reasonable likelihood that the debtor intended to reorganize.” *Id.* The Second Circuit noted that “a determination of bad faith requires a full examination of all the circumstances of the case; it is a highly factual determination but also one that may sweep broadly.” Factors to consider are the assets, number and composition of creditors, financial condition, whether there are employees, intent to delay or frustrate secured creditors, and current financial position. No one factor is dispositive. The Bankruptcy Court denied the motion to dismiss and confirmed the amended plan.

United States v. Klein (*In re Klein*), 648 B.R. 228 (Bankr. D. Neb. 2022)

This was filed as a third Chapter 12. It was filed six months after the Debtors’ real estate was foreclosed and all equipment replevined. The initial motions related to eligibility. The only source of income at the time of filing was Social Security. The explanation for filing as a Chapter 12 was to attempt to deal with capital gain tax issues derived from the sale of the farm assets. To stay in Chapter 12, the Debtors admitted the need to purchase cattle and equipment. The SBA brought an adversary proceeding seeking to determine non-dischargeability of debt arising from economic injury disaster loan in response to COVID-19 under fraud discharge exception. SBA filed motion seeking preliminary injunction enjoining Debtors from spending balance of loan. A preliminary injunction was granted finding irreparable harm, likelihood of success on the merits, and public interest in favor of an injunction.

In re DLB II, LLC, 654 B.R. 777 (Bankr. N.D. Iowa 2023)

Secured creditor moved to dismiss Debtor limited liability company's Chapter 12 case. Secured creditor later moved to amend its motion to add alternative to convert the case to one under Chapter 7. Debtor objected to both motions and also moved for sanctions for violation of automatic stay.

Debtor did not qualify as “farming operation” for purposes of Chapter 12 relief. It failed to show that 80% of its assets arose out of or related to a farming operation, as required for Chapter 12 relief. Further, it failed to demonstrate that at least 50% of its debts arose out of or related to a farming operation, as required for Chapter 12 relief. The court found fraud in connection with the filing because it was not actually a farm operation.

Debtor sought sanctions for a violation of the stay when, after filing, the secured creditor simply rescheduled the sheriff sale. The court concluded the secured creditor did not “willfully” violate the stay by rescheduling the sheriff's sale rather than canceling it and sanctions were not appropriate absent evidence of actual injury.

In re Watkins, No. 22-1245-GLS, 2023 WL 7448745 (B.A.P. 9th Cir. Nov. 9, 2023)

Chapter 12 Debtor appealed the Bankruptcy Court's order dismissing his case and imposing a three-year bar to refile under section 349(a). Debtor filed a total of seven Chapter 12 cases between 2009 and 2022. He confirmed a plan in three of those cases but defaulted under the terms of each plan. Section 1208(c) provides that a Bankruptcy Court may dismiss a Chapter 12 case for “cause,” including ten specified examples. There is an implied requirement of good faith. Intent to abuse the judicial process and the purpose of the reorganization provisions are appropriate considerations in that evaluation. The totality of circumstances and an unconfirmable plan support the conclusion the filing was in bad faith and a bar is appropriate.

Farm Credit Servs. of America, FLCA v. Topp (In re Topp), 75 F.4th 959 (8th Cir. 2023)

Farm Credit Services of America appealed the Bankruptcy Court's Memorandum and Order setting the cramdown interest rate to be applied to Farm Credit's secured claim in this Chapter 12 bankruptcy case. Debtor and Farm Credit agreed on a 20-year repayment period. But they disagreed on the appropriate cramdown interest rate—debtor Topp proposed starting with the 20-year treasury (1.87% at the relevant time), while Farm Credit countered starting with the national prime rate (3.25% at the time); both agreed with a 2% risk adjustment. The Bankruptcy Court used the 20-year treasury rate, added a 2% risk adjustment, and rounded up to 4%. In deciding whether the Bankruptcy Court erred, the court considers whether the plan adequately provides for “the value, as of the effective date of the plan, of property to be distributed ... under the plan on account of such claim is not less than the allowed amount of such claim.” 11 U.S.C. § 1225(a)(5)(B)(ii). On appeal, Farm Credit asserts the court is required to follow the plurality opinion in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), and start with the prime rate to achieve the proper discount rate for cramdown purposes. Topp contends *Till* does not mandate starting with prime rate in chapter 12. Relying on its prior decision in *United States v. Doud*, 869 F.2d 1144 (8th Cir. 1989) (also a chapter 12 case), the 8th Circuit reminds us that the appropriate interest rate “should consist of a risk-free rate, plus additional interest to compensate a creditor for risks posed by the plan.” 75 F.4th at 961 (quoting *Doud*), and opines that both the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) (a chapter 13 case) and the 8th Circuit in *Doud* favor the formula approach but neither mandates use of the national prime, a treasury rate, or any other relatively risk-free rate as the starting point for the interest rate analysis. Because the treasury rate is a risk-free rate and the prime rate is a low-risk rate, use of the former typically will require a larger risk adjustment to get to the ultimate discount rate. The 8th Circuit found no

clear error in the bankruptcy court’s factual findings about the appropriate discount rate. Affirmed.

In re Las Martas, Inc., No. 22-02380, 2023 WL 6413170 (Bankr. D.P.R. Sept. 29, 2023)

On December 5, 2022, the court entered an Opinion and Order directing the Debtor to show cause why confirmation should not be denied pursuant to sections 1225(a)(3,6) of the Bankruptcy Code, and the case dismissed pursuant to section 1208(c)(5). The court discussed the standards for dismissal under section 1208(c)(9) as well as sections 1225(a)(3,6). Ultimately a decision to dismiss is within the sound discretion of the court. The financial analysis in the prior cases, decline in the number of milking cows, and milk quota were of particular note. Decreasing assets and increasing liabilities were also material considerations. The plan was not feasible and the motion to dismiss was granted.

In re Perkins, 581 B.R. 822 (B.A.P. 6th Cir. 2018)

Creditor objected to confirmation of Debtor’s proposed Chapter 12 plan, both on ground that Debtor was not “family farmer” eligible for Chapter 12 relief, that her aggregate debt exceeded Chapter 12 eligibility limits, and that her proposed plan was not feasible. Bankruptcy Court overruled creditor’s objections and confirmed the proposed plan.

In re Perkins, 563 B.R. 229 (Bankr. W.D. Ky. 2016)

Hybrid approach for assessing whether debts exceed eligibility limitations. Creditor objected to confirmation of Debtor’s proposed Chapter 12 plan, both on ground that Debtor was not “family farmer” eligible for Chapter 12 relief, that her aggregate debt exceeded Chapter 12 eligibility limits, and that her proposed plan was not feasible. If the aggregate debt did not exceed the \$4,031,575 limitation on eligibility for Chapter 12 relief, if that debt was calculated using either Debtor’s schedules, could not be denied relief even if the amount was increased above the cap based on filed claims.

In re Valentine Hill Farm LLC, 580 B.R. 815 (Bankr. S.D. Ind. 2018)

After trustee had filed motion to dismiss Debtor’s Chapter 12 case as “bad faith” filing, or possibly based on Debtor’s fraud, the Debtor sought to dismiss. Court considered a pattern of successive filings to warrant a 180-day bar.

In re CF Beef & Grain, LLC, 590 B.R. 849 (Bankr. E.D. Wis. 2018)

Confirmation feasibility issues discussed based on a plan depending on cash infusions and income from land in foreclosure.

In re Parker, 560 B.R. 732 (Bankr. E.D. Tenn. 2016)

Chapter 12 Debtor sought dismissal of an unconverted case. Parties who had filed motions to convert to a Chapter 7 objected. Court addresses absolute right to dismiss noting the right is not qualified by any requirement the Debtor act in good faith seeking to convert.

In re Jubilee Farms, 595 B.R. 546 (Bankr. E.D. Ky. 2018)

Partial dirt-for-debt plan and feasibility.

In re Packer, 586 B.R. 274 (Bankr. N.D. Ill. 2018)

Creditor moved to convert the case to a Chapter 7 asserting the Debtors had committed fraud in connection with the case. The Debtors “overincluded” assets in the schedules by including assets owned by limited liability companies’ assets. Discussion of burden of proof in a motion to convert.

In re Wulff, 598 B.R. 459 (Bankr. E.D. Wis. 2019)

Confirmation order for Chapter 12 plan providing for payment of secured creditor’s untimely filed claims was entitled to *res judicata* effect.

In re Johnson, 581 B.R. 289 (Bankr. W.D. Wis. 2018)

Review of elements for confirmation of a Chapter 12 plan including feasibility. Confirmation denied based on unrealistic projections and historic information. Also discusses interest rate and term provisions for treatment of secured creditor and compensation for risk.

Schonscheck v. Deere & Co. (In re Schonscheck), 592 B.R. 679 (Bankr. E.D. Wis. 2018)

Creditor filed replevin action pre-petition. Debtors filed Chapter 12 and soon after, but before the creditor learned of the bankruptcy, a default judgment was

entered in state court. The Chapter 12 was dismissed and a writ of replevin was issued in state court. Debtors then filed a new Chapter 12 and an adversary proceeding seeking to have the writ determined invalid. Cause to annul the stay was found.

In re Blake, 585 B.R. 539 (Bankr. S.D. Ill. 2018)

Debtor bears the burden of proving by a preponderance of the evidence that the proposed plan satisfies all statutory requirements. The requirements for confirmation when a secured claim holder does not accept the plan are discussed. The proper valuation date related to collateral is analyzed and feasibility and “best interests of creditors” test are addressed.

In re Heft, 564 B.R. 389 (Bankr. C.D. Ill. 2017)

Whether a debtor may use proceeds from the sale of equipment to make a direct payment to a secured creditor contrary to the terms of the pending but not yet confirmed plan when the creditor did not file a claim is addressed. The importance of reviewing the claims register is highlighted.

In re Vantiger-Witte, 557 B.R. 151 (Bankr. N.D. Iowa 2016)

Chapter 12 converted to Chapter 13. In a prior Chapter 12, the court found the filing in bad faith. FSA moved to dismiss the case and deny confirmation of the Chapter 13 plan. The plan was confirmed and the filing determined to be in good faith.

In re Pedersen, 593 B.R. 785 (Bankr. N.D. Iowa 2018)

State Department of Revenue objected to confirmation of Chapter 12 plan arguing its claim was entitled to priority. The court held the Department of Revenue’s tax claim arose from transfer of Debtors’ crop insurance policy, and thus was not entitled to priority.

In re Loganbill, 554 B.R. 871 (Bankr. W.D. Mo. 2016)

Competing motion to dismiss for failure to comply with the terms of a confirmed plan, to dismiss or convert and for entry of an order of discharge. Chapter 12 Debtors’ pattern of omissions and falsities supported dismissal or conversion of their bankruptcy case. Conversion rather than dismissal was the appropriate

result after analyzing the Debtors' failures, omissions and, inferentially, falsities by Debtors.

Sunshine Heifers, LLC v. Citizens First Bank (*In re Purdy*), 870 F.3d 436 (6th Cir. 2017)

Bank held a security interest in cows owned by Debtor. The cows were auctioned and proceeds distributed after a determination of the security interest. A party claiming to be the lessor of certain of the cows appealed seeking a portion of the sale proceeds. Whether the agreements related to dairy cows were leases or disguised security agreements is addressed in determining the appellant was entitled to a portion of the proceeds. Decision on ownership issue was not barred by law of case or appellate court's mandate.

Turtle Mountain State Bank v. McDougall (*In re McDougall*), 572 B.R. 239 (Bankr. D.N.D. 2017)

Agricultural supplier's lien was prior to bank's properly perfected security interest in Debtors' livestock proceeds, only as to prepetition proceeds. North Dakota statutes regarding agricultural supplier liens illustrates the need to consider the application of state law.

In re Burns, 566 B.R. 918 (Bankr. N.D. Ind. 2017)

Trustee sought plan modification proposing to take funds allocated to secured creditor and to distribute the funds to unsecured creditors. Debtor objected and filed claims on creditor's behalf. The court disallowed the late claims as untimely even though confirmed Chapter 12 plan provided for full payment to the creditor. Rules for filing claims in a Chapter 12 are the same as in a Chapter 13 according to the court. Excusable neglect may form the basis for an extension of the Debtor's deadline for filing claims on behalf of a creditor.

In re Ferguson, 834 F.3d 795 (7th Cir. 2016)

Junior creditor who had requested marshaling at the time of the sale of crops and equipment renewed the request several years later when land was being sold. Bankruptcy Court granted the request and an appeal was taken. District Court reversed and remanded for further determinations. Junior creditor appealed. Held: District Court order remanding to Bankruptcy Court was not final, appealable order.

In re Meyer, 563 B.R. 708 (Bankr. N.D. Iowa 2017)

Chapter 12 Debtor, who farmed leased farmland owned by family trusts. Debtor objected to the claim for rent arguing improvements and repairs to the trust owned facilities and equipment were entitled to setoff. State law governs the substance of the claims at issue. Even if barred by a statute of limitations, a claim may still be used as a defense. The objection to claim was sustained.

In re Richfield Equities, L.L.C., 556 B.R. 313 (Bankr. E.D. Mich. 2016)

Local Rules established deadlines for filing of a section 503(b)(9) motion. Administrative expense claims must be timely filed and supported by appropriate documentation. “Cause” did not exist for allowance of untimely administrative expense claim that lacked supporting documentation.

McDougall v. Ag Country Farm Credit Servs., PCA (In re McDougall), 587 B.R. 87 (B.A.P. 8th Cir. 2018)

Chapter 12 Debtor brought action against creditors and transferors of property alleging the consent to the transfer had been fraudulently obtained so the property could be pledged to its creditor. Bankruptcy Court did not have “arising under,” “arising in,” or “related to” jurisdiction over state law fraud claim.

Schley v. Peoples Bank (In re Schley), 565 B.R. 655 (Bankr. N.D. Iowa 2017)

Chapter 12 was converted to a Chapter 7 in a case of debtors who ran feeder-to-finish pig operation. Cross motions regarding the interest of a bank with a perfected security interest in livestock and proceeds or feed supply company with an agricultural supplier lien in the same proceeds resolved by application of state agricultural supply dealer lien statute.

In re Richards, 616 B.R. 879 (Bankr. S.D. Ind. 2020)

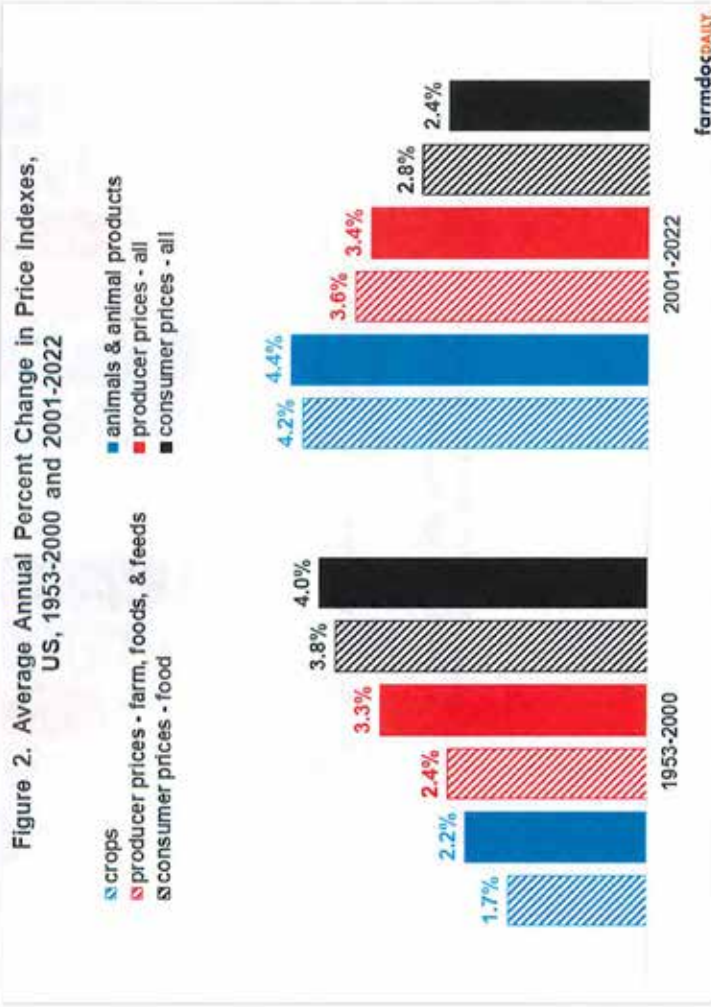
Court sustained Debtors’ objection to IRS’s amended claim setting off prepetition tax liability against postpetition tax refund. Plan specifically provided that no creditor was allowed to offset any claim provided by the plan, and the IRS did not object. Also, prepetition taxes were a dischargeable, prepetition tax under 11 U.S.C. § 1232(a)(1).

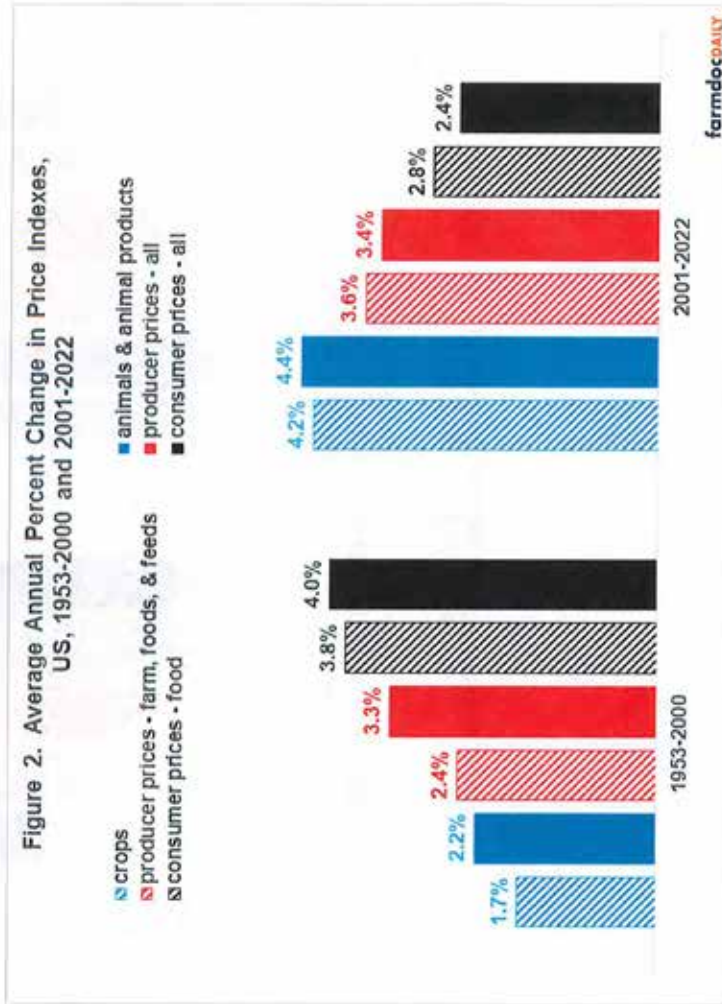
Farm Credit Servs. of America, PCA v. Swackhammer (In re Swackhammer), 650 B.R. 914 (B.A.P. 8th Cir. 2023)

The bankruptcy court confirmed debtors' chapter 12 plan in 2019, and approved modifications to that plan in 2020 and 2021 upon debtors' motions alleging that their circumstances had changed substantially due to abnormally wet weather, equipment failure, employee illness, or losses in farm acreage from delayed financing. Debtors filed third and fourth motions to modify their plan in 2022 to again extend the deadline for payments to Farm Credit and other creditors, alleging unforeseen loss in revenue from the 2021 crops and arguing they did not need to prove any change in circumstances to obtain plan modification. Farm Credit countered that the debtors' failure to make timely plan payments in each of the first three years under the plan proved lack of feasibility and that debtors must establish their losses were the result of a substantial and unanticipated change in circumstances to justify plan modification. The bankruptcy court approved the fourth motion to modify the plan. The BAP initially clarified that the proper standard of review of an order granting or denying a motion to modify a confirmed plan is for "abuse of discretion." Noting that courts are split on what a debtor must establish to achieve plan modification, the BAP held that "plan modifications under § 1229(a) require a showing, at a minimum, of a 'substantial change in circumstances.'" 650 B.R. at 920. The BAP also reminds us that the 8th Circuit recognizes "that projecting income and expenses in the farm context is not 'an exact science.'" 650 B.R. at 921 citing and quoting *In re Monnier Bros.*, 55 F.2d 1336, 1341 (8th Cir. 1985). The BAP found no clear error in the bankruptcy court's findings of fact and no abuse of discretion in its granting the motion to amend the plan. Affirmed.

Producer Prices for Farm Products
(Index 1982=100)

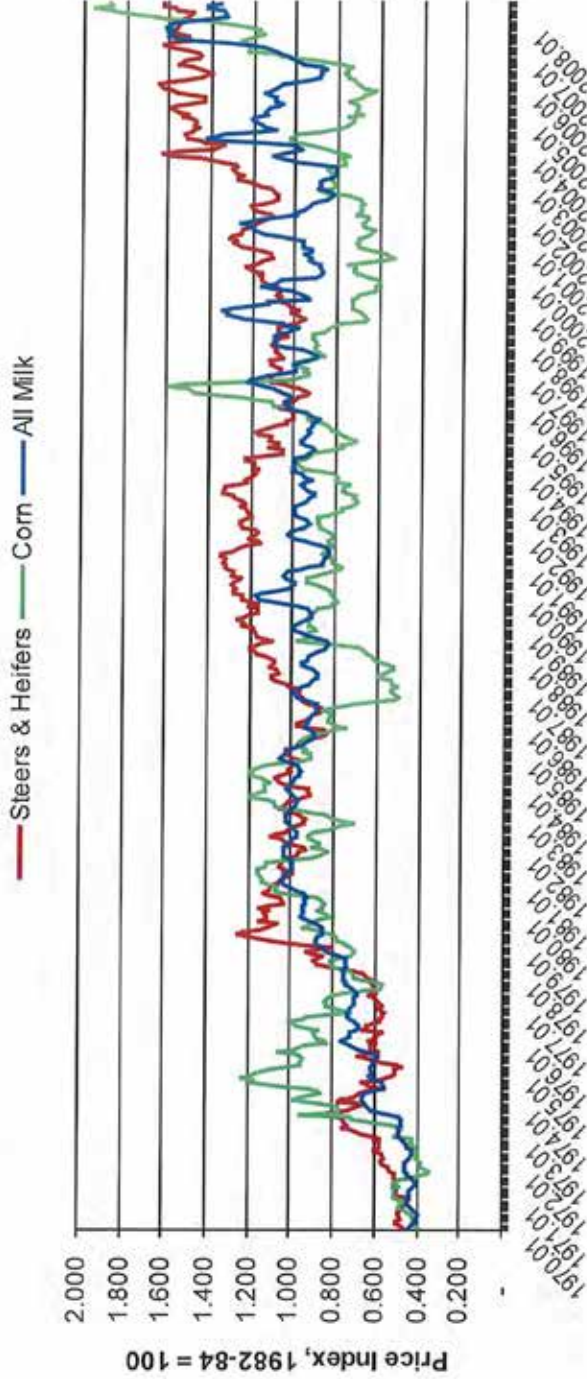
Commodity	9/2014	9/2024	% Change	% Change Adjusted for Inflation
Farm Products	193.1	217.2	12.5%	-12.9%
Corn	140.2	171.0	22.0%	-5.6%
Soybeans	180.9	166.0	-8.2%	-29.0%
Wheat	183.0	158.1	-13.6%	-33.1%
Hay, Hayseeds, & Oilseeds	224.6	220.2	-1.9%	-24.1%
Raw Cotton	117.0	103.9	-11.2%	-31.2%
Almonds	345.0	357.3	3.6%	-19.8%
Peanuts	104.9	129.0	23.0%	-4.8%
Eggs, Large	186.9	513.8	174.9%	112.8%
Slaughter Hogs	126.8	100.5	-20.7%	-38.6%
Slaughter Cattle	244.2	288.0	17.9%	-8.7%
Slaughter Poultry	300.7	368.4	22.5%	-5.2%
Raw Milk	186.9	186.1	-0.4%	-22.9%





What is Variability in Dairy vs Beef or Corn? (plenty!)

National Average Monthly Prices Received by Farms for Corn, Beef, and Milk



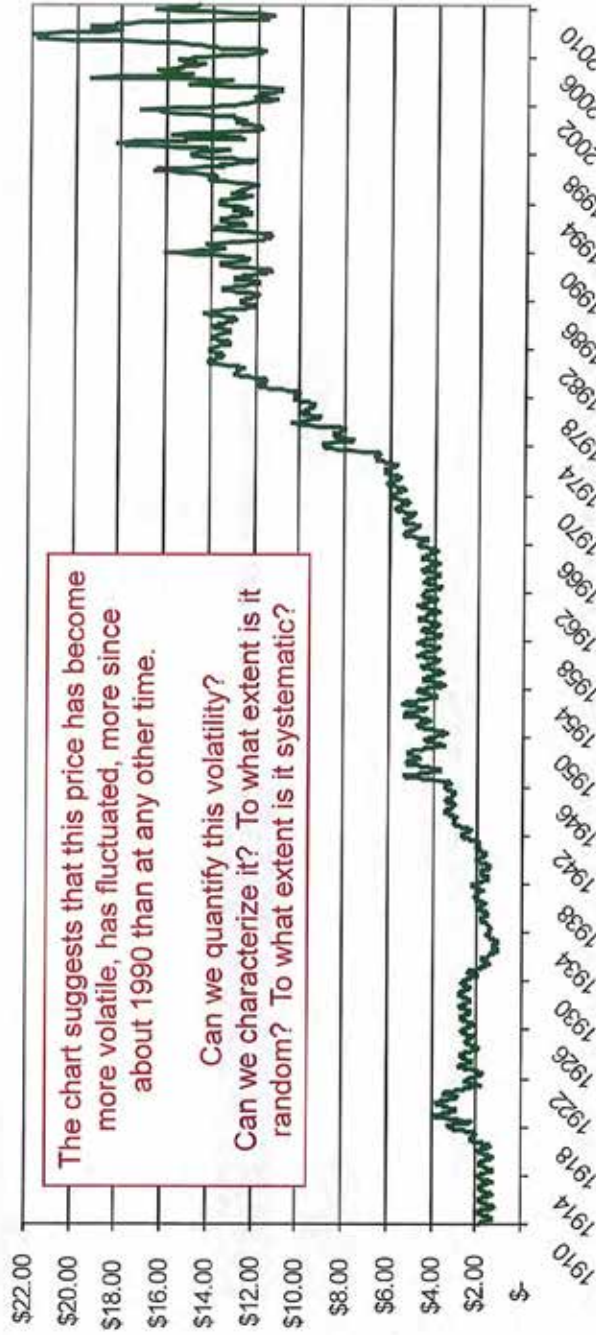
Cornell Program on Dairy Markets & Policy

prepared by Andrew Novakovic

16

Let's look at "volatility" in the US Average Price for All Milk

Figure 1. U.S. Average Monthly Price for All Grades of Farm Milk, 1910 to 2010
(not adjusted for inflation)



prepared by Andrew Novakovic

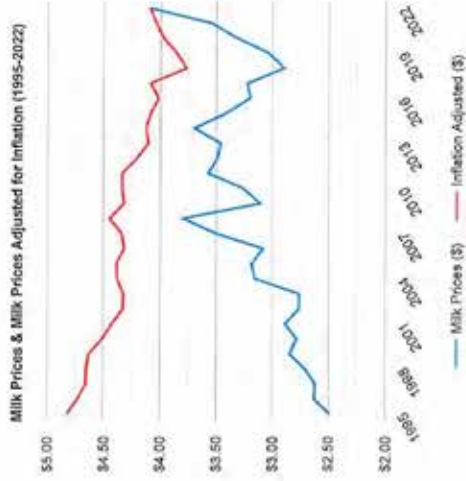


Home • Inflation and Prices • Milk Prices By Year And Adjusted For Inflation

Milk Prices By Year And Adjusted For Inflation

The average price for a gallon of milk was \$3.983 in July, compared to 3.956 in June, according to data published August 14, 2024, by the U.S. Labor Department's Bureau of Labor Statistics (BLS).

Over a longer period and averaging the BLS's monthly pricing data for milk — fresh, whole and fortified, a gallon was \$4.03 in 2023 versus \$4.09 in 2022, marking a 1.5% decrease.



For a bit of background, milk is one of the goods the BLS monitors for inflation, using it in calculating the overall change in consumer prices. Frankly, its relative importance is small for that purpose as it's just one of many items within the bureau's major "food index." You'll find milk listed in the BLS's monthly summary of Consumer Price Index by browsing Food -> Food at

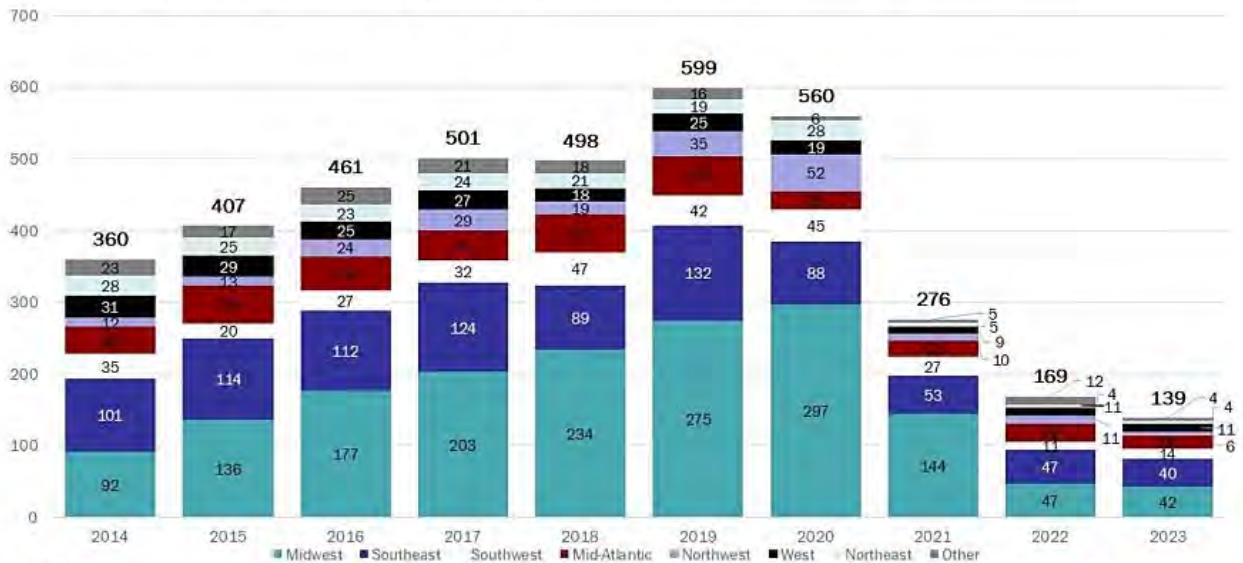
Farm Bankruptcies Down... For Now

Samantha Ayoub
Associate Economist

[Chapter 12 Bankruptcy](#) provides family farmers with flexibility to carry on normal business operations while making reasonable payments towards their debt load, even when facing the risk and uncertainty of agricultural production. The measure was introduced into law as a temporary measure in 1986 but became permanent in 2005 due to its success streamlining the filing process and addressing the large debts of farming operations. AFBF [Market Intel](#) reports have long followed the annual filings of Chapter 12 bankruptcies nationwide as an indicator of farm financial health.

The good news for 2023 is that farm bankruptcies have once again reached a record low since Chapter 12 became permanent. Coming off a year of record-high [commodity prices](#) and subsequently high [net farm incomes](#) in 2022, overall farm loan delinquency rates also dropped in 2023. According to the [U.S. Courts](#), 139 farm bankruptcies were filed in 2023, down 18% from 2022. This continues a four-year decline since the decade high of 599 filings in 2019. Unfortunately, this downward trend in farm bankruptcies is unlikely to continue.

Figure 1. Calendar Year Chapter 12 Farm Bankruptcies By Region
2023 Filings Down 18% from 2022, Down 77% from 2019



AFBF American Farm Bureau Federation

Source: U.S. Courts, Farm Bureau Calculations

Farm finances are a dark spot right now. The total number of farms in the U.S. declined by over 140,000 between the 2017 and 2022 Census of Agriculture. Five thousand more farms were lost from 2022 to 2023. Bankruptcy filings do not represent this long-term trend of farm closures and consolidation. Additionally, in February, net farm income for 2024 was projected to be down nearly 40% from 2022, and many key commodity price expectations have fallen further since then. The government safety net that normally supports farmers when markets hit bottom is currently undermined by inflation and an outdated 2018 farm bill. So, just because Chapter 12 farm bankruptcies have been falling in recent years does not mean farms are not facing devastating financial struggles now.

Chapter 12 Bankruptcies by Region

Most regions had decreases in bankruptcy filings last year. After more than doubling in 2022, there were only four filings in territories and states outside the lower 48 – designated “Other” by the U.S. Courts – which was 67% less in 2023 than 2022, making it the largest decrease of any region. Other regions that had double-digit percentage decreases in Chapter 12 filings were the Northwest, mid-Atlantic, Midwest and Southeast. The Midwest and Southeast had the most filings of any regions with 42 and 40 filings, respectively. Both the Northeast and West saw no change from 2022 to 2023, but the Northeast tied for the least number of filings compared to the West’s 11 filings.

Only one region had an increase in filings in 2023: the Southwest (Texas, Oklahoma, New Mexico, Arizona, Utah and Colorado). The region had three more cases filed than in 2022 for 14 total Chapter 12 filings in 2023. This region was hit hard by extreme drought in 2022, reducing harvest yields, which led to continued planting and market uncertainty in 2023.

Table 1. 2023 Chapter 12 Farm Bankruptcies By Region

Region	Filings	Year-over-Year Change*
Other Alaska, Guam, Hawaii, Puerto Rico, the District of Columbia & the Virgin Islands	4	-67%
Southeast Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina & Tennessee	40	-15%
Southwest Arizona, Colorado, New Mexico, Oklahoma, Texas & Utah	14	27%
West California & Nevada	11	0%
Northeast Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island & Vermont	4	0%
Mid-Atlantic Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia & West Virginia	18	-31%
Midwest Iowa, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota & Wisconsin	42	-11%
Northwest Idaho, Montana, Oregon, Washington & Wyoming	6	-45%

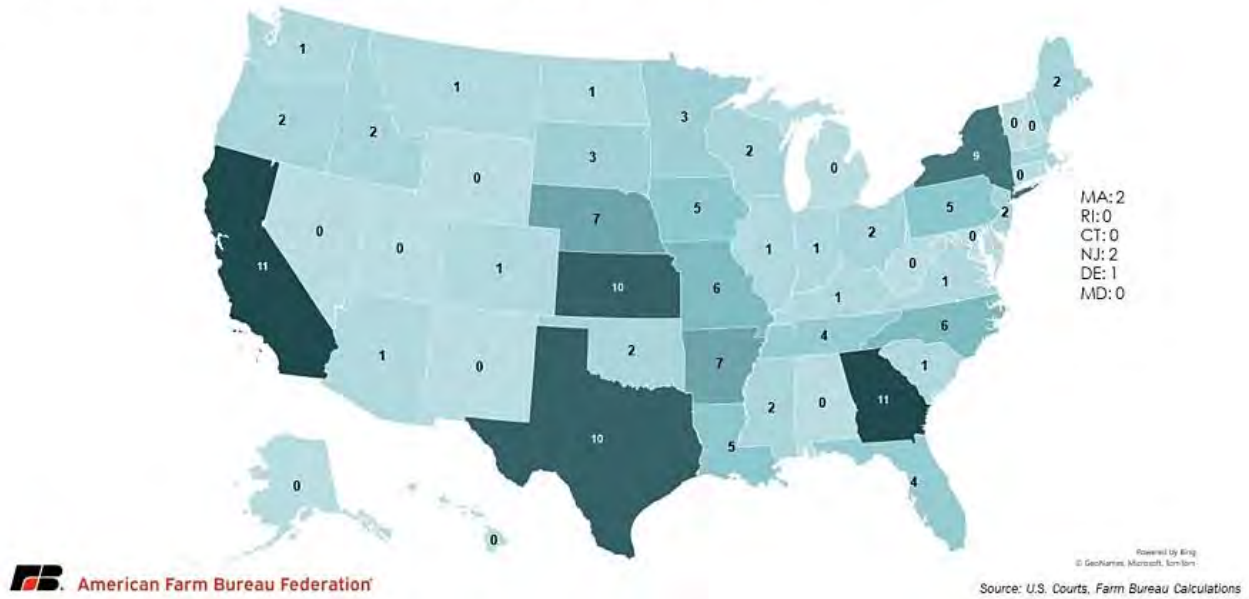
*12-Month Period Ending in Dec 2023 Relative to 12-Month Period Ending in Dec 2022

Chapter 12 Bankruptcies by State

On a state level, the total number of bankruptcies widely varies, as shown in Figure 3. While 17 states/territories had no bankruptcies, some states had as many as 11 cases filed.

Figure 2. Chapter 12 Farm Bankruptcies in 2023

Chapter 12 Farm Bankruptcies, January 2023 Through December 2023

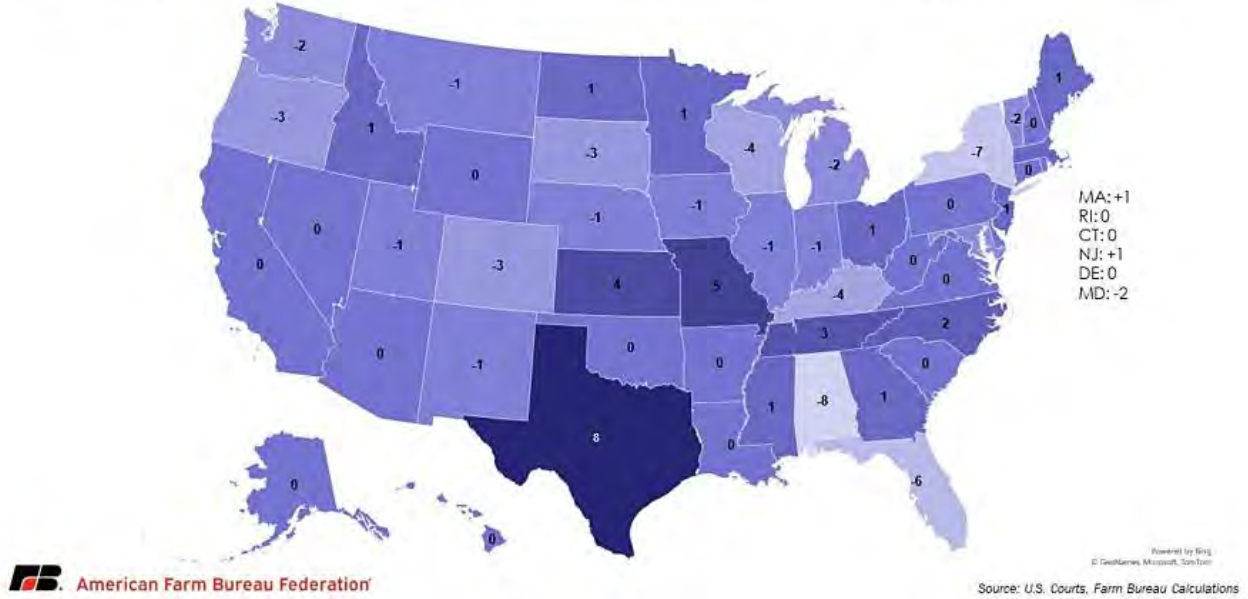


Twelve states had no filings in 2023: Alaska, Alabama, Connecticut, Hawaii, New Hampshire, New Mexico, Nevada, Rhode Island, Utah, Vermont, West Virginia and Wyoming. While some of these states have a recent history of zero filings – Nevada has not had a filing in 10 years – this is a first for others. 2023 is the first time Alabama and Michigan have not had a filing since Chapter 12 became permanent in 2005.

Twenty states had decreases in filings in 2023. As seen in Figure 4, nearly three-quarters of all states and territories had decreases or no changes in their filings. New York had the largest decrease in cases with nine cases – seven less than 2022.

Figure 3. Year-Over-Year Change in Chapter 12 Farm Bankruptcies

Change in Chapter 12 Farm Bankruptcies, January 2023 Through December 2023 Compared to January 2022 Through December 2022



In less fortunate circumstances, 14 states had increases in 2023 filings. Texas had the largest increase in filings with 10 cases – eight more than 2022. Three other states had a double-digit number of filings: California (11), Georgia (11) and Kansas (10). Of the 14 states with increased cases, nine increased by only one case (Georgia, Idaho, Massachusetts, Maine, Minnesota, Mississippi, North Dakota, New Jersey and Ohio). The other states that had increases include Missouri (six, up from one), North Carolina (six, up from four) and Tennessee (four, up from one).

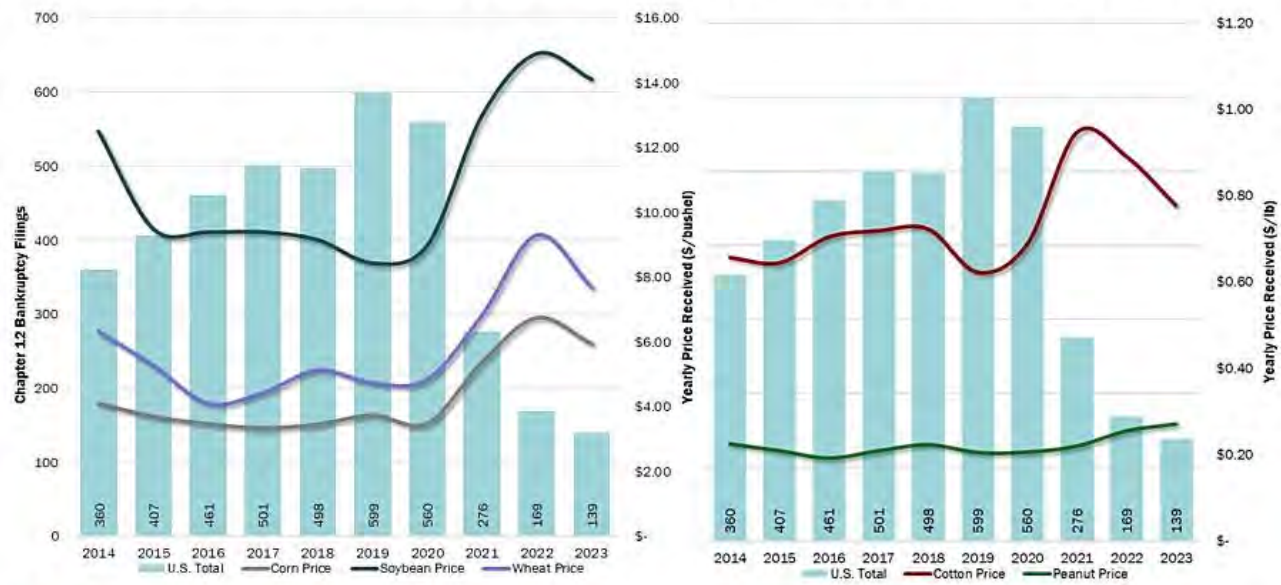
The Future of Farm Financials

Chapter 12 farm bankruptcies in 2023 fell to a record low since the program was made permanent, but this year, farmers face decreased revenues and higher costs. As a result, we are likely going to see increased filings in 2024 and beyond.

After record-high grain prices and farm incomes in 2022, 2023 [net farm income](#) (farm income minus expenses) is forecast at only \$155 billion, down from \$185.5 billion in 2022. This was still high enough to lead to another decline in farm loan [delinquency rates](#) in 2023. However, a drop in 2023 grain prices (Figure 5) is [expected to continue](#) into 2024. USDA estimated that 2024 net farm income would be \$43 billion lower than 2023 when adjusted for inflation, and this estimate is derived from the initial February [commodity outlooks](#) for the 2024/2025 marketing year. Since the report in February, the price outlook for all major

grains has continued to worsen due to increased [supply expectations](#) from favorable growing conditions nationwide and historically high on-farm stocks. The price for corn was initially forecast at \$4.40 per bushel in the February outlook, but the [July World Agricultural Supply and Demand Estimates](#) report lowered that to \$4.30 per bushel. Likewise, soybean and wheat price outlooks are down 10 cents and 30 cents per bushel, respectively, between the two reports. Cotton prices fell 12 cents per pound from February to March after an unexpected 9% increase in acres planted from the March [Prospective Plantings](#) report to the final June [Acreage](#) survey. As a result, the \$21-billion drop in farm cash receipts for crop and livestock sales in 2024 that USDA expected in February is now likely to be even greater.

Figure 4. U.S. Total Chapter 12 Farm Bankruptcies vs. Commodity Prices



Source: U.S. Courts, USDA NASS, Farm Bureau Calculations

Another element of the farm financial struggle is production expenses that continue to increase to record highs for the fourth consecutive year. In the February net farm income forecast, production expenses were expected to increase \$17 billion. The Purdue University-CME Group Ag Economy Barometer has [recorded](#) higher input costs as farmers' biggest concern for their farming operation for many years. Looking to the future, USDA [forecasts](#) that total production costs will continue to increase into 2025 for all major field crops except cotton (corn, soybeans, wheat, rice, peanuts, sorghum, oats and barley). To accommodate these costs, it is crucial that farmers have access to capital. Agricultural debt nationwide [increased](#) in 2023 due to growing demand for production loans to cover surging supply costs. However, farm capital investment is approaching record lows, according to the

Perdue University-CME Group Ag Economy Barometer's Farm Investment Index. That same report has shown growing concern for interest rates' impact on long term farm well-being.

According to data from the Kansas City Federal Reserve, farm debt at commercial banks reached over \$744 billion in 2023, up from \$709 billion in 2022. Much of this debt has been made more expensive after 11 interest rate increases by the Federal Reserve between March 2022 and January 2024. So, farmers have been hit by both the inflation that increased many of their costs and the interest rate hikes that have been aimed at curbing that inflation. Those rate increases have led to a 43% increase in aggregate U.S. farm interest expenses from 2022 to 2023. The elevated interest expenses are expected to continue into 2024, remaining 73% higher than 2018, when the last farm bill was passed. The double-edged sword of inflation and the interest rates that the Federal Reserve Bank is using to combat it have raised operating costs for farmers, increasing the need for credit to provide farm liquidity. Chapter 12 bankruptcies require the repayment of debt over three to five years, but farms are faced with ongoing challenges in sustaining their operation finances in the meantime to cover those payments.

Filing for bankruptcy is a last resort after all other options have been exhausted to pay back debts. Therefore, bankruptcy filing may not always be a solution for farms facing financial hardship. Many farms may choose to close before reaching the point of bankruptcy when faced with such uncertain futures for farm finances. Recent declines in the number of U.S. farms are just the latest in a trend of losses in farms and farmland beginning in 1950. Smaller farms with under \$50,000 in agricultural product sales and government program payments face the highest rates of closure, likely due to the high costs of sustaining these businesses with limited farm revenue. These smaller farms are also, naturally, more reliant on off-farm income. Eighty-four percent of all U.S. farms earn the majority of their household income off-farm and use that to cover farm expenses. To be eligible for Chapter 12 filings, more than 50% of the filer's gross income must have come from farming. As a result, many struggling farms may not even have Chapter 12 bankruptcy as an option. Meanwhile, as hope for an updated farm bill grows dimmer as we approach the Sept. 30 deadline, holes in the farm safety net continue to grow, making it even more difficult for farmers to manage risk in their operations.

Farmers are relying on the 2018 farm bill, written and passed in an era of stable prices, to serve as support against the uncertainty of the current market. That farm bill operated through six years of market volatility, a global pandemic and exceptional price inflation that was not adequately addressed by many of the farm bill's programs. The 2018 farm bill, still

in place in 2024 under a 12-month extension, is based on outdated reference prices that lower the safety net to the financial floor and offer very little protection against bankruptcy. When production is affected to the point that farm revenues fall, USDA, through the Agriculture Risk Coverage (ARC) or Price Loss Coverage (PLC) [programs](#), issues payments to covered commodities based off historical yield levels and reference prices -- minimum market prices – on a farm’s base acreage. However, base acreage – the crop-specific acres a farm has eligible for farm bill programs – registered after the 2018 farm bill is [21 million acres](#) lower than the actual acreage planted to program crops. This discrepancy undermines the effectiveness of ARC’s risk management benefits. The reference prices that trigger PLC payments are based off a price escalator that has [not kept up](#) with inflation or input price increases. Farms continue to face lower income from the [dropping commodity prices](#) that are leading to farm losses, but – for many farmers – with no support from outdated farm bill provisions, we may be facing a near future of heightened farm financial hardships.

Conclusion

It has been encouraging to see four straight years of fewer Chapter 12 filings. This shows the fundamental long-term viability of American farming.

Keep the greater farm financial environment in mind, though, when looking to the coming years. Rising production costs, difficulty attaining capital and falling crop prices all threaten long-term farm well-being. Farm bankruptcies are only one indicator of farm financial health. Other farm closures, sales and consolidations can also show that farms are financially struggling, short of the last resort of a Chapter 12 bankruptcy.

Farm finances will almost certainly weaken in 2024 and 2025, based on high credit costs, rising land costs and falling commodity prices. Meanwhile, the (already) six-year-old farm safety net is dangerously fraying just when it may be needed most.

REGISTER NOW



#AFBF25

Echoes of '80s Farm Crisis in Current Economy

Bernt Nelson

Economist

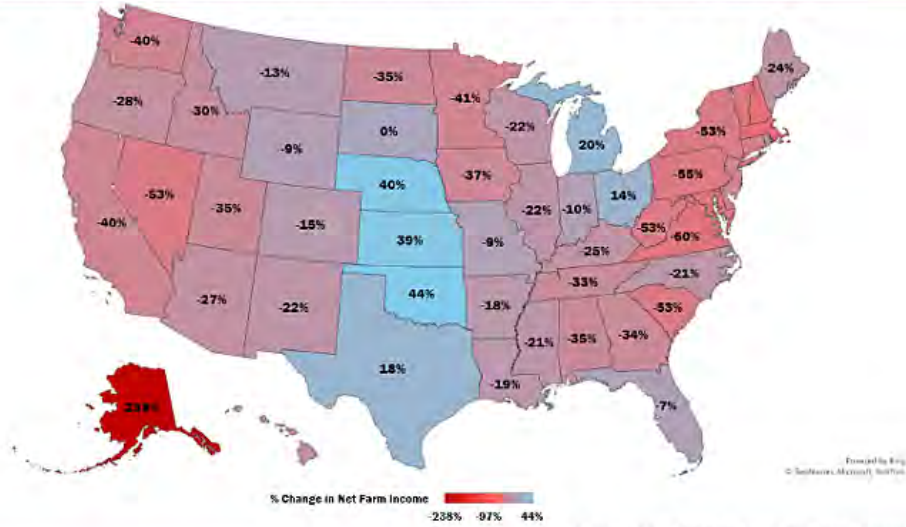
Facing tumbling commodity prices and livestock prices that are a mixed bag at best, American farm families are struggling to keep their heads above water; and the farm bill that is supposed to provide a safety net for times like this is not there to protect them. Many aspects of today's economy have us pointed in a direction similar to the farm crisis of the 1980s, but it's not too late to avoid that.

This Market Intel details the economic landscape for farmers and some ways in which it is similar to the farm economy crisis of the 1980s. It will build on several past [Market Intel](#) reports and be followed by another that will lay out the leadership traits and actions that can help weather this storm.

State of the Economy

USDA's [September farm income forecast](#) estimates that 2024 net farm income will fall 4.4% from 2023 to \$140 billion. More alarming, [net farm income has fallen](#) 23%, or \$42 billion, in just two years. Overall, states with more crop production are forecasted to have a bigger drop in income compared to states with more livestock production (Figure 1). While livestock prices have been a mixed bag, livestock receipts are expected to rise by 7.1% on the back of stronger-than-expected prices in cattle, eggs and dairy.

Figure 1. STATE-LEVEL CHANGES IN FARM INCOME
Percentage Change in Net Farm Income 2023 to 2024



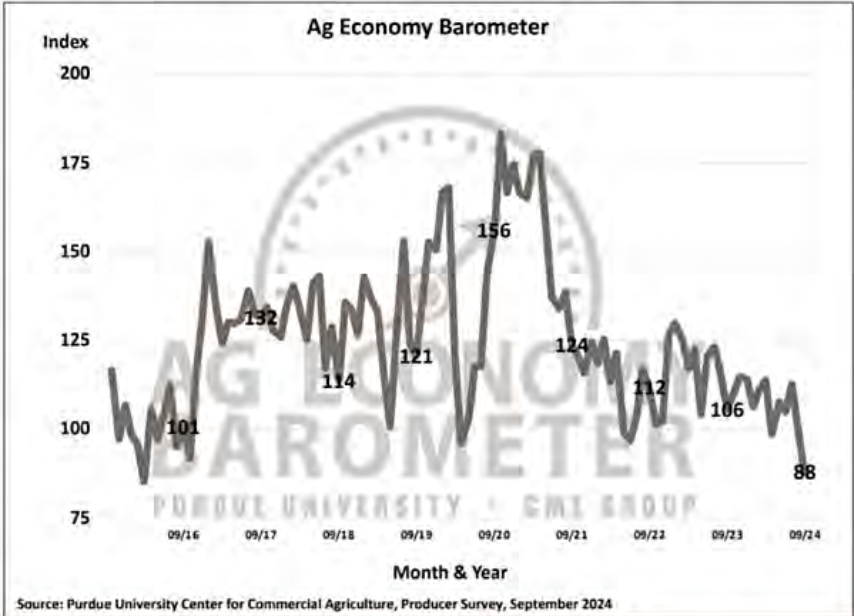
Source: USDA ERS September Farm Income Forecast



Farmers’ Struggles Go Beyond Finances

According to Purdue University/CME Group [Ag Economy Barometer’s](#) September [report](#), which is based on a monthly survey of producers, farmer sentiment fell dramatically in one month to its lowest level since the ag economy downturn in 2016. (Figure 2)

FIGURE 2. PURDUE/CME GROUP AG BAROMETER



Source: Purdue University Center for Commercial Agriculture, Producer Survey, September 2024



Prices

Row Crops & Grains

Spring's favorable planting conditions and summer's good growing weather is resulting in robust yields and a growing supply of many U.S. row crops. USDA's World Agricultural Supply and Demand Estimates (WASDE) [report](#), released on August 12, estimates [record-setting and well-above-trend yields](#) for many crops, including corn, soybeans and wheat, pushing prices near 2020 lows.

Basis is the difference between a futures price or a standard market point price for a commodity and the local cash price actually being offered for that commodity. Basis varies by geographic region and is sensitive to events that [disrupt](#) or [increase costs](#) for shipping. Corn and soybean [stocks are up 30%](#) over last year, leaving farmers and buyers short of storage space and creating widening and more uncertain basis. These large stocks combined with the monster harvest being brought in could drive grain buyers to slow delivery and reduce the farmers' price. Supply chain disruptions, including the recent [port strike](#), Mexican rail stoppages, low water in the Mississippi River and the impacts of Hurricane Helene's devastation, all add even more risk to this scenario, as it upends normal time and distance relationships.

Livestock

The U.S. cattle [inventory](#) is at a 73-year low as result of drought, inflation and high supply costs all driving farmers to sell cattle. This pushed beef prices to [record levels](#) in July. Packers have slowed slaughter pace, while lower prices for feed grains have incentivized feeding cattle to heavier [weights](#). USDA's September WASDE estimates the average 2024 price for fed steers is \$185.11, up 5% from last year but down 1.5% from a month ago.

Hog prices have recovered some from 2023, when average losses for farrow to finish farms were estimated at \$31 per head, but slow demand and elevated costs have minimized profits. It could take years for hog farmers to make up for 2023's losses.

Poultry & Eggs

At an estimated \$1.28 per pound, 2024 broiler prices would be unchanged from 2023. Table egg production in 2024 is estimated to be 7.8 billion dozen table eggs, down about .8% from 2023. This change reflects the smaller layer inventory from the outbreak of highly pathogenic [avian influenza](#) in 2022. Lower production has pushed wholesale egg prices

higher. The average New York daily wholesale price for large eggs was \$4.01 per dozen in August and is the highest monthly average since egg prices hit record highs in December 2022. Egg receipts, originally forecast to drop by 12%, are now expected to [surge by 38.7%](#).

Costs

While many commodity prices have fallen, the cost of production is far above pre-pandemic levels. Drought conditions fueled a market rally in grains from 2020-2022, but farmers and consumers alike were facing another rally during this time, inflation. Following a short but severe recession caused by COVID-19-related supply shutdowns, the Federal Reserve [increased the money supply](#) by 42% in just 22 months using a combination of low interest rates and “quantitative easing.” The result of this oversupply of money was the highest [inflation](#) we had seen in nearly 40 years. The impact on farmers was immediate, with prices for supplies such as chemicals, equipment and seed headed to new highs. Fertilizer prices hit record levels in April 2022 following the Russian invasion of Ukraine. According to USDA's farm income summary, total production expenses are now forecast to decrease slightly, by \$4.4 billion (1%), following three consecutive years of record highs, mostly due to an 11% drop in fertilizer prices.

Mistakes of the Past—The '80s

Today's farm economy looks a lot like the '80s farm crisis. There are several similarities that have the farm economy pointed in the same direction but there are some big differences and it's not too late to change for the better.

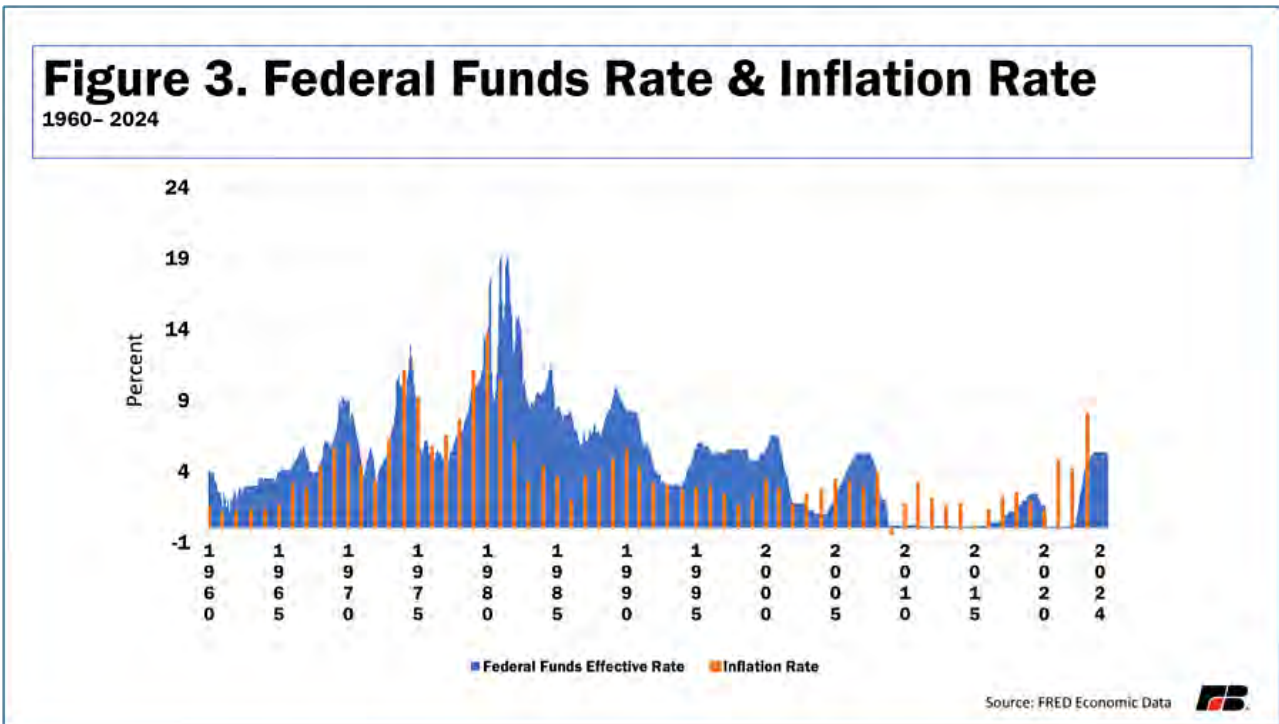
The time between 1964 and 1982 would become what is called “[The Great Inflation](#),” a result of the Federal Reserve's expansion of the money supply to combat unemployment decades before. [In 1973](#), President Nixon's secretary of Agriculture responded to a multiyear contract with the Soviet Union for feed grains by calling for American farmers to produce as much as possible and plant “fencerow to fencerow.” Land values increased and lenders were more than happy to provide credit to farmers. By 1980, inflation had risen to 14.5% and unemployment over 7.5%. Prices were sky high when the Fed implemented their policies to combat inflation, increasing the [federal funds effective rate](#). As inflation fell, the real cost of borrowing, including existing loans, took off for all Americans, but hit hardest at the farm families and rural bankers who had made those encouraged production investments. These rate hikes, along with crashing crop prices, caused land values to plummet and were followed by a massive recession.

The [1981 farm bill](#) focused primarily on crop insurance and crop insurance subsidies. It was not able to serve farmers during this time of high inflation. This is a lot like how the recently [expired 2018 farm bill](#) wasn't serving farmers as intended after four years of inflation and rising interest rates. Toward the end of the '80s, farmers produced a massive crop just in time for a global economic slowdown. Prices crashed, and farmers were left with production losses and less able to use credit because of low income, lower land values and high interest costs (Sound familiar?).

The 1985 farm bill, the [Food Security Act](#), provided more effective commodity price income supports and created several new conservation programs. But for many it was too little, too late. By the end of the '80s, it is estimated that [300,000](#) farms had defaulted on loans and more banks had failed than during the Great Depression.

How Today is Different From the '80s

As in the '80s, in 2022 the Fed began using interest rate hikes to reduce inflation, moving from 8% down to a target rate of 2%. Due to the large amount of capital needed up front to farm, farmers across the country also rely on credit to help meet cash flow needs. When the Fed increased [interest](#) rates, it increased their interest costs by 43% from 2022 to 2023. The Fed's recent decision to drop interest rates by half a percent will help, but this still leaves minimum interest rates for an operating loan, the kind a farmer would use to plant a crop, at about 8%. While these interest rates are lower than they were in the '80s, they are the highest in quite some time (Figure 3).



Another difference between now and the '80s farm crisis is land values. According to USDA-National Agricultural Statistics Service's most recent Land Value Summary [report](#), released on Aug. 2, [land values increased](#) to an average of \$4,170 per acre in 2024, up 5% from the year before. This is, so far, the opposite of what happened in the '80s, when land values fell 7.3% between 1980 and 1990. Land value is important for ag lenders because increased land value gives a farmer with land more collateral to borrow against (although it also raises the cost for rented land farmed.) When land values fell in the '80s it restricted farmers' ability to get a loan just as prices fell.

Conclusions

The most alarming piece of the current ag economy is lower commodity prices without a [farm bill](#) to help sustain our farmers. U.S. farmers have produced a massive crop two years in a row. While this is amazing in terms of productivity and the ability of our farmers to feed the world, it has also caused commodity prices to drop dangerously low. Stocks of stored grain are up, and a record crop without matching demand threatens to put more downward pressure on prices.

On top of that, inflation has driven up costs for inputs, with very few coming down in recent years. Interest rates are elevated due to the Fed's battle to bring down inflation, driving up

the cost of borrowing.

When Congress got around to passing a farm bill in the '80s, it was too little, too late for many. This is a lesson from the past: that America's farm families are the ones that will pay for an outdated (or expired) farm bill. The farm economy is at a pivotal moment, if policymakers are not able to learn from the mistakes of the past, the past could repeat itself. The good news is that interest rates have started to come down, and land values have not fallen like they did in the '80s. It will be critical for interest rates to continue dropping so farmers have access to credit to help weather cash flow issues until an updated farm bill is passed.

Many farmers entered 2024 with strong balance sheets; but expensive credit comes with a price. It may help farmers [survive this year](#), but using credit at higher interest rates depletes working capital. Less working capital and lower crop prices mean that the access to credit could be [worse in 2025](#) and the burden of debt could make many of these same farmers vulnerable.

This Market Intel will be followed by another that will lay out the leadership traits and actions that can help farmers survive the challenges of this farm economy.

REGISTER NOW



#AFBF25

Agriculture in the Red: Net Farm Income Drops Again in 2024 Forecast

Daniel Munch

Economist

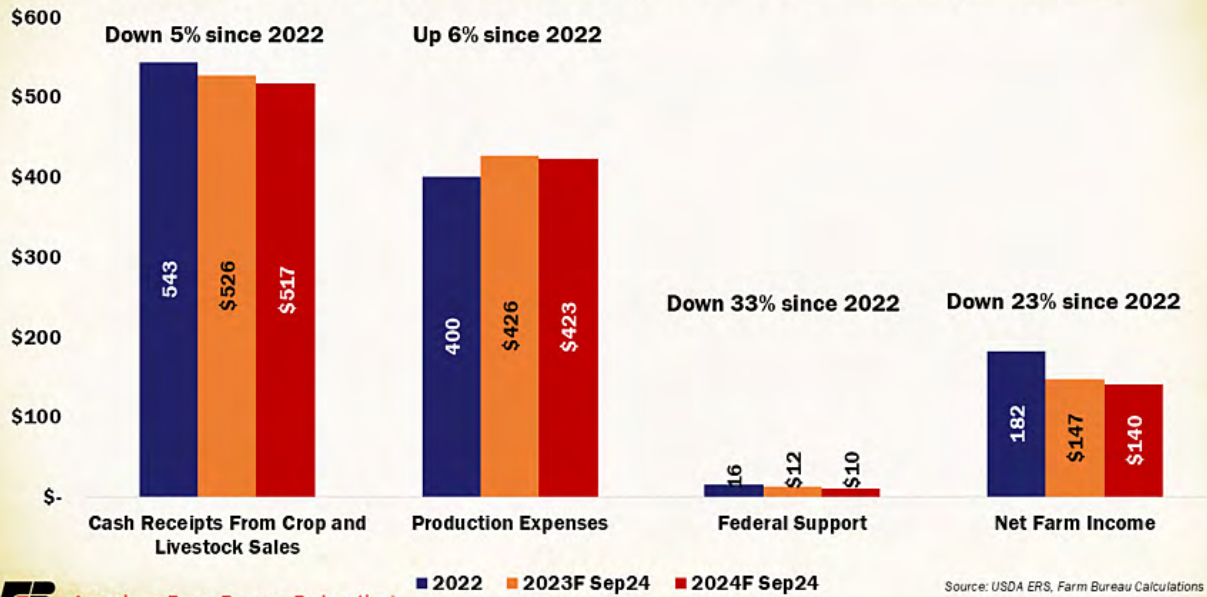
USDA's [September 2024 farm income forecast](#) projects this to be yet another challenging year for American farmers, who are expected to lose nearly a quarter of their income in two years. Net farm income, a key measure of profitability, is forecast at \$140 billion for 2024, marking a \$6.5 billion decline (4.4%) from 2023, following a sharp 19.5% drop from 2022 to 2023. Inflation-adjusted figures indicate even greater financial strain, with net farm income expected to fall by \$10.2 billion (6.8%) from the previous year.

[Many agricultural economists](#) had anticipated USDA would lower its [February net farm income projections](#) in light of mounting economic pressures. Instead, the September report revised forecasts made in February up, adjusting the original estimate from \$116 billion to \$140 billion. This upward revision, which places net farm income above the 20-year average (2004–2023), reflects a smaller decline than initially expected. The February estimate had forecast a steep 25.5% drop from 2023, but the updated projection now shows a more moderate 4.4% decrease. USDA also revised net farm income for 2023 down from \$155.9 billion to \$146.5 billion, which made the decline in 2024 look less extreme. This shift in estimates is largely attributed to a stronger-than-expected performance in the livestock sector and an expected slight decline in total production expenses.

Despite these improvements, however, broader economic pressures persist. Record costs for labor, interest, and taxes, along with reduced government support, continue to present significant challenges for U.S. farmers, who remain financially vulnerable as they head into another difficult year. The unexpected upward revision would appear to offer some relief, but it may understate the economic hurdles farmers – especially crop farmers – are facing in 2024.

FIGURE 1: U.S. NET FARM INCOME BY COMPONENT

U.S. Farm Sector Cash Receipts, Expenses, Government Payments and Net Farm Income | Billion Dollars



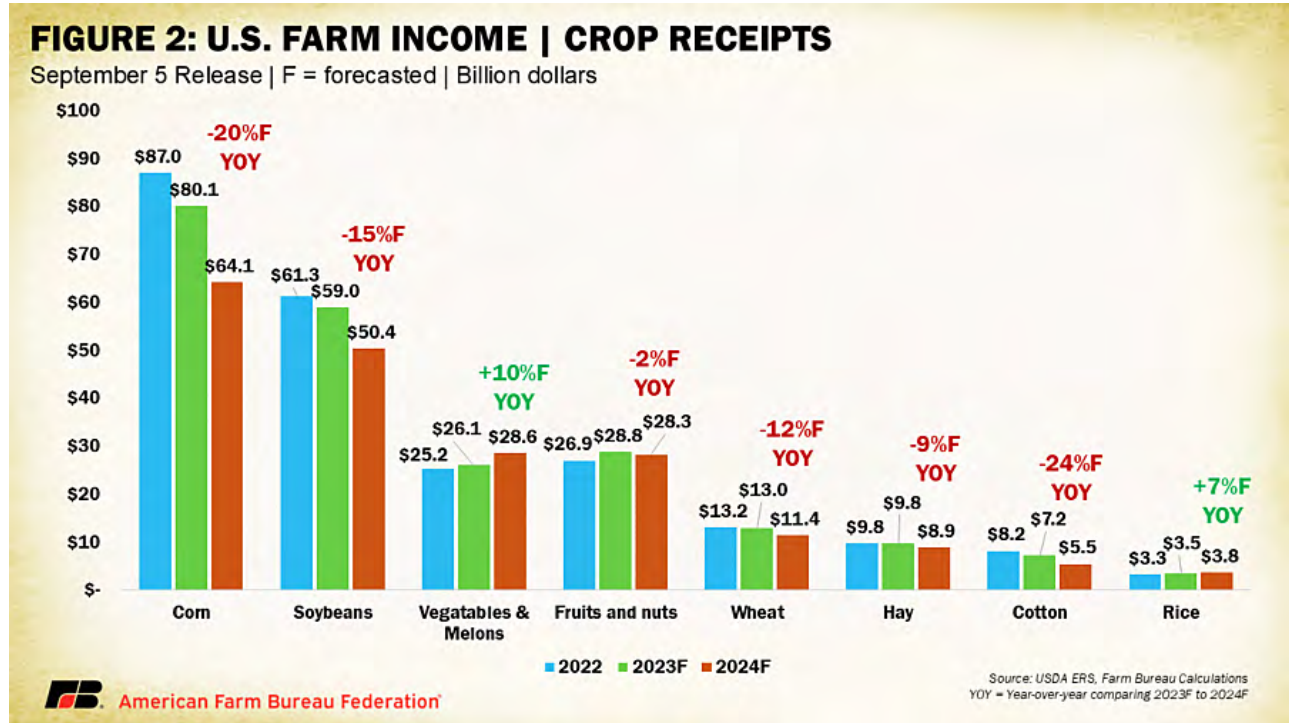
Cash Receipts: Crops Hit Hard

Cash receipts from crop sales are expected to suffer a significant blow in 2024, with a forecasted year-over-year decline of \$27.7 billion (10%) to \$249 billion. This projected drop is far more severe than the USDA’s original February forecast, which anticipated a \$16.7 billion (6%) decrease. Corn receipts, in particular, are forecast to plummet by \$16 billion (20%), largely driven by price declines that will more than offset the increase in quantities sold. This represents a sharp downward revision from February’s forecast, which had already projected an \$11.3 billion drop in farm sales of corn.

Soybean receipts are also expected to decline steeply, falling by \$8.6 billion (14.6%), a much larger drop than the \$6 billion (10%) drop initially forecast in February. Other major crops like wheat, cotton, and hay will also experience lower receipts, with cotton expected to fall by \$1.7 billion (23.6%) and wheat by \$1.6 billion (12.3%).

This sharp downturn in crop cash receipts, despite – or because of – a [bumper crop](#), has been alarming to farmers who have been battling fluctuating commodity prices and rising input costs. The revised 2024 forecast suggests an exceptionally tough year ahead for these producers. The anticipated drop in receipts for grains and oilseeds is largely a result of a global surplus and weaker market prices, offering little relief for growers.

On the bright side, vegetable and melon receipts are expected to rise by \$2.5 billion (9.8%) and rice receipts to bump up \$250 million (7%), providing a small but positive spot in a sector whose overall outlook remains negative.

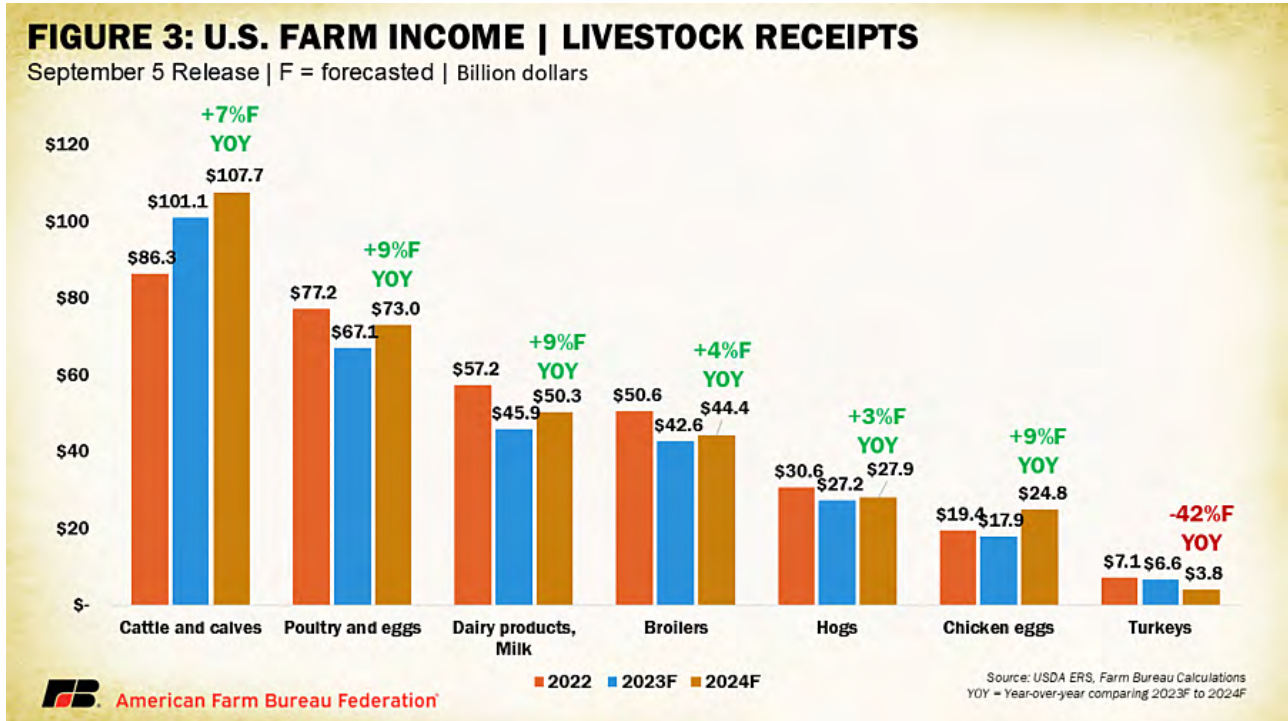


Livestock: Mixed Results

On the livestock side, the original February forecast projected a modest decline of \$4.6 billion (1.9%) in total animal product receipts. However, the updated September report presents a far more optimistic outlook, with receipts now expected to rise by \$17.8 billion (7.1%) in 2024. This significant upward revision is largely due to stronger-than-anticipated prices across key livestock sectors, particularly for cattle, dairy, and eggs. Egg receipts, originally forecast to drop by 12%, are now expected to surge by 38.7%, reflecting robust price gains linked to the impacts of highly pathogenic avian influenza. USDA also reversed its earlier prediction for cattle and calves, shifting from an estimated \$1.6 billion (1.6%) decline to a substantial \$6.6 billion (6.5%) increase. Similarly, milk receipts, which were initially projected to fall by \$900 million (2%), are now forecast to climb by \$4.3 billion (9.4%), driven primarily by higher-than-expected prices.

Despite these gains, not all sectors of the livestock industry are benefiting. Turkey producers are expected to experience a severe downturn, with receipts forecast to drop by \$2.7 billion (41.5%). This steep decline reflects weaker consumer demand and lower prices.

Likewise, hog producers will see only modest growth, with receipts expected to rise by just \$700 million (2.7%). While livestock producers will see some relief in 2024, it will not be uniform.



Government Payments: Fading Safety Nets

Direct government payments, which have provided a critical safety net for farmers in past years, are expected to decrease by \$1.8 billion, or 15.1%, to \$10.4 billion in 2024. This reduction is largely attributed to lower payments from the Dairy Margin Coverage program and diminished supplemental and ad hoc disaster assistance compared to 2023. The reduction also marks the fourth consecutive year of declining support, reflecting the winding down of pandemic-era programs and the outdated nature of safety net programs like Agriculture Risk Coverage and Price Loss Coverage. As commodity prices remain above outdated reference price levels, these programs rarely trigger, leaving producers exposed to severe financial pressure. This mismatch between current market conditions and program triggers underscores the need for immediate [reform](#).

Production Expenses: Marginal Decline with Rising Costs in Key Areas

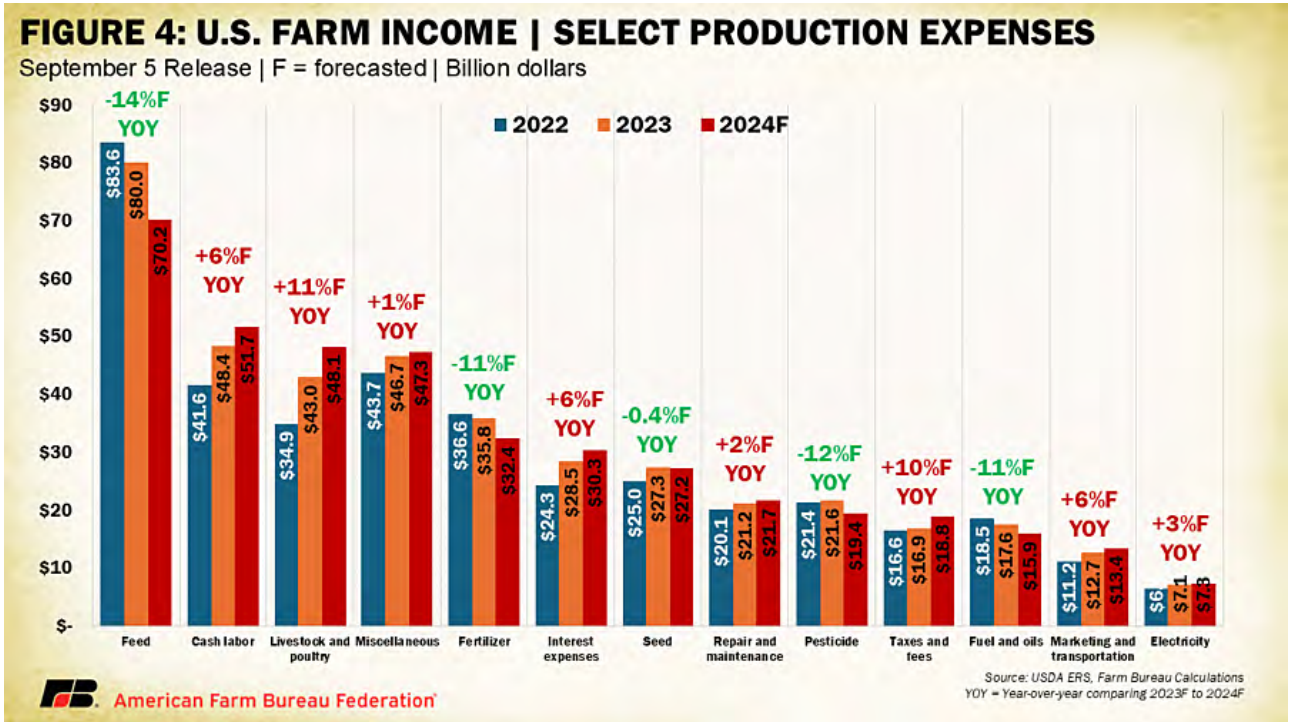
Total production expenses in 2024 are now forecast to decrease slightly by \$4.4 billion (1%) to \$457.5 billion, compared to the February report, which initially predicted an increase of

\$16.7 billion (4%) for the year. While this revision may seem like a positive development, it follows years of record-high expenses, and inflation-adjusted costs remain elevated. Crucially, key cost drivers such as labor and interest expenses are expected to rise, adding continued financial pressure on farmers. In fact, farmers are paying the highest costs on record in dollar terms for labor, interest, and taxes.

Labor costs, for example, are forecast to increase by \$3.4 billion (6.9%), while interest expenses are expected to rise by \$1.8 billion (6.3%), driven by high interest rates and growing debt levels. Farm sector debt is projected to increase by 4.2%, or \$21.8 billion, reaching \$540.8 billion in 2024. This rise in debt reflects both higher borrowing needs and sustained high interest rates, further straining farmers' financial health.

These increases in critical expense areas will offset some of the relief provided by the projected declines in feed, fertilizer, and fuel expenses. Feed costs are now forecast to drop by \$9.8 billion (12.3%), fertilizer by \$3.5 billion (9.7%), and fuel by \$1.7 billion (9.6%) — a marked improvement from the February report, which anticipated smaller reductions in these categories, although the livestock producer's feed cost savings is the crop farmer's revenue loss.

Despite the overall decline in total expenses, the rise in labor and interest costs means that farmers will continue to face a tight financial situation in 2024 and beyond. The upward pressure from these persistent costs will strain margins, leaving little room for error as producers navigate a challenging year ahead. The revised estimates provide a mixed picture, where certain cost reductions offer some relief, but the economic reality of record-high labor, interest and tax burdens remains a significant concern.



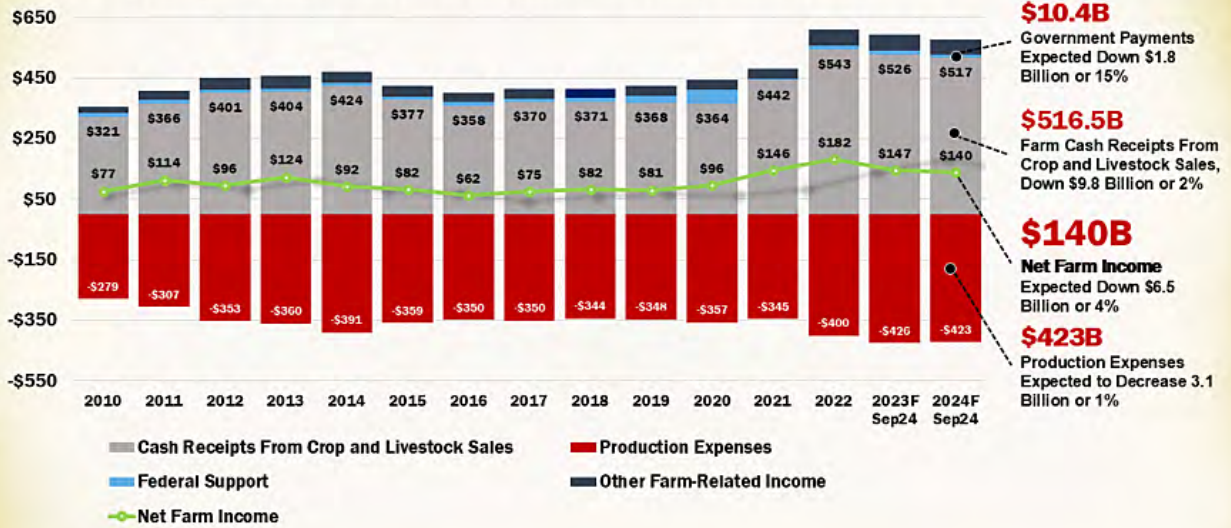
Conclusion: A Tough Road Ahead

USDA's 2024 farm income forecast paints a grim picture for American agriculture. Net farm income is set to decline nearly 25% in two years, with substantial losses in crop receipts and continued pressure from rising costs. While livestock producers may see modest gains, the outlook for many crop farmers is increasingly uncertain, with global supply and demand imbalances weighing heavily on prices. The reduced government support, combined with elevated production expenses, leaves many farmers in a precarious financial position.

Notably, in 2022, a record year for net farm income, 57% of farm operations reported a financial loss, according to the Census of Agriculture. This disparity highlights the disconnect between national income averages and the individual financial reality many farmers face. The fact that the majority of farms experienced losses in such a high-income year underscores the fragility of the farm economy, even when the sector as a whole appears strong. Without targeted policy changes, such as an updated safety net in a farm bill, farmers will struggle even more in the face of declining income and rising debt.

FIGURE 5: U.S. FARM INCOME AND EXPENSES

U.S. Farm Sector Cash Receipts, Expenses and Net Farm Income, Billion Dollars



AFB American Farm Bureau Federation

Source: USDA ERS, Farm Bureau Calculations

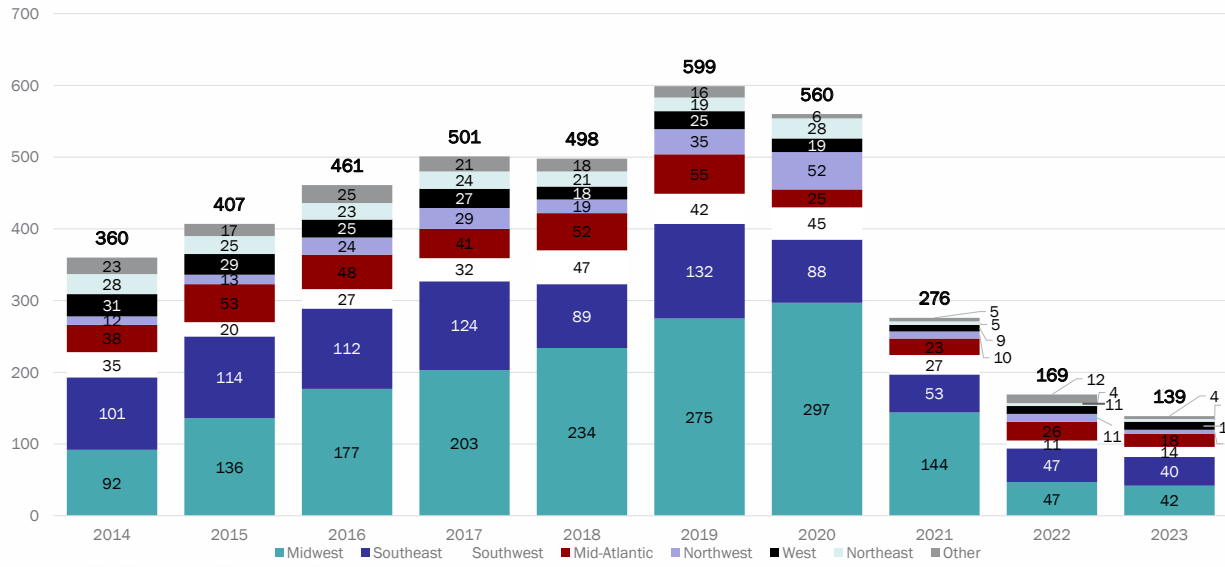
REGISTER NOW



#AFBF25

Figure 1. Calendar Year Chapter 12 Farm Bankruptcies By Region

2023 Filings Down 18% from 2022, Down 77% from 2019



Source: U.S. Courts, Farm Bureau Calculations

Figure 2. Chapter 12 Farm Bankruptcies in 2023

Chapter 12 Farm Bankruptcies, January 2023 Through December 2023

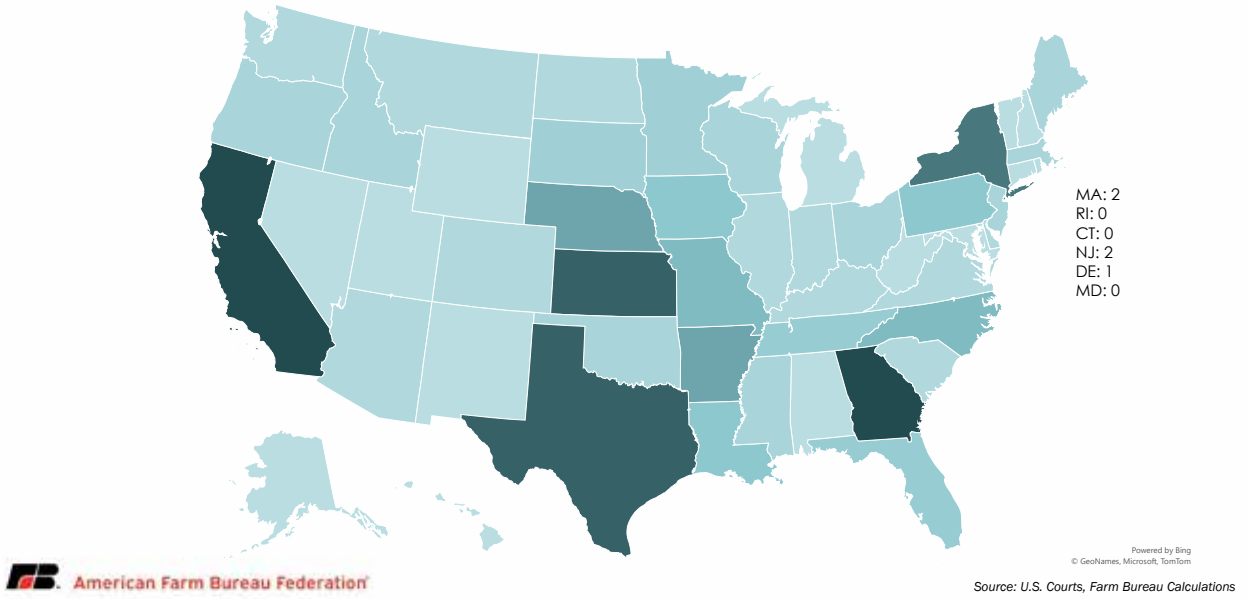
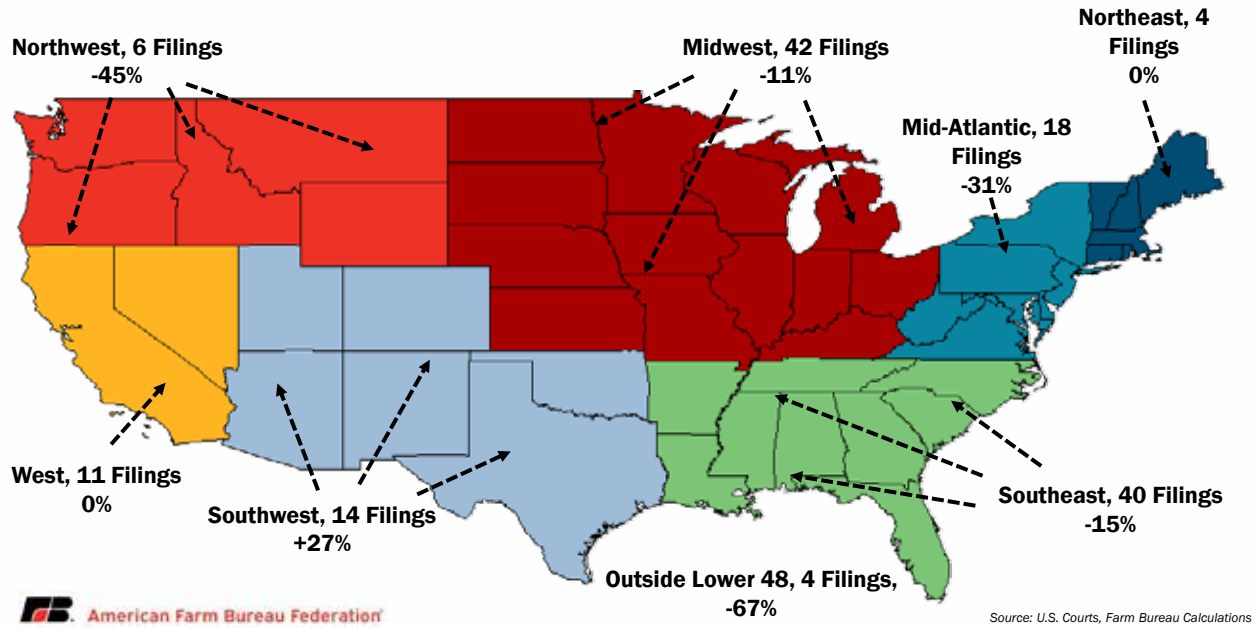


Figure 2. 2023 Chapter 12 Farm Bankruptcies By Region,
12-Month Period Ending in Dec 2023 Relative to 12-Month Period Ending in Dec 2022



2026 CENTRAL STATES BANKRUPTCY WORKSHOP

Table 1. 2023 Chapter 12 Farm Bankruptcies By Region

Region	Filings	Year-over-Year Change*
Other Alaska, Guam, Hawaii, Puerto Rico, the District of Columbia & the Virgin Islands	4	-67%
Southeast Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina & Tennessee	40	-15%
Southwest Arizona, Colorado, New Mexico, Oklahoma, Texas & Utah	14	27%
West California & Nevada	11	0%
Northeast Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island & Vermont	4	0%
Mid-Atlantic Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia & West Virginia	18	-31%
Midwest Iowa, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota & Wisconsin	42	-11%
Northwest Idaho, Montana, Oregon, Washington & Wyoming	6	-45%



*12-Month Period Ending in Dec 2023 Relative to 12-Month Period Ending in Dec 2022

Farm Bureau Calculations

Figure 3. Year-Over-Year Change in Chapter 12 Farm Bankruptcies

Change in Chapter 12 Farm Bankruptcies, January 2023 Through December 2023 Compared to January 2022 Through December 2022

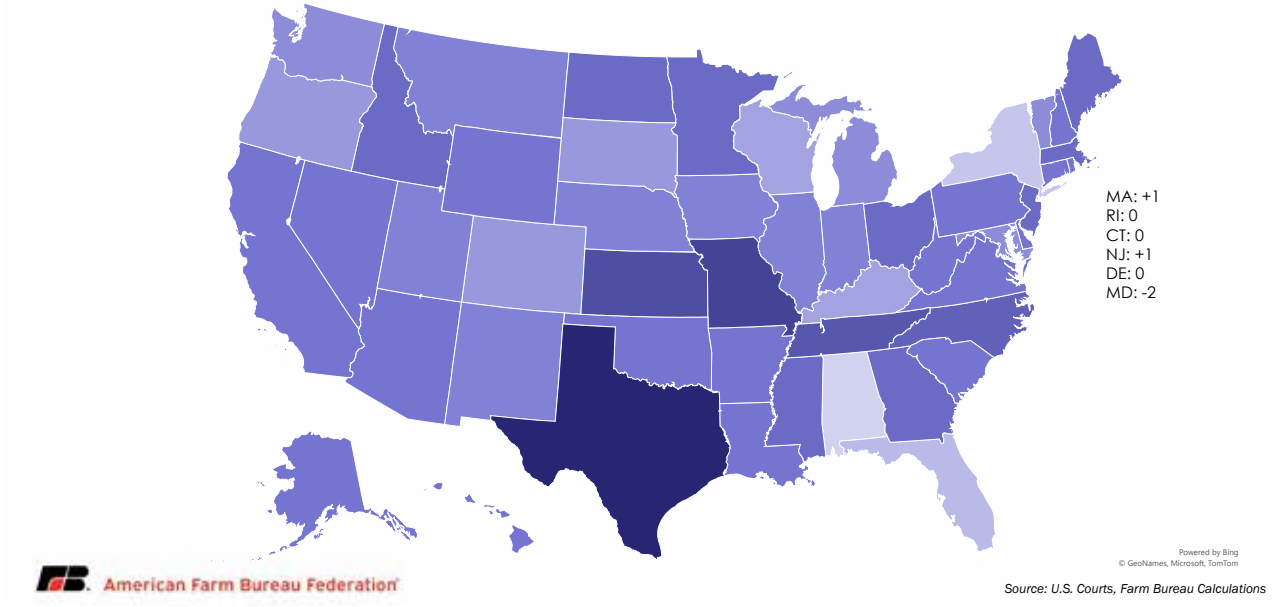
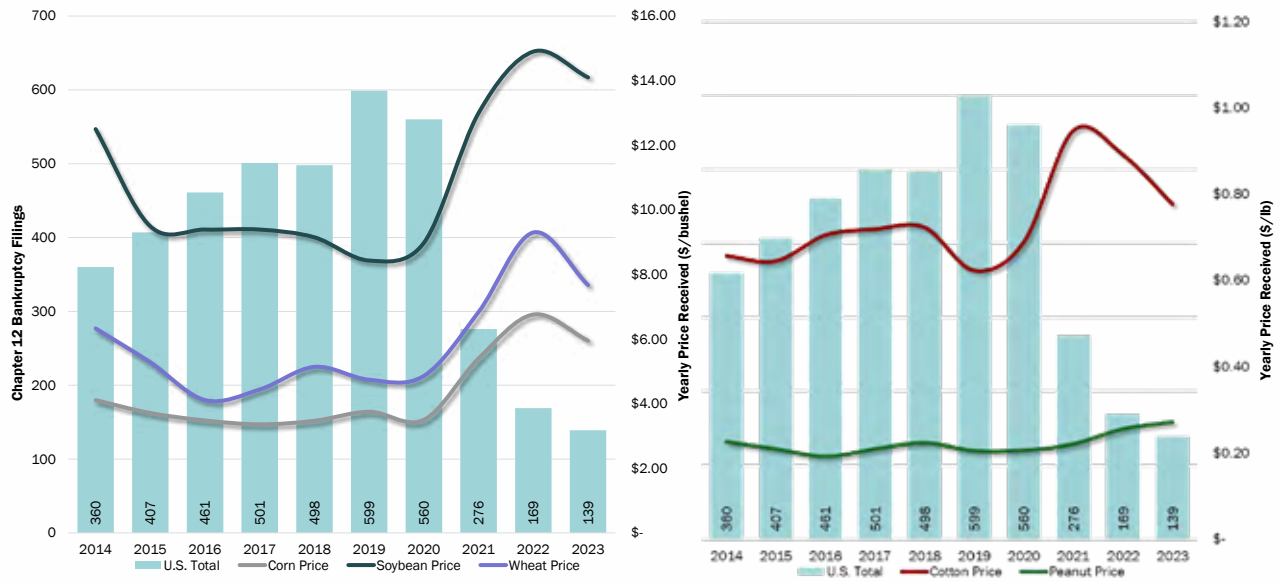
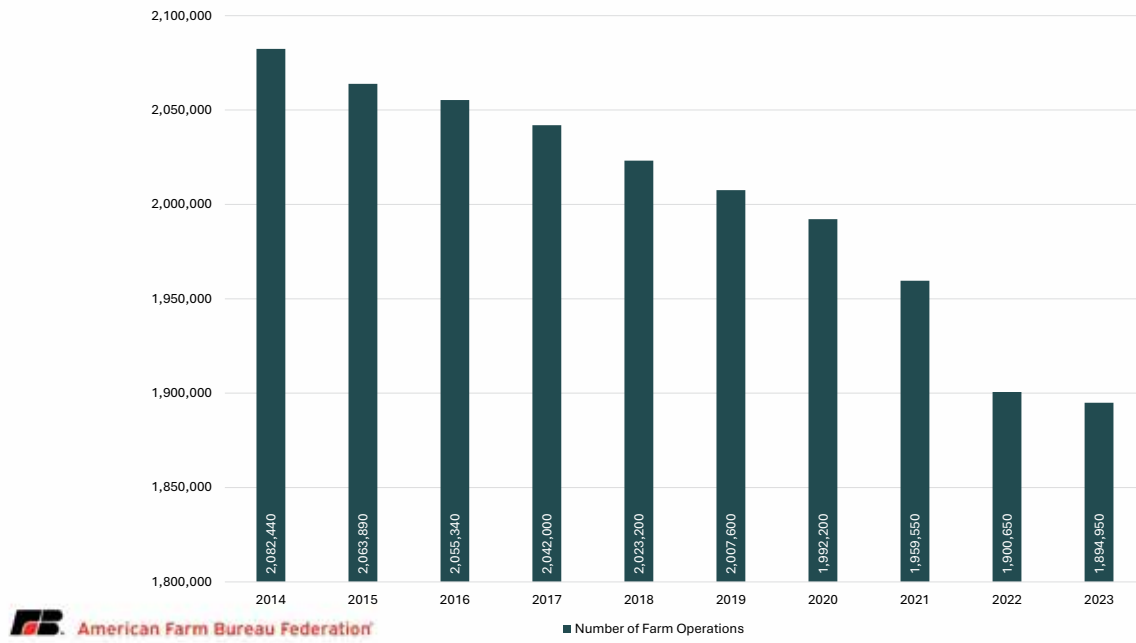


Figure 4. U.S. Total Chapter 12 Farm Bankruptcies vs. Commodity Prices



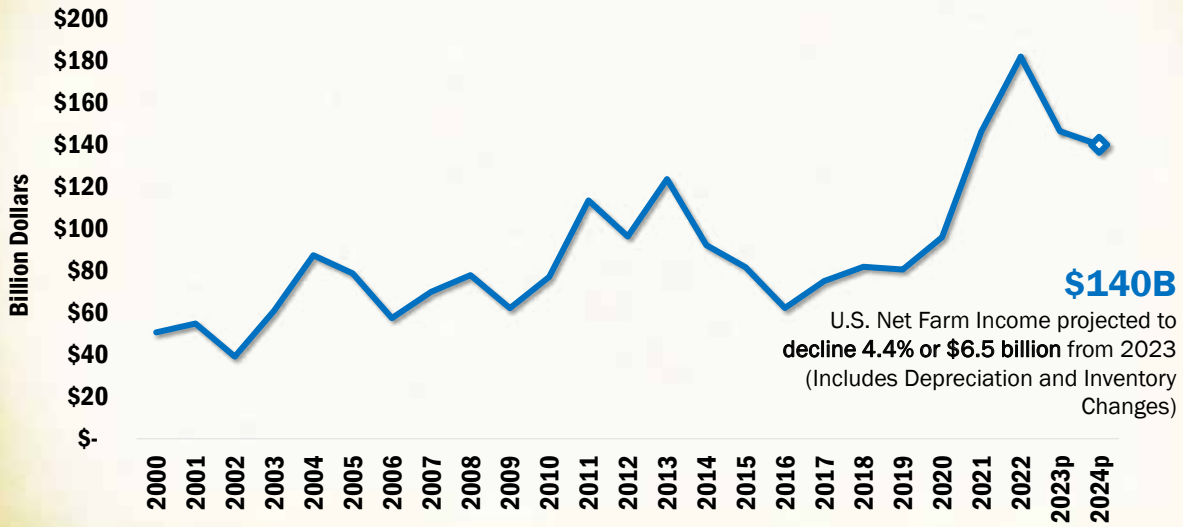
Source: U.S. Courts, USDA NASS, Farm Bureau Calculations

Figure 4. Total U.S. Farm Operations



U.S. FARM ECONOMY

U.S. Farm Sector Net Farm Income



U.S. FARM ECONOMY

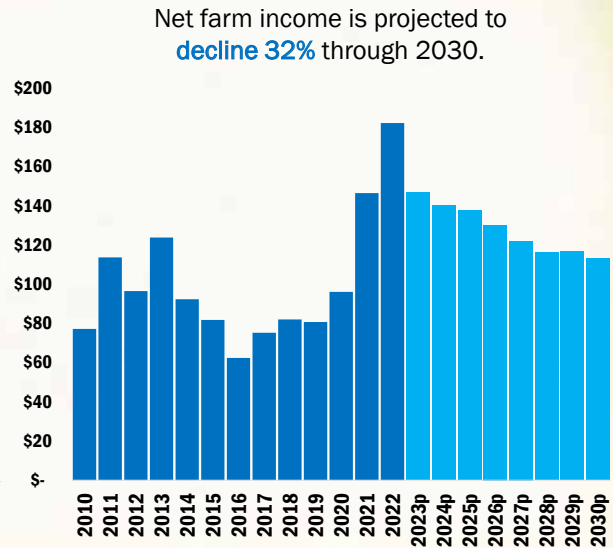
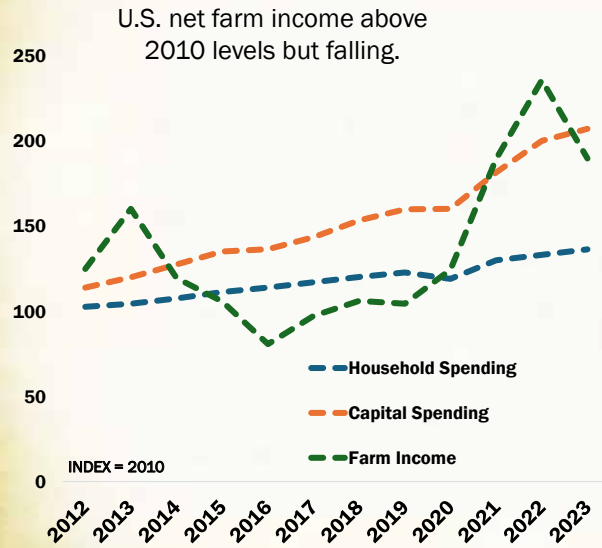
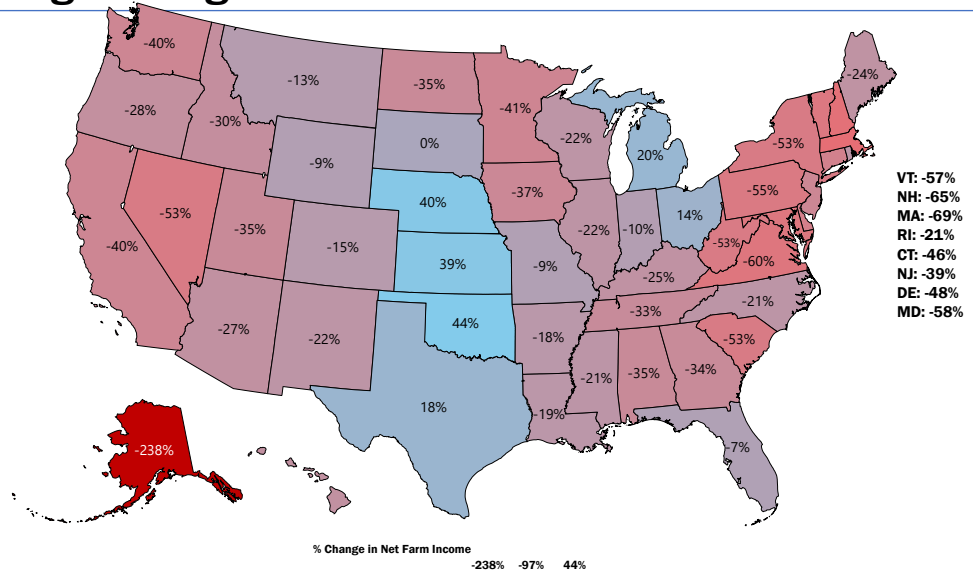


Figure 1. STATE-LEVEL CHANGES IN FARM INCOME
Percentage Change in Net Farm Income 2022 to 2023

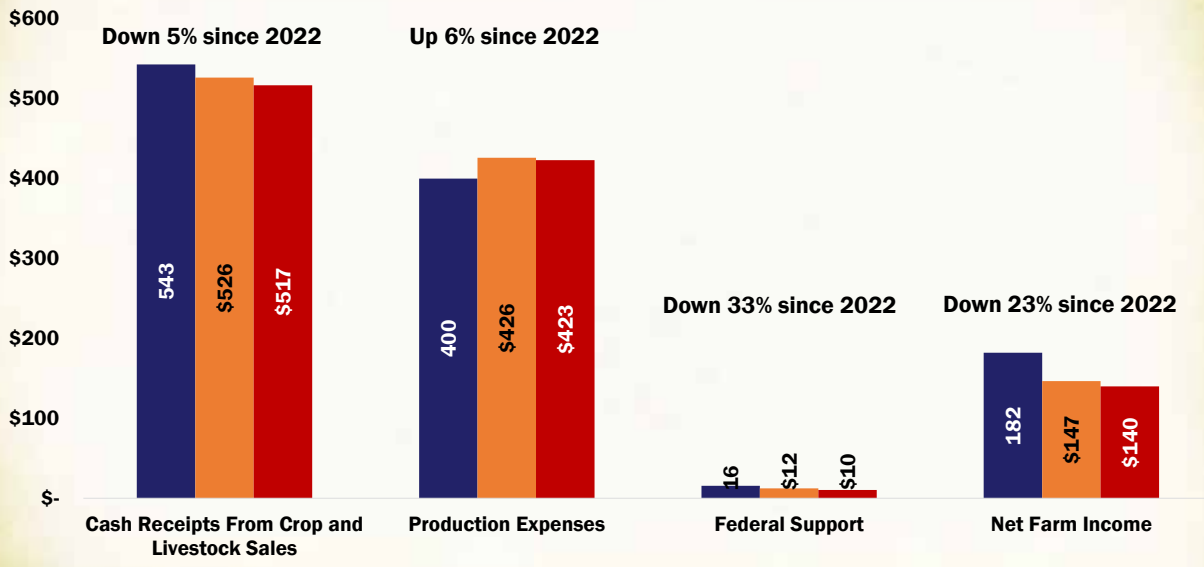


Source: USDA ERS September Farm Income Forecast



FIGURE 1: U.S. NET FARM INCOME BY COMPONENT

U.S. Farm Sector Cash Receipts, Expenses, Government Payments and Net Farm Income | Billion Dollars

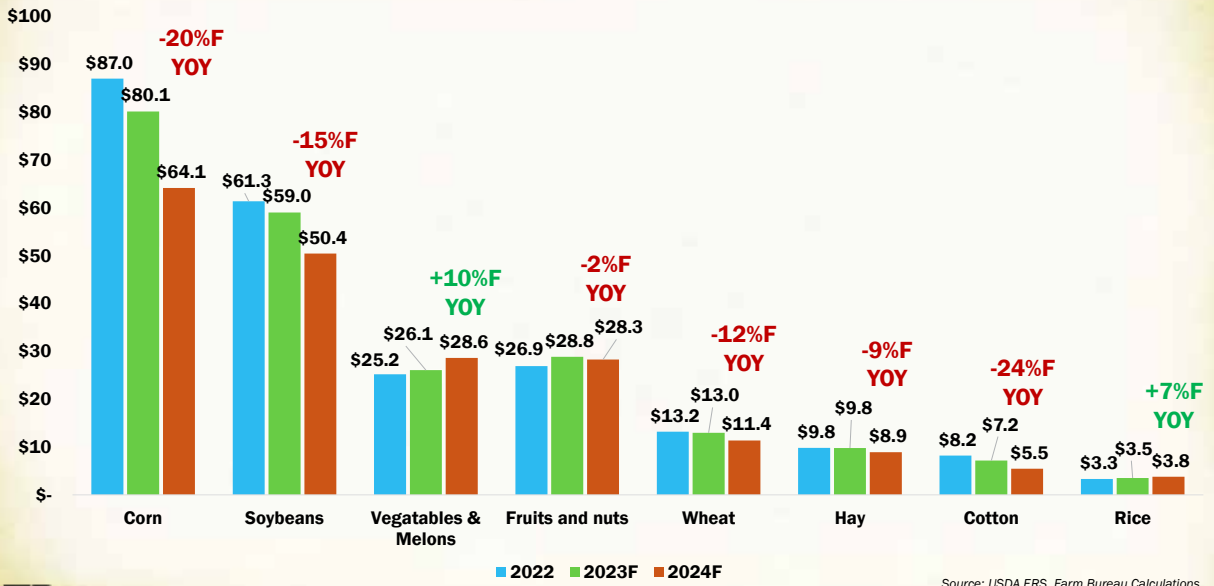


■ 2022 ■ 2023F Sep24 ■ 2024F Sep24

Source: USDA ERS, Farm Bureau Calculations

FIGURE 2: U.S. FARM INCOME | CROP RECEIPTS

September 5 Release | F = forecasted | Billion dollars



AFB American Farm Bureau Federation

Source: USDA ERS, Farm Bureau Calculations
YOY = Year-over-year comparing 2023F to 2024F

FIGURE 3: U.S. FARM INCOME | LIVESTOCK RECEIPTS

September 5 Release | F = forecasted | Billion dollars

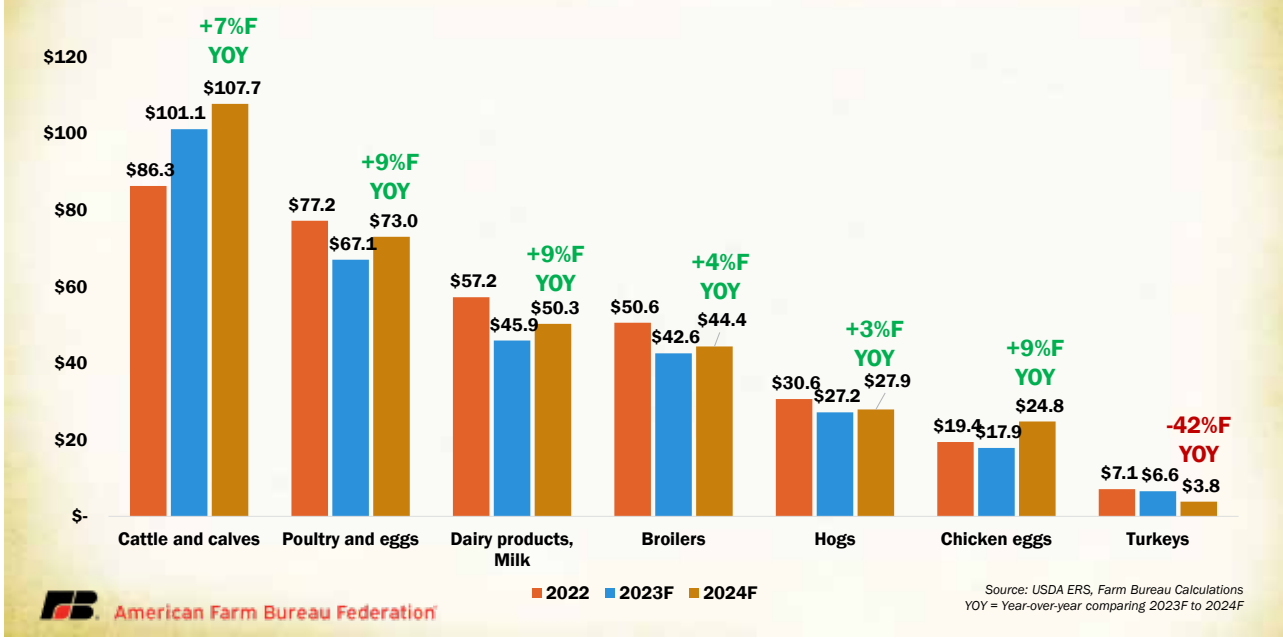
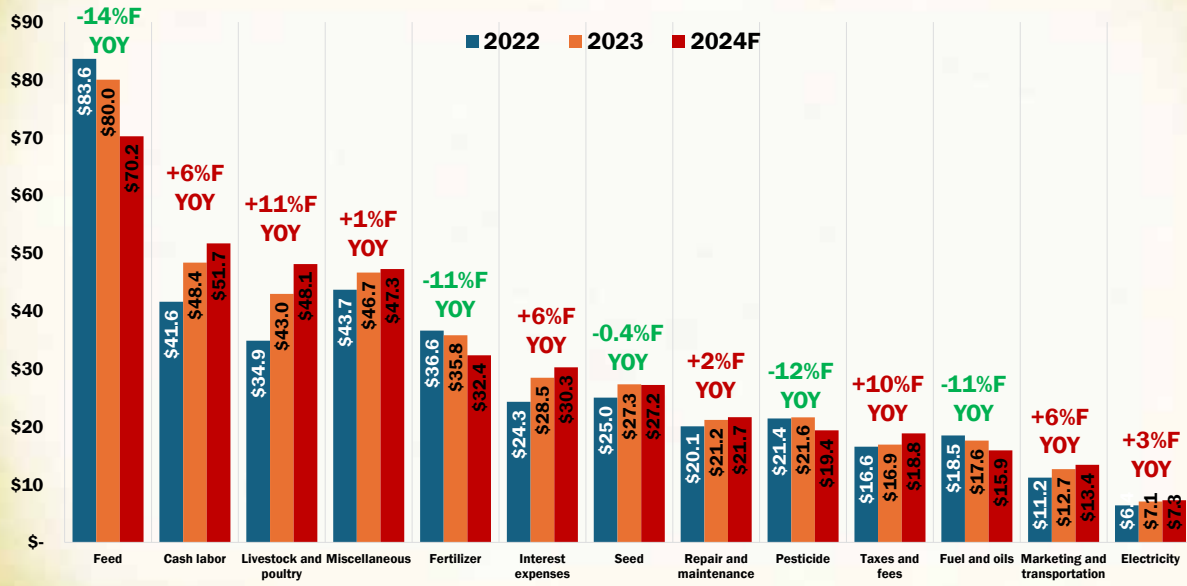


FIGURE 4: U.S. FARM INCOME | SELECT PRODUCTION EXPENSES

September 5 Release | F = forecasted | Billion dollars



AFB American Farm Bureau Federation

Source: USDA ERS, Farm Bureau Calculations
YOY = Year-over-year comparing 2023F to 2024F

FIGURE 5: U.S. FARM INCOME AND EXPENSES

U.S. Farm Sector Cash Receipts, Expenses and Net Farm Income, Billion Dollars

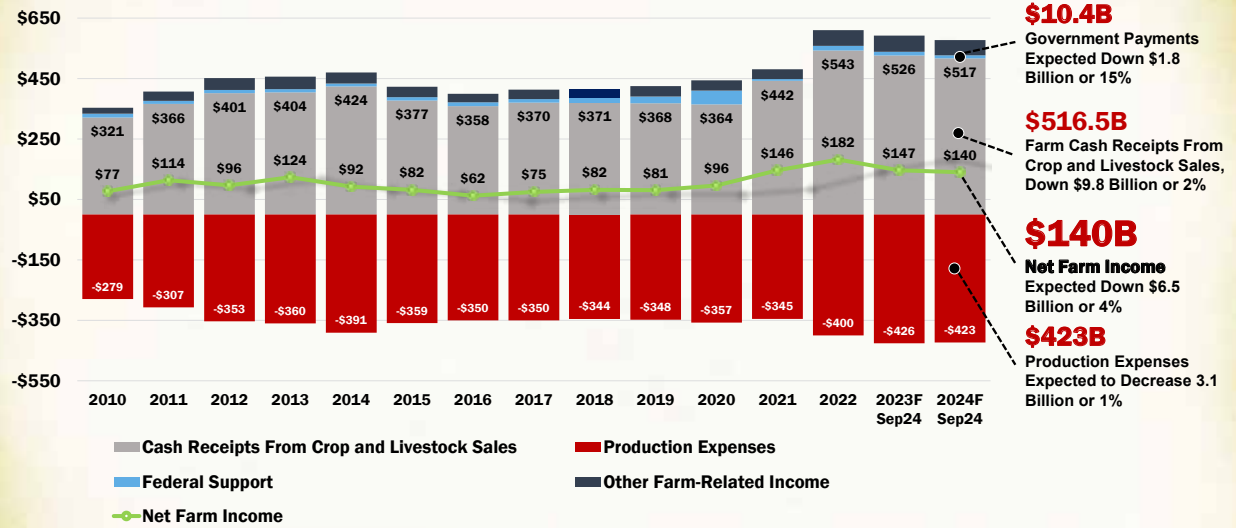
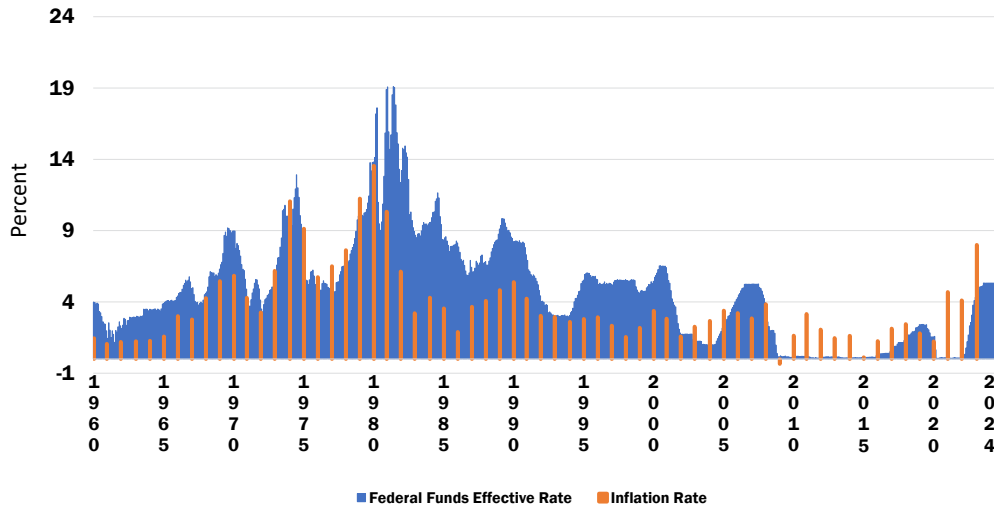


Figure 3. Federal Funds Rate & Inflation Rate

1960-2024



Source: FRED Economic Data



AMERICAN BANKRUPTCY INSTITUTE

Summary Comparison of U.S. Bankruptcy Code Chapters 11, 12, & 13 Prepared by Mary Jo Heston's Chambers (Updated June. 1, 2023)

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Eligibility Requirements	<p><i>Ch. 11:</i></p> <p>Anyone or any entity that can file for ch. 7 relief, except a stockbroker, commodity broker, or an insured depository institution, may be a debtor. § 109(d).¹</p> <p>No debt limit or income requirement.</p> <p><i>Small Business Debtors:</i></p> <p>Person engaged in commercial or business activities (excludes person whose primary activity is business of owning or operating single asset real estate). § 101(51D).</p> <p>Aggregate noncontingent, liquidated, secured and unsecured debts of \$3,024,725 or less.</p> <p>No member of a group of affiliated debtors has aggregate noncontingent, liquidated secured and unsecured debts over \$3,024,725.</p>	<p>At least 50% of small business debtor's debt is from commercial or business activities.</p> <p>Aggregate noncontingent, liquidated, secured and unsecured debts of not more than \$7,500,000. § 1182; § 101(51D); § 104. On June 21, 2024, the Bankruptcy Threshold Adjustment and Technical Corrections Act ("Corrections Act") will sunset and the debt limit for subchapter V debtors will revert to the small business debtor limit of \$3,024,725, effective through March 31, 2025.</p> <p>Before the Corrections Act, § 1182(B)(ii) excluded "any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934," and § 1182(B)(iii) excluded "any debtor that is an affiliate of an issuer, as defined in</p>	<p><i>For individuals:</i></p> <p>1) family farmer with regular income and aggregate debts up to \$11,097,350 and 50% of the aggregate noncontingent, liquidated debt arises from a farming operation. § 101(18); or 2) family fisherman with regular income and aggregate debts below \$2,268,550 of which 80% constitutes debt from commercial fishing activities. § 101(19A)(i). § 109(f).</p> <p><i>For corporations or partnerships:</i></p> <p>50% of stock or equity is held by one family and/relatives who conduct the farming operation, more than 80% of asset value relates to farming operations, and aggregate noncontingent, liquidated debts are below \$11,097,350 with at least 50% of the debt arises from farming activities. § 101(18)(B). Family farmer must be</p>	<p>Individual (or individual and spouse) with regular income that owes noncontingent, liquidated debts of less than \$2,750,000 determined as of the petition date. Excludes stockbrokers and commodity brokers. A corporation or partnership may not be a debtor under ch. 13. § 109(e).</p> <p>Before the enactment of the Corrections Act, § 109(e) distinguished between unsecured and secured debt for eligibility purposes. Debtors were eligible if their noncontingent, liquidated, unsecured debts were less than \$465,275 and their noncontingent, liquidated, secured debts totaled less than \$1,395,875. The Corrections Act is set to sunset on June 21, 2024, after which § 109(e) will revert to its prior form and the debt limit will decrease.</p>

¹ Unless otherwise indicated, all chapter, section and rule references are to the Federal Bankruptcy Code, 11 U.S.C. §§ 101- 1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<p>Eligibility (cont'd)</p>	<p>No unsecured creditors committee (or committee is sufficiently inactive). Status as a "small business debtor" hinges, at least in part, upon whether a creditor's committee is appointed, and on how much that creditor's committee participates in the bankruptcy. A party in interest under § 1102(a)(2) may compel the appointment of a creditor's committee thereby extinguishing debtor's small business status. The UST appoints any such committee. <i>Id.</i></p> <p>Debtor must indicate it is a small business debtor by checking appropriate box in Item 13 of voluntary petition. FRBP 1020.</p> <p>In a voluntary case, the debtor must state in the petition whether it is a small business debtor. In an involuntary case, debtor must do so within 14 days of entry of the order for relief. BR 1020(a). Debtor's statement of eligibility is presumed correct unless a party or the UST timely objects. BR 1020(a), BR 1020(b).</p>	<p>section 3 of the Securities Exchange Act of 1934." The Corrections Act narrowed the exclusion (thereby broadening eligibility) for affiliates of a debtor in § 1182(B)(iii), to "any debtor that is an affiliate of a corporation described in clause (ii)." This provision will sunset and revert to its original language on June 21, 2024, defining debtor as "a small business debtor." § 1182(1).</p> <p>Small business debtors must opt in to subchapter V by checking appropriate box in Item 13 of voluntary petition. § 103(i); BR 1020(a).</p> <p>No committee of creditors unless the court orders for cause. § 1102(a)(3).</p>	<p>engaged in a farming operation, including "farming, tillage of the soil, dairy farming, ranching, production of raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state." § 101(21).</p>	

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Asserting Eligibility & Election of Subchapter V Application		Small business debtor wishing to proceed under subchapter V must elect subchapter V application in the petition, or, in an involuntary case, within 14 days after entry of order for relief. BR 1020(a).		
Filing Fees	\$1,738 paid when petition is filed, including \$1,167 filing fee and \$571 administrative fee. 28 U.S.C. § 1930.	Ch. 11 filing fee is paid when petition is filed. No separate fee is due for electing for subchapter V.	\$278, including \$200 filing fee and \$78 administrative fee. 28 U.S.C. § 1930(a)(5). Individual filers may pay the fee in installments. Fee must be paid in full no later than 120 days after the petition is filed.	\$313, including a \$235 filing fee and \$78 in administrative fees. Fee may be paid in installments within 120 days after the petition is filed.
UST Quarterly Fees	UST quarterly fees are based on a sliding scale formula in 28 U.S.C. § 1930(a)(6). Minimum amount is \$325 for disbursements up to \$15,000. Code does not define "disbursements." Failure to pay UST quarterly fees is "cause" for dismissal. § 1112(b)(4)(K).	None. Subchapter V debtors are exempt from paying UST quarterly fees. 28 U.S.C. § 1930(a)(6)(A).	UST Fees for ch. 12 debtors shall not exceed 10% of the first \$450,000 paid under the plan, and 3% of any payments in excess of \$450,000. 28 U.S.C. § 586(e)(1)(B). 28 U.S.C. § 586(e)(2) further curtails the standing trustee's salary and estimated expenses. Excess funds are to be deposited in the U.S. Trustee System Fund.	No UST fees.
Reports	Must file monthly/quarterly operating reports. Must file all reports and summaries required of a trustee under § 704(a)(8). Duty ends when duty to pay fees ends, usually when final decree is entered. BR 2015(a).	No separate rule.	Must file monthly/quarterly operating reports. Duty ends only when case is completed. BR 2015(b).	No monthly operating reports required by ch. 13 debtors not engaged in business.

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
	<p><i>Small Business Debtors:</i></p> <p>Must file reports dealing with profitability, projections, receipts, disbursements, etc. § 308, BR 2015(a)(6). Duty ends on effective date of confirmed plan. Additional reporting requirement under § 1116.</p>	<p>BR 2015(b) requires subchapter V DIP (or Trustee, if appointed) to perform the duties prescribed in BR 2015(a)(2)-(4). Debtor must perform requirements of BR 2015(a)(6).</p> <p>subchapter V debtors do not have to file a statement of current monthly income. BR 1007(b)(5).</p>		
Automatic Stay & Co-Debtors	<p>Unlike chs. 12 and 13, ch. 11 does not provide an explicit co-debtor stay and guarantors are only protected if the court grants § 105 relief.</p>	<p>No separate rule.</p>	<p>Same co-debtor stay as in ch. 13. Upon filing, the automatic stay extends only to co-debtors on consumer debts and not to debts incurred in the ordinary course of business. § 1201. Section 1201 is identical to the co-debtor provision applicable to ch. 13. See § 1301. Cases from either chapter are thus instructive. Courts have held that certain debts from farming operations are not consumer debt. See <i>In re SPW, Inc.</i> 83 B.R. 27 (Bankr. S.D. Cal. 1988) (guarantees given by ch. 12 debtor's shareholders for commercial loans for family farm were not related to consumer debt so co-debtor stay did not apply).</p>	<p>Upon filing, the automatic stay extends only to co-debtors on consumer debts and not to debts incurred in the ordinary course of business. § 1301. The term "consumer debt" is defined in § 101(8).</p>

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<p>Trustees</p>	<p>Generally, a trustee is only appointed under § 1104(a) for cause or if the appointment is in the best interest of creditors; this is done if the Debtor in Possession (DIP) falters.</p> <p>Creditors may seek to elect a trustee by requesting an election be convened within 30 days after the court orders the appointment of a trustee. § 1104(b)(1).</p> <p>Unless a court appoints a trustee, there is no disbursement agent for a ch. 11 case.</p> <p>DIP: under § 1107, the DIP retains many of the powers of the trustee; under § 1108, the DIP retains the power to operate the business.</p>	<p>A disinterested trustee is appointed in every subchapter V case. § 1183(a). The trustee has a role similar to a ch. 13 trustee. The trustee is also authorized to operate the debtor's business if the debtor is removed as a DIP.</p> <p>§ 1183(b)(5). Effective Dec. 1, 2022, the subchapter V trustee will be appointed automatically upon removal of the DIP; no separate motion is necessary. BR 2012.</p> <p>The trustee makes all payments to creditors under the confirmed plan. Trustee may make adequate protection payments to secured creditors prior to confirmation. § 1194.</p> <p>The trustee must appear at mandatory status conference; facilitate development of a consensual plan; and perform duties generally consistent with § 1302. § 1183(b).</p> <p>If confirmation is consensual, the trustee's role is terminated upon "substantial consummation" of the confirmed plan. § 1183(c). If confirmation is contested, the trustee serves until completion of payments</p>	<p>A disinterested trustee is appointed in every ch. 12 case. § 1202. Ch. 12 cases are more supervised than ch. 11 cases. This provides additional oversight of the debtor but it comes at a cost of usually 10% in most jurisdictions.</p> <p>A ch. 12 trustee has all the reporting and supervisory duties of a ch. 7 trustee set out by § 704(a). The trustee also shall appear and be heard on confirmation of the plan, matters affecting estate property, and sales. If the court directs for cause, the trustee shall also exercise some ch. 11 trustee powers, like investigating the acts and assets of the debtor. § 1202(b)(1)-(3).</p> <p>The trustee conducts any asset sales of farmland and farm equipment. § 1206.</p> <p>If the debtor is removed as DIP, the trustee assumes operation of the business and succeeds to other ch. 11 trustee powers. § 1202(b)(5).</p> <p>Post-confirmation, the trustee must ensure plan payments are made timely. § 1202(b)(4).</p>	<p>A disinterested trustee is appointed in every ch. 13 case. § 1302.</p> <p>A ch. 13 trustee has all the reporting and supervisory duties of a ch. 7 trustee set out by § 704(a). The trustee shall appear and be heard on plan confirmation and modification, and property values. The trustee must ensure plan payments are made timely. § 1302(b).</p> <p>If the debtor is engaged in business, the trustee also shall perform the ch. 11 trustee duties in § 1106(a)(3) and (4). § 1302(c).</p> <p>The ch. 13 trustee may seek dismissal under § 1307(c) for "cause."</p>

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Estate Property Post-confirmation (cont'd)		then confirmation order triggers § 1186(a), and estate is augmented to include the debtor's: (1) post-petition § 541 property and (2) post-petition earnings.		
Adequate Protection	Section 361 applies. Adequate protection may be provided by 1) cash or periodic cash payments for diminution in the value of the entity's interest in the property; 2) replacement liens; or 3) "such other relief" as will result in the realization of the indubitable equivalent of the entity's interest in the property. § 361.	Section 361 applies. After notice and a hearing, the court may authorize the trustee to make preconfirmation adequate payments to the holder of a secured claim. § 1s194(c).	Section 361's general definition of adequate protection does NOT apply to a ch. 12 case. § 1205(a). Adequate protection may be provided by 1) cash or periodic cash payments for diminution of the value of the collateral; 2) replacement liens; 3) reasonable rental value for the use of farmland; 4) "such other relief" to adequately protect the value of property securing the claim (like the indubitable equivalent test). § 1205(b).	Section 361 applies. The debtor is required to make preconfirmation adequate protection payments to holders of claims secured by a purchase money security interest in personal property. § 1326(a)(1)(C). The amount of periodic payments on a secured claim under a plan must also provide adequate protection payments to the holder of a claim secured by personal property. § 1325(a)(5)(B)(iii)(II).
Avoidance Powers	Pursuant to § 1107, the ch. 11 DIP is the proper party to assert ch. 5 avoidance actions unless removed as DIP, and a trustee is appointed pursuant to § 1104. There is some disagreement as to whether examiners appointed under § 1104 also have the authority to pursue avoidance actions under § 1106. Many courts have also ruled that bankruptcy courts have the power to authorize a creditors committee to bring an avoidance action on behalf of the estate. A ch. 11 plan may also provide for the	Subject to certain limitations, the debtor has all rights of a trustee under § 1184, and therefore presumably has standing to bring ch. 5 avoidance actions unless removed as a DIP pursuant to § 1185.	The ch. 12 DIP has exclusive standing to bring ch. 5 avoidance actions unless removed as a DIP pursuant to § 1204. § 1203.	The ch. 13 standing trustee is authorized to pursue avoidance actions. § 554(a). Courts are divided over whether a ch. 13 debtor also has standing to assert the estate's avoiding powers. Unlike chs. 11 and 12, there is no provision in ch. 13 expressly conferring on debtors the powers of a trustee.

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
	transfer of avoidance powers to a representative of the estate appointed in the confirmation order. § 1123(b)(3)(B).			
Plan Exclusivity	Regular ch. 11 debtors and Small Business Debtors have a 120-day exclusivity period to file a plan.	Only the debtor can file a plan. § 1189(a).	Only the debtor can file a plan. § 1221.	Only the debtor can file a plan. § 1321.
Plan Deadlines	<p><i>Ch. 11:</i></p> <p>No deadline for filing the plan per se, but ch. 11 debtors have 120 days to exclusively file a plan. This period may be extended up to 18 months from the date the order for relief is entered. § 1121(b) & (d).</p> <p><i>Small Business Debtors:</i></p> <p>Debtors have 180 days to exclusively file a plan. This period may be extended up to 20 months from the date the order for relief is entered. § 1121(d)(2)(B) & (e). The plan must be confirmed 45 days after filed unless the time period has been extended. §§ 1121(e)(3), 1129(c).</p>	Similar to ch. 12, the plan must be filed within 90 days of the order for relief, but this period may be extended if it is shown that the need for the extension is due to circumstances for which the debtor should not justly be held accountable. § 1189(b).	The debtor must file a plan within 90 days of the order for relief. To extend the 90-day period, debtor must clearly demonstrate that the inability to file a plan was due to circumstances beyond the debtor's control. § 1221.	The debtor must file a plan within 14 days after the petition is filed, and such time can only extend for cause shown and on notice as the court may direct. BR 3015(b).
Disclosure Statement	<p><i>Ch. 11:</i></p> <p>The debtor must file a disclosure statement that provides adequate information to creditors. § 1125. The court must approve the disclosure statement prior to the debtor's ability to solicit votes.</p>	<p>None required unless otherwise ordered by the court. § 1181(b).</p> <p>Same as in case of small business debtor where court orders that § 1125 applies.</p>	None required.	None required.

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Disclosure Statement (cont'd)	<p><i>Small Business Debtors:</i></p> <p>A Small Business Debtor does not need to file a separate disclosure statement if the court deems the plan to contain adequate information. § 1125(f). Acceptances/rejections of a plan may be solicited based on conditionally approved disclosure statements. § 1125(f).</p> <p>Where court orders that § 1125 applies, court may conditionally approve disclosure statement and fix dates and times for acceptance/rejection, filing objections, and hearings on objections and confirmation.</p>			
Status Conference	None required.	<p>Adds a new requirement, requiring the court to hold a status conference no later than 60 days after the order for relief. § 1188(a). This period may be extended for circumstances for which the debtor should not justly be held accountable. § 1188(b). No later than 14 days prior to such conference the debtor is to file a report detailing its efforts to attain a consensual plan. § 1188(c).</p>	None required.	None required.

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<p>Commencement of Plan Payments</p> <p>Plan Content</p>	<p>Ch. 11 debtor commences making plan payments on the date the first payment is due under the confirmed plan.</p> <p>Plans <i>must</i>: 1) designate classes of claims/interests; 2) specify impaired/unimpaired claims; 3) specify treatment for each unimpaired claim; 4) provide the same treatment for each claim/interest; 5) provide sufficient means of implementing the plan; 6) if applicable, include provision barring the issuance of nonvoting equity securities; 7) contain provisions consistent with the public interest; and 8) in an individual case, provide for debtor's future income to fund plan payments. § 1123.</p> <p>Plans <i>may</i>: 1) impair or leave unimpaired secured/unsecured claims; 2) assume/reject leases & executory contracts; 3) settle/adjust any claim/interest of debtor or the estate; 4) designate a convenience class of claims; 5) sell estate property; 6) modify secured claims except secured interests in a principal residence; and 7) "include any other provision consistent with § 1123."</p> <p>Cannot modify consensual liens on a principal residence.</p>	<p>Plans <i>must</i>: 1) provide a brief history of the business operations of the debtor; 2) provide a liquidation analysis; 3) provide projections with respect to the ability of the debtor to make payments under the proposed plan; and 4) provide for the submission of all or such portion of the future earnings of other future income of the debtor as is necessary for the execution of the plan. § 1190(1) & (2).</p> <p>Plans <i>may</i>: 1) modify the rights of the holder of a claim secured only by a security interest in real property that is the principal residence of the debtor if the new value received in connection with granting the security was i) not used primarily to acquire real property; and (ii) used primarily in connection with the small business of the debtor. § 1190(3).</p>	<p>Ch. 12 debtor has no obligation to make payments to the trustee before confirmation. § 1226; 8 Collier on Bankruptcy P 1226.01 (16th 2019).</p> <p>Mirrors those of ch. 13, ch. 12 plans <i>must</i>: 1) provide future earnings or future income to the trustee; 2) provide all priority claims under § 507 are paid in full; 3) provide the same treatment of all claims if the plan classifies claims and interests; and, 4) if all the debtor's projected disposable income for a 5-year period is committed to the plan, then the plan may provide for less than full payment of amounts owed under § 507(a)(1)(B). § 1222.</p> <p>Under § 1222(b)(1)-(12), the plan <i>may</i> designate classes, modify rights of secured claims, cure defaults, pay unsecured creditors, assume leases and executory contracts, and provide for the sale or distribution of property.</p>	<p>Ch. 13 debtor must commence making payments no later than 30 days after the date of filing the plan or order for relief, whichever is earlier. § 1326(a)(1).</p> <p>Plans <i>must</i>: 1) provide future earnings or future income to the trustee; 2) provide all priority claims under § 507 are paid in full; 3) provide the same treatment for each claim within a particular class; and 4) if all the debtor's projected disposable income for a 5-year period is committed to the plan, then the plan may provide for less than full payment of amounts owed under § 507(a)(1)(B). § 1322.</p> <p>Under § 1322(b)(1)-(11), the plan <i>may</i> designate classes, modify rights of secured claims, cure defaults, pay unsecured creditors, and assume leases and executory contracts.</p> <p>Unlike ch. 12, § 1322 does not contain a provision</p>

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Plan Content (cont'd)			Ch. 12 allows modification of home mortgages, § 1222(b)(2), and discharge of taxes arising from sale of farming assets. § 1232.	authorizing the sale of property in the plan. Cannot modify consensual liens on a principal residence.
Sales Free and Clear of Liens	Ch. 11 <i>debtors in possession</i> may sell assets, other than in the ordinary course of business, free and clear of liens under § 363(f) after notice and a hearing. § 1107(a). Sales free and clear of liens require satisfying one of the following grounds: 1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; 2) the interest holder consents; 3) the property's sale price is greater than the aggregate value of all liens on the property; 4) the interest is in bona fide dispute; or 5) the interest holder could be compelled in a legal or equitable proceeding to accept a money satisfaction for the claim. § 363(f)(1)-(5).		Ch. 12 debtors in possession <i>and</i> trustees retain the right to sell property free and clear of liens under § 363(f). §§ 1203, 1206. In addition, § 1206, which applies only in ch. 12, allows trustees under § 363(b) and (c) after notice and hearing to sell farmland, farm equipment, or any property used to carry out a commercial fishing operation (including a commercial fishing vessel) free and clear of third-party interests even if none of the grounds in § 363(f) are satisfied. Section 1206 "modifies [§] 363(f) to allow family farmers or fishermen to sell assets not needed for the reorganization prior to confirmation without the consent of the secured creditors, subject to approval of the court." 8 Collier on Bankruptcy P 1206.01 (16th 2019). But proceeds of such sales are still subject to those third-party interests. § 1206.	Ch. 13 <i>debtors</i> may sell assets, other than in the ordinary course of business, free and clear of liens under § 363(f) after notice and hearing. § 1303. Sales free and clear of liens require satisfying one of the following grounds: 1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; 2) the interest holder consents; 3) the property's sale price is greater than the aggregate value of all liens on the property; 4) the interest is in bona fide dispute; or 5) the interest holder could be compelled in a legal or equitable proceeding to accept a money satisfaction for the claim. § 363(f)(1)-(5).

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<p>Special Tax Provisions for Chapter 12</p>			<p>Because ch. 12 plans typically sell property to reorganize, to avoid hard tax consequences, § 1232(a) "reclassifies" these government claims as unsecured claims arising before the petition date that shall not be entitled to § 507 priority status and discharged under § 1228.</p> <p>Section 1232 was signed into law on October 26, 2017. Public Law 115-72 provides that the amendments apply to any bankruptcy case pending, but not confirmed, on the effective date of the act.</p> <p>Ch. 12 debtors must include § 1232(a) unsecured claims in their plans. If there is a post-confirmation sale, transfer, exchange, or other disposition on farm property, and a subsequent government unit claim arises, then it will be necessary for the trustee to adjust payments accordingly.</p> <p>Possible plan language: The ch. 12 plan should include language to the effect that any potential claim within the scope of § 1232(a) arising post-petition, but before discharge, shall be included</p>	

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<p>Special Tax Provisions for Chapter 12 (cont'd)</p>			<p>in the class of general unsecured claims. 8 Collier 1232.03. The plan language should account for the trustee's need to include tax claims in the unsecured creditor pool and should time any disbursements to the unsecured creditors only after the tax claims have been filed to avoid a potentially unequal (i.e., not <i>pro rata</i>) distribution amongst unsecured claimants.</p>	
<p>Plan Confirmation Requirements</p>	<p><i>Ch. 11:</i></p> <p>After notice, the court shall hold a hearing on confirmation. 28-days' notice required. BR 2002(b).</p> <p>To be confirmed, plans must satisfy 16 requirements of § 1129(a). Chief among the requirements are feasibility and the best interest of the creditors tests. If all other requirements under § 1129(a) are met but for (a)(8), the debtor may seek to "cram down" the plan over the objections of its creditors. § 1129(b).</p> <p>Absolute priority rule applies. As a component of a § 1129(b) cram down, plans must satisfy the absolute priority rule. At least one court has found the absolute priority rule applies in individual ch. 11s. <i>In re Rogers</i>, 2016 WL</p>	<p>To be confirmed, plan must satisfy the requirements of § 1129(a), § 1191.</p> <p>No consenting impaired class needed for confirmation if 1) plan satisfies § 1129(a) [other than (a)(8), (a)(10), and (a)(15)]; 2) plan does not discriminate unfairly; and 3) plan is fair and equitable, as to each impaired, nonconsenting class. §§ 1181(a), 1191(b).</p> <p>A plan is "fair and equitable" if 1) § 1129(b)(2)(A) is satisfied; 2) it provides for application of all debtor's projected disposable income for 3 years beginning on date first payment is due (or up to 5 years, as ordered) to plan payments; and 3) debtor will</p>	<p>Except for cause, confirmation hearing shall be concluded not later than 45 days after the filing of the plan. 21-days' notice required. BR 2002(a)(8).</p> <p>Plans must satisfy all Code requirements, be proposed in good faith, and pay all admin fees. In addition, the court must find that the debtor's plan is feasible and in the best interest of creditors.</p> <p>With respect to secured claims, § 1225(a)(5) provides three avenues of treatment: 1) the creditor has accepted the plan; 2) the secured creditor retains its lien and receives property having a value, as of the effective date, not less than the allowed</p>	<p>Confirmation hearing must be scheduled not earlier than 21 days but not later than 45 days after the 341 meeting of creditors. 28-days' notice required. BR 2002(b).</p> <p>Plans must satisfy all Code requirements, be proposed in good faith, and pay all admin fees. In addition, the court must find that the debtor's plan is feasible and in the best interest of creditors.</p> <p>With respect to secured claims, § 1325(a)(5) provides three avenues of treatment: 1) the creditor has accepted the plan; 2) the secured creditor retains its lien and receives property having a value, as of the effective date, not less than the allowed</p>

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Plan Confirmation Requirements (cont'd)	<p>3583299 (Bankr. S.D. Ga. June 24, 2016).</p> <p>Creditors must object to the plan or risk forfeiting their objection. BR 3015(f).</p> <p><i>Small Business Debtors:</i></p> <p>Section 1129(e) directs the court to confirm a plan not later than 45 days after the date it was filed. Small business plans follow the same confirmation requirements as their larger ch. 11 counterparts.</p>	<p>be able to make all plan payments or there is a reasonable likelihood debtor will be able to make all plan payments. § 1191(c).</p> <p>The absolute priority rule does not apply. § 1181(a).</p>	<p>amount of the secured claim, i.e., "cramdown;" and 3) debtor surrenders the property.</p> <p>Cramdown for ch. 12 purposes depend on the amount of the claim. § 506(a) and (b).</p> <p>Permissible plan duration is up to 5 years. No "means test" for disposable income.</p> <p>Creditors do not have an opportunity to vote on ch. 12 plans but may object to the plan or risk forfeiting their objection. BR 3015(f).</p>	<p>amount of the secured claim, i.e., "cramdown;" and 3) debtor surrenders the property.</p> <p>Creditors do not have an opportunity to vote on ch. 13 plans but may object to the plan or risk forfeiting their objection. BR 3015(f).</p>
Plan Modifications	<p>The plan proponent may modify a plan any time before confirmation. § 1127(a), (c).</p> <p>After confirmation, the plan proponent or reorganized debtor may modify the plan prior to substantial consummation of the plan. Plan modifications must comply with § 1125, § 1127(b), (c).</p>	<p>The debtor may modify the plan at any time prior to confirmation. §1193(a).</p> <p>After confirmation and before substantial consummation, the debtor may modify the plan if it complies with §§ 1122 and 1123, confirms the modified plan, <i>and</i> finds that circumstances warrant the modification. § 1193(b).</p> <p>After confirmation and substantial consummation, the debtor may modify the plan at any time within 3 years, or up to 5 years as fixed by the court, but the modified plan must comply</p>	<p>Debtor may modify the plan at any time before confirmation. § 1223.</p> <p>Plans may be modified after confirmation but only before debtor has completed payments under such plan. Plans may be modified by the debtor, trustee, or holder of an allowed unsecured claim. § 1229.</p> <p>Plans may be modified only to: 1) increase/decrease payments; 2) extend/reduce the time for payments; 3) alter the amount of distribution; or 4) provide payment on a</p>	<p>Debtor may modify the plan at any time before confirmation. § 1323.</p> <p>Plans may be modified after confirmation but only before debtor has completed payments under such plan. Plans may be modified by the debtor, trustee, or holder of an allowed unsecured claim. § 1329.</p> <p>Plans may be modified only to: 1) increase/decrease payments; 2) extend/reduce the time for payments; 3) alter the amount of distribution; or 4) reduce amounts paid under plan by</p>

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Plan Modifications (cont'd)		with § 1121(b), and the court must find that circumstances warrant the modification. § 1193(c). A consensually confirmed plan may only be modified by consent. § 1193(b).	§ 1232(a) claim. § 1229. Plan may NOT be modified by anyone except the debtor in the last year of the plan to require payments leaving the debtor with insufficient funds to operate the farm. § 1229(d)(3).	the actual amount expended by debtor to purchase healthcare. § 1329.
Conversion	<p>A ch. 7 debtor may convert to ch. 11 if the case has not been converted under §§ 1112, 1208, or 1307. § 706(a). A party cannot waive the right to convert. <i>Id.</i></p> <p>A ch. 11 debtor may convert a case to ch. 7 unless: 1) the debtor is not a DIP; 2) the case was commenced as an involuntary case; or 3) the case was converted to a ch. 11 case other than on the debtor's request. § 1112(a).</p> <p>The court may only convert to ch. 7 on the request of a party in interest, after notice and a hearing, and for cause. The court will convert or dismiss, whichever is in the best interest of creditors. § 1112(b).</p> <p>The court may not convert to ch. 7 if the debtor is a farmer or a corporation that is not a moneyed, business or commercial operation unless the debtor requests the conversion. § 1112(c).</p> <p>A ch. 11 case may be converted to ch. 12 or ch. 13 only if: 1) the debtor</p>	No separate rule.	<p>A ch. 7 debtor may convert to ch. 12 if the case has not been converted under §§ 1112, 1208, or 1307. § 706(a). A party cannot waive the right to convert. <i>Id.</i></p> <p>A ch. 12 debtor may convert a case to ch. 7 any time. § 1208(a).</p> <p>The court may only convert to ch. 7 on the request of a party in interest, after notice and a hearing, upon a showing the debtor committed fraud. § 1208(d).</p> <p>The applicable law and debtor's eligibility for ch. 12 on the petition date, not the conversion date, governs conversion to ch. 12. <i>See In re Campbell</i>, 313 B.R. 871 (B.A.P. 10th Cir. 2004), and <i>see In re Ridgely</i>, 93 B.R. 683 (Bankr. E.D. Mo. 1988); <i>but cf. In re Feely</i>, 93 B.R. 744 (Bankr. S.D. Ala. 1988) (determining eligibility for</p>	<p>A ch. 7 debtor may convert to ch. 13 if the case has not been converted under §§ 1112, 1208, or 1307. § 706(a). A party cannot waive the right to convert. <i>Id.</i></p> <p>A ch. 13 debtor may convert a case to ch. 7 at any time. § 1307(a).</p> <p>The court may only convert to ch. 7 on the request of a party in interest, after notice and a hearing, and for cause. The court will convert or dismiss, whichever is in the best interest of creditors. § 1307(c).</p> <p>At any time before confirmation, the court may convert a case to ch. 11 or ch. 12, on the request of a party in interest or the U.S. Trustee. § 1307(d).</p> <p>The court may not convert a ch. 13 case to ch. 7, 11 or 12</p>

2026 CENTRAL STATES BANKRUPTCY WORKSHOP

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Conversion (cont'd)	requests it; 2) the debtor has not been discharged under § 1141(d); and 3) conversion is equitable. § 1112(d).		conversion to ch. 12 based on the motion date, not the petition date). There is no specific provision permitting or prohibiting the conversion of a ch. 12 case to ch. 11 or ch. 13.	if the debtor is a family farmer unless the debtor requests the conversion. § 1307(f).
Debtor Discharge	<p>A confirmed plan binds: 1) the debtor; 2) any entity acquiring property under the plan; and 3) any creditors, among others, whether or not the entities have accepted the plan. § 1141(a).</p> <p>For a non-individual ch. 11 debtor, discharge occurs at confirmation, except as otherwise provided in the plan or confirmation order. This discharges the debtor from any debt that arose prior to the date of confirmation and eliminates all equity interests in the debtor that are provided for in the plan. Debts set forth in § 1141(d)(6) are not discharged (certain debts owed to government units).</p> <p>For an individual ch. 11 debtor, unless ordered otherwise, confirmation does not discharge any debt provided for in the plan until the court grants a discharge upon completion of all payments under the plan. An individual debtor is not discharged from any debt excepted under § 523.</p>	<p>If a plan is consensually confirmed, then the general discharge provisions under §1141(d)(1) – (4) shall apply. Thus, in a non-liquidating subchapter V case, discharge will occur on confirmation.</p> <p>If a plan is non-consensually confirmed, then the timing provision for discharge under § 1141(d) shall not apply. Rather, discharge will be entered after completion of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix. § 1192.</p> <p>Because § 1141(d)(5) does not apply to a case under subchapter V, there is no provision for a hardship discharge in an individual case.</p>	<p>Two types of discharge available: 1) debtor completes all plan payments, other than payments to long-term secured creditors; and 2) debtor qualifies for a "hardship discharge" whether or not debtor has completed all payments. § 1228.</p> <p>To receive a hardship discharge, the debtor's failure to complete plan payments must be due to circumstances beyond the debtor's control, creditors must have received at least as much under the plan as they would in a ch. 7 liquidation, and modification of the plan under § 1229 is not practicable. § 1228(b).</p> <p>Ch. 12 allows discharge of taxes arising from the sale of farming assets. § 1232.</p>	<p>Two types of discharge available: 1) full compliance discharge; and 2) hardship discharge. § 1328.</p> <p>To receive a hardship discharge, the debtor's failure to complete plan payments must be due to circumstances beyond the debtor's control, creditors must have received at least as much under the plan as they would in a ch. 7 liquidation, and modification of the plan under § 1329 is not practicable. § 1328(b).</p> <p>With some exceptions, the "full compliance" discharge under § 1328(a) discharges a wider swath of debts than its sister chapters. For example: 1) some willful and malicious torts; 2) fines and penalties; 3) marital property settlement debts; 4) debts that were denied discharge in an earlier bankruptcy.</p>

AMERICAN BANKRUPTCY INSTITUTE

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
Debtor Discharge (cont'd)	<p>Section 1141(d)(3) applies to non-individual and individual debtors, barring a discharge if the plan liquidates all of debtor's assets, the debtor suspends business, and the debtor would be denied a discharge under § 727(a).</p> <p>A claim is discharged regardless of whether the creditor filed a proof of claim. § 1141(d)(1)(A). But the plan may supersede § 1141(d) and pay creditors that have not filed a proof of claim. § 1141(d)(1).</p> <p>An individual debtor who has not completed payments under the plan may receive a hardship discharge if the requirements of § 1141(5)(B) are met.</p>			<p>Debts excepted from discharge include: debts provided for under § 1322(b)(5); tax claims under § 507(a)(8)(C); tax claims under § 523(a)(1)(B); debts incurred under false pretenses or misrepresentation; unscheduled debts; debts for fraud or defalcation while in a fiduciary capacity; embezzlement or larceny; domestic support obligations; student loans unless undue hardship; or debts incurred by debtor's operation of a motor vehicle while under the influence. § 1328.</p>



The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

Statutory Agricultural Lien Rapid Finder Chart: *Illinois*

Originally published 1993 by **Martha L. Noble**

Updated 2008 by **Elizabeth R. Rumley & Jennifer Fiser**

Updated 2020 by **Micah Brown**

* The statutes are current through the 2020 Session of the 101st Illinois General Assembly



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

Statutory Agricultural Lien Rapid Finder Chart: Illinois

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
LIEN FOR PEST EXTERMINATION 65 ILCS 5/11-20-8	THE MUNICIPALITY THAT INCURRED COSTS TO EXTERMINATE PESTS	REAL PROPERTY WHICH COSTS WERE INCURRED TO EXTERMINATE PESTS	NO	YES, WITH THE OFFICE OF THE RECORDER IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED IF THE PROPERTY IS REGISTERED UNDER THE TORRENS SYSTEM, MUST FILE IN THE OFFICE OF THE REGISTRAR OF TITLES OF THAT COUNTY	NOT SPECIFIED	SUPERIOR TO ALL OTHER LIENS, EXCEPT TAX LIENS AND ANOTHER WHO HAS PRIOR RIGHTS IN THE PROPERTY
LIEN ON GRAIN ASSETS 240 ILCS 40/20-10	LENDER THAT LOANED MONEY FOR THE GRAIN OR PRODUCER WITH EVIDENCE OF GRAIN SALE	ALL GRAIN ASSETS AND EQUITY ASSETS	YES, POSSESSION OF A WAREHOUSE RECEIPT OR WRITTEN EVIDENCE OF A STORAGE OBLIGATION	NO	DATE OF DELIVERY OF GRAIN	PRIOR TO ANY OTHER LIEN RELATING TO THE GARIN ASSETS, REGARDLESS OF THE TIME OF THE OTHER LIEN
LIEN FOR CONTROL OR ERADICATION OF NOXIOUS WEEDS 505 ILCS 100/10	DEPARTMENT OF AGRICULTURE	REAL PROPERTY THE DEPARTMENT INCURRED COSTS TO CONTROL OR ERADICATE NOXIOUS WEEDS	NO	NOT SPECIFIED	SIX MONTHS AFTER NOTICE OF COSTS TO PROPERTY OWNER AND OWNER DID NOT REPAY COSTS	NOT SPECIFIED
LIEN FOR CARE OF UNDELIVERED ANIMALS 510 ILCS 35/1 – 35/22	TRANSPORTING COMPANY REQUIRED TO HOLD ANIMALS UNDER THE ILLINOIS BOVINE TUBERCULOSIS ERADICATION ACT	CATTLE, BISON, SHEEP, GOATS, ANTELOPES, OR CERVIDS HELD BY TRANSPORTING COMPANY	YES, IMPLIED BY THE STATUTE	NO	NOT SPECIFIED	NONE
LIEN UPON LIVESTOCK RUNNING AT LARGE 510 ILCS 55/1 – 55/1.2	LAW ENFORCEMENT OFFICIAL OR OWNER OR OCCUPIER OF LAND WHO IMPOUNDS TRESPASSING LIVESTOCK	TRESPASSING LIVESTOCK THAT HAVE BEEN IMPOUNDED	YES, IMPLIED BY THE STATUTE	NO	NOT SPECIFIED	NONE



2026 CENTRAL STATES BANKRUPTCY WORKSHOP

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
RAILROAD LIEN ON ANIMALS 510 ILCS 70/7	RAILROAD OR OTHER COMMON CARRIER WHICH TRANSPORTS ANIMALS AND CARES FOR THEM AT ITS OWN EXPENSE	ANIMALS TRANSPORTED AND CARED FOR BY A RAILROAD OR OTHER COMMON CARRIER	NO	NO	NOT SPECIFIED	NONE
LIEN FOR HUMANE CARE OF ANIMALS 510 ILCS 70/12	ILLINOIS DEPARTMENT OF AGRICULTURE AND HUMANE SOCIETIES	ABUSED ANIMAL IMPOUNDED BY AUTHORITY OF THE DEPARTMENT OF AGRICULTURE	YES, IMPLIED BY THE STATUTE	NO	NOT SPECIFIED	NONE
LANDLORD'S LIEN ON CROPS 735 ILCS 5/9-316	LANDLORD	CROPS GROWING OR GROWN ON DEMISED PREMISES	NO	NO	DATE THAT CROP STARTS GROWING	SUPERIOR TO ALL OTHER AGRICULTURAL LIENS UNDER UCC
HORSESHOER'S LIEN 770 ILCS 30/0.01 – 30/12	PERSON WHO SHOES OR HAS AN EMPLOYEE SHOE AN ANIMAL	SHOED ANIMAL	NO	YES, WITH THE RECORDER OF THE COUNTY WHERE THE ANIMAL IS LOCATED	NOT SPECIFIED	SUPERIOR TO ALL OTHER SUBSEQUENTLY RECORDED LIENS AND CLAIMS
STABLE KEEPER'S LIEN 770 ILCS 40/49	ANY PERSON KEEPING HORSES, CARRIAGES, OR HARNESS AT THE REQUEST OF THE OWNER OR POSSESSOR OF THE PROPERTY	HORSES, CARRIAGES, AND HARNESS	YES	NO	THE DATE THE HORSE IS BROUGHT TO THE STABLE	SUPERIOR TO ALL OTHER LIENS EXCEPT FOR A PRIOR STATUTORY LIEN OR SECURITY INTEREST PROPERLY PERFECTED UNDER UCC ARTICLE 9
AGISTER'S LIEN 770 ILCS 40/50	AGISTERS AND PERSONS KEEPING, YARDING, FEEDING, OR PASTURING DOMESTIC ANIMALS	DOMESTIC ANIMALS KEPT, YARDED, FED OR PASTURED	YES	NO	NOT SPECIFIED	NONE
THRESHERMEN'S LIEN 770 ILCS 40/50a	OWNER OR LESSEE OF A THRESHING MACHINE, CLOVER HULLER, CORN SHELLER, OR HAY BALER	GRAIN, SEED, CLOVER, OR HAY PROCESSED WITH LIEN CLAIMANT'S MACHINERY	NO	NO	DATE OF COMMENCEMENT OF HULLING, THRESHING, SHELLING, OR BALING	LIEN IS NOT VALID AGAINST A PURCHASER WITHOUT WRITTEN NOTICE OF THE LIEN BEFORE PURCHASE



AMERICAN BANKRUPTCY INSTITUTE

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
LABOR AND STORAGE LIEN 770 ILCS 45/1 – 45/8	PERSON, FIRM, OR CORPORATION WHICH EXPENDS LABOR, SKILL, OR MATERIAL ON CHATTEL OR STORES CHATTEL	CHATTEL UPON WHICH LABOR, SKILL, OR MATERIALS ARE EXPENDED OR WHICH IS STORED	NO	YES, WITH THE RECORDER OF THE COUNTY WHERE LABOR, SKILL, OR MATERIAL WAS EXPENDED OR WHERE CHATTEL WAS STORED	DATE OF FIRST EXPENDI-TURE OF LABOR, SKILL, OR MATERIAL OR DATE UPON WHICH STORAGE COMMENCES	LIEN IS SUBJECT TO PRIOR RECORDED UCC SECURITY INTEREST
LABOR OR STORAGE LIEN (SMALL AMOUNT) 770 ILCS 50/1 – 50/6	PERSON, FIRM OR CORPORATION THAT EXPENDS LABOR, SKILL OR MATERIAL UPON ANY CHATTEL OR STORES ANY CHATTEL	CHATTEL, WORTH LESS THAN \$2000, UPON WHICH LABOR, SKILL, OR MATERIALS ARE EXPENDED OR WHICH IS STORED	YES	NO	DATE OF FIRST EXPENDITURE OF LABOR, SKILL, OR MATERIAL OR DATE UPON WHICH STORAGE COMMENCES	ENFORCEMENT OF THE LIEN BARS ACTION AGAINST THE LIEN CLAIMANT FOR RECOVERY OF THE VALUE OF THE CHATTEL
MECHANICS LIEN 770 ILCS 60/1 – 60/36	ANY PERSON WHO SUPPLIES LABOR, SERVICES, MATERIALS, FIXTURES, APPARATUS, MACHINERY, OR LEASES EQUIPMENT	THE REAL PROPERTY FURNISHED WITH LABOR, SERVICES, MATERIALS, FIXTURES, APPARATUS, MACHINERY, OR LEASED EQUIPMENT	NO	NO, BUT MUST GIVE IMPROVED PROPERTY OWNER NOTICE	THE DATE OF THE CONTRACT	PRIORITY OVER OTHER SUBSEQUENT LIENS IF LIEN IS PERFECT
LIEN FOR SERVICE OF STALLIONS AND JACKS 770 ILCS 100/0.01 – 100/11	OWNER OF STALLION OR JACK KEPT FOR SERVICE	MARE OR JENNET SERVED AND PROGENY OF THE SERVICE	NO	YES, WITH THE RECORDER OF DEEDS IN THE COUNTY IN WHICH THE MARE OR JENNET IS KEPT	NOT SPECIFIED	LIEN ON PROGENY IS A FIRST LIEN SERVICE FEE LIEN IS SUPERIOR TO ALL LIENS NOT DULY RECORDED PRIOR TO THE RECORDING OF THE SERVICE FEE LIEN
WAREHOUSE LIEN 810 ILCS 5/7-209 – 5/7-210	BEFORE 1/1/09: WAREHOUSEMAN AFTER 1/1/09: WAREHOUSE	BEFORE 1/1/09: GOODS COVERED BY WAREHOUSE RECEIPT OR PROCEEDS THEREOF AFTER 1/1/09: GOODS COVERED BY THE WAREHOUSE RECEIPT OR STORAGE AGREEMENT OR PROCEEDS THEREOF	YES, LIEN IS LOST IF WAREHOUSE VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCABLE BY COMMERCIALY REASONABLE SALE	THE DATE OF THE WAREHOUSE RECEIPT OR STORAGE AGREEMENT	ENFORCABLE BY COMMERCIALY REASONABLE SALE
CARRIER'S LIEN 810 ILCS 5/7-307 – 5/7-308	CARRIER	GOODS COVERED BY BILL OF LADING OR PROCEEDS THEREOF	YES, LIEN IS LOST IF CARRIER VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCABLE BY COMMERCIALY REASONABLE SALE	AFTER THE DATE OF THE CARRIER'S RECEIPT OF THE GOODS FOR STORAGE OR TRANSPORTATION	ENFORCABLE BY COMMERCIALY REASONABLE SALE

Secondary sources:

Landlord Liens, 0130 SURVEYS 26, Thomson Reuters (last updated March 2020)





The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

Statutory Agricultural Lien Rapid Finder Chart: *Indiana*



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

Statutory Agricultural Lien Rapid Finder Chart: Indiana

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
WAREHOUSE LIEN IND. CODE ANN. §§ 26-1-7-209 – 26-1-7-210	WAREHOUSE	GOODS COVERED BY A WAREHOUSE RECEIPT OR STORAGE AGREEMENT OR ON THE PROCEEDS THEREOF	YES, LIEN IS LOST IF WAREHOUSE VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCABLE BY COMMERCIALY REASONABLE SALE	THE DATE OF THE WAREHOUSE RECEIPT OR STORAGE AGREEMENT	ENFORCABLE BY COMMERCIALY REASONABLE SALE
CARRIER'S LIEN IND. CODE ANN. §§ 26-1-7-307 – 26-1-7-308	CARRIER	GOODS COVERED BY A BILL OF LADING OR ON THE PROCEEDS THEREOF	YES, LIEN IS LOST IF CARRIER VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCABLE BY COMMERCIALY REASONABLE SALE	AFTER THE DATE OF THE CARRIER'S RECEIPT OF THE GOODS FOR STORAGE OR TRANSPORTATION	ENFORCABLE BY COMMERCIALY REASONABLE SALE
MECHANIC'S LIEN IND. CODE ANN. §§ 32-28-3-1 – 32-28-3-18	CONTRACTOR, SUBCONTRACTOR, MECHANIC, LESSOR LEASING CONSTRUCTION OR OTHER EQUIPMENT AND TOOLS, JOURNEYMAN, LABORER OR ANY OTHER PERSON PERFORMING LABOR OR FURNISHING MATERIALS OR MACHINERY TO CHANGES TO REAL PROPERTY	UPON THE STRUCTURE OR PROPERTY FOR WHICH THE WORK WAS DONE, AS WELL AS THE MACHINERY, TOOLS, STOCK, MATERIAL, FINISHED OR UNFINISHED WORK	NO	YES, WITH THE RECORDERS OFFICE OF THE COUNTY WHERE THE PROPERTY IS LOCATED	RELATES BACK TO DATE THE MECHANIC OR OTHER PERSON BEGAN TO PERFORM THE LABOR OR FURNISH THE MATERIALS OR MACHINERY	SUBORDINATE TO PURCHASE MONEY SECURITY INTERESTS FOR THE PROPERTY SUPERIOR TO ALL OTHER LIENS CREATED AFTER IT
ENGINEERS, LAND SURVEYORS, AND ARCHITECTS LIEN IND. CODE ANN. §§ 32-28-11-1 – 32-28-11-2	PROFESSIONAL ENGINEERS, REGISTERED LAND SURVEYORS, AND REGISTERED ARCHITECTS	UPON THE STRUCTURE OR PROPERTY FOR WHICH THE WORK WAS DONE, AS WELL AS THE MACHINERY, TOOLS, STOCK, MATERIAL, FINISHED OR UNFINISHED WORK	NO	YES, WITH THE RECORDERS OFFICE OF THE COUNTY WHERE THE PROPERTY IS LOCATED	RELATES BACK TO DATE THE ENGINEER, SURVEYOR, OR ARCHITECT BEGAN TO PERFORM THE LABOR OR FURNISH THE MATERIALS OR MACHINERY	SUBORDINATE TO PURCHASE MONEY SECURITY INTERESTS FOR THE PROPERTY SUPERIOR TO ALL OTHER LIENS CREATED AFTER IT



2026 CENTRAL STATES BANKRUPTCY WORKSHOP

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
CORPORATE EMPLOYEE'S LIEN IND. CODE ANN. §§ 32-28-12-1 – 32-28-12-7	EMPLOYEE OF A CORPORATION DOING BUSINESS IN INDIANA	PROPERTY AND EARNINGS OF THE CORPORATE EMPLOYER	NO	YES, WITH THE RECORDER OF THE COUNTY IN WHICH THE CORPORATE EMPLOYER IS LOCATED OR DOING BUSINESS	LIEN RELATES BACK TO DATE OF FIRST EMPLOYMENT OR ANY SUBSEQUENT DATE OF EMPLOYMENT	SUPERIOR TO SUBSEQUENT LIENS, EXCEPT OTHER EMPLOYEE LIENS AND LIENS WHICH ARE RECORDED FOR A 60-DAY PERIOD IN A COUNTY IN WHICH NO EMPLOYEE'S LIEN IS RECORDED
LANDLORD'S LIEN ON CROPS IND. CODE ANN. § 32-31-1-19	LANDLORD ENTITLED TO RENT AS CROPS, RENT IN KIND, OR CASH RENT UNDER AN AGREEMENT WITH A TENANT	CORPS GROWN ON THE LEASED PREMISES	NO	YES, LANDLORD MUST FILE A FINANCING STATEMENT UNDER IND. CODE ANN. § 26-1-9.1-501 THIRTY DAYS BEFORE THE CROP MATURES AND DURING THE YEAR THE CROP IS GROWN	DATE THE LIEN NOTICE IS RECORDED	PRIORITY OVER ALL SUBSEQUENTLY RECORDED LIENS
BLACKSMITH'S LIEN IND. CODE ANN. §§ 32-33-1-1 – 32-33-1-5	PERSON WHO SHOES AN ANIMAL OR REPAIRS A VEHICLE AT THE REQUEST OF THE OWNER OR THE OWNER'S AGENT	ANIMAL SHOD OR VEHICLE REPAIRED	NO	YES, WITH THE RECORDER OF COUNTY IN WHICH THE OWNER OF THE ANIMAL OR VEHICLE RESIDES	DATE THE LIEN IS FILED	SUPERIOR TO LIENS WHICH ARE NOT DULY RECORDED PRIOR TO THIS LIEN
LIVERYMEN'S LIEN IND. CODE ANN. §§ 32-33-8-1	PERSON ENTRUSTED WITH LIVESTOCK	LIVESTOCK CARED FOR OR FED	YES, IMPLIED BY THE STATUTE	NO	DATE OF POSSESSION	NONE
MECHANIC'S AND TRADESMAN'S LIEN IND. CODE ANN. §§ 32-33-9-1 – 32-33-9-8	PERSON ENTRUSTED WITH AN ARTICLE OF VALUE FOR CONSTRUCTION, ALTERATION, OR REPAIR	ARTICLES OF VALUE PROVIDED WITH SERVICE	YES	NO	NOT SPECIFIED	NONE
	PERSON ENTRUSTED WITH LIVESTOCK OR PERISHABLE GOODS FOR CARE OR FEEDING	LIVESTOCK OR PERISHABLE GOODS CARED FOR OR FED	YES	NO	NOT SPECIFIED	NONE
	FORWARDING AND COMMISSION MERCHANT WHO STORES GOODS	STORED GOODS	YES	NO	NOT SPECIFIED	NONE



AMERICAN BANKRUPTCY INSTITUTE

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
THRESHER'S LIEN IND. CODE ANN. §§ 32-33-10-1 – 32-33-10-10	OWNER OR OPERATOR OF MACHINES OR TOOLS USED TO PRODUCE, HARVEST, OR PREPARE CROPS FOR MARKET	CROPS PRODUCED WITH SERVICES OF THE MACHINE OR TOOLS PROCEEDS OF THE SALE OF SUCH CROPS	NO	YES, WITH THE RECORDER OF THE COUNTY WHERE THE WORK WITH THE MACHINERY OR TOOLS WAS PERFORMED	NOT SPECIFIED	LIEN DOES NOT ATTACH TO GOODS POSSESSED BY A PURCHASER OR DEALER WITHOUT NOTICE OF THE LIEN
MECHANIC'S LIEN UPON FARM MACHINERY IND. CODE ANN. §§ 32-33-10-5 – 32-33-10-10	PERSON WHO STORES, REPAIRS, SERVICES, OR FURNISHES SUPPLIES TO MOTOR VEHICLES OR EQUIPMENT, INCLUDING FARM MACHINERY	MOTOR VEHICLES OR EQUIPMENT, INCLUDING FARM MACHINERY	NO, BUT THE LIEN CLAIMANT IS AUTHORIZED TO RETAIN POSSESSION	YES, WITH THE RECORDER OF THE COUNTY WHERE THE LABOR WAS PERFORMED OR SUPPLIES WERE FURNISHED	NOT SPECIFIED	NONE
MECHANIZED AGRICULTURAL SERVICES LIEN IND. CODE ANN. §§ 32-33-12-1 – 32-33-12-2	OWNER OR OPERATOR OF MACHINE OR TOOL USED IN THRESHING OR HULLING GRAIN OR SEEDS OR IN THE PLOWING, DISKING OR CULTIVATING OF LAND FOR THE PRODUCTION OF CROPS OR IN THE COMBINING, PICKING OR BALING OF CROPS	GRAIN OR SEED THRESHED OR HULLED WITH THE MACHINE OR UPON CROPS PRODUCED OR PREPARED FOR MARKET OR STORAGE	NO	YES, IN OFFICE OF SECRETARY OF STATE WITHIN 30 DAYS OF PLOWING, DISKING OR CULTIVATING OR 10 DAYS OF COMBINING, BALING OR PICKING	NOT SPECIFIED	NONE
WAREHOUSEMAN LIEN IND. CODE ANN. §§ 32-33-14-1 – 32-33-14-3	ALL PERSONS, FIRMS, LLCs AND CORPORATIONS ENGAGED IN THE BUSINESS OF STORING, WAREHOUSING AND FORWARDING GOODS, WARES AND MERCHANDISE	ALL GOODS, WARES AND MERCHANDISE LEFT FOR STORAGE, WAREHOUSING OR FORWARDING	YES	ENFORCEABLE BY PUBLIC AUCTION OF GOODS	ENFORCEABLE BY PUBLIC AUCTION OF GOODS	ENFORCEABLE BY PUBLIC AUCTION OF GOODS

Secondary sources:

Landlord Liens, 0130 SURVEYS 26, Thomson Reuters (last updated March 2020)





The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

Statutory Agricultural Lien Rapid Finder Chart: *Iowa*

Originally published 1993 by **Martha L. Noble**

Updated 2008 by **Elizabeth R. Rumley & Jennifer Fiser**

Updated 2020 by **Micah Brown**

* The statutes are current through the 2020 Regular Session of the 88th Iowa General Assembly



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

Statutory Agricultural Lien Rapid Finder Chart: Iowa

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
APIARIST LIEN IOWA CODE ANN. §§ 160.6 – 160.8	DEPARTMENT OF AGRICULTURE	PROPERTY IN WHICH THE STATE APIARIST INCURRED COSTS TO DISINFECT OR DESTROY BEES OR BEE EQUIPMENT INFESTED WITH CONTAGIOUS DISEASES, PARASITES, OR AFRICANIZED BEES	NO	YES, IF THE COSTS ARE NOT PAID BY THE OWNER WITHIN SIXTY DAYS, THE UNPAID AMOUNT SHALL BE CERTIFIED TO THE COUNTY AUDITOR OF THE COUNTY IN WHICH THE BEE OWNER'S PROPERTY IS LOCATED	NOT SPECIFIED	NOT SPECIFIED
CONTROL OF PATHOGENIC VIRUSES IN POULTRY LIEN IOWA CODE ANN. §§ 165B.1 – 165B.5	DEPARTMENT OF AGRICULTURE; POLITICAL SUBDIVISION	REAL PROPERTY OF THE OWNER OF A RESTRICTED CONCENTRATION POINT OR TRANSPORTER OR BUYER OF INFECTED POULTRY FROM A RESTRICTED CONCENTRATION POINT	NO	YES, WITH THE COUNTY AUDITOR OF ANY COUNTY IN WHICH THE OWNER IS A TITLEHOLDER OF REAL PROPERTY	NOT SPECIFIED	NOT SPECIFIED
LIEN FOR ERECTING OR MAINTAINING FENCE FOR LIVESTOCK IOWA CODE ANN. §§ 169C.6; 359A.6; 359A.22A	NEIGHBORING LANDOWNER OF OWNER OF TRESPASSING LIVESTOCK	REAL PROPERTY OF THE OWNER OF TRESPASSING LIVESTOCK OR OWNER OF AJOINING LAND WHO DOES NOT ERECT OR MAINTAIN A FENCE	NO	YES, CERTIFICATION TO THE COUNTY TREASURER FOR THE AMOUNT OWED FOR ERECTING OR MAINTAINING A FENCE	NOT SPECIFIED	NOT SPECIFIED
TAX LEVY ON FLOOD AND EROSION CONTROL ON AGRICULTURAL LANDS IOWA CODE ANN. § 161E.9	COUNTY BOARD OF SUPERVISORS	ALL AGRICULTURAL LANDS WITHIN THE COUNTY	NO	NOT SPECIFIED	NOT SPECIFIED	NOT SPECIFIED



2026 CENTRAL STATES BANKRUPTCY WORKSHOP

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
ASSESSMENT FOR ERADICATION COSTS OF HARMFUL BARBERRY, PLANT DISEASE, OR INSECT PEST IOWA CODE ANN. §§ 177A.5 – 177A.19	DEPARTMENT OF AGRICULTURE	PROPERTY UPON WHICH THE OFFICE OF STATE ENTOMOLOGIST INCURS EXPENSES TO ERADICATE SUCH PESTS	NO	YES, THE SECRETARY SHALL CERTIFY THE UNPAID ASSESSMENT TO THE TREASURER OF THE COUNTY WHERE THE PROPERTY IS LOCATED	NOT SPECIFIED	NOT SPECIFIED
LIEN ON GRAIN DEALER ASSETS IOWA CODE ANN. § 203.12A	GRAIN INDEMNITY FUND BOARD	"ALL GRAIN DEALER ASSETS": PROCEEDS RECEIVED OR DUE A GRAIN DEALER UPON SALE, OR ANY IDENTIFIABLE FUNDS OR PROPERTY OF GRAIN DEALER FROM SALE OF GRAIN	NO	YES, FILE A LIEN STATEMENT WITH THE SECRETARY OF STATE	TIME OF SURRENDER OF WAREHOUSE RECEIPTS OR OTHER WRITTEN EVIDENCE OF OWNERSHIP AS PART OF A GRAIN SALE TRANSACTION OR THE TIME OF DELIVERY OF THE GRAIN FOR SALE	PERFECTED LIEN SUBJECT TO PRIORITY RULES UNDER IOWA CODE ANN. § 554.9322
LIEN ON WAREHOUSE OPERATOR ASSETS IOWA CODE ANN. § 203C.12A	GRAIN INDEMNITY FUND BOARD	"WAREHOUSE OPERATOR ASSETS": PROCEEDS RECEIVED OR DUE A WAREHOUSE OPERATOR UPON THE SALE OF GRAIN SOLD BY WAREHOUSE OPERATOR, STORAGE PAYMENTS RECEIVED OR DUE TO OPERATOR, GRAIN OWED BY OPERATOR, OR ANY IDENTIFIABLE FUNDS OR PROPERTY FROM SALE OF GRAIN BY OPERATOR	NO	YES, FILE A LIEN STATEMENT WITH THE SECRETARY OF STATE	AT THE COMMENCEMENT OF THE STORAGE OBLIGATION	PERFECTED LIEN SUBJECT TO PRIORITY RULES UNDER IOWA CODE ANN. § 554.9322
WAREHOUSE LIEN IOWA CODE ANN. §§ 554.7209 – 554.7210	WAREHOUSE	GOODS COVERED BY A WAREHOUSE RECEIPT OR STORAGE AGREEMENT OR ON PROCEEDS THEREOF	YES, LIEN IS LOST IF WAREHOUSE VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCEABLE BY COMMERCIALY REASONABLE SALE	THE DATE OF THE WAREHOUSE RECEIPT OR STORAGE AGREEMENT	ENFORCEABLE BY COMMERCIALY REASONABLE SALE
CARRIER'S LIEN IOWA CODE ANN. §§ 554.7307 – 554.7308	CARRIER	GOODS COVERED BY A BILL OF LADING OR PROCEEDS THEREOF	YES, LIEN IS LOST IF CARRIER VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCEABLE BY COMMERCIALY REASONABLE SALE	AFTER THE DATE OF THE CARRIER'S RECEIPT OF THE GOODS FOR STORAGE OR TRANSPORTATION	ENFORCEABLE BY COMMERCIALY REASONABLE SALE



AMERICAN BANKRUPTCY INSTITUTE

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
LANDLORD'S LIEN IOWA STAT. ANN. §§ 570.1 – 570.10	LANDLORD OF LEASED PREMISES	CROPS GROWN ON THE PREMISES AND TENANT'S PERSONAL PROPERTY USED OR KEPT ON THE PREMISES AND WHICH IS NOT EXEMPT	NO	YES, LANDLORD MUST FILE A FINANCING STATEMENT	DATE PROPERTY IS BROUGHT ONTO THE LEASED PREMISES	NONE
AGRICULTURAL SUPPLY DEALER'S LIEN IOWA CODE ANN. §§ 570A.1 – 570A.6	AGRICULTURAL SUPPLY DEALER ENGAGED IN RETAIL SALE OF SPECIFIED AGRICULTURAL SUPPLIES TO FARMERS	CROPS AND LIVESTOCK PRODUCED USING THE AGRICULTURAL SUPPLIES	NO	YES, WITH THE IOWA SECRETARY OF STATE	DATE LIEN STATEMENT IS FILED	SUPERIOR TO SUBSEQUENT LIENS, EXCEPT LIENS OF OTHER AGRIC. SUPPLY DEALERS, LANDLORDS, AND THRESHERMEN OR CORNSHELLERS EQUAL TO PRIOR PERFECTED LIEN OR SECURITY INTEREST OF A FINANCIAL INSTITUTION, EXCEPT AS PROVIDED BY STATUTORY DEFENSES SUPERIOR IN PART TO PRIOR LIENS AND SECURITY INTERESTS IN LIVESTOCK
HARVESTER'S LIEN IOWA CODE ANN. §§ 571.1A – 571.5	PERSON PERFORMING HARVESTING SERVICES	CROP HARVESTED BY HARVESTER	NO	YES, WITH THE IOWA SECRETARY OF STATE	NOT SPECIFIED	PRIOR AND SUPERIOR TO A LANDLORD'S LIEN OR ANY SECURITY INTEREST
MECHANIC'S LIEN IOWA CODE ANN. §§ 572.1 – 572.33	PERSON FURNISHING OR RENTING MATERIAL, LABOR OR SERVICES ON BUILDING OR LAND	THE BUILDING OR IMPROVEMENT AT ISSUE AND LAND BELONGING TO OWNER ON WHICH THE BUILDING OR IMPROVEMENT IS LOCATED	NO	CLERK OF COURT IN COUNTY IN WHICH PROPERTY IS LOCATED	COMMENCEMENT OF WORK	INFERIOR TO LIENS FILED BEFORE COMMENCEMENT OF WORK AND TO "CONSTRUCTION MORTGAGE LIENS"
FORWARDING AND COMMISSION MERCHANT'S LIEN IOWA CODE ANN. §§ 576.1 – 576.2	FORWARDING AND COMMISSION MERCHANTS	EVERY KIND OF PROPERTY IN MERCHANT'S POSSESSION, INCLUDING AGRICULTURAL PRODUCTS	YES	NO	NOT SPECIFIED	NONE



2026 CENTRAL STATES BANKRUPTCY WORKSHOP

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
ARTISAN'S LIEN IOWA CODE ANN. §§ 577.1 – 577.3	PERSON WHO MAKES, REPAIRS, IMPROVES, OR ENHANCES THE VALUE OF ANY INANIMATE PERSONAL PROPERTY	INANIMATE PERSONAL PROPERTY	YES, UNLESS ATTORNEY GENERAL BELIEVES SUPPLIER HAS ENGAGED IN A DECEPTIVE ACT OR PRACTICE AND PROVIDES SUPPLIER WITH WRITTEN NOTICE TO SURRENDER POSSESSION OF THE PROPERTY TO THE PROPERTY OWNER	NO	NOT SPECIFIED	SUBJECT TO ALL PRIOR LIENS OF RECORD
COLD STORAGE LOCKER LIEN IOWA CODE ANN. §§ 578.1 – 578.2	LESSOR WHO OWNS OR OPERATES A REFRIGERATED LOCKER PLANT	ALL PROPERTY OF EVERY KIND KEPT IN THE LEASED COLD STORAGE LOCKERS	YES	NO	NOT SPECIFIED	NONE
LIEN FOR CARE OF STOCK AND STORAGE OF BOATS AND MOTOR VEHICLES IOWA CODE ANN. §§ 579.1 – 579.3	STABLE KEEPERS, HERDERS, FEEDERS, STOCK KEEPERS, AND KEEPERS OF PLACES FOR STORING MOTOR VEHICLES, BOATS, AND BOAT ENGINES AND MOTORS	PROPERTY KEPT AND STORED, INCLUDING LIVESTOCK	YES	NO	NOT SPECIFIED	SUBJECT TO ALL PRIOR LIENS OF RECORD
CUSTOM CATTLE FEEDLOT LIEN IOWA CODE ANN. §§ 579A.1 – 579A.5	CUSTOM CATTLE FEEDLOT OPERATOR; CONTRACT PRODUCER*	CATTLE AND IDENTIFIABLE CASH PROCEEDS FROM THE SALE OF THE CATTLE	NO	YES, A FINANCING STATEMENT IN THE OFFICE OF THE SECRETARY OF STATE	AT THE TIME THE CATTLE ARRIVE AT THE CUSTOM CATTLE FEEDLOT	A PERFECTED CUSTOM CATTLE FEEDLOT LIEN HAS PRIORITY OVER A CONFLICTING LIEN OR SECURITY INTEREST IN THE CATTLE, INCLUDING A PRIOR LIEN OR SECURITY INTEREST SUBJECT TO COURT-ORDERED LIEN FOR LIVESTOCK IN IMMEDIATE NEED OF SUSTENANCE (IOWA CODE ANN. § 717.4) OR VETERINARIAN'S LIEN (IOWA CODE ANN. §§ 581.1A – 581.4), IF SUCH LIEN IS PERFECTED AS AN AGRICULTURAL LIEN LIEN THAT IS EFFECTIVE BUT NOT PERFECT HAS PRIORITY AS PROVIDED IN IOWA CODE ANN. § 554.9322



AMERICAN BANKRUPTCY INSTITUTE

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
<p align="center">COMMODITY PRODUCTION CONTRACT LIEN IOWA CODE ANN. §§ 579B.1 – 579B.7</p>	<p align="center">CONTRACT PRODUCER IN A PRODUCTION CONTRACT*</p>	<p>PRODUCTION CONTRACT FOR LIVESTOCK: (1) IF NOT SOLD OR SLAUGHTERED, LIEN ATTACHED TO LIVESTOCK; (2) IF SOLD, LIEN ATTACHED TO CASH PROCEEDS; (3) IF LIVESTOCK SLAUGHTERED, LIEN ATTACHED TO ANY PROPERTY OF THE CONTRACTOR THAT IS SUBJECT TO A SECURITY INTEREST</p> <p>PRODUCTION CONTRACT FOR RAW MILK: (1) IF NOT SOLD OR PROCESSED, LIEN ATTACHED TO RAW MILK; (2) IF SOLD, LIEN ATTACHED TO CASH PROCEEDS; (3) IF PROCESSED, LIEN ATTACHED TO ANY PROPERTY SUBJECT TO SECURITY INTEREST</p> <p>PRODUCTION CONTRACT FOR CROPS: (1) NOT SOLD OR PROCESSED, LIEN ATTACHED TO CROP; (2) IF CROP SOLD, LIEN ATTACHED TO CASH PROCEEDS; (3) IF CROP PROCESSED, LIEN ATTACHED TO ANY PROPERTY SUBJECT TO SECURITY INTEREST</p>	<p align="center">NO</p>	<p>YES, FOR A LIEN ARISING OUT OF PRODUCING LIVESTOCK OR RAW MILK, FILE A FINANCING STATEMENT IN THE OFFICE OF THE SECRETARY OF STATE; IF CONTINUOUS ARRIVAL, CONTRACT PRODUCER MUST FILE A FINANCING STATEMENT FOR THE LIVESTOCK WITHIN FORTY-FIVE DAYS AFTER THE LIVESTOCK'S ARRIVAL</p> <p>YES, FOR A LIEN ARISING OUT OF PRODUCING A CROP, FILE A FINANCING STATEMENT IN THE OFFICE OF THE SECRETARY OF STATE WITHIN FORTY-FIVE DAYS AFTER THE CROP IS FIRST PLANTED</p>	<p>FOR A LIEN ARISING OUT OF PRODUCING LIVESTOCK OR RAW MILK, LIEN ATTACHES THE DAY THE LIVESTOCK FIRST ARRIVES AT THE CONTRACT LIVESTOCK FACILITY</p> <p>FOR A LIEN ARISING OUT OF PRODUCING A CROP, LIEN ATTACHES THE DAY THE CROP IS FIRST PLANTED</p>	<p>SUPERIOR TO A CONFLICTING LIEN OR SECURITY INTEREST IN THE COMMODITY, INCLUDING A LIEN OR SECURITY INTEREST THAT WAS PERFECTED PRIOR TO THE PERFECTION OF THE COMMODITY PRODUCTION CONTRACT LIEN UNDER THIS CHAPTER</p> <p>NOT SUPERIOR TO A COURT-ORDERED LIEN PROVIDED IN IOWA CODE ANN. § 717.4 OR A VETERINARIAN'S LIEN CREATED UNDER CHAPTER 581, IF SUCH LIEN IS PERFECTED AS AN AGRICULTURAL LIEN</p> <p>LIEN THAT IS EFFECTIVE BUT NOT PERFECT HAS PRIORITY AS PROVIDED IN IOWA CODE ANN. § 554.9322</p>
<p align="center">LIEN FOR SERVICES OF ANIMALS IOWA CODE ANN. §§ 580.1 – 580.9</p>	<p>OWNER OR KEEPER OF A STALLION, JACK, OR BULL</p> <p>ENTITY PROVIDING ARTIFICIAL INSEMINATION SERVICES</p>	<p align="center">PROGENY RESULTING FROM THE SERVICES</p>	<p align="center">NO</p>	<p>YES, WITH SHERIFF OF COUNTY IN WHICH PROGENY IS KEPT</p>	<p align="center">DATE OF PROGENY'S BIRTH</p>	<p>LIEN IS DESIGNATED A "PRIOR" LIEN</p>



2026 CENTRAL STATES BANKRUPTCY WORKSHOP

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
VETERINARIAN'S LIEN IOWA CODE ANN. §§ 581.1A – 581.4	VETERINARIAN LICENSED AND REGISTERED UNDER IOWA LAW	LIVESTOCK PROVIDED WITH VETERINARIAN'S SERVICES	NO	TO PERFECT, MUST FILE WITH THE OFFICE OF THE SECRETARY OF STATE	TIME VET TREATS THE LIVESTOCK	IF PERFECTED, PRIORITY OVER ALL OTHER LIENS AND ENCUMBRANCES, REGARDLESS OF FILING DATE IF UNPERFECTED, PRIORITY AS ACCORDING TO RULES OF PRIORITY NOT SUPERIOR TO A COURT-ORDERED LIEN PROVIDED IN § 717.4, IF SUCH LIEN IS PERFECTED AS AN AGRICULTURAL LIEN
LIEN ON LIVESTOCK IN IMMEDIATE NEED OF SUSTENANCE OR NEGLECTED IOWA CODE ANN. §§ 717.1 – 717.6	DEPARTMENT OF AGRICULTURE; LOCAL AUTHORITY	LIVESTOCK, IDENTIFIABLE PROCEEDS FROM THE DISPOSITION OF THE LIVESTOCK, AND PRODUCTS FROM THE LIVESTOCK IN THE PRODUCTS' UNMANUFACTURED STATES	NOT SPECIFIED, BUT IMPLIED	YES, BY FILING A FINANCIAL STATEMENT IN THE OFFICE OF THE SECRETARY OF STATE NO LATER THAN TWENTY DAYS AFTER THE EFFECTIVE DATE OF THE LIEN	DATE THE COURT ORDER IS ENTERED	IF PERFECTED, PRIORITY OVER A CONFLICTING LIEN OR SECURITY INTEREST IN THE LIVESTOCK AND ASSOCIATED PROCEEDS AND PRODUCTS, INCLUDING LIENS OR SECURITY INTERESTS PERFECTED PRIOR TO THE PERFECTION OF THE COURT-ORDERED LIEN

* A person who is a custom cattle feedlot operator may file a financing statement and enforce a lien as a contract producer under Chapter 579A or under Chapter 579B, but not both. Iowa Code Ann. § 579A.5. A person who is a custom cattle feedlot operator as defined in § 579A.1 may file and enforce a lien as a contract producer under this chapter or chapter 579A, but not both. Iowa Code Ann. § 579B.7.

Secondary sources:

Landlord Liens, 0130 SURVEYS 26, Thomson Reuters (last updated March 2020)





The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

Statutory Agricultural Lien Rapid Finder Chart: *Michigan*

Originally published 1993 by **Martha L. Noble**

Updated 2008 by **Elizabeth R. Rumley & Jennifer Fiser**

Updated 2020 by **Micah Brown**

* The statutes are current through the 2020 Regular Session of the 100th Michigan State Legislature



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

Statutory Agricultural Lien Rapid Finder Chart: Michigan

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
LIEN ON PRODUCE OF GRAIN DEALER MICH. COMP. LAWS ANN. § 285.86A	CLAIMANT THAT POSSESSES A WAREHOUSE RECEIPT OR WRITTEN EVIDENCE OF OWNERSHIP OR STORAGE; DIRECTOR OF DEPARTMENT OF AGRICULTURE	ALL OF THE FARM PRODUCE ASSETS OF A GRAIN DEALER	NO	NO	DATE THE FARM PRODUCE IS DELIVERED TO THE GRAIN DEALER	PRIORITY OVER A CONFLICTING SECURITY INTEREST IN OR AGRICULTURAL LIEN ON SAME COLLATERAL
LIEN FOR ERADICATION OF CHERRY PESTS MICH. COMP. LAWS ANN. § 286.85	COMMISSIONER OF AGRICULTURE	REAL PROPERTY IN WHICH EXPENSES WERE FURNISHED TO CONTROL OR ERADICATE PESTS	NO	YES, THE BILL FOR EXPENSES MUST BE CERTIFIED TO THE SUPERVISOR OF THE TOWNSHIP IN WHICH THE PROPERTY IS LOCATED	THIRTY DAYS AFTER BILL IS ISSUED AND GOES UNPAID	NOT SPECIFIED
LIEN FOR WHITE PINE BLISTER RUST CONTROL AREAS MICH. COMP. LAWS ANN. § 286.105	COMMISSIONER OF AGRICULTURE	REAL PROPERTY IN WHICH EXPENSES WERE FURNISHED TO ERADICATE SUCH PLANTS	NO	NOT SPECIFIED	NOT SPECIFIED	NOT SPECIFIED
LIEN ON FARMLAND AND OPEN SPACE PRESERVATION DEVELOPMENT MICH. COMP. LAWS ANN. § 324.36113	LOCAL GOVERNING BODY	REAL PROPERTY FORMERLY SUBJECT TO OPEN SPACE DEVELOPMENT RIGHTS EASEMENT	NO	YES	NOT SPECIFIED	NOT SPECIFIED
LIEN ON DRIFTING FOREST PRODUCTS MICH. COMP. LAWS ANN. § 426.160	OWNER OF LAND ADJACENT TO WATER WHO INCURS DAMAGES FROM DRIFT FOREST PRODUCTS	DRIFTING FOREST PRODUCTS	NO	NO	NOT SPECIFIED	NONE



AMERICAN BANKRUPTCY INSTITUTE

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
WAREHOUSE LIEN MICH. COMP. LAWS ANN. §§ 440.7209 – 440.7210	WAREHOUSEMAN	GOODS COVERED BY A WAREHOUSE RECEIPT OR ON PROCEEDS THEREOF	YES, LIEN IS LOST IF WAREHOUSE VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCABLE BY COMMERCIAL REASONABLE SALE	THE DATE OF THE WAREHOUSE RECEIPT OR STORAGE AGREEMENT	ENFORCABLE BY COMMERCIAL REASONABLE SALE
CARRIER'S LIEN MICH. COMP. LAWS ANN. §§ 440.7307 – 440.7308	CARRIER	GOODS COVERED BY A BILL OF LADING	YES, LIEN IS LOST IF CARRIER VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCABLE BY COMMERCIAL REASONABLE SALE	AFTER THE DATE OF THE CARRIER'S RECEIPT OF THE GOODS FOR STORAGE OR TRANSPORTATION	ENFORCABLE BY COMMERCIAL REASONABLE SALE
LIEN OF RIVER IMPROVEMENT COMPANY UPON LOGS, LUMBER, AND TIMBER MICH. COMP. LAWS ANN. §§ 485.121 – 485.123	RIVER IMPROVEMENT COMPANY WHICH BREAKS UP LOGJAM OR SECURES LOGS, LUMBER, OR TIMBER	LOGS, LUMBER, OR TIMBER THAT OBSTRUCTS NAVIGATION	YES, AUTHORIZED BY THE STATUTE	NO	NOT SPECIFIED	NONE
LIEN OF MECHANIC, ARTISAN, TRADESMAN, OR MANUFACTURER; KEEPER OF ANIMALS MICH. COMP. LAWS ANN. §§ 570.185 – 570.194	PERSON WHO REPAIRS OR MANUFACTURES PERSONAL PROPERTY PERSON WHO KEEPS OR CARES FOR LIVESTOCK	PERSONAL PROPERTY PROVIDED WITH SERVICES LIVESTOCK PROVIDED WITH CARE	YES, AUTHORIZED BY THE STATUTE	NO	NOT SPECIFIED	NONE
LIEN FOR PRESSING, THRESHING OR HULLING MICH. COMP. LAWS ANN. §§ 570.331 – 570.339	OWNER, PART-OWNER OR LESSEE OF MACHINE USED TO PRESS, THRESH OR HULL ANOTHER'S AGRICULTURAL PRODUCTS	AGRICULTURAL PRODUCTS PROVIDED WITH SERVICES	NO	YES, WITH THE REGISTER OF DEEDS IN THE COUNTY WHERE THE SERVICES WERE PERFORMED	DATE THE LIEN STATEMENT IS FILED	NONE
RAILROAD COMPANY'S LIEN ON ANIMALS MICH. COMP. LAWS ANN. § 750.51	RAILROAD COMPANY WHICH PROVIDES FOOD, WATER, OR SHELTER TO A TRANSPORTED ANIMAL	ANIMAL PROVIDED WITH CARE	NO	NO	NOT SPECIFIED	NONE





The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

Statutory Agricultural Lien Rapid Finder Chart: *Minnesota*

Originally published 1993 by **Martha L. Noble**

Updated 2008 by **Elizabeth R. Rumley & Jennifer Fiser**

Updated 2020 by **Micah Brown**

* The statutes are current through the 2020 Regular Session and 1st through 7th Special Sessions of the Minnesota State Legislature



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

Statutory Agricultural Lien Rapid Finder Chart: Minnesota

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
TAX ASSESSMENT ON NOXIOUS WEED CONTROL AND ERADICATION MINN. STAT. ANN. §§ 18.78 – 18.83	COMMISSIONER OF AGRICULTURE	REAL PROPERTY UPON WHICH INSPECTOR INCURS EXPENSES TO CONTROL OR ERADICATE NOXIOUS WEEDS	NO	YES, WITH THE COUNTY AUDITOR IN EACH COUNTY OF EACH TRACT SERVICED	DATE OF FILING THE STATEMENT OF COST FOR SERVICES WITH THE COUNTY AUDITOR	NO PRIORITY; OWNER OF PROPERTY REQUIRED TO PAY WITH PAYMENT OF GENERAL TAXES
TAX LEVY FOR PLANT PEST CONTROL PROGRAM MINN. STAT. ANN. § 18G.13	LOCAL GOVERNING BODY	ALL TAXABLE REAL PROPERTY WITHIN THE CONTROL PROGRAM JURISDICTION	NO	YES, THE LEVY MUST BE CERTIFIED TO THE COUNTY AUDITOR	NOT SPECIFIED	NOT SPECIFIED
LIEN FOR PLANT QUARANTINE EXPENSES MINN. STAT. ANN. § 18H.03	COMMISSIONER OF AGRICULTURE	REAL PROPERTY UPON WHICH COMMISSIONER INCURS EXPENSES	NO	YES, A STATEMENT OF THE COST OF ALL SERVICES RENDERED ON THE PROPERTY WITH THE COUNTY AUDITOR OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED	DATE THE STATEMENT IS FILED	NOT SPECIFIED; COLLECTED ACCORDING TO MINN. STAT. ANN. § 429.101
TAX LEVY FOR CONTROL OF FOREST AND SHADE TREE PEST MINN. STAT. ANN. §§ 89.51 – 59.64	COMMISSIONER OF NATURAL RESOURCES	ALL TAXALBE REAL PROPERTY LOCATED WITHIN THE CONTROL ZONE	NO	YES, ALL UNPAID CHARGES MUST BE REPORTED TO THE TAX LEVYING AUTHORITY FOR THE COUNTY WHERE THE ASSESSED PROPERTY IS LOCATED	DATE TAX LEVY IS FILED WITH THE COUNTY	COLLECTION DETERMINED BY THE SPECIAL ASSESSMENT AND AD VALOREM PROPERTY TAX PROCEDURE
WAREHOUSE LIEN MINN. STAT. ANN. §§ 336.7-209 – 336.7-210	WAREHOUSE	GOODS COVERED BY A WAREHOUSE RECEIPT OR STORAGE AGREEMENT OR ON THE PROCEEDS THEREOF	YES, LIEN IS LOST IF WAREHOUSE VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCABLE BY COMMERCIALY REASONABLE SALE	THE DATE OF THE WAREHOUSE RECEIPT OR STORAGE AGREEMENT	ENFORCABLE BY COMMERCIALY REASONABLE SALE



2026 CENTRAL STATES BANKRUPTCY WORKSHOP

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
CARRIER'S LIEN MINN. STAT. ANN. §§ 336.7-307 – 336.7-308	CARRIER	GOODS COVERED BY A BILL OF LADING OR ON THE PROCEEDS THEREOF	YES, LIEN IS LOST IF CARRIER VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCABLE BY COMMERCIALY REASONABLE SALE	AFTER THE DATE OF THE CARRIER'S RECEIPT OF THE GOODS FOR STORAGE OR TRANSPORTATION	ENFORCABLE BY COMMERCIALY REASONABLE SALE
LIEN ON NEGLECTED ANIMAL MINN. STAT. ANN. § 343.29	PEACE OFFICERS, AGENTS OF SOCIETIES FOR THE PREVENTION OF CRUELTY TO ANIMALS AND OTHERS WHO CARE FOR NEGLECTED ANIMALS	ANIMALS PROVIDED WITH CARE	YES	YES, NOTICE OF POSSESSION OF THE ANIMAL MUST BE FILED WITH THE TOWN CLERK	NOT SPECIFIED	NONE
LIEN ON ESTRAYS MINN. STAT. ANN. §§ 346.01 – 346.07	PERSON WHO TOOK UP ESTRAY AND INCURRED EXPENSES CARING FOR THE ESTRAY	THE ESTRAY CARED FOR	YES	YES, IF THE OWNER IS UNKNOWN BY THE FINDER MUST FILE A NOTICE WITH THE TOWN CLERK	NOT SPECIFIED	NOT SPECIFIED
MECHANIC, LABORER, AND MATERIALMAN LIEN MINN. STAT. ANN. §§ 514.01 – 514.16	ANY PERSON WHO PROVIDES LABOR, SERVICES, OR MATERIALS OR MACHINERY TO IMPROVE REAL ESTATE OR ANY PERSON WHO PERFORMS ENGINEERING OR LAND SURVEYING SERVICES ON THE REAL ESTATE	THE IMPROVEMENT AND THE LAND FURNISHED WITH LABOR, SERVICES, OR MATERIALS	NO	YES, MUST FILE STATEMENT OF CLAIM WITHIN 120 DAYS OF LAST WORK OR MATERIALS PROVIDED WITH THE COUNTY RECORDER OR, IF REGISTERED LAND, WITH THE REGISTRAR OF TITLES OF THE COUNTY IN WHICH THE IMPROVED LAND IS LOCATED	DATE THE FIRST ITEM OF MATERIAL OR LABOR IS FURNISHED UPON THE REAL PROPERTY	PRIORITY TO ANY MORTGAGE OR OTHER ENCUMBRANCE NOT THEN RECORDED, UNLESS LIENHOLDER HAD ACTUAL NOTICE OF OTHER LIEN NOT SUPERIOR BONA FIDE PURCHASER, MORTGAGEE, OR ENCUMBRANCER WITHOUT ACTUAL OR RECORD NOTICE
MECHANICS' LIEN ON PERSONAL PROPERTY MINN. STAT. ANN. §§ 514.18 – 514.22	PERSON WHO STORES, CARES FOR, OR ENHANCES THE VALUE OF PERSONAL PROPERTY	PERSONAL PROPERTY, INCLUDING ANIMALS, TOOLS, MACHINERY, AND IMPLEMENTS	NO; STATUTE PROVIDES FOR POSSESSORY AND NON-POSSESSORY LIENS	IF POSSESSION IS LOST, LIEN STATEMENT MUST BE FILED IN THE SAME MANNER AS A UCC FINANCING STATEMENT LIEN STATEMENT IS ALSO FILED ON A CENTRALIZED COMPUTER SYSTEM (MINN. STAT. ANN. § 366.9-411)	NOT SPECIFIED	NONPOSSESSORY LIEN IS SUBJECT TO PRIOR RECORDED LIENS AND TO PURCHASE BY PARTIES WITHOUT NOTICE OF THE LIEN FILED LIEN IS CONSIDERED UCC SECURITY INTEREST



AMERICAN BANKRUPTCY INSTITUTE

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
LIEN ON TIMBER FOR LABOR MINN. STAT. ANN. §§ 514.40 – 514.50; §§ 514.54 – 514.56	PERSON WHO PERFORMS MANUAL LABOR OR OTHER SERVICES IN CUTTING, PROCESSING, OR HAULING TIMBER	TIMBER AND SPECIFIED TIMBER PRODUCTS	NO	YES; FOR MARKED TIMBER, WITH COMMISSIONER OF NATURAL RESOURCES FOR UNMARKED TIMBER, WITH THE DISTRICT COURT OF THE COUNTY IN WHICH THE SERVICES WERE PERFORMED	NOT SPECIFIED	PREFERRED TO ALL OTHER CLAIMS EXCEPT THOSE OF THE STATE OF MINNESOTA AND CLAIMS OF AN OWNER OR OCCUPANT OF LAND FROM WHICH TIMBER IS UNLAWFULLY REMOVED
LIEN UPON OBSTRUCTING OR INTERMIXED LOGS MINN. STAT. ANN. § 514.51	PERSON WHO DRIVES OBSTRUCTING OR INTERMINGLED LOGS OR TIMBER OWNED BY ANOTHER	LOGS OR TIMBER	NO	NOT SPECIFIED	NOT SPECIFIED	NONE
LIEN OF THE COMMISSIONER OF NATURAL RESOURCES ON LOGS, TIMBER, AND LUMBER MINN. STAT. ANN. §§ 514.57 – 514.58	MINNESOTA COMMISSIONER OF NATURAL RESOURCES	LOGS, TIMBER, OR LUMBER INVOLVED WITH OFFICIAL SERVICES	YES, AUTHORIZED BY STATUTE	NO	NOT SPECIFIED	NONE
LIEN FOR UNPAID WAGES MINN. STAT. ANN. § 514.59	UNPAID EMPLOYEE	ALL PROPERTY OF THE EMPLOYER	NOT SPECIFIED, BUT IMPLIED THAT POSSESSION IS NOT REQUIRED	NOT SPECIFIED	NOT SPECIFIED	PRIOR TO MORTGAGES, JUDGMENTS, AND OTHER LIENS WHICH ATTACH AFTER THE BEGINNING OF THE LABOR OR SERVICES BY WHICH THE WAGES WERE EARNED
LIEN ON CROPS FOR RENTAL VALUE OF FARM MACHINERY DURING MEDIATION MINN. STAT. ANN. § 514.661	CREDITOR WITH A PERFECTED OR UNPERFECTED SECURITY INTEREST IN SEASONAL USE MACHINERY, WHO ENGAGES IN DEBT MEDIATION	CROPS PRODUCED BY THE DEBTOR IN THE CALENDAR YEAR IN WHICH DEBT MEDIATION OCCURS	NO	YES, WITH THE APPROPRIATE OFFICE FOR FILING A UCC FINANCING STATEMENT	NOT SPECIFIED	PERFECTED LIEN HAS PRIORITY OVER LIENS AND SECURITY INTERESTS UNPERFECTED LIEN HAS THE PRIORITY OF AN UNPERFECTED UCC SECURITY INTEREST



2026 CENTRAL STATES BANKRUPTCY WORKSHOP

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
VETERINARIANS LIEN MINN. STAT. ANN. §§ 514.93 – 514.94; §§ 514.18 – 514.22; §§ 336A.01 – 336A.16	VETERINARIAN THAT PROVIDED CARE AND TREATMENT TO UNCLAIMED ANIMAL	PROPERTY OF OWNER OR LAWFUL POSSESSOR	YES	YES, RECORD OF SALE WITH THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH SALE IS MADE	TEN DAYS AFTER COMPLETION OF VETERINARY CARE AND TREATMENT	PRIORITY DETERMINED BY ARTICLE 9 OF THE UCC
AGRICULTURAL PRODUCER'S LIEN MINN. STAT. ANN. § 514.945; §§ 336A.01 – 336A.16	PRODUCER OF AGRICULTURAL COMMODITIES, EXCEPT RAW MILK AND SPECIFIED GRAINS	AGRICULTURAL COMMODITIES, EXCEPT RAW MILK AND SPECIFIED GRAINS PROCEEDS AND PRODUCTS OF SUCH AGRICULTURAL COMMODITIES	NO	YES, LIEN IS PERFECTED UNTIL 20 DAYS AFTER DELIVERY WITHOUT FILING, AT WHICH TIME A LIEN STATEMENT MUST BE FILED WITH THE APPROPRIATE OFFICE FOR FILING A U.S. FINANCING STATEMENT LIEN STATEMENT IS ALSO FILED ON A CENTRALIZED COMPUTER SYSTEM (MINN. STAT. ANN. § 366.9-411)	DATE COMMODITIES ARE DELIVERED	CONTINUOUSLY PERFECTED LIEN HAS PRIORITY OVER OTHER LIENS AND ENCUMBRANCES, REGARDLESS OF DATE FILED LIEN FILED 20 DAYS OR MORE AFTER DELIVERY HAS PRIORITY IN ORDER THAT IT IS FILED UNPERFECTED LIEN HAS PRIORITY OF UNPERFECTED UCC SECURITY INTEREST PURCHASER WITHOUT WRITTEN NOTICE OF THE LIEN TAKES FREE OF THE LIEN
AGRICULTURAL LIEN ON CROPS MINN. STAT. ANN. §§ 514.963 – 514.964; §§ 336A.01 – 336A.16	PERSON LEASING REAL PROPERTY FOR AGRICULTURAL PRODUCTION PERSON PROVIDING COMBINING, PICKING, HARVESTING, HAULTING, BALING, DRYING OR STORING SERVICES IN THE ORDINARY COURSE OF BUSINESS SUPPLIER FURNISHING CROP PRODUCTION INPUTS IN THE ORDINARY COURSE OF BUSINESS	CROPS PRODUCED ON THE REAL PROPERTY IN THE CROP YEAR THAT IS SUBJECT TO THE LEASE CROPS COMBINED, PICKED, HARVESTED, HAULED, BALED, DRIED, OR STORED EXISTING CROPS UPON LAND, CROPS PRODUCED FROM FURNISHED SEED, OR CROPS PRODUCED, HARVESTED OR PROCESSED USING A PETROLEUM PRODUCT	NO NO NO	PERFECTED WHEN FILING STATEMENT IS FILED WITH SEC. OF STATE PERFECTED WHEN FILING STATEMENT IS FILED WITH SEC. OF STATE PERFECTED WHEN FILING STATEMENT IS FILED WITH SEC. OF STATE	WHEN THE CROPS BECOME GROWING CROPS UPON THE SERVICES BEING PROVIDED BY THE HARVESTER WHEN THE CROP PRODUCTION INPUTS ARE FURNISHED BY THE SUPPLIER TO THE PURCHASER	PRIORITY OVER ALL COMPETING SECURITY INTERESTS AND ALL AG LIENS IN CROPS PRIORITY OVER ALL COMPETING SECURITY INTERESTS AND ALL AG LIENS IN CROPS EXCEPT LANDLORDS LIEN PRIORITY OVER ALL COMPETING SECURITY INTERESTS AND ALL AG LIENS IN CROPS EXCEPT LANDLORDS LIEN AND HARVESTER'S LIEN



AMERICAN BANKRUPTCY INSTITUTE

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
AGRICULTURAL LIEN ON LIVESTOCK MINN. STAT. ANN. §§ 514.965 – 514.966; §§ 336A.01 – 336A.16	LICENSED VETERINARIAN PERFORMING VETERINARY CARE	ANIMAL	NO	PERFECTED WHEN FILING STATEMENT IS FILED WITH SEC. OF STATE	EFFECTIVE UPON PERFORMANCE OF SERVICES	PRIORITY OVER ALL COMPETING SECURITY INTERESTS AND ALL AG LIENS ON THE ANIMALS
	OWNER OF LIVESTOCK USED FOR BREEDING SERVICES	LIVESTOCK BRED AND ANY RESULTING OFFSPRING	NO	PERFECTED WHEN FILING STATEMENT IS FILED WITH SEC. OF STATE	EFFECTIVE WHEN SERVICES ARE PROVIDED	PRIORITY OVER ALL COMPETING SECURITY INTERESTS AND ALL AG LIENS ON THE ANIMALS EXCEPT VETERINARIAN LIENS AND FEEDER LIENS
	SUPPLIER FURNISHING LIVESTOCK PRODUCTION INPUTS	LIVESTOCK	NO	PERFECTED WHEN FILING STATEMENT IS FILED WITH SEC. OF STATE	EFFECTIVE WHEN AGRICULTURAL PRODUCTION INPUTS ARE FURNISHED	PRIORITY OVER ALL COMPETING SECURITY INTERESTS AND ALL AG LIENS ON THE ANIMALS EXCEPT VETERINARIAN LIENS, FEEDER LIENS, AND BREEDER LIENS
	PERSON WHO STORES, CARES FOR, OR CONTRIBUTES TO THE KEEPING, FEEDING, PASTURING OR OTHER CARE OF LIVESTOCK IN THE ORDINARY COURSE OF BUSINESS	LIVESTOCK	NO	PERFECTED WHEN FILING STATEMENT IS FILED WITH SEC. OF STATE	EFFECTIVE WHEN THE SERVICES OR CONTRIBUTIONS ARE PROVIDED THE OBLIGOR	PRIORITY OVER ALL COMPETING SECURITY INTERESTS AND ALL AG LIENS ON THE ANIMALS EXCEPT VETERINARIAN LIENS





The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

Statutory Agricultural Lien Rapid Finder Chart: *Wisconsin*

Originally published 1993 by **Martha L. Noble**

Updated 2008 by **Elizabeth R. Rumley & Jennifer Fiser**

Updated 2020 by **Micah Brown**

* The statutes are current through the 2019-2020 Wisconsin State Legislature Session



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

Statutory Agricultural Lien Rapid Finder Chart: Wisconsin

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	NOTICE/FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
LIEN FOR EXPENSES OF FOREST PEST CONTROL WIS. STAT. ANN. § 26.30	DEPARTMENT OF NATURAL RESOURCES	LAND WHERE FOREST INSPECTION PEST CONTROL WAS COMPLETED	NO	YES, IN ACCORDANCE WITH PROCEDURES IN WIS. STAT. ANN. § 779 ET SEQ.	AT TIME OF FILING	NOT SPECIFIED
TAX LEVY FOR ABATEMENT OF PESTS WIS. STAT. ANN. § 94.02	DEPARTMENT OF AGRICULTURE	REAL PROPERTY UPON WHICH EXPENSES WERE INCURRED TO ABATE PESTS	NO	YES, MUST CERTIFY TAX WITH ASSESSOR'S CLERK IN THE CITY WHERE THE REAL PROPERTY IS LOCATED	THE DATE IN WHICH THE TAX IS CERTIFIED BY THE ASSESSOR'S CLERK	NONE
EMPLOYEE'S LIEN FOR UNPAID WAGES WIS. STAT. ANN. § 109.09	DEPARTMENT OF WORKFORCE DEVELOPMENT; UNPAID EMPLOYEE	ALL REAL OR PERSONAL PROPERTY OF THE EMPLOYER	NO	YES, MUST FILE A NOTICE OF THE LIEN WITH THE CLERK OF THE CIRCUIT COURT OF THE COUNTY IN WHICH THE ALL OR SOME SERVICES WERE PERFORMED	DATE THAT NOTICE OF LIEN IS FILED	NOT SUPERIOR TO LIENS OF A COMMERCIAL LENDING INSTITUTION AGAINST THE EMPLOYER
LIEN ON STRAY ANIMALS WIS. STAT. ANN. §§ 170.01-170.06	TOWN RESIDENT WHO TAKES UP A STRAY ANIMAL FOUND ON PROPERTY OWNED AND OCCUPIED BY THE RESIDENT	STRAY ANIMALS TAKEN UP BY FINDER, INCLUDING LIVESTOCK	YES, IMPLIED BY THE STATUTE	YES, IF OWNER IS KNOWN, THEN FINDER MUST NOTIFY OWNER WITHIN 7 DAYS. IF OWNER UNKNOWN, THEN NOTICE TO BE FILED WITH TOWN CLERK WITHIN 10 DAYS OF FINDING STRAY. IF ANIMAL IS WORTH \$50 OR MORE, CERTIFICATE MUST BE FILED WITH THE TOWN CLERK. CERTIFICATE OF APPRAISAL FOR AN ANIMAL VALUED AT \$10 OR MORE MUST BE FILED WITH THE TOWN CLERK	NOT SPECIFIED	NONE



2026 CENTRAL STATES BANKRUPTCY WORKSHOP

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	NOTICE/FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
LIEN FOR COMMON CARRIERS WIS. STAT. ANN. § 171.07	COMMON CARRIER	ANY PROPERTY TRANSPORTED OR STORED WITH, OR LEFT WITH ANY COMMON CARRIER	YES	ENFORCEABLE BY COMMERCIALY REASONABLE SALE	ENFORCEABLE BY COMMERCIALY REASONABLE SALE	ENFORCEABLE BY COMMERCIALY REASONABLE SALE
ANIMAL FINDER LIEN WIS. STAT. ANN. §§ 172.01 – 172.05	FINDER OF AN ANIMAL/RUNNING AT LARGE	ANIMAL FOUND AND SEIZED	YES	IF OWNER UNKNOWN, THEN FINDER OF ANIMAL MUST FILE NOTICE WITHIN 10 DAYS OF FINDING ANIMAL WITH TOWN CLERK WHERE ANIMAL IS FOUND; WHEN THE ANIMAL'S VALUE EXCEEDS \$50, FINDER MUST ALSO PUBLISH NOTICE IN THE COUNTY WHERE THE ANIMAL IS FOUND CERTIFICATE OF APPRAISAL IF ANIMAL IS VALUED AT \$10 OR MORE	UPON COMPLETION OF THE ADJUDICATORY DISPUTE RESOLUTION BETWEEN THE FINDER AND THE OWNER PRESCRIBED BY WIS. STAT. ANN. § 172.05	NOT SPECIFIED
LIEN OF WAREHOUSE KEEPERS WIS. STAT. ANN. §§ 407.209 – 407.210	WAREHOUSE KEEPER	GOODS COVERED BY A WAREHOUSE RECEIPT OR ON THE PROCEEDS THEREOF	YES, LIEN IS LOST IF WAREHOUSE VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCABLE BY COMMERCIALY REASONABLE SALE	THE DATE OF THE WAREHOUSE RECEIPT OR STORAGE AGREEMENT	ENFORCEABLE BY COMMERCIALY REASONABLE SALE
LIEN OF CARRIERS WIS. STAT. ANN. §§ 407.307 – 407.308	CARRIER	GOODS COVERED BY A BILL OF LADING	YES, LIEN IS LOST IF CARRIER VOLUNTARILY DELIVERS OR UNJUSTIFIABLY REFUSES TO DELIVER	ENFORCABLE BY COMMERCIALY REASONABLE SALE	AFTER THE DATE OF THE CARRIER'S RECEIPT OF THE GOODS FOR STORAGE OR TRANSPORTATION	ENFORCEABLE BY COMMERCIALY REASONABLE SALE



AMERICAN BANKRUPTCY INSTITUTE

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	NOTICE/FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
CONSTRUCTION LIEN WIS. STAT. ANN. §§ 779.01 – 779.17	ANY PERSON WHO PERFORMS, FURNISHES, OR PROCURES ANY WORK, LABOR, SERVICE, OR MATERIALS	REAL PROPERTY FURNISHED WITH WORK, LABOR, SERVICE, OR MATERIALS	NO	NOTICE MUST BE PROVIDED TO THE OWNER OF THE PROPERTY AT LEAST THIRTY DAYS BEFORE FILING THE LIEN CLAIM YES, MUST FILE CLAIM FOR LIEN IN THE OFFICE OF THE CLERK OF CIRCUIT COURT OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED WITHIN SIX MONTHS FROM THE LAST WORK, LABOR, SERVICE, OR MATERIALS PROVIDED TO THE REAL PROPERTY	THE DATE AFTER NOTICE IS PROVIDED TO THE OWNER AND LIEN CLAIM IS FILED WITH THE OFFICE OF THE CLERK OF THE CIRCUIT COURT	PRIOR TO ANY SUBSEQUENT LIEN, EXCEPT AS OTHERWISE PROVIDED FOR ENVIRONMENTAL REPAIR LIENS AND CERTAIN MORTGAGES
LOG LIENS WIS. STAT. ANN. §§ 779.18-779.31	PERSON WHO PERFORMS SERVICES IN OBTAINING LOGS AND TIMBER PRODUCTS, INCLUDING COOKS AND SERVERS PERSON WHO FURNISHES SUPPLIES FOR OBTAINING LOGS AND TIMBER PRODUCTS PERSON WHO DRIVES ANOTHER'S LOGS COMPANY AUTHORIZED TO COLLECT TOLLS ON LOGS, TIMBER, OR LUMBER	LOGS OR TIMBER AND PRODUCTS MANUFACTURED FROM THE LOGS OR TIMBER LOGS OR TIMBER AND PRODUCTS MANUFACTURED FROM THE LOGS OR TIMBER LOGS DRIVEN TO A DESTINATION POINT LOGS, TIMBER, OR LUMBER SUBJECT TO A TOLL	NO	YES, WITH THE CLERK OF THE CIRCUIT COURT IN THE COUNTY WHERE ALL OR SOME OF THE SERVICES OR SOME PART OF THE SERVICES WERE PERFORMED; WITHIN 3 MONTHS OF LAST DAY OF SERVICE PERFORMED	IMPLIED BY STATUTE THAT ATTACHMENT OCCURS WHEN NOTICE OF LIEN IS FILED WITH CLERK	LIEN TAKES PRECEDENCE OVER ALL OTHER ENCUMBRANCES, CLAIMS, OR LIENS
MECHANIC'S LIEN WIS. STAT. ANN. §§ 779.41 – 779.42; 779.48	MECHANIC, GARAGE KEEPER, OR SHOP KEEPER	PERSONAL PROPERTY PROVIDED WITH SERVICES TO IMPROVE THE PROPERTY OR DOES ANY WORK ON THE PROPERTY AT THE REQUEST OF THE OWNER	POSSESSION IS PERMITTED, BUT NOT REQUIRED	NO	DATE SERVICES COMMENCE	FOR CHARGES EXCEEDING \$1,500, LIEN IS SUBJECT TO SECURITY INTERESTS PERFECTED BEFORE THE LIEN ATTACHES



2026 CENTRAL STATES BANKRUPTCY WORKSHOP

TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	NOTICE/FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
LIEN OF LIVERY STABLE OR BOARDING STABLE KEEPER, AGISTER, OR GARAGE KEEPER WIS. STAT. ANN. §§ 779.43; 779.48	LIVERY STABLE OR BOARDING STABLE KEEPER, AGISTER, OR GARAGE KEEPER	CARRIAGES, AUTOMOBILES, HARNESS OR ANIMALS	POSSESSION IS PERMITTED, BUT NOT REQUIRED	NO	NOT SPECIFIED	NONE
LIEN OF FACTORS AND BROKERS WIS. STAT. ANN. §§ 779.45 – 407.308	FACTOR, BROKER OR OTHER AGENT ENTRUSTED WITH PROPERTY	BILL OF LADING, CUSTOMHOUSE PERMIT, WAREHOUSE RECEIPT OR PERSONAL PROPERTY FOR THE PURPOSE OF SALE	POSSESSION IS PERMITTED, BUT NOT REQUIRED	ENFORCEABLE BY COMMERCIALY REASONABLE SALE	ENFORCEABLE BY COMMERCIALY REASONABLE SALE	ENFORCEABLE BY COMMERCIALY REASONABLE SALE
ANIMAL BREEDER'S LIEN WIS. STAT. ANN. § 779.49	OWNER OF A STALLION, JACKASS, OR BULL, OR SEMEN FROM SUCH AN ANIMAL, KEPT AND USED FOR BREEDING SERVICES	FEMALE ANIMAL PROVIDED WITH BREEDING SERVICE AND HER OFFSPRING	NO, POSSESSION IS NOT REQUIRED BUT THE OWNER OF THE MALE ANIMAL USED TO SERVICE THE FEMALE ANIMAL MAY SEIZE AND TAKE POSSESSION OF THE DAM AND OFFSPRING OR EITHER WITHOUT PROCESS AT ANY TIME BEFORE THE OFFSPRING IS ONE YEAR OLD, IN CASE THE PRICE AGREED UPON FOR THE SERVICES REMAINS UNPAID, AND SELL THE OFFSPRING AT PUBLIC AUCTION	FILING IS ONLY NECESSARY FOR THE LIEN TO BE EFFECTIVE AGAINST GOOD FAITH PURCHASERS OF THE FEMALE ANIMAL OR HER OFFSPRING; MUST FILE WITH THE REGISTER OF DEEDS IN THE COUNTY WHERE THE OWNER OF THE FEMALE ANIMAL RESIDES	NOT SPECIFIED	LIEN IS EFFECTIVE AGAINST INNOCENT PURCHASER OR MORTGAGEE OF THE FEMALE ANIMAL OR HER OFFSPRING IF STATEMENT SHOWING THAT THE SERVICE HAS BEEN RENDERED AND THE AMOUNT DUE FOR THE SERVICE IS FILED WITH THE REGISTER OF DEEDS OF THE COUNTY WHERE THE OWNER OF THE FEMALE ANIMAL RESIDES
LIEN FOR THRESHING, HUSKING, OR BALING WIS. STAT. ANN. § 779.50	PERSON WHO THRESHES GRAIN, HUSKS OR SHELLS CORN, OR BALES HAY OR STRAW BY MACHINE FOR ANOTHER	CROPS, HAY OR STRAW PROVIDED WITH THE SERVICES OF THE LIEN CLAIMANT	NO	YES, WITH THE REGISTER OF DEEDS IN THE COUNTY IN WHICH THE SERVICES WERE PERFORMED WITHIN 15 DAYS FROM THE DATE SERVICES WERE COMPLETED	DATE THE SERVICES COMMENCE	PREFERRED TO ALL OTHER LIENS AND ENCUMBRANCES; PROPERLY REGISTERED LIEN IS EFFECTIVE AGAINST AN INNOCENT PURCHASER FOR VALUE



Faculty

Mark A. Bogdanowicz is a partner with the law firm of Spencer Fane, LLP in Nashville, Tenn., where he concentrates his practice in the areas of business transactions and corporate and commercial litigation, with an emphasis on bankruptcy and creditors' rights. He has represented both secured and unsecured creditors (including landlords, franchisors, trade creditors and utilities) in all aspects of chapter 11 cases. Mr. Bogdanowicz has more than 17 years of experience representing landlords in national retail cases. He serves on the advisory board of ABI's Central States Bankruptcy Workshop, and he is a coordinating editor for the *ABI Journal*, as well as a regular contributor. Mr. Bogdanowicz is admitted to practice before the state courts of Illinois, Indiana and Tennessee, as well as the Seventh Circuit Court of Appeals, the Federal District Courts for the Northern, Central and Southern Districts of Illinois, the Eastern District of Michigan, the Northern and Southern Districts of Indiana and the Middle District of Tennessee. He received his A.B. *cum laude* from Harvard University in 1995 and his J.D. from Vanderbilt University School of Law in 2000, where he was the articles editor of the *Vanderbilt Law Review*.

Rebecca R. DeMarb is a partner with Kali Resolution Partners LLC in Madison, Wis., and Chicago, and a partner with Swanson Sweet LLP also in Madison. She represents companies in financial distress both in and out of court as an attorney and serves as a financial advisor and fiduciary through Kali. Ms. DeMarb was first appointed as a chapter 128 receiver in Wisconsin nearly 20 years ago and has since served as an assignee or receiver in more than 60 matters in state and federal courts. Beginning in 2021, she expanded her fiduciary work to include serving as a chief restructuring officer and began working regionally. Ms. DeMarb has served as an assignee in ABC matters, and she has been appointed to operate and sell or to liquidate businesses and real estate in Wisconsin, Minnesota, South Dakota, Kansas, Michigan and Illinois. She is AV-rated by Martindale-Hubbell and has received numerous honors, including The M&A Advisor Turnaround Award, The M&A Advisor Small Transaction Award, and the Turnaround Management Association's Midwest and National Awards. Ms. DeMarb is a member of the Bankruptcy, Insolvency & Creditors' Rights Section of the State Bar of Wisconsin, the Commercial Receivers Association, ABI and the Turnaround Management Association. She currently serves as co-chair of ABI Central States Bankruptcy Workshop, founded the Wisconsin Network of IWIRC in 2018, and has participated on the IWIRC International Board since 2019. Ms. DeMarb received her J.D. *cum laude* in 1997 from the University of Wisconsin.

Hon. Shon Hastings is Chief U.S. Bankruptcy Judge for the District of North Dakota in Fargo, appointed in September 2011 and reappointed in February 2025. From 2014-21, she was assigned bankruptcy cases in the District of Nebraska. Judge Hastings serves as a mediator for civil cases in the U.S. District Court for the District of North Dakota and bankruptcy cases in the Districts of Minnesota and South Dakota. She has also mediated bankruptcy cases in the Northern and Southern District of Iowa. Judge Hastings serves as the Eighth Circuit Governor on the National Conference of Bankruptcy Judges' Board of Governors. In January 2022, she was appointed to the Bankruptcy Appellate Panel of the Eighth Circuit. She began serving as Chief Judge of the Eighth Circuit Bankruptcy Appellate Panel on Jan. 25, 2024. Judge Hastings received her undergraduate degree and J.D. from the University of North Dakota.

Austin Peiffer is an attorney at Ag & Business Legal Strategies in Hiawatha, Iowa, where he focuses his practice on business bankruptcy matters. He joined the firm in 2020 following a clerkship with Chief Bankruptcy Judge A. Benjamin Goldgar of the U.S. Bankruptcy Court for the Northern District of Illinois. Mr. Peiffer was the American College of Bankruptcy's 2019 Distinguished Law Student for the Eighth Circuit, served as a judicial extern and worked with Washington University's Low-Income Taxpayer Clinic, and in 2025 he became Board Certified in Business Bankruptcy Law by the American Board of Certification. He received his J.D., with a certification in Business & Corporate Law, from Washington University School of Law in St. Louis.

Jeffrey Peterson is a shareholder at Winthrop & Weinstine, P.A. in Minneapolis and focuses his practice on commercial financing, creditors' rights, bankruptcy and agricultural law. He is a frequent speaker on agriculture and finance topics. Mr. Peterson is a former chair of the American Bar Association (ABA) Agricultural and Agribusiness Financing Subcommittee, and a former president of the American Agricultural Law Association (AALA). He also is a Fellow in the American College of Commercial Finance Lawyers (ACCFL). Mr. Peterson received his undergraduate degree in economics from Hamline University and worked for two years as a market analyst for CHS, advising producers and grain cooperatives in South Dakota, Nebraska, Kansas and Colorado on grain and livestock markets. He received his J.D. from the University of Kansas School of Law and his LL.M. in agricultural law from the University of Arkansas.