

## GRAPES OF IMPACT: THE FAMILY FARMER RELIEF ACT OF 2019 AND CHAPTER 12

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### I. INTRODUCTION

It is no secret that many American farmers are in financial trouble, specifically small family farmers. As a part of an effort to alleviate farmers in a struggling agriculture economy, Congress passed the Family Farmer Relief Act of 2019, an amendment to Chapter 12 of the Bankruptcy Code that expands specialized bankruptcy relief to more farmers.<sup>1</sup> The bill was signed into law on August 23, 2019, and it became effective immediately. Chapter 12 of the Bankruptcy Code allows small family farms to continue their farming operations while creating a debt repayment plan that successfully reorganizes their business through a set of provisions “created specifically to provide repayment flexibility and reorganizational advantages for family farms during poor economic times.”<sup>2</sup>

This amendment increases the debt limit of Chapter 12 from \$4.4 million to \$10 million.<sup>3</sup> The change now incorporates farmers who were originally meant to be protected, as the farming industry has changed since Chapter 12 was originally enacted in 1986 and amended in 2005. While the Family Farmer Relief Act of 2019 adjusts the definition of a family farmer to promote the underlying policy behind Chapter 12, the amendment also engages in something deeper. The amendment directly aims to help small family farmers remain in business by restructuring their debts, but it also indirectly

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1. See Family Farmer Relief Act of 2019, Pub. L. No. 116-51, 133 Stat. 1075.

2. 165 CONG. REC. H7439 (daily ed. July 25, 2019) (statement of Rep. Delgado).

3. Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed under Section 104(a) of the Code, 84 Fed. Reg. 3488 (proposed Feb. 21, 2019) (noticing the debt limit of \$4,411,400, effective April 1, 2019).

targets the development and maintenance of the rural communities where these farms are located.

This Article will discuss the history and purpose of Chapter 12, the continued need for Chapter 12 in the Bankruptcy Code, and the need for the 2019 amendment. The Article will also touch on the broader implications of Chapter 12 and the importance of preserving small family farms for rural communities and society as a whole. Chapter 12 is important beyond simply the bankruptcy context, because (i) reorganizing and facilitating the continued operation of small family farms strengthens the economy of the communities where they are located and provides food security, (ii) the benefits of megafarms are limited, if not outweighed, by the negative impacts they have on their surrounding communities, and (iii) a healthy rural economy creates a healthier urban economy. The Family Farmer Relief Act of 2019 is an important amendment that realizes Chapter 12's design by assisting small family farms to reorganize during economic hardship and continues to support the benefits of small family farms.

## II. HISTORY

In the 1980s, thousands of family farms were foreclosed because of an agricultural economic crisis that rivaled conditions during the 1930s.<sup>4</sup> One contributing factor to the crisis was an agricultural boom in the 1970s which encouraged farmers and investors to expand operations and leverage their farming assets,<sup>5</sup> a credit option made easier under new federal law which allowed farmers to take out higher risk loans.<sup>6</sup> However, the strong agriculture market of the 1970s began to crumble in the early 1980s, leaving farmers with large loans and high interest rates that they could not afford and assets that were no longer valuable enough to secure those loans. These dire circumstances came to a head as a result of various issues such as: economic forces outside agriculture that caused interest rates to dramatically increase; a grain embargo in 1980 that lowered

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4. David Ray Papke, *Rhetoric and Retrenchment: Agrarian Ideology and American Bankruptcy Law*, 54 MO. L. REV. 871, 881–82, 889–90 (1989).

5. U.S. Dept. Agric.: Econ. Res. Serv., *Are Farmer Bankruptcies a Good Indicator of Rural Financial Stress?* 3 (1996) (“The economic climate of the 1970s encouraged farmers to expand production and benefit from export opportunities and strong commodity prices. High rates of inflation and low real interest rates further encouraged investment in farmland. Per acre farmland values increased more than threefold from \$196 in 1970 to \$823, its 1982 peak. Total farm-sector equity grew 255 percent during 1970-80. Total farm business debt nearly quadrupled from \$48.8 billion in 1970 to \$193.8 billion at its peak in 1984. A considerable number of farmers were financially extended and vulnerable to sudden shifts in economic forces.”), <http://ageconsearch.umn.edu/record/33675/files/ai967246.pdf>.

6. Farm Credit Act of 1971, Pub. L. No. 92-181, 85 Stat. 583 (codified as amended in scattered sections of 31 U.S.C.) (increasing the loan-to-value ratio of mortgage debt).

commodity prices while production costs were increasing;<sup>7</sup> and the plummet in value of the farmland that secured most farm debt by the late 1980s.<sup>8</sup> The massive dissolution of family farms indicated that the existing reorganization provisions under the Bankruptcy Code were ineffective to provide the needed debt relief to family farmers. In response, Congress enacted the Family Farmers Bankruptcy Act of 1986 which created a new proceeding under the Bankruptcy Code titled Chapter 12, designed specifically for family farmers to help avoid farm foreclosures in favor of reorganizations and continued operation.<sup>9</sup> Chapter 12 of the Bankruptcy Code was enacted to “give family farmers facing bankruptcy a fighting chance to reorganize their debts and keep their land.”<sup>10</sup>

### III. CHAPTER 12

Chapter 12 is a specific type of bankruptcy available to family farmers, a defined term under the Bankruptcy Code determined by a debtor’s farm income, farm debt, and engagement in farming.<sup>11</sup> Upon filing for bankruptcy under Chapter 12, a family farmer receives judicial protections, such as an automatic stay, which prevent creditors from certain debt collections and foreclosing on property.<sup>12</sup> Throughout bankruptcy, the Chapter 12 debtor will continue to operate the farm and a trustee is appointed to monitor and oversee the case.<sup>13</sup>

Within 90 days of filing, the debtor must submit a reorganization plan to the bankruptcy court, proposing a repayment plan which is typically over a three- to five-year period.<sup>14</sup> The plan is meant to restructure a farmer’s debt through debt modification. This is accomplished by mechanisms uniquely available to family farmers under Chapter 12, such as reducing a secured debt to the value of the collateral, lowering the interest rate on a debt, and extending a loan’s repayment term.<sup>15</sup> A secured debt may be bifurcated if the debt exceeds the value of the collateral, in which case the debt amount above the value of the collateral is reclassified as unsecured debt.<sup>16</sup> A

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7. NAT’L BANKR. REV. COMM’N, BANKRUPTCY: THE NEXT TWENTY YEARS 1012 (1997), <http://govinfo.library.unt.edu/nbrcreport/23chapte.pdf>.

8. Susan A. Schneider, *Bankruptcy Reform and Family Farmers: Correcting the Disposable Income Problem*, 38 TEX. TECH L. REV. 309, 324–25 (2006).

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

10. H.R. REP. NO. 99-958, at 48 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249.

11. 11 U.S.C. § 101(18) (2018). The provision also includes family fishermen as of 2005.

12. § 362.

13. §§ 1203, 1204, 1207; *see also* § 1202(a) (protecting creditors’ interests).

14. § 1221.

15. P. Maureen Bock-Dill, Note, *Get Down and Dirty: The Eighth Circuit’s Admonition to Farmers Seeking the Protection of Chapter 12*, 43 ARK. L. REV. 701, 701 (1990).

16. §§ 506(a); 1225(a)(5)(B).

Chapter 12 plan must provide for full payment of priority claims,<sup>17</sup> and a debtor is required to pay all secured debts in full, in addition to market rate interest if the payment occurs over time.<sup>18</sup>

This secured debt repayment may be extended beyond the life of the plan, providing extra flexibility in light of the sporadic income stream of farm products.<sup>19</sup> Chapter 12 debtors may, however, only be required to pay a small portion of their unsecured debt.<sup>20</sup> Unsecured creditors, or unsecured portions of a secured claim, are only entitled to receive at least as much as they would receive in a liquidation under Chapter 7 and, in most cases, the debtor's projected net disposable income.<sup>21</sup> Upon successful completion of the plan, the farmer receives a discharge and any debt left unpaid to unsecured creditors is forgiven.<sup>22</sup>

Prior to the enactment of Chapter 12, family farmers could only reorganize under Chapter 11 or Chapter 13 of the Bankruptcy Code.<sup>23</sup> Chapter 11, however, is typically used for restructuring large businesses. Under Chapter 11, the debtor must propose a plan that is supported by at least a majority of the debtor's creditors.<sup>24</sup> The unequal bargaining power between farmers and creditors made this plan requirement unrealistic for most farmers.<sup>25</sup> Additionally, the absolute priority rule requires a debtor to pay unsecured creditors in full if they object to the plan in order to maintain any ownership interest in their property.<sup>26</sup> Chapter 12, however, does not require creditor support and a plan may be approved over creditor objections, compelling debt adjustments while enabling a farmer to keep its property.<sup>27</sup> The absolute priority rule is also replaced in Chapter 12 by the liquidation and disposable income tests to allow reorganization for the family farmer along with some security for creditors.<sup>28</sup>

Chapter 13 is designed for individuals with regular income seeking to reorganize their debts. This chapter of the Bankruptcy Code is unavailable to corporate or partnership farmers, or any

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17. Priority claims are defined in the Code, but include things like taxes owed to the IRS and child support payments.

18. § 1225(a)(5).

19. § 1222(b)(9).

20. Susan Schneider, *Chapter 12 Bankruptcy: Family Farm Restructuring*, 2015 ARK. L. NOTES 1686 (2015) [hereinafter Schneider, *Family Farm Restructuring*].

21. §§ 1225(a)(4), (b).

22. § 1228.

23. Of course, they may be able to still proceed under these chapters.

24. § 1126.

25. Mark Bromley, *The Effects of the Chapter 12 Legislation on Informal Resolution of Farm Debt Problems*, 37 DRAKE L. REV. 197, 197 (1988); Jonathan K. Van Patten, *Chapter 12 in the Courts*, 38 S.D. L. REV. 52, 97 (1993).

26. § 1129(b)(2)(B)(ii).

27. Schneider, *Family Farm Restructuring*, *supra* note 20.

28. *See In re Foster*, 84 B.R. 707, 710 (Bankr. D. Mont. 1988)

individual whose debt exceeds a prescribed amount.<sup>29</sup> While the plan does not require creditor acquiescence, the debt ceiling for Chapter 13 prevents many family farmers from qualifying.<sup>30</sup> Additionally, Chapter 13 restricts reorganization of real estate debt to residential property, which often precludes a farmer's ability to restructure a typical family farm mortgage.<sup>31</sup> Chapter 13 also requires regular payments to creditors and complete payment to secured creditors before receiving a discharge. The unpredictable nature of farm income hinders regular payments and the ability to pay off large secured debts within three to five years, meaning that any Chapter 13 case filed by a family farmer would inevitably be dismissed for noncompliance.

These reorganization impediments under Chapter 11 and 13 would force family farmers into liquidation, while Chapter 12 successfully deals "with the special problems created by farm bankruptcies which each of the other options failed to resolve."<sup>32</sup>

#### IV. IMPACT OF CHAPTER 12 AND ADJUSTMENTS

Proponents of Chapter 12 believe its enactment has brought great benefits to small family farmers.<sup>33</sup> Some scholars, though, question the need for Chapter 12.<sup>34</sup> They argue (i) that Chapter 12 has not had a significant impact because it has rarely been utilized and (ii) that the low filing numbers of Chapter 12 bankruptcies as compared to other chapters indicate Chapter 12's futility in providing reorganization relief to small family farmers.<sup>35</sup> These Chapter 12 filing statistics, though, are misleading. The existence of this chapter in the Bankruptcy Code provides a uniform system of debt restructuring that facilitates negotiations outside of court. Chapter 12 has had a shadow effect, providing farmers with a bargaining chip to get creditors to negotiate outside of court.<sup>36</sup>

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29. § 109(e) (unsecured debt limit of \$419,275 and secured debt limit \$1,257,850).

30. *In re Perkins*, 581 B.R. 822, 833–34 (B.A.P. 6th Cir. 2018).

31. Schneider, *Family Farm Restructuring*, *supra* note 20.

32. Bock-Dill, *supra* note 15, at 703.

33. NAT'L BANKR. REV. COMM'N, *supra* note 7, at 1014 (citing *To Extend the Period During Which Chapter 12 of Title 11 of the United States Code Remains in Effect: Hearing on H.R. 5322 Before the Subcommittee on Economic and Commercial Law of the House Committee on the Judiciary*, 102d Cong., 2d Sess. 21 (1992) ("Chapter 12 has saved literally thousands of family farms, stabilized farm values, and encouraged more out-of-court negotiations and settlements between lenders and farmers.") (testimony of A. Thomas Small, one of the principal drafters of Chapter 12, before the House Judiciary Committee)).

34. These critiques were generally raised prior to 2005, when Chapter 12 became a permanent provision in the Bankruptcy Code.

35. Katherine M. Porter, *Phantom Farmers: Chapter 12 of the Bankruptcy Code*, 79 AM. BANKR. L.J. 729, 729–30 (2005).

36. Bromley, *supra* note 25, at 197–98; Schneider, *Family Farm Restructuring*, *supra* note 20; Van Patten, *supra* note 25, at 97.

Because Chapter 12 gives farmers more leverage to demand concessions from secured creditors than under any other reorganizational chapter,<sup>37</sup> creditors are encouraged to engage in out-of-court negotiations. One study finding support for the out-of-court influence was in Iowa where attorneys reported that one-third to one-half of their clients' farm credit disputes were negotiated after the enactment of Chapter 12.<sup>38</sup> Additionally, the number of filings will naturally be higher when the population that qualifies for relief under those provisions is larger.<sup>39</sup> Despite the limited number of filings, the success rate of Chapter 12 is greater than cases filed under other reorganization chapters. Over the last ten years, Chapter 12 has enjoyed a success rate of around forty percent, while Chapter 11 has had between a ten to thirty percent reorganization success rate and Chapter 13 only has about a thirty-seven percent success rate.<sup>40</sup>

Lawmakers recognize the value of Chapter 12, even though it only reaches a small percentage of the population. In 2005,<sup>41</sup> Congress made Chapter 12 a permanent provision of the Bankruptcy

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37. Porter, *supra* note 35, at 731.

38. Chris Faiferlick & Neil E. Harl, *The Chapter 12 Bankruptcy Experience in Iowa*, 9 J. AGRIC. TAX'N & L. 302, 331 (1988).

39. Today there are about 2 million farms, which includes farms that do not fit into the definition of family farmer under the Code; compared to 32.5 million businesses and over 327 million people in America today.

40. U.S. TR. PROGRAM, U.S. DEPT OF JUSTICE, CHAPTER 12 STANDING TRUSTEE FY18 ANNUAL REPORTS (2019), <https://www.justice.gov/ust/private-trustee-data-statistics/chapter-12-trustee-data-and-statistics> (278 new cases were filed in 2018 and 97 were completed with a plan); see Jamey M. Lowdermilk, *A Fighting Chance? Small Family Farmers and How Little We Know*, 86 TENN. L. REV. 177, 192 n.100 (2018) (citing U.S. Trustee Chapter 12 Standing Trustee Annual Reports for years 2009-2017 and finding that "approximately forty percent of Chapter 12 cases complete a reorganization plan measured by the number of Chapter 12 cases closed with a completed plan divided by the number of new Chapter 12 cases filed between January 1, 2009, and December 31, 2017 (the years for which data is available)  $((122+137+154+119+99+88+97+118+125) / (259+259+194+221+270+347+428+421+264) = 0.40)$ "). When the data from 2018 is included, the percentage goes down slightly, to a 39.3% success rate. See sources cited *supra* this note. See also Cathy Moran, *Chapter 11 Bankruptcy Explained*, BANKR. IN BRIEF, <https://www.bankruptcyinbrief.com/chapter-11-bankruptcy-explained/> (last visited Mar. 8, 2020) ("The rate of successful Chapter 11 reorganizations is depressingly low, sometimes estimated at 10% or less."); Elizabeth Warren & Jay L. Westbrook, *The Success of Chapter 11: A Challenge to the Critics*, 107 MICH. L. REV. 603, 614 (2009) ("The data show that the success rate is at least twice what conventional wisdom holds, approaching a third of the cases filed, even if a simple, naïve metric is employed."); Jonathan Petts, *Why is Chapter 13 Probably a Bad Idea?*, UPSOLVE, <https://upsolve.org/learn/why-chapter-13-is-probably-a-bad-idea/#1-chapter-13-has-a-failure-rate-of-67> (last updated Aug. 16, 2019) ("[O]nly 33% of Chapter 13 cases result in a discharge . . ."); Ed Flynn, *Chapter 13 Case Outcomes by State*, 33 AM. BANKR. INST. J., Aug. 2014, at 40, 76 (chapter 13 plan completion was about 36% between 2007 to 2013); Ed Flynn, *Success Rates in Chapter 13*, 36 AM. BANKR. INST. J., Aug. 2017, at 38, 38 (showing a success rate of 38.8% between 2010 and 2016).

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

Code as a part of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA).<sup>42</sup> Not only did BAPCPA make Chapter 12 a permanent provision of the Bankruptcy Code, it also modified the definition of family farmer to align with the realities of the farming industry. The definition was expanded to include part-time farmers who earn at least half of their income from farm work instead of the previous eighty percent income requirement.<sup>43</sup> Also, the look back period to determine whether a debtor meets the definition of family farmer was extended to cover the previous three years instead of the last year, providing greater flexibility for farmers who might have sought non-farm work temporarily to address financial problems with their farming operation.<sup>44</sup> Additionally, the debt limit was raised.<sup>45</sup> The revised definition of family farmers and increase in debt limits was a response to the change in how small family farmers operate and earn their income. These changes were made to provide relief to the types of farmers that Congress intended to help when Chapter 12 was originally enacted.

#### V. WHY IS THE DEBT LIMIT INCREASE NECESSARY?

Although the Family Farmer Act of 2019 changed only one aspect of Chapter 12, it was critical. The debt limit is a bright line rule that determines whether Chapter 12 relief is available to a farmer. Debt limits in Chapter 12 are extremely important because of the debt-centric nature of farming. Farmers are required to obtain credit and take on debt in order to operate, and a lot of debt at that.<sup>46</sup> National farm debt has reached over 416 billion dollars and has increased 182 percent since 1986.<sup>47</sup> The 2019 amendment allows the purpose of Chapter 12 to be fulfilled since farming has changed significantly over the last few decades. Additionally, the current economic conditions

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42. See JEROME M. STAM & BRUCE L. DIXON, U.S. DEPT. AGRIC.: ECON. RES. SERV., FARMER BANKRUPTCIES AND FARM EXITS IN THE UNITED STATES, 1899-2002, at 31-32 (2004), [https://www.ers.usda.gov/webdocs/publications/42532/17750\\_aib788\\_1.pdf?v=](https://www.ers.usda.gov/webdocs/publications/42532/17750_aib788_1.pdf?v=;); see also Susan A. Schneider, *History of Chapter 12 Bankruptcy: On Again, Off Again*, 18 AGRIC. L. UPDATE 1, 1-2 (2001) (seven-year sunset provision that was renewed by Congress several times maintaining its temporary nature), <https://nationalaglawcenter.org/wp-content/uploads/assets/aala/08-01.pdf>.

43. Porter, *supra* note 35, at 734.

44. See Pub. L. No. 109-8, § 1005 (codified as amended at 11 U.S.C. § 101(18)(A)(ii) (2018)).

45. See *What is Chapter 12 Family Farmer Bankruptcy?*, AM. FARM BUREAU FED'N (Apr. 11, 2019), <https://www.fb.org/market-intel/what-is-chapter-12-family-farmer-bankruptcy>.

46. NAT'L BANKR. REV. COMM'N, *supra* note 7, at 1018 ("Even at the family farm level, farming is a debt-intensive business. Farm debt does not only include land and equipment financing, but the cyclical nature of farming requires farmers to finance their working capital on a year-to-year basis.").

47. Robert J. Keach, *ABI Testifies on Family Farmers and Small Business Reorganizations*, 38 AM. BANKR. INST. J., Aug. 2019, at 8, 8.

that farmers face further punctuate the need to provide access to specialized restructuring relief.<sup>48</sup>

The original debt limit restrictions in Chapter 12 were set to limit relief to small family farmers only,<sup>49</sup> in part because large agricultural businesses could successfully reorganize under Chapter 11 without the same impediments that a small farm would face.<sup>50</sup> Land prices generally indicate an appropriate debt limit for debtors.<sup>51</sup> The original \$1,500,000 cap was “set in 1986 when farm land values were low,”<sup>52</sup> and the amended debt limit in 2005 was to account for inflation.<sup>53</sup> By 2017, farmland prices had almost tripled since 2005.<sup>54</sup>

With increased land values, family farmers were able to leverage that land for larger loans.<sup>55</sup> The larger loans were needed as production costs increased.<sup>56</sup> Additionally, farm equipment has changed and become more complicated, bearing a higher price.<sup>57</sup> The increased debt limit reflects the increased cost of production as well as the increased value of land.

Although farmland has increased in value, other economic conditions have created an agricultural downturn in addition to more expensive production costs. Mimicking the pattern from the 1970s and 1980s, there was an agricultural boom at the beginning of the 21st century that began to decline in 2013.<sup>58</sup> Since then, net farm income has declined for the past five years<sup>59</sup> and is almost half of what

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48. P.J. Huffstutter, *U.S. Bill Raising Debt Ceiling for Farm Bankruptcies Heads to White House*, NASDAQ (Aug. 2, 2019, 6:18 PM), <https://www.nasdaq.com/articles/u.s.-bill-raising-debt-ceiling-for-farm-bankruptcies-heads-to-white-house-2019-08-02> (“With what’s going on in farmland today - as net income has continued to decrease, all the market uncertainty and the natural disasters - this is a very timely change.”).

49. NAT’L BANKR. REV. COMM’N, *supra* note 7, at 1017.

50. *Id.*

51. Alexandria C. Quinn, *The Next Generation of Chapter 12 Bankruptcy: Revising the Remedy*, 22 DRAKE J. AGRIC. L. 245, 261–62 (2017).

52. NAT’L BANKR. REV. COMM’N, *supra* note 7, at 1017.

53. Porter, *supra* note 35, at 734.

54. Quinn, *supra* note 51, at 262.

55. *See* NAT’L BANKR. REVIEW COMM’N, *supra* note 7, at 1017, discussing how the \$1.5 million set in 1986 had not changed at the time of the report in 1997.

56. Keach, *supra* note 47, at 8 (“Relative to 1986, and in nominal dollars, production expenses in agriculture have increased by 198 percent and farm debt has increased by 182 percent, while net cash income has experienced only half of that growth . . .”).

57. *Not Fake News: Congress Enacts New, Sensible Bankruptcy Reform*, 38 AM. BANKR. INST. J., Oct. 2019, at 10, 76 (“It had gone from two-wheel drive tractors to monster machines pulling wide, wide swaths of equipment with GPS precision. So today’s \$10 million limit is basically today’s equivalent of \$1.5 million back in 1986.”).

58. Alana Semuels, *‘They’re Trying to Wipe Us Off the Map.’ Small American Farmers Are Nearing Extinction*, TIME (Nov. 27, 2019), <https://time.com/5736789/small-american-farmers-debt-crisis-extinction/>.

59. 165 CONG. REC. H7439 (daily ed. July 25, 2019) (statement of Rep. Delgado).

it was in 2013,<sup>60</sup> as commodity prices decrease as a result of globalization.<sup>61</sup> Natural disasters resulting from climate change have devastated farms,<sup>62</sup> and the trade war with China has displaced a large market of consumers.<sup>63</sup> The result of the accumulation of these pressures resembles the conditions of the 1980s farm crisis.<sup>64</sup>

These pressures have manifested themselves in a variety of ways. Some small farmers are retiring or selling their farms, while others have filed for bankruptcy.<sup>65</sup> More than 100,000 farms closed between 2011 and 2018,<sup>66</sup> and Chapter 12 farm bankruptcy filings have increased every year for the past five years with a twenty percent increase in 2019 alone, ending at an eight-year high.<sup>67</sup>

How many more farmers will qualify for Chapter 12 protection going forward is unclear. One agricultural policy analyst has found that only around 5,000 farms would become newly eligible for Chapter 12 relief out of the 2.1 million existing farms.<sup>68</sup> If this is true, the 2019 amendment might not yield as much assistance as lawmakers in Washington had hoped. This study, however, based its findings on data from 1992 to 2011. In 2011, the national farm debt was 139 billion dollars,<sup>69</sup> while today that debt has almost tripled to 416 billion dollars. Only time will tell how effective the increased debt limit will be in preserving small family farms.

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60. Semuels, *supra* note 58.

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

62. 165 CONG. REC. H7438 (daily ed. July 25, 2019) (statement of Rep. Cicilline).

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

64. Huffstutter & Lange, *supra* note 61 (quoting Michelle Bowman, a governor at the U.S. Federal Reserve, that farm decline was a “troubling echo” of the 1980s farm crisis).

65. *U.S. Farm Bankruptcies Hit an Eight-Year High*, AM. BANKR. INST. (Jan. 31, 2020), <https://www.abi.org/newsroom/bankruptcy-headlines/us-farm-bankruptcies-hit-an-eight-year-high>.

66. Semuels, *supra* note 58.

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

68. Jim Monke, *Farm Debt and Chapter 12 Bankruptcy Eligibility*, CRS INSIGHT (Mar. 15, 2019), <https://fas.org/sgp/crs/misc/IN11073.pdf>.

69. JENNIFER IFFT ET AL., U.S. DEPT. AGRIC.: ECON. RES. SERV., DEBT USE BY U.S. FARM BUSINESSES, 1992-2011, at 6 (2014), [https://www.ers.usda.gov/webdocs/publications/43840/44987\\_eib122.pdf](https://www.ers.usda.gov/webdocs/publications/43840/44987_eib122.pdf).

Raising the debt limit gives more farmers the opportunity to benefit from favorable and flexible restructuring under Chapter 12 that is needed in today's depressed farm economy.<sup>70</sup> Following the 2019 amendment, Chapter 12 is now more aligned with family farm scale and credit needs.<sup>71</sup> The amendment was intended to prevent "mass liquidations and further consolidation in the largest sectors of the industry" and will enable more small family farmers to retain their assets and continue their operations.<sup>72</sup>

#### VI. BROADER IMPLICATIONS: WHY DOES CHAPTER 12 MATTER?

The Family Farmer Relief Act of 2019 is a bill that was aimed at preserving small family farmers in America, an important societal goal. The Supreme Court has noted that "[f]amily farmers hold a special place in our Nation's history and folklore,"<sup>73</sup> but some legal scholars argue that family farmer protections are simply pursued for sentimental reasons.<sup>74</sup> Small family farms, though, provide tangible benefits for our country, besides nostalgia, that support a grant of specialized legal relief.

One of the largest critiques of providing additional agricultural relief is that policymakers rely on agricultural relief as the pipeline for rural development.<sup>75</sup> While this critique may have some validity, it does not follow that support for small family farms is inconsequential. Although farms and agriculture may no longer be the backbone for rural America, small family farms still play an important role in our society. Small family farms, the kind Chapter 12 aims to benefit, contribute to the security of our food supply chain, biodiversity, and the vitality of rural economies.

If small family farms disappeared, large megafarms would be vulnerable to food supply failure. This is because large farms typically specialize in only a few products and monocultures.<sup>76</sup> In the event of a disease or a natural disaster that destroys the product or isolates a region from the rest of the country, that region loses its

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70. 165 CONG. REC. H7439, *supra* note 59.

71. Keach, *supra* note 47, at 8.

72. P.J. Huffstutter, *U.S. Bill Raising Debt Ceiling for Farm Bankruptcies Heads to White House*, REUTERS (Aug. 2, 2019), <https://www.reuters.com/article/us-usa-congress-farms/u-s-bill-raising-debt-ceiling-for-farm-bankruptcies-heads-to-white-house-idUSKCN1US2L8> (quoting Sen. Grassley).

73. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 209 (1987).

74. See Porter, *supra* note 35, at 736–37.

75. See, e.g., Karl N. Stauber, *Why Invest in Rural America – And How? A Critical Public Policy Question for the 21st Century*, ECON. REV., 2d Q. 2001, at 34–35.

76. Mario Hereto et al., *Farming and the Geography of Nutrient Production for Human Use: A Transdisciplinary Analysis*, 1 LANCET PLANETARY HEALTH e33, e37–e38 (2017) (shifts to larger-scale industrial farming are associated with declines in the diversity of nutritional diversity because they are primarily monocultures).

entire access to that product.<sup>77</sup> Additionally, small farms often produce specialized foods that bolster biodiversity.<sup>78</sup> Because megafarms focus on a limited number of products, small farms offer diversification of our food supply. And even if the small farmer grows the same crop as a large producer, that farmer will often cultivate a different variety of that product.<sup>79</sup> Food chain supply security, biodiversity, and food variety all support preservation of small family farms.

Rural economies and communities also benefit from small family farms, experiencing improved qualities of life. While megafarms might appear to create benefits for rural communities, such as jobs, more efficient farming, and lower food costs, the community suffers when a small farm is taken over. The vertical integration of megafarms forecloses open and competitive markets at a local level.<sup>80</sup>

Additionally, the perceived greater efficiency of megafarms is not realized.<sup>81</sup> The local economy and consumers do not receive the monetary benefits of megafarm production and investment, as supplies are obtained outside the community and profits go to investors, often in urban areas.<sup>82</sup> Just as large corporate farms are less likely to put money into the local economy, they are also less likely to care about the environmental impacts of their operations. Because small family farms are connected to their land and the community, they are more likely to “manage their natural resources responsibly.”<sup>83</sup> Some scholars have suggested that rural communities do not need small family farms because those farms actually depend on the local rural economy to continue.<sup>84</sup> But studies have consistently shown that rural communities with small family farms

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77. See, e.g., Semuels, *supra* note 58; Kelsey Nowakowski, *Why We Need Small Farms*, NAT'L GEOGRAPHIC (Oct. 12, 2018), <https://www.nationalgeographic.com/environment/future-of-food/photos-farms-agriculture-national-farmers-day/>.

78. Nowakowski, *supra* note 77.

79. James K. Boyce, *A Future for Small Farms? Biodiversity and Sustainable Agriculture* 6 (Univ. of Mass. Amherst Political Econ. Research Inst., Working Paper No. 86, 2004).

80. NAT'L COMM'N ON SMALL FARMS, U.S. DEP'T. OF AGRIC., *A TIME TO ACT* 18 (1998); FOOD & WATER WATCH, *THE ECONOMIC COST OF FOOD MONOPOLIES* 11 (2012) (“Rural communities often bear the brunt of agribusiness consolidation. For nearly 80 years, academic studies have documented the negative impact of agriculture’s consolidation and industrialization, which aligns farms more closely with food manufacturers than their local communities.”).

81. See generally Willis L. Peterson, *Are Large Farms More Efficient?* (Univ. of Minn. Dep’t of Applied Economics, Staff Paper No. P97-2, 1997).

82. See, e.g., ALICIA HARVIE & HILDE STEFFEY, *REBUILDING AMERICA’S ECONOMY WITH FAMILY FARM-CENTERED FOOD SYSTEMS* 12–13 (2010).

83. Christy Anderson Brekken, *South Dakota Farm Bureau, Inc. v. Hazeltine: The Eighth Circuit Abandons Federalism, Precedent, and Family Farmers*, 22 L. & INEQ. 347, 354 (2004).

84. Stephen R. Miller, *Three Legal Approaches to Rural Economic Development*, 23 KAN. J.L. & PUB. POL’Y 345, 348 (2014)

have a higher standard of living than rural communities surrounded by industrialized farms.<sup>85</sup>

Small family farm success and the adjacent success of its rural economy is important because rural prosperity affects the productivity and success of our entire society. Rural and urban areas are interdependent. Rural communities provide many things, including food, energy, and unique experiences, while urban communities provide a market, specialized services, and resources for investment.<sup>86</sup> Quality of life in rural and urban communities also in turn impact one another.<sup>87</sup>

Taken together, small family farms should continue to receive policy attention because of the tangible benefits they provide to rural communities, as well as their urban counterparts. Protecting small family farms should not be labeled as the “silver bullet” solution to rural economic problems though; family farms are only one important piece of rural community success.<sup>88</sup>

## VII. CONCLUSION

The Family Farmer Relief Act of 2019’s debt limit increase for Chapter 12 qualification will help family farmers maintain their operations and potentially encourage farmers away from retiring and selling off their productions to large farm operations that are starting to dominate agriculture. The purpose of Chapter 12 is to provide reorganization relief to small family farmers during economic difficulties and the changes in farming operations necessitated this amendment. Chapter 12’s preservation of small family farmers in turn provides food supply security and benefits rural communities. And while this is true, both agriculture and non-farm rural development should be integrated because agriculture alone cannot revitalize rural communities.<sup>89</sup> Nevertheless, without policies

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85. S. SPECIAL COMM. TO STUDY PROBLEMS OF AM. SMALL BUS., 79TH CONG., SMALL BUSINESS AND THE COMMUNITY: A STUDY OF THE CENTRAL VALLEY OF CALIFORNIA ON EFFECTS OF SCALE OF FARM OPERATIONS 13 (Comm. Print. 1946) (authored by Dr. Walter R. Goldschmidt, Assistant Professor of Anthropology and Sociology, UCLA); *see also* DAVID J. PETERS, REVISITING THE GOLDSCHMIDT HYPOTHESIS: THE EFFECT OF ECONOMIC STRUCTURE ON SOCIOECONOMIC CONDITIONS IN THE RURAL MIDWEST 20 (2002); Linda Lobao & Curtis W. Stofferahn, *The Community Effects of Industrialized Farming: Social Science Research and Challenges to Corporate Farming Laws*, 25 AGRIC. & HUM. VALUES 219, 223 (2008).

86. Brian Dabson, *Rural-Urban Interdependence: Why Metropolitan and Rural America Need Each Other 2* (The Blueprint for Am. Prosperity Metro. Plc’y Program at Brookings, 2007).

87. ROBERT D. ATKINSON, REVERSING RURAL AMERICA’S ECONOMIC DECLINE: THE CASE FOR A NATIONAL BALANCE GROWTH STRATEGY (2004).

88. *See* Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969, 1027 (2005).

89. *See Strategies to Revitalize Rural America*, CTR. RURAL AFFAIRS, <https://www.cfra.org/strategies-to-revitalize-rural-america> (last visited Mar. 10, 2020).

supportive of family farms, rural and urban communities would suffer as small family farms disappeared.

The unique circumstances of small family farmers required a specialized provision to accomplish the reorganization goals of the Bankruptcy Code. The need for individualized rules for particular areas in our economy is further illustrated by the special treatment for small businesses and the recent enactment of the Small Business Reorganization Act.<sup>90</sup> Chapter 12 continues to provide relief to small family farmers that is unavailable under other reorganization provisions. Protecting individual producers is not just about sentiment; it's also about our nation's prosperity as a whole.

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90. Small Business Reorganization Act of 2019, Pub. L. No. 116-54 (addressing issues small businesses faced in reorganization under Chapter 11 by creating specialized provisions for business with a prescribed debt limit); *see also* Andrew D. Simmons, Comment, *Expanding Bankruptcy Protection to the Individual Businessman: Taking Chapter 12 One Step Further*, 24 SAN DIEGO L. REV. 1201, 1219–20 (1987).