

THE NEXT GENERATION OF CHAPTER 12
BANKRUPTCY: REVISING THE REMEDY

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I. INTRODUCTION

In 1978, Congress enacted the Bankruptcy Code.¹ Following this enactment, the Bankruptcy Code became effective on October 1, 1979.² Title 11 of the United States Code has since aided millions facing financial plight.³ The Bankruptcy Code facilitated a means of obtaining a fresh start for a wide variety of debtors including, but not limited to, impoverished individuals, multi-million dollar businesses, and municipalities.⁴ Until 1986, though, that wide variety of debtors failed to mention or provide relief for family farmers and fishermen.

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1. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 402, 92 Stat. 2549, 2682 (codified as amended at 11 U.S.C. § 101 (2012)).

2. Karen M. Gebbia-Pinetti, *Bankruptcy Symposium: Interpreting the Bankruptcy Code: An Empirical Study of the Supreme Court's Bankruptcy Decisions*, 3 CHAP. L. REV. 173, 175 n.3 (2000).

3. *Id.* at 178.

4. *Id.* at 177 n.11 (“Chapter 7 relief (liquidation) is available to individuals and businesses; chapter 9 relief (adjustment of debts of a municipality) is available to certain insolvent municipalities; chapter 11 relief (reorganization) is available to individuals and businesses but is used primarily for businesses; . . . and chapter 13 relief (adjustment of debts of an individual with regular income) is available only to individuals who earn a regular income and whose debts fall within specific limits.”). *See generally* 11 U.S.C. § 109 (2012).

In reaction to the 1986 Farm Crisis,⁵ Congress enacted a remedial mechanism for restructuring the nation's burdensome family farm debt.⁶ This mechanism, Chapter 12 bankruptcy, was codified at Chapter 12 of Title 11 of the United States Code.⁷ Chapter 12 bankruptcy, notably the only evenly numbered bankruptcy chapter, is exclusively for use by family farmers and fishermen.⁸ In creating and enacting Chapter 12, Congress believed this new chapter of the Bankruptcy Code, which was designed around the assets of a family farmer or fishermen, would make it "easier for a family farmer to confirm a [p]lan of [r]eorganization."⁹ Further, Congress also noted the heightened risk of the unpredictable nature of the agricultural economy,¹⁰ and the stunning rate at which farms were failing during the farm crisis.¹¹ "The basic premise of Chapter 12 is that it permits a family farmer (judged eligible under the code) to reduce the amount of all indebtedness to the value of non-exempt assets owned by the farmer," thereby limiting debt and discharging the remainder while allowing them to continue to operate his or her farm in the process.¹²

This Note, which focuses exclusively on the family farmer aspect of Chapter 12 bankruptcy, discusses legislative history from the creation of Chapter 12 through its disappearance during multiple "sunset dates."¹³ This Note covers the

5. *Market to Market Classroom—1980s Farm Crisis*, IOWA PUB. TELEVISION, <http://site.iptv.org/mtom/classroom/module/13999/farm-crisis> (last visited July 28, 2017)

("During the 1980s, farmers in the United States were confronted by an economic crisis more severe than any since the Great Depression. Many of those who relied on agriculture for their livelihoods faced financial ruin. The epicenter of the downturn was in the Midwest, but the effects quickly rippled to other areas where agriculture played a prominent role in the local economy.")

6. David H. Hahn, *Chapter 12—The Long Road Back*, 66 NEB. L. REV. 726, 726 (1987).

7. See 11 U.S.C. §§ 120-1231 (2012); *Chapter 12—Family Farmer Bankruptcy or Family Fisherman Bankruptcy*, U.S. BANKR. CT. (Oct. 17, 2005), http://www.iasb.uscourts.gov/v2_db_crs/chapter-12-farmer-fisherman.shtm [hereinafter *Family Farmer Bankruptcy*].

8. Interview with Samuel Z. Marks, Attorney at Law, Marks Law Firm, in Des Moines, Iowa (Oct. 20, 2015); see also *Family Farmer Bankruptcy*, *supra* note 7.

9. Ken D. Duft, *Chapter 12 Bankruptcy in Retrospect; Its Impact on Agribusiness Firms*, AGRIBUSINESS MGMT. 1, <http://www.agribusiness-mgmt.wsu.edu/ExtensionNewsletters/cash-asset/Chap12.pdf> (last visited July 28, 2017).

10. *In re Wichmann*, 77 B.R. 718, 721 (Bankr. D. Neb. 1987); Jonathan K. Van Patten, *Chapter 12 in the Courts*, 38 S.D. L. REV. 52, 75 (1993).

11. *In re Finkbine*, 94 B.R. 461, 466 (Bankr. S.D. Ohio 1988); Van Patten, *supra* note 10, at 83.

12. Duft, *supra* note 9, at 3. See generally *Family Farmer Bankruptcy*, *supra* note 7.

13. *Sunset Law*, BLACK'S LAW DICTIONARY (10th ed. 2014) (The definition of a sunset law is "[a] statute under which a governmental agency or program automatically terminates at the end of a fixed period unless it is formally renewed.")

current state of Chapter 12, and how a farmer would use the Bankruptcy Code should they find themselves in financial trouble. Additionally, this Note delves into the scarce usage of Chapter 12 throughout the state of Iowa during the last five years. It examines the farming economy to predict a reemergence of Chapter 12 usage for the family farmer—nearly thirty years after the farm crisis. Lastly, this Note looks at Chapter 12 bankruptcy from an analytical perspective, calling into question the state of the present day farming economy and the inability for Chapter 12 to accommodate the currently high levels of indebtedness. This Note argues, with a potential twenty-first century farm crisis on the horizon, the aggregate debt level of Chapter 12 bankruptcy should be revised in order to accommodate present day farm indebtedness. With these revisions, Chapter 12 will continue to be an accessible remedy for the family farmer as Congress originally intended.

II. CHAPTER 12: REMEDY DURING TURMOIL

Family farms have historically benefited from legislation most prominently within the first Farm Bill, which was enacted during the Great Depression.¹⁴ The Agricultural Adjustment Act of 1933 acknowledged a critical economic emergency in the vast disproportion concerning the cost of purchasing commodities and the purchasing power of farmers.¹⁵ The remedies established in the Adjustment Act were put in place

[t]o relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, [and] to provide for the orderly liquidation of joint-stock land banks, and for other purposes.¹⁶

This remedy ostensibly worked for the American farmer, and following the Great Depression, there was little discussion regarding the financial anguish of farmers until the 1986 Farm Crisis.¹⁷

14. Barnes Gunn Kelley, Note, *Chapter 12: Entrepreneur Punishment and Family Favorites*, 15 Drake J. Agric. L. 485, 485 (2010); see Agricultural Adjustment Act of 1933, Pub. L. No. 73-10, 48 Stat. 31.

15. Agricultural Adjustment Act, 48 Stat. at 31.

16. *Id.*

17. Interview with James L. Snyder, Assistant U.S. Tr., U.S. Trs.' Office, U.S. Dep't of Justice, in Des Moines, Iowa (Oct. 20, 2015).

Farmers experienced significant financial success in America during the agricultural boom in the 1970s.¹⁸ Following on the heels of this uptick was the bottoming out of the agricultural depression that marked the 1980s and is said to “rival that of the [1930s] in terms of its impacts on farmers.”¹⁹ Farmers were quickly seeing their net worth diminish by more than half as land values plummeted while interest rates skyrocketed, causing a dramatic increase in the cost of credit.²⁰ The farm crisis was felt across the nation. The crisis affected the Midwest first and eventually spread outward until it reached the coasts.²¹ It was then, at one of the most desperate points in America’s farming history, the need to restructure a farmer’s debt while allowing him to retain his property required an addition to the Bankruptcy Code.²² Thus, Chapter 12 was born.²³

At first glance, it appeared farmers should just be able to use one of the preexisting chapters of the Bankruptcy Code in order to achieve financial reprieve. Chapter 13, which is the chapter that focuses on debt reorganization for individuals, seemed like the obvious first choice. Upon further review, the legislature came to realize most farmers were likely to have too much debt to qualify for the narrow parameters of Chapter 13.²⁴ Chapter 11, the default chapter for individuals whose debts exceeded the Chapter 13 limits, was then considered.²⁵ Unfortunately, Chapter 11, which is traditionally used as a means of helping businesses reorganize, was found to be “too complicated, time consuming, expensive, or otherwise unsuitable” for the family farmer and their unique financial obligations.²⁶ To quickly remedy this situation, Congress designed Chapter 12 by using Chapter 13 as a guide²⁷ to “provide a quick and predictable process for reorganizing the debt obligations” of family farmers.²⁸ This legislation sent a timely message to the country that Congress and the government were sensitive to family farmers facing difficult times.²⁹

18. Susan A. Schneider, *Bankruptcy Reform and Family Farmers: Correcting the Disposable Income Problem*, 38 TEX. TECH L. REV. 309, 324 (2006).

19. *Id.* (citations omitted).

20. *Id.* at 324-25.

21. See Thomas J. Knudson, *Middle West’s Farm Crisis Reaches the East*, N.Y. TIMES (Mar. 3, 1986), <http://www.nytimes.com/1986/03/03/nyregion/middle-west-s-farm-crisis-reaches-the-east.html?&pagewanted=all>.

22. See Schneider, *supra* note 18, at 324-25.

23. *Id.*

24. Duft, *supra* note 9, at 2.

25. See Schneider, *supra* note 18, at 325; Duft, *supra* note 9, at 2.

26. Duft, *supra* note 9, at 2.

27. Schneider, *supra* note 18, at 312.

28. *Id.*

29. Van Patten, *supra* note 10, at 53.

While some members of Congress opposed Chapter 12, arguing it would “encourage bankruptcy and discourage a farmer’s incentive to work out arrangements” with lenders,³⁰ Senator Charles Grassley (Republican—Iowa) pushed Chapter 12 through with his passionate mission of “saving the family farm.”³¹ In only three months, Chapter 12 made the journey through the traditionally lengthy and extensive legislative process, evidencing the overwhelming bipartisan support for this mission.³² The broad support of Chapter 12 can be attributed to both the support of family farmers, and the widespread impact felt by the farming crisis from coast to coast.³³

The original parameters of Chapter 12 bankruptcy were narrowly tailored for the amount of debt held by the average family farmer in 1986.³⁴ Family farmers who were eligible to file Chapter 12 were defined as an individual or husband and wife engaged in a farming operation that:

- (1) [H]ave aggregate debts that do not exceed \$1,500,000.00;
- (2) [H]ave at the date of filing at least 80% of their aggregate noncontingent, liquidated debts arising out of a farming operation owned or operated by them . . . ; and
- (3) [R]eceived, during the taxable year preceding the one in which bankruptcy was filed, 50% of their gross income from farming.³⁵

As a direct result, countless people filed for Chapter 12 bankruptcy during the immediate period following its enactment.³⁶ Based on the sheer number of bankruptcies being filed, the court system had no choice but to accommodate by appointing additional judges and trustees to oversee the proceedings.³⁷

In order to push Chapter 12 through the legislative process efficiently, compromises were made by writing in sunset dates for the chapter to be reviewed; to phase Chapter 12 out once it was no longer needed.³⁸ The following chart details

30. Duft, *supra* note 9, at 1, 6.

31. Interview with James L. Snyder, *supra* note 17.

32. Kelley, *supra* note 14, at 486-87; *see also* Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088.

33. 1986 Bankruptcy Act, 100 Stat. 3088; Kelley *supra* note 14, at 487.

34. Interview with James L. Snyder, *supra* note 17.

35. *In re Rinker*, 75 B.R. 65, 66 (Bankr. Ct. S.D. Iowa 1987); *see* 11 U.S.C. § 101(18)(A) (2012).

36. Interview with James L. Snyder, *supra* note 17.

37. 1986 Bankruptcy Act, 100 Stat. 3088.

38. Interview with James L. Snyder, *supra* note 17.

the review dates, the extensions, and sunset dates created throughout the existence of Chapter 12.³⁹ Furthermore, the chart illustrates the lengths of time farmers endured without Chapter 12 as a remedy:

TABLE 1.⁴⁰

Review Date	Extension	Sunset Date Set
Chapter 12 created in 1986		August 1993
August of 1993	5 years	October 1, 1998
Omnibus appropriations bill passed in late October 1998	Retroactive 6 months from October 1, 1998	April 1, 1999
March 30, 1999	6 months	October 1, 1999
October 9, 1999	Retroactive 8 month extension going back to October 1, 1999, when the sunset took place	July 1, 2000
May 11, 2001	11 month retroactive extension going back to July 1, 2000, sunset date	June 1, 2001, which was 20 days later
June 6, 2001	4 months	October 2001
December 19, 2002, Protection of Family Farmers Act of 2002 ⁴¹	6 months	June 2003
August 15, 2003, Family Farmer Bankruptcy Relief Act of 2003 ⁴²	6 months	February 2004
October 25, 2004, Family Farmer Bankruptcy Relief Act of 2004 ⁴³	18 months	April 2006

39. Susan A. Schneider, *History of Chapter 12 Bankruptcy: On Again, Off Again*, AGRIC. L. UPDATE 1, 1-2 (Aug. 2002), <http://www.nationalaglawcenter.org/assets/aala/08-01.pdf>.

40. JEROME M. STAM & BRUCE L. DIXON, U.S. DEP'T OF AGRIC. BULL. NO. 788, FARMER BANKRUPTCIES AND FARM EXITS IN THE UNITED STATES, 1899-2002, 31 (2004).

41. Protection of Family Farmers Act of 2002, Pub. L. No. 107-377, 116 Stat. 3115.

42. Family Farmer Bankruptcy Relief Act of 2003, Pub. L. No. 108-73, 117 Stat. 891.

43. Family Farmer Bankruptcy Relief Act of 2004, Pub. L. No. 108-369, 118 Stat. 1749.

As evidenced by the sheer number of extensions Chapter 12 received in order to fulfill its intended purpose, the temporary status of this legislation was less than ideal. Notably, regardless of whether Chapter 12 was effective or not, attorneys continued to file bankruptcy claims even during periods of ineffectiveness; the presumption that eventually another extension would pass.⁴⁴

In 2005, Congress took steps to end the back and forth game Chapter 12 battled for over a decade by creating a permanent home for it in the Bankruptcy Code.⁴⁵ Along with this permanency came the long overdue adjustments to increase the debt ceiling and reconfigure the farm-related debt percentage in order to accommodate the inflation of debt.⁴⁶ By eliminating these temporary authorizations, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005⁴⁷ significantly benefited family farmers who sought access to a permanent financial remedy under Chapter 12 of the Bankruptcy Code.⁴⁸

III. THE CURRENT STATE AND PROCESS OF CHAPTER 12

In 2005, there was overwhelming support for family farmers who at that time knew the opportunity to restructure debt — while retaining their property and means of income — was consistently available in a time of crisis.⁴⁹ The permanency created by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 created the ideological certainty that farmers would be able to seek help in the event of another farm crisis.⁵⁰ After decades of uncertainty, this Act allowed for a sense of comfort and relief. In the decade following the passage of this Act, there were few significant changes to Chapter 12.⁵¹ The current state of Chapter 12 still allows

44. Interview with James L. Snyder, *supra* note 17.

45. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, §§ 1001-1007, 119 Stat. 23, 185-88.

46. *Id.*

47. *See id.*

48. Susan A. Schneider, *The Family Farmer in Bankruptcy: Recent Developments in Chapter 12*, 3 DRAKE J. AGRIC. L. 161, 161 (1998).

49. Schneider, *supra* note 18, at 325.

50. Interview with James L. Snyder, *supra* note 17.

51. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23.

filing access to family farmers⁵² with “regular annual income,”⁵³ giving recognition to the seasonal nature of farming income.⁵⁴ In fact, one of the only changes that occurred in the decade following the permanency of Chapter 12 is the adjustment of the aggregate debt ceiling of the farmer, which was adjusted from \$3,237,000 to \$4,031,575 (based on an evaluation of the amount of debt possessed by farmers).⁵⁵

While Chapter 12 was intended for use almost exclusively by farmers, this is not to say it has the ability to help out *all* farmers. New farmers, or people looking to start a farm, are not likely able to use the restructuring aid of Chapter 12. Looking back to the original intent of this process, the aim was to help farmers stay afloat and restructure his or her debt. In Iowa, a state filled with farm families and landowners, trustees and courts will turn away petitions if they are not convinced the restructure will help the farmer successfully regain financial control.⁵⁶ Therefore, the meticulous task of convincing a court the restructuring plan is feasible rests on farmers and the farmers’ attorneys.⁵⁷

Looking back at the farm crisis, land prices rose while crop prices dropped.⁵⁸ This situation made the purchase of land a bad investment, and therefore, farmers were not able to pay off their debt.⁵⁹ In present day, if a new farmer purchases land and is unable to create enough revenue to pay off the debt that is incurred upon the transaction, the trustee is likely to encourage them to cut his or her losses.⁶⁰ If a new farmer submits a petition and is turned away, (likely because they don’t have any equity in their farm) they will then be encouraged to file a Chapter 7 bankruptcy.⁶¹

52. 11 U.S.C. § 101(18) (2012) (The term “family farmer” means an “individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$4,031,575 and not less than 50 percent of whose aggregate noncontingent, liquidated debts . . . on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual’s or such individual and spouse’s gross income . . .”).

53. 11 U.S.C. § 101(19) (2012).

54. *Chapter 12—Bankruptcy Basics*, U.S. CTS. STATE CTS., <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-12-bankruptcy-basics> (last visited July 28, 2017) [hereinafter *Bankruptcy Basics*].

55. *See* 11 U.S.C. § 101(18)(A) (2012).

56. *See Bankruptcy Basics*, *supra* note 54.

57. Van Patten, *supra* note 10, at 75.

58. Interview with James L. Snyder, *supra* note 17.

59. *Id.*

60. *Id.*

61. *Id.*

This requires a liquidation of farm assets to pay off the aggregate debt.⁶² The trustee acts, therefore, as a gatekeeper that has discretion⁶³ to decide if Chapter 12 is the right move for a farmer. The trustee has the burden of deciding if a farmer will have the ability to recover from the crippling financial situation, or if they should simply concede and liquidate assets.⁶⁴ The latter option is commonly recommended to new farmers attempting to start up.⁶⁵

Upon deciding to file for Chapter 12 bankruptcy, it is recommended the farmer consult an attorney—in order to meet the criteria required to file for a family farm (husband and wife or as a corporation or partnership).⁶⁶ An attorney will likely prepare a petition for the farmer listing:

- (1) [A]ll creditors and the amounts and nature of their claims; (2) The source, amount, and frequency of the debtor's income;⁶⁷ (3) [A]ll the debtor's property; and (4) [T]he debtor's monthly farming and living expenses, i.e., food, shelter, utilities, taxes, transportation, medicine, feed, fertilizer, etc.⁶⁸

Upon the completion of this documentation, the debtor takes a credit counseling class independently; this reviews the debt⁶⁹ that was incurred and discusses means of budgeting as a future preventative measure.⁷⁰ The certificate from this class, along with the attorney prepared petition, are then filed with the court.⁷¹

Once filed with the court, an impartial trustee is appointed to the case⁷²—with the exception of states such as Iowa who only have one trustee handling all of the

62. *Id.*

63. Van Patten, *supra* note 10, at 91; *see In re Kloberdanz*, 83 B.R. 767, 773 (Bankr. D. Colo. 1988) (“The Court must be persuaded that it is probable, not merely possible or hopeful, that the Debtors can actually pay the restructured debt and perform all obligations of the plan. This requires consideration of the farm’s earning power, capital structure, economic conditions, managerial efficiency, and whether the same management will continue to operate the farm.”).

64. Interview with James L. Snyder, *supra* note 17.

65. *Id.*

66. *Bankruptcy Basics*, *supra* note 54 (explaining that partnerships and corporations, while being able to file as a family farmer, have a different set of criteria to accommodate the outstanding stock or equity in the corporation and the ownership distribution within the family).

67. 11 U.S.C. § 101(13) (2012) (stating the term “debtor” means person or municipality concerning which a case under this title has been commenced).

68. *Bankruptcy Basics*, *supra* note 54.

69. 11 U.S.C. § 101(12) (2012) (stating the term “debt” means liability on a claim).

70. *Bankruptcy Basics*, *supra* note 54.

71. *Id.*

72. *Id.*

Chapter 12 bankruptcies.⁷³ In addition to the appointment of a trustee, the filing of a petition with the court also places an automatic stay, which prevents creditors from attempting to collect the debts included on the petition.⁷⁴ Creditors⁷⁵ are not allowed to continue lawsuits, engage in wage garnishment, or communicate with the debtor to demand payment.⁷⁶ To ensure they are aware of the situation, creditors are then given notice of the filing by the court and the right to object to the discharge of debt.⁷⁷ While filing under any bankruptcy chapter will require a debtor to notify creditors, Chapter 12 is slightly unusual because farming debts tend to be limited to a few creditors with large amounts owed to them.⁷⁸ In comparison, someone filing under Chapter 7 or 13 may need to notify dozens of creditors whom are owed small sums.⁷⁹

Approximately twenty to thirty-five days after filing, there will be a “Meeting of Creditors” held by the trustee.⁸⁰ At this meeting, the debtor will attend with an attorney, and the trustee will place the debtor under oath before asking a series of questions to ensure accuracy of the petition.⁸¹ The creditors, through notification of the bankruptcy filing by the debtor, may also attend this meeting and ask the debtor questions.⁸² The trustee will also discuss the proposed term of the debtor’s Chapter 12 repayment plan prepared by the attorney.⁸³ This plan will reorganize the debt into a three-to-five-year plan that requires payments of the debtor’s disposable income on a monthly basis—paid out by the trustee to the creditors for the stated claims⁸⁴ as directed in the plan.⁸⁵

73. Interview with James L. Snyder, *supra* note 17; *Bankruptcy Basics*, *supra* note 54.

74. Duft, *supra* note 9, at 2; *see Bankruptcy Basics*, *supra* note 54.

75. 11 U.S.C. § 101(10) (2012) (stating that the term “creditor” means “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor.”).

76. *Bankruptcy Basics*, *supra* note 54.

77. Interview with James L. Snyder, *supra* note 17.

78. *Id.*

79. *Id.*

80. *Bankruptcy Basics*, *supra* note 54.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* (“There are three types of claims: priority, secured, and unsecured. Priority claims are those granted special status by the bankruptcy law, such as most taxes and the costs of bankruptcy proceeding. Secured claims are those for which the creditor has the right to liquidate certain property if the debtor does not pay the underlying debt. In contrast to secured claims, unsecured claims are generally those for which the creditor has no special rights to collect against particular property owned by the debtor.”).

85. *Id.*; *see* Kelley, *supra* note 14, at 490.

A Chapter 12 plan must provide for full payment to priority claims, and secured creditors “must be paid at least as much as the value of the collateral pledged for the debt.”⁸⁶ The plan does not have to fully pay all unsecured claims, but the entirety of the debtor’s disposable income must be paid monthly to the trustee for the three-to-five-year term⁸⁷ decided on by the plan. This method assumes through the plan, an unsecured creditor would receive “at least as much as they would receive if the debtor’s nonexempt assets were liquidated under Chapter 7.”⁸⁸ The court then has the option to accept or reject the debtor’s plan.⁸⁹ Should the plan be accepted by the court, the debtor will spend the next three to five years⁹⁰ in bankruptcy, making monthly payments to the trustee to pay off the creditor’s claims.⁹¹ This plan helps the farmer manage his or her debt by avoiding the incurrence of more interest and penalties, elongating the duration of the debt payments, and reducing the debt level down to the value of the property of the farm.⁹² Assuming the debtor made payments in a timely manner and for the full duration of the plan, they will receive a discharge at the end of the plan specified time.⁹³ The discharge effectively releases the debtor from all debts included in the plan, and creditors who were provided for in the plan will continue to be restricted from taking action⁹⁴ to further collect any remaining balances owed by the debtor.⁹⁵ Upon the discharge by the court, the debtor is successfully released of pre-filing obligations while maintaining their farmstead and will likely be able to commence farming operations with a newly debt-free slate.⁹⁶

86. *Bankruptcy Basics*, *supra* note 54.

87. Schneider, *supra* note 18, at 313.

88. *Bankruptcy Basics*, *supra* note 54; *see* Schneider, *supra* note 18, at 313.

89. Robert Moore, *Chapter 12 Bankruptcy: Hope for Financially Stressed Family Farms*, OHIO ST. U. (2009), https://dairy.osu.edu/sites/dairy/files/imce/PDF/2009%20BDN%20Chapter%2012%20Bankruptcy%20_2_.pdf.

90. *Bankruptcy Basics*, *supra* note 54 (stating should the debtor fail to make payments the case will be dismissed without a discharge).

91. *Id.*; *see* Kelley, *supra* note 14, at 490.

92. Kelley, *supra* note 14, at 490-91; *see* Mark Bromley, *The Effects of Chapter 12 Legislation on Informal Resolution of Farm Debt Problems*, 37 DRAKE L. REV. 197, 209 (1987).

93. *Bankruptcy Basics*, *supra* note 54.

94. *Id.*; *see* 11 U.S.C. § 1228(a) (2012) (explaining that certain debts are not dischargeable by the Bankruptcy Code such as student loans, alimony, child support, debts for willful and malicious injury to person or property, debts for death or personal injury caused by operation of a motor vehicle while intoxicated, and debts from fraud, embezzlement, or larceny).

95. *Bankruptcy Basics*, *supra* note 54.

96. *See id.*

IV. THE DORMANT PERIOD

Chapter 12 bankruptcy is a useful tool for long-time farmers who find themselves in a crisis and are looking to continue farming as an occupation while sorting out their finances. In comparison to the amount of farms in Iowa, the amount of Chapter 12 bankruptcies filed in recent years is exceedingly low.⁹⁷ There were only eight Chapter 12 bankruptcies filed in the Southern District of Iowa from 2011 to 2015.⁹⁸ Only slightly higher, the Northern District of Iowa had twenty-seven Chapter 12 bankruptcies filed from 2011 to 2015.⁹⁹ For comparison, the annual single digit filings of Chapter 12 bankruptcies consistently fail to compare to the thousands of Chapter 7 bankruptcies and hundreds of Chapter 13 bankruptcies filed in the state of Iowa yearly.¹⁰⁰

The low number of annual filings in Iowa means there are very few attorneys in the state who have experience filing Chapter 12 bankruptcy based on need.¹⁰¹ Additionally, only one trustee is needed to handle all of the Chapter 12 bankruptcies filed in the entire state of Iowa due to the sheer lack of filings reviewed each year.¹⁰² The shortage of people with a detailed understanding of Chapter 12 has yet to be a problem for farmers in Iowa. In fact, knowledge of the parameters and usability of Chapter 12 is generally not discussed in common bankruptcy practice nor regularly taught in law school bankruptcy courses. While the general lack of Chapter 12 knowledge is not a problem now, a future rapid uptick in the amount of people attempting to file Chapter 12 bankruptcies would surely shock the current system if farmers faced another farm crisis.

V. THE TWENTY-FIRST CENTURY FARM CRISIS

Chapter 12, based on statistics from both the Northern and Southern Districts of Iowa, has seemingly gone into a somewhat dormant period with such low annual

97. *Southern District of Iowa Bankruptcy Statistics: Filings by Chapter*, U.S. BANKR. CT., http://www.iasb.uscourts.gov/v2_php/bkstats-by-chapter.php (last updated Mar. 27, 2017) [hereinafter *Southern District Bankruptcy Statistics*].

98. *Id.* (explaining that in 2011, five Chapter 12 bankruptcies were filed. In 2012, one was filed. In 2013, zero Chapter 12 bankruptcies were filed. In 2014 and 2015, one Chapter 12 was filed).

99. *Northern District of Iowa Bankruptcy Statistics: Filings by Chapter*, U.S. BANKR. CT., <http://www.ianb.uscourts.gov/publicweb/?q=ianb-statistics> (last visited July 28, 2017) [hereinafter *Northern District Bankruptcy Statistics*] (stating in 2011, five Chapter 12 bankruptcies were filed. In 2012, seven Chapter 12 bankruptcies were filed. In 2013 and 2014, three Chapter 12 bankruptcies were filed. In 2015, nine Chapter 12 bankruptcies were filed).

100. *Southern District Bankruptcy Statistics*, *supra* note 97.

101. Interview with James L. Snyder, *supra* note 17.

102. *Id.*; see *Family Farmer Bankruptcy*, *supra* note 7.

numbers.¹⁰³ The state of the farming economy, however, indicates there may soon be a resurgence for the necessity of Chapter 12 in Iowa and across the United States.¹⁰⁴ In the event of another farm crisis, farmers across the nation would ideally turn to Chapter 12 and its availability, once again, as a remedial measure to save their farms and livelihoods.¹⁰⁵

At Iowa State University, economists are urging farmers to be cautious in their expenditures in preparation for a potential downturn in the values of both commodities and land.¹⁰⁶ Average farmland values have been steadily increasing since 1996, declining only briefly between 2008 and 2009.¹⁰⁷ An increase in farmland price means current farmers, who wish to acquire more farmland, will need to take out larger bank notes in order to pay for the increased value of the farmland and the accruing interest on their loan.¹⁰⁸ In addition to the increasing price of land, operating prices for inputs such as fertilizer and seed are dramatically increasing.¹⁰⁹ Items such as these are required to be purchased each year in order to run a farming operation. While it is commonly known that farming is an expensive endeavor to begin, the profession has historically been considered a good investment because the profits outweigh the capital needed to start up.¹¹⁰ In the past few years, this theory has been tested with low commodity prices, high farmland prices, and high input prices making it more difficult for the family farmer to break even, let alone turn a profit.¹¹¹ Low commodity prices can be attributed to any number of factors

103. *Southern District Bankruptcy Statistics*, *supra* note 97; see *Northern District Bankruptcy Statistics*, *supra* note 99.

104. John Lawrence & Ed Adcock, *Iowa State University Economists Have Cautious Message for Farmers*, IOWA ST. U. EXTENSION & OUTREACH (Aug. 2013), <https://www.extension.iastate.edu/agdm/articles/lawr/LawrAug13.html>.

105. See generally Christopher Doering & Donnelle Eller, *Ag Forecast Bleak Unless Commodity Prices Rebound*, DES MOINES REG. (Aug. 9, 2015, 8:46 PM), <http://www.desmoinesregister.com/story/money/agriculture/2015/08/09/farm-economy/31392409/>.

106. Lawrence & Adcock, *supra* note 104.

107. WENDONG ZHANG ET AL., 2015 IOWA LAND VALUE SURVEY: OVERVIEW 9 (Dec. 14, 2015), <http://www.card.iastate.edu/land-value/2015/2015-Iowa-Land-Value-Survey-Overview.pdf>.

108. Donnelle Eller, *Rent Squeeze Could Push Some Farmers out of Business*, DES MOINES REG. (Sept. 28, 2014, 10:55 PM), <http://www.desmoinesregister.com/story/money/agriculture/2014/09/27/farmland-rent-costs-crops-iowa-farmers-growers-corn-soy-beans/16372885>.

109. *Id.*; Tracy Rucinski & P.J. Huffstutter, *Fearing Wave of Bankruptcies, U.S. Corn Belt Wants New Debt Cap*, REUTERS (Jan. 15, 2016, 6:15 PM), <http://www.reuters.com/article/us-agriculture-bankruptcy-idUSL2N15000G>. See generally ZHANG ET AL., *supra* note 107, at 9.

110. Eller, *supra* note 108.

111. ZHANG ET AL., *supra* note 107, at 9.

such as climate, changing habits of importing and exporting with other countries, and the state of the economy across the United States.¹¹² From an objective point of view, the current situation is seemingly mirroring what farmers faced in the 1920s and again in the 1986 Farm Crisis.¹¹³ This is causing farmers and economists alike to ask if the historic peril that birthed Chapter 12 bankruptcy is repeating itself. Should another farm crisis come to fruition, as history would indicate it might, there will again be resurgence in the need for Chapter 12 bankruptcy to aid farmers across the country.

One of the first places to witness the stress that farmers are undergoing is in the offices of farm equipment manufacturers and suppliers.¹¹⁴ In Iowa alone, these companies have had to cut hundreds of jobs to accommodate the lack of profit coming in because farmers are more stringent with disposable income.¹¹⁵ With less annual income, farmers are not likely to purchase larger and newer items such as tractors and combines.¹¹⁶ On a national scale, farm income was forecasted to decrease an average of 32% in the year 2015.¹¹⁷ These predicted earnings were the lowest since 2009 when the farm economy faced a 43% drop in profit.¹¹⁸ While farm income is predicted to continue decreasing, the debt-to-asset ratio of the family farm is predicted to increase, as it has risen from 11.3 in 2013 to 12.8 only two years later in 2015.¹¹⁹ When combined, low annual incomes and high debt-to-asset ratios lead to farmers in crisis who will be in need of a remedy like Chapter 12 to save their farm.

Iowa's neighbors to the west are already seeing increased numbers of farmers attempting to file Chapter 12 bankruptcies, which they attribute to the very same fears Iowa economists are predicting.¹²⁰ South Dakota attorney Laura Kulm Ask states grain farmers are plagued by high land prices and low grain prices, forcing them into restructuring.¹²¹ "Farmland prices have been high for a while now and they don't seem to be decreasing anytime soon because farmland is becoming so sparse, and farmers are forced into bidding wars just to obtain enough ground to

112. Interview with James L. Snyder, *supra* note 17.

113. *Id.*

114. *See generally* Doering & Eller, *supra* note 105.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. Tracy Rucinski & P.J. Huffstutter, *supra* note 109.

120. Interview with Laura L. Kulm Ask, Attorney at Law, Gerry & Kulm Ask, Prof'l LLC (Feb. 2, 2016); *see* Lawrence & Adcock, *supra* note 104.

121. Interview with Laura L. Kulm Ask, *supra* note 120.

attempt to stay viable.”¹²² Additionally, there has been a surge in dairy and beef cattle farmers in South Dakota also seeking Chapter 12 as a restructuring remedy, in addition to the grain farmers, making the downturn in farming economy appear all inclusive.¹²³

While Chapter 12 currently has the ability to help some farmers from a practical stand point, Kulm Ask notes many farmers who come seeking legal advice are having difficulty meeting the requirements of the process.¹²⁴ When farmers have more debt than the maximum aggregate debt ceiling, as set forth by the statutory requirements, they are not allowed the remedies Chapter 12 provides.¹²⁵ Thus, they are forced to use other means of aid such as informal restructuring or Chapter 11 bankruptcy.¹²⁶ Another side effect of the imbalance of the farm economy is that new farmers, who are trying to make a career by renting land, will suffer greatly; they too will have to suffer without the aid of Chapter 12 to fall back on.¹²⁷ “Young farmers are stretching themselves too thin to get started in the farming game, and then one bad year ends them because their cash flows are too tight to start with. With increased land prices, rent on farm ground also increased to generate profit for the landowner.”¹²⁸ This situation made it very realistic a renting farmer could lose money in a fiscal year based on the current market.¹²⁹ For the first time since the 1980s, renting farmers are breaking leases and walking away from any chance at a farming income—as realization is spreading that the agricultural economy is potentially cycling back to an emulation of the 1986 Farm Crisis.¹³⁰ These renting farmers, should they maintain their rented farm ground, will not have the usage of Chapter 12 to get them out of financial crisis in the way land-owning neighbors may.¹³¹ Instead, these farmers will be encouraged to file a Chapter 7 bankruptcy and liquidate the assets they have in order to pay debts, thereby ending his or her farming career before it even started.¹³²

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. See *In re Kloberdanz*, 83 B.R. 767, 773 (Bankr. D. Colo. 1988) (discussing the requirement of the debtor to show longevity of their farming operation to make a restructuring through Chapter 12 a feasible possibility); Eller, *supra* note 108.

128. Interview with Laura L. Kulm Ask, *supra* note 120.

129. Eller, *supra* note 108.

130. *Id.*

131. See generally *In re Kloberdanz*, 83 B.R. at 772 (discussing how a Chapter 12 plan must be feasible to pass the muster of the Bankruptcy Court).

132. See generally *id.* at 772-73 (discussing if debtors had income to pay creditors according to the plan).

In general, farm economists are not optimistic about the upcoming future of the farm economy in Iowa.¹³³ This new farm crisis is not likely to be sudden, but rather a gradual and widespread adjustment that is slated to impair farmers across the country for the next few years.¹³⁴ The Iowa Secretary of Agriculture, Bill Northey, is quoted stating “[he] [does not] see the return of the 1980s farm crisis . . . but there are tighter times coming, . . . [a]nd tighter times impact everyone differently. Some farmers will be upside down.”¹³⁵ To that end, Kulm Ask stated she is seeing “farmers [who are] being forced to work with some of the tightest cash flows and lending restrictions that [she] [has] ever seen.”¹³⁶ With these tighter times comes uncertainty as to how long this will last, how severe it will be, and what is in store for farmers across the country.¹³⁷

Overall, while most farmers will be able to weather the challenges ahead, those who have aggressively expanded recently or have borrowed heavily will likely face significant problems in the upcoming months and years.¹³⁸ It is a situation like the current state of the economy that demanded the initial creation of Chapter 12 bankruptcy. However, in the eve of the next farming crisis, it seems as though Chapter 12 may not be ready and able to meet the needs of the present day farmer. Due to the cyclical nature of the farm economy, its current state is likely to be what brings Chapter 12, and the need for reform, back into the public eye.

VI. A CRY FOR CHAPTER 12 REVISION

With the potential for the next farm crisis on the horizon, farmers will be looking to the courts, once again, to help in the restructuring of farms through Chapter 12 bankruptcy. Keeping in mind the length of time that has passed since the last significant amendments were made to Chapter 12, the next logical question is: “Will Chapter 12 be able to accommodate the debt load of the present day family farmer?”

According to 2015 statistics, there are 88,600 farms¹³⁹ in Iowa with an average

133. Doering & Eller, *supra* note 105.

134. *Id.*

135. *Id.*

136. Interview with Laura L. Kulm Ask, *supra* note 120.

137. Doering & Eller, *supra* note 105.

138. ZHANG ET AL., *supra* note 107, at 9.

139. Doering & Eller, *supra* note 105.

size of 333 acres.¹⁴⁰ The average value for one acre of farm ground in Iowa is currently \$7633.¹⁴¹ While the average sale value for one acre is in the seven thousand dollar range, the highest priced farm ground in northwestern Iowa can go for upwards of nine thousand dollars per acre.¹⁴² The pricing of a combine for harvesting (that is around ten years old) is between \$80,000 and \$150,000.¹⁴³ A ten-year-old tractor will then cost another \$75,000–\$150,000 per tractor, keeping in mind that most farmers need multiple tractors to run their operations.¹⁴⁴ In addition, most farmers have to carry an operating note for inputs including seed, fertilizer, chemicals, and interest to front the money for the next year's harvest. A farmer is also likely to have a mortgage for a home, loans for vehicles, insurance payments, monthly bills, and other normal expenditures. What does this mean for an Iowa farmer? It means these averages¹⁴⁵ make it very easy for the amount they owe to creditors to reach or even exceed \$4,153,150.¹⁴⁶ The dollar amount of \$4,153,150 is the current maximum amount of debt that is allowed in order for a farmer to qualify to file for Chapter 12 bankruptcy.¹⁴⁷ Simply put, if a farmer's debt exceeds this amount, the farmer will not have the ability to use Chapter 12 as a remedy even if they have met all of the other qualifications. This maximum debt amount was adjusted in the past to accommodate changing times and prices, and based on the current state of financial farming investments, there is a clear need to increase the limit even more to allow present day farmers access to the benefits of Chapter 12.

In 2005, land prices were a large factor in deciding to adjust the maximum amount of debt allowed under Chapter 12.¹⁴⁸ Since 2005 alone, land prices have almost tripled.¹⁴⁹ This again calls into question the need for the legislature to look into the debt maximum to decide what a more reasonable limit may be based on

140. *A Look at Iowa Agriculture*, AG. CLASSROOM (July 2016), <http://www.agclassroom.org/teacher/stats/iowa.pdf> [hereinafter *Iowa Agriculture*].

141. ZHANG ET AL., *supra* note 107, at 9.

142. *Id.*

143. See *John Deere Combines*, PLAINS EQUIP. GRP., <http://www.plainsequipmentgroup.com/browse-equipment/all-categories/used/all-industries/Combine/John-Deere/all-models/> (last visited July 28, 2017) [hereafter *John Deere Combines*].

144. See *Tractors*, PLAINS EQUIP. GRP., <http://www.plainsequipmentgroup.com/browse-equipment/all-categories/used/all-industries/Tractor/all-makes/all-models/#anchor> (last visited July 28, 2017) [hereafter *Tractors*].

145. See generally ZHANG ET AL., *supra* note 107, at 9; *Iowa Agriculture*, *supra* note 140; *John Deere Combines*, *supra* note 143; *Tractors*, *supra* note 144.

146. *Bankruptcy Basics*, *supra* note 54.

147. *Id.*

148. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23.

149. ZHANG ET AL., *supra* note 107, at 9.

the increased price of land. Chapter 12, which has only been adjusted in times when a farming remedy is desperately needed, has seemingly flown under the radar. This is primarily because it hasn't been needed by the masses. In the meantime, farming prices have increased substantially, but the statutory limits of Chapter 12 have only minimally. Based on the figures above,¹⁵⁰ farmland alone could potentially put the farmer in debt 60% of the way to the debt ceiling without including any other factors such as inputs, machinery, or a mortgage.

Attorney Laura Kulm Ask stated that while the number of Chapter 12 bankruptcies in South Dakota has increased recently, many of the cases brought to her office require formal restructuring that is outside the current scope of Chapter 12.¹⁵¹ In her current practice, she found farmers are having difficulty coming in under the maximum aggregate debt ceiling.¹⁵² Farmers are therefore forced to use other methods such as informal restructuring or Chapter 11 bankruptcy—because the chapter created specifically for their own use has not been updated to accommodate current needs.¹⁵³ Additionally Joseph Peiffer, a Cedar Rapids, Iowa, bankruptcy attorney, stated that well more than half of the farmers who came to him for bankruptcy help during the past two years did not qualify for a Chapter 12 bankruptcy simply because they had aggregate debts in excess of the limit.¹⁵⁴

In the off-chance a farmer meets the requirements of Chapter 12, they are plighted with filing fees and fees associated with the trustee payment of 10% of the farming estate. Typically, this fee would not serve as much of a burden, but this amount becomes 10% of millions of dollars in aggregate debt due to the inflated amount of debt farmers incur to run his or her operation.¹⁵⁵ For many farmers, the realization of the cost required to get out of financial trouble could be enough to deter them from the use of Chapter 12 bankruptcy.¹⁵⁶ Based on these factors, the current state of Chapter 12 seemingly works against those people it was created to aid.¹⁵⁷

150. See *id.*; *Iowa Agriculture*, *supra* note 140.

151. Interview with Laura L. Kulm Ask, *supra* note 120.

152. *Id.*

153. *Id.* (“This dollar amount makes it impossible for most of the larger farms in South Dakota to qualify for a Chapter 12, and therefore, they file chapter 11 reorganizations.”).

154. Bill Tiedje, *Farms Exceed Chapter 12 Bankruptcy Debt*, IOWA FARMER TODAY (Apr. 28, 2017), http://www.iowafarmertoday.com/news/regional/farms-exceed-chapter-bankruptcy-debt/article_763f12a4-2ab7-11e7-93d9-1708ca76d884.html.

155. Interview with Laura L. Kulm Ask, *supra* note 120 (“In addition, Chapter 12 bankruptcies require that the trustee be paid a fee of 10% of the debts paid through the plan; and therefore, it can be a very costly mechanism that is not feasible for farmers.”).

156. *Id.*

157. *Id.*

Aside from debt limit, Kulm Ask also emphasized significant problems with the current usability of Chapter 12 for farmers in South Dakota, stating there are “tough restrictions placed upon the debtor, which makes it difficult for the debtor to operate day-to-day and [because] they are costly restrictions, [Chapter 12] is not always affordable to a farmer.”¹⁵⁸ Therefore, the lack of usability additionally may act as a deterrent, forcing farmers to look elsewhere for a remedy.

The farming industry is currently struggling to stay afloat in the Midwest, and amongst those attorneys trying to help their clients use Chapter 12, there is a general feeling of frustration in the inaction taken to provide aid to farmers in times of crisis such as these.¹⁵⁹ The message of frustration mirrors a call for help by the family farmer that empowered Senator Grassley in the creation of Chapter 12 bankruptcy. While Chapter 12 was the remedy in 1986, the current hindrances call into question its effectiveness and ability to adapt to the changing farming economy.¹⁶⁰ Bankruptcy was never intended to be completely user friendly. When Chapter 12 was instituted for the specific purpose of *helping the family farmer*, it should, at the very least, be a viable option for this specific class of people.¹⁶¹

VII. MAKING CHAPTER 12 A MODERN REMEDY

With changing times, land prices that are consistently climbing, and commodity prices which have seemingly plateaued, the legislature will have to watch Chapter 12 bankruptcy very closely.¹⁶² Not addressing details, such as the maximum debt level, will essentially exclude a large number of farmers from access to Chapter 12 and thereby ignore the original intent of aiding farmers during financial hardship.¹⁶³ With the farm economy at a low point and no sign that it will improve in the near future, Chapter 12 needs to be ready to accommodate the next influx of farmers using it. In order to successfully make accommodations, the legislature

158. *Id.*

159. *Id.* (“[I]t is the farming industry that is struggling and no one seems to care. Farmers are what feed the world and work the longest, hardest days I have ever seen and yet there is no one out there to take care of them right now when prices are at an all-time low to ensure that the occupation that our State was built on will continue to exist.”)

160. *Id.*; see Interview with James L. Snyder, *supra* note 17.

161. See Agricultural Adjustment Act of 1933, Pub. L. No. 73-10, 48 Stat. 31; Interview with Laura L. Kulm Ask, *supra* note 120 (“Bankruptcy is a hard process for any debtor to go through and that is why it is a last resort and is not taken lightly. There are tough restrictions placed upon the debtor which make it difficult for the debtor to operate day-to-day, and they are costly restrictions so it is not always affordable to a farmer, which I have personally seen affect who can file and who can restructure in a chapter 12.”).

162. See ZHANG ET AL., *supra* note 107, at 9; Doering & Eller, *supra* note 105.

163. *Bankruptcy Basics*, *supra* note 54.

must re-evaluate the aggregate debt levels to correspond with the current economy.¹⁶⁴

In an effort to put the legislator on notice, Chapter 12 bankruptcy attorneys across the Midwest are speaking out in favor of an increased debt limit to accommodate the current state of farming.¹⁶⁵ These attorneys, who have turned away farming clients or filed them as more costly Chapter 11 bankruptcies, are also of the opinion the current cap on aggregate debt is out of touch with the operating size of farms.¹⁶⁶ Joseph Peiffer, Cedar Rapids, Iowa, bankruptcy attorney, encouraged the legislature to increase the limit to at least ten million dollars, more than doubling the current limit.¹⁶⁷ In an effort to make these changes, Peiffer has presented his recommendation to Senator Grassley in the hopes he will once again fight for the Iowa farmer just as he did thirty years ago.¹⁶⁸ Grassley's office, in response to this proposal, stated Senator Grassley viewed a proposal to adjust the amount, but information and research is still being gathered.¹⁶⁹ Should the aggregate debt level be raised to ten million dollars, the amount of farmers able to use Chapter 12 bankruptcy as a remedy for financial crisis would grow exponentially.¹⁷⁰ However, Peiffer is still doubtful that half or more of the people who come into his office would be able to be helped, even with this substantially increased limit.¹⁷¹ Only when it is capable of helping the majority of family farmers will Chapter 12 again satisfy its intended purpose of helping to financially restructure the family farm.

Even if the updated Chapter 12 accommodated the current debt load of farmers, it will likely never be updated to accommodate people who are new to the farming industry.¹⁷² If a farmer does not own any of the land outright, and owes debt on the entire amount, a plan of restructuring will not help them in the long run.¹⁷³ Similar to farmers renting land, the trustee would again recommend a Chapter 7

164. See ZHANG ET AL., *supra* note 107, at 9; Doering & Eller, *supra* note 105; *Bankruptcy Basics*, *supra* note 54.

165. Rucinski & Huffstutter, *supra* note 109.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. See *id.*

171. Tiedje, *supra* note 154.

172. Van Patten, *supra* note 10; see *In re Kloberdanz*, 83 B.R. 767, 773 (Bankr. D. Colo. 1988) (“The court must be persuaded that it is probable, not merely possible or hopeful that the Debtors can actually pay the restructured debt and perform all obligations of the plan. This requires consideration of the farm’s earning power, capital structure, economic conditions, managerial efficiency, and whether the same management will continue to operate the farm.”).

173. See generally *In re Kloberdanz*, 83 B.R. at 773.

bankruptcy.¹⁷⁴ This alternative allows the farmer to liquidate their assets and use those funds to pay off the debt, resulting in farmers that cut losses and no longer farm.¹⁷⁵ This also keeps in line with the original intent of Chapter 12, which was to help the once successful farmer to be successful again, discounting those who merely tried to get into farming yet failed.¹⁷⁶ While raising the aggregate debt level will benefit a majority of career farmers and allow for the legislative intent of Chapter 12 to be true once again, there may never be a complete remedy for all farmers in crisis.

VIII. CONCLUSION

In a reaction to the 1986 Farm Crisis, Congress enacted a mechanism for restructuring the nation's burdensome family farm debt.¹⁷⁷ This mechanism was Chapter 12 bankruptcy.¹⁷⁸ To view the thirty years since the creation of Chapter 12 as a rollercoaster would be an understatement. There were high points¹⁷⁹ when Chapter 12 was completing its envisioned purpose of helping farmers, as well as low points when sunset periods threatened the end of help for farmers across America.¹⁸⁰ With a dormancy in Iowa for the past decade, Chapter 12 managed to fly under the radar with very few amendments since its enactment. Now, as Chapter 12 is slowly making a reappearance out of necessity, we have clear warning another crisis is on the horizon. The legislature must take this proactive opportunity and adjust Chapter 12 now in order to accommodate the current state of the farm economy before it fails to help farmers across the nation. Only then, after adjustments to accommodate the present day family farmer, will Chapter 12 accomplish its intended purpose by helping farmers through another financial crisis.¹⁸¹

174. *See generally id.*; Van Patten, *supra* note 10, at 91.

175. *See generally In re Kloberdanz*, 83 B.R. at 773 (evaluating the probable chance of restructuring having a lasting impact on the farmer's chances of survival); Van Patten, *supra* note 10, at 91.

176. *See generally Bankruptcy Basics*, *supra* note 54.

177. Duft, *supra* note 9; Hahn, *supra* note 6, at 726.

178. *See Bankruptcy Basics*, *supra* note 54.

179. *See id.*

180. Schneider, *supra* note 39.

181. *See Duft*, *supra* note 9, at 7-8.