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What you really need to know about Chapter 12s

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1. Make sure you screen potential clients for chapter 12 – even if they don't present as "farmers."
  - a. See attached article and statutory comparison – NOTE: chart does not account for Sub V cases.
  - b. Only chapter where it is possible to get rid of capital gains taxes, even post petition
  - c. Unlike 13 – cram down everything
  - d. Like 11 re-amortize all secured loans (maybe not government)
  - e. Flexible (such as annual) payments
  - f. No creditor voting
2. Need to project income/feasibility – usually one of the largest hurdles to confirmation
  - a. Employ an expert – accountant, farm advisor, county ag agents
  - b. Wisconsin Farm Center Hotline 800-942-2474 is another resource
3. Negotiate with creditors early in the process (ideally pre-filing). The clock starts ticking on the day of filing. Once filed, there are 90 days for the plan to be filed and confirmation must be concluded 45 days after that. Verify debtor has taxes filed or is ready to. If anticipating a valuation fight, file the Motion for Valuation early in the case. Line up appraisers and other experts you may need or use.
4. Interest calculations are important with these large loans. The plan can typically re-write both the interest and principal on loans. Many secured loans in Chapter 12 will amortize beyond the 36-60 month plan term. Avoid a fight with creditors post completion by being specific in spelling out the principal, interest rate, length, and payment amount in the plan. Also, when interest starts, as of the filing, confirmation? If there is an order for adequate protection payments are those interest only? Does it reduce the principal of the claim?
5. New programs – the Inflation Reduction Act gave a lot of money to the USDA/FSA and many direct loans with delinquencies are already forgiven, but it can be used with guaranteed debt as well. Stay tuned. Flyer attached.

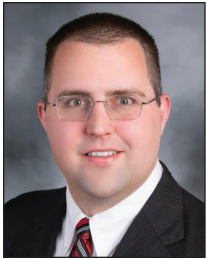
# Trustee Talk

BY JOSEPH A. PEIFFER, AUSTIN J. PEIFFER AND JAN SENSENICH<sup>1</sup>

## What Every Bankruptcy Lawyer Must Know About Chapter 12



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Although chapter 12 is the focus of this article, it is not primarily for chapter 12 farmer/fisherman reorganization practitioners. This article is for everyone else, primarily for those who really do not know much about chapter 12 and really do not plan on representing any farmers or fishermen or filing any chapter 12 cases. So, why do you need to know anything about chapter 12?

Farmers do not always walk into your offices in overalls with straw hats and boots. Someone who may qualify for chapter 12 relief might at first appear to be just another client. They may not ask about chapter 12, or even if they do identify as a farmer, they may not express much interest in undergoing "a farm reorganization." They could be someone with a struggling construction business who does some agricultural work on the side. They may not have any apparent nonexempt equity, and perhaps they just want to be done with farming. They may present as a chapter 7 client.

Here is the problem: If you are not screening every client for chapter 12 eligibility, and one slips through and you do not let that client know about the extraordinary relief that chapter 12 offers, you have made a serious (and perhaps costly) professional mistake. If such a client learns, after the bankruptcy you put them through, that they could have filed for chapter 12 relief and you failed to mention it, it might be time to call your carrier. That is why you should read this article.

The good news is that screening for chapter 12 eligibility is easy. There are two simple questions to ask: (1) "Have you had any income from either a farming, agricultural or commercial fishing operation in the past three tax years?" and (2) "Have you had income from the liquidation of farming assets in the past three tax years?" If the answer to both questions is a clear "no," then you are done.<sup>2</sup> That will probably be true for most of your incoming cases. If you have a prospective client answer "yes," then you really need to run them through a chapter 12 eligibility checklist, which is not difficult (see the exhibit).

<sup>1</sup> Joseph Peiffer has represented farmers and creditors in chapter 12 cases and worked with Sen. Charles Grassley (R-Iowa) to improve chapter 12 by the addition of special tax provisions regarding the sale of farm assets. Mr. Sensenich is president of the Association of Chapter 12 Trustees and co-chair of the National Association of Chapter 13 Trustee's Inclusion and Acceptance Committee.

<sup>2</sup> It is best practice to look at the client's tax returns, including any limited liability company or other pass-through entities' tax returns, to verify the answers to the questions.

### Chapter 12 Eligibility Checklist

Yes or No?	Characteristic	Individual	Non-Individual
	Debt Limit	Aggregate debts of \$10 million or less (11 U.S.C. § 101(18)(A)).	Aggregate debts of \$10 million or less (11 U.S.C. § 101(18)(B)(ii)).
	Income Qualification	> 50 percent of the gross income is from farming in the year before filing.	None.
	Income Qualification	> 50 percent of the gross income is from farming in both the second and third years before filing.	None.
	Debt Composition	> 50 percent of the aggregate, noncontingent, liquidated debt arises from farming (11 U.S.C. § 101(18)(A)).	None.
	Asset Composition		>80 percent value of its assets consists of assets related to the farming operation. 11 U.S.C. § 101(18)(B)(i).
	Ownership Restrictions	None.	>50 percent of the outstanding stock or equity is held by one family, or by one family and relatives of members of the family and the family's or relatives' farm. 11 U.S.C. § 101(18)(B).
	Publicly Traded	Not Applicable.	Not Allowed (11 U.S.C. § 101(18)(B)(iii)).
	Farming Operation Required	Maybe (11 U.S.C. § 101(18)(A) appears to require the family farmer to be engaged in farming; however, in <i>In re Williams</i> , 2016 WL 1644189 (Bankr. W.D. Ky. 2016), actual engagement in farming is not required).	Yes (11 U.S.C. § 101(18)(B)).

Chapter 12 eligibility depends on active involvement in farming or commercial fishing, with an emphasis on debt and income. The income limitations require that for an individual, the person received greater than half of their gross income from farming in either the tax year before filing or both the second and third tax years before filing.<sup>3</sup> In addition, at least 50 percent of the aggregated noncontingent liquidated debts must arise from the farming operation.<sup>4</sup> For family fishermen, at least 80 percent of aggregated noncontingent liquidated debt must arise from the fishing operation.<sup>5</sup> If the outcome of that analysis is that the debtor is clearly not eligible for chapter 12, then you are free to move on and evaluate their other options. If it looks like the client is eligible or if it is a close case, then you really owe it to that client to recommend a consultation with an experienced chapter 12 practitioner. If the practitioner reaches the conclusion that chapter 12 is not an option, then the practitioner's duty has been fulfilled.

However, if the practitioner concludes that chapter 12 is an option for that client, then they can brief that client on their options, which protects the interests of the client and the practitioner. For most practitioners, a chapter 12 screening would only involve asking a few additional questions. It could result in a few clients seeking the services of a chapter 12 practitioner, but if those clients were better served by that choice, then you have done well by those clients.

## Why Is Discussing the Chapter 12 Option Important?

At this point, you might be wondering, why is consultation about chapter 12 so important for those found eligible? Chapter 12 is the most powerful chapter of the Bankruptcy Code, as it allows debtors to accomplish the following: (1) the sale of land and the depreciated assets, and in some jurisdictions the end product of the farm,<sup>6</sup> while deprioritizing any capital gains tax<sup>7</sup>; (2) the cramming down of the claims of secured creditors of *all* collateral to the value of the collateral (including mortgages on the home); (3) the reamortization of all secured loans, including the home mortgage, extending to the useful life of the collateral with interest rates adjusted to the *Till* interest rate (prime rate plus a risk factor) or some other rate approved in your jurisdiction<sup>8</sup> (for farms and homes, this amortization period can be 30 years); (4) the ability to propose a plan with a flexible payment schedule (seasonal or even annual payments); and (5) the ability to propose and confirm a plan with no creditor voting, which can be confirmed over creditor objections — provided that the bankruptcy court approves the values and interest rate used.

Each of these benefits of chapter 12 involves something that is lacking in other reorganization chapters. When combined in a well-drafted plan, chapter 12 allows debtors to make substantial changes in their operations, including

changing the scale of their farm, the type of farming done or even allowing debtors to sell equipment or parts of their farm and retain others, including their home. Even if farmers are determined to scale down, work their way out of farming or pass the farm to the next generation of farmers, chapter 12 offers a unique set of reorganization tools that can make those transitions more successful.

## Deprioritization of Governmental Claims

Section 1232 allows a family farmer to deprioritize governmental claims arising due to the sale or other disposition of assets used in the farming operation. In the Eighth Circuit, the tax on the sale of end products (including market hogs and corn) qualifies for deprioritization.<sup>9</sup> In *Knudsen*, the taxes shown on the tax return before the application of § 1222(a)(2)(A), the predecessor of § 1232, were \$55,319. Application of § 1222(a)(2)(A) deprioritized \$43,248 of the taxes, meaning that the deprioritized taxes would be discharged when the Knudsens received their chapter 12 discharge.

The taxes that were not deprioritized, \$12,701, were required to be paid through the chapter 12 plan. Given the increase in the debt limit to \$10 million, the tax savings will increase dramatically. One of the authors' cases requires the liquidation of more than 600 acres of land and about a quarter of a million dollars in equipment. The anticipated tax savings will exceed \$700,000. If this farmer had liquidated and then filed a chapter 7 case, the taxes would have been nondischargeable. If a farmer with assets encumbered well beyond the value of the debtor's assets filed a chapter 7 before the liquidation of the assets, the bankruptcy trustee would abandon the assets, which would then be sold by the creditors after foreclosure. The taxes would then be measured from the adjusted tax basis to the total value of the encumbrances, thereby dramatically increasing the tax collectible by the taxing authorities.

## Cramdown of Secured Claims

Section 506 allows an undersecured claim to be bifurcated with the value of the collateral being treated as a secured claim and the excess being treated as an unsecured claim. This applies for all chapters of bankruptcy, but most other chapters disallow the cramming down of certain debts, most notably loans secured by mortgages on a debtor's principal residence.<sup>10</sup>

Chapter 12 contains no parallel restriction.<sup>11</sup> This is important for family farmers, because often a farmer's principal residence is on the farm, so the ability to modify a mortgage secured by the principal residence can be essential to a successful reorganization. However, this power is not restricted to cases where the debtor's principal residence is associated with the farming or fishing operation.

## Reamortization of Secured Loans

Under 11 U.S.C. § 1222(b)(5) and (9), a chapter 12 plan can pay any allowed secured claim over a period longer than the plan term. Courts have interpreted this to allow the reamor-

3 11 U.S.C. § 101(18)(A).

4 *Id.*

5 11 U.S.C. § 101(19)(A).

6 *In re Knudsen*, 389 B.R. 643, 665-69 (N.D. Iowa 2008); *aff'd*, 581 F.3d 696 (8th Cir. 2009).

7 See 11 U.S.C. § 1232.

8 *In re Fuelling*, 601 B.R. 665 (Bankr. N.D. Iowa 2019) (citing *U.S. v. Doud*, 869 F.2d 1144, 1145 (8th Cir. 1989)), for the proposition that the market rate would be the U.S. treasury bond yield of the same maturity with an upward "risk premium."

9 *In re Knudsen*, 389 B.R. 643, 665-69 (N.D. Iowa 2008); *aff'd*, 581 F.3d 696 (8th Cir. 2009).

10 See 11 U.S.C. §§ 1123(b)(5), 1322(b)(2).

11 See 11 U.S.C. § 1222(b)(2) ("[T]he plan may ... modify the rights of holders of secured claims.").

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tization of secured loans over the asset's usable lifespan at the interest rates provided for in *Till* or other favorable rates. For farmland, that can be 25 or 30 years. This amounts to a forced loan extension at a favorable interest rate for a debtor who would likely not qualify for credit on such favorable terms.

## Flexible Payment Schedule

As opposed to a chapter 13, where payments must generally start within 30 days of filing the case<sup>12</sup> and generally are made monthly,<sup>13</sup> a chapter 12 debtor can make payments quarterly, seasonally or annually. In addition, there is no requirement to commence payments prior to plan confirmation. While 11 U.S.C. § 1221 requires a debtor to file a plan within 90 days of the petition date, this period can be extended for cause, and delays in plan confirmation can extend the time before a debtor must begin making plan payments for years.

## A Plan Is Confirmable if a Court Finds that It Meets the Statutory Requirements

In contrast to a non-small business chapter 11, where, in addition to meeting statutory confirmation require-

ments,<sup>14</sup> a plan must be voted on by creditors,<sup>15</sup> confirmation of a chapter 12 plan is like confirmation of a chapter 13 plan.<sup>16</sup> If the debtor can satisfy the court that the statutory requirements are met, potentially over objections from creditors, the chapter 12 trustee and the U.S. Trustee, then the plan is confirmable. Whereas in a chapter 11 one dissatisfied undersecured creditor might be positioned to prevent confirmation, or prevent the debtor from retaining property under the plan by invoking the absolute-priority rule,<sup>17</sup> in a chapter 12 dissatisfied creditors have only the right to object to the plan, and their objections can be overruled by a judge.

## Conclusion

The power available to debtors under chapter 12 makes scenarios where another chapter of bankruptcy is more favorable to an eligible debtor few and far between. Even if you have no interest in filing a chapter 12 yourself, you owe it to clients to ask the questions to determine whether they might be eligible for chapter 12. Not only is it the right thing to do, it is your ethical duty and can prevent a malpractice lawsuit in the future. **abi**

<sup>12</sup> 11 U.S.C. § 1326(a)(1).

<sup>13</sup> 11 U.S.C. § 1325(a)(5)(B)(iii)(I) provides that a secured creditor whose claim is modified by a chapter 13 plan may insist on equal monthly payments, and the general practice in chapter 13s is for monthly payments, though this does not appear to be required by the Bankruptcy Code.

<sup>14</sup> This includes drafting a disclosure statement (11 U.S.C. § 1125).

<sup>15</sup> See 11 U.S.C. §§ 1126, 1129(a)(7), (8), (10).

<sup>16</sup> Compare 11 U.S.C. §§ 1225 & 1325.

<sup>17</sup> 11 U.S.C. § 1129(b)(2)(B) & (C).

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# Chapter 12 Comparison

Eligibility	Chapter 11	Chapter 12	Chapter 13
Who can be a debtor	Any person except a bank, insurance company or government unit §109(d)	Family farmer Family fisherman §109(f)  Individual Individual and spouse Partnership or corporation if controlled by one family (and its relatives) and more than 80% of value of assets are related to farming or fishing operations §101(18), (19A&B)	Individual Individual and spouse §109(e)
Special income requirements	None	Must have regular annual income §§101(19), (19B), 109(f)  More than 50% of gross income must come from farming operations or commercial fishing operations §101(18)(A), (19A)(A)(ii)	Must have regular income §109(e)

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Debt limit	None	<p>Family farmer \$4,153,150 at least 50% must arise from farming operations (exclusive of principal residence debt) §101(18)(A)</p> <p>Family fisherman \$1,924,550 at least 80% must arise from commercial fishing operation (exclusive of principal residence debt) §101(19A)(i)</p>	<p>Unsecured debt \$394,725 Secured debt \$1,184,200 §109(e)</p>
Prior case pending within 180 days and dismissed by court for willful failure to obey court order, failure to appear to prosecute case, or on debtor's motion after a request for automatic stay relief was filed	Individual debtor ineligible §109(g)	<p>Individual and family farmer ineligible</p> <p>Family fisherman is eligible §109(g)</p>	Ineligible §109(g)
Other definitions	§1101	<p>Farming operation §101(21)</p> <p>Commercial fishing operation §101(7A)</p>	Individual with regular income §101(30)
<b>Filing the petition</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
Joint petition filed by individual debtor and spouse allowed	Yes §302	Yes §302	Yes §302



Involuntary petition allowed	Yes if debtor not generally paying debts as they come due or a custodian has been appointed §303(a)	No §303(a)  Note: Involuntary petition not permitted under any chapter against a farmer, family farmer or individual and spouse (no involuntary joint petitions). §303(a)	No §303(a)
Credit counseling course (completed within 180 days prepetition) required unless exceptions apply §§109(h), 521(b), BR 1007c)	Yes, if debtor an individual §109(h) No, if debtor a partnership or corporation	Same as chapter 11 §109(h)	Yes §109(h)
Statement of current monthly income required	Yes, if debtor is an individual BR 1007(b)(5)	No	Yes BR 1007(b)(6)
<b>Dismissal or conversion</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
Voluntary dismissal by debtor BR 1017(f)	Best interests test §1112(b)(1)	Absolute right unless present case was a conversion from chapter 7 or 11 §1208(b) BR 1017(f)(3)	Absolute right unless present case was a conversion from chapter 7, 11 or 12 §1307(b) BR 1017(f)(3)
Conversion by debtor to Chapter 7 BR 1017(f)	Absolute right if three exceptions do not apply §1112(a)	Absolute right §1208(a),	Absolute right §1307(a)
Conversion by debtor to a chapter other than chapter 7 BR 1017(f)	Yes, if prior to discharge §1112(d)	No specific code authority But see 1208(e)	Yes, if prior to confirmation §1307(d)

Involuntary conversion to chapter 7 or dismissal of case	Yes Best interests test, for cause §1112(b)(1),( 2) No involuntary conversion if debtor is a farmer §1112 (c)	Yes, dismissal for cause §1208 (c) Dismissal or conversion if debtor committed fraud in connection with the case §1208(d)	Yes, dismissal or conversion for cause §1307 (c) but no conversion if debtor is a farmer §1307(f)
Involuntary conversion to a chapter other than chapter 7	No specific authority, but see § 1112(f)	No specific authority, but see § 1208(e)	Yes, §1307(d), but cannot convert if debtor is a farmer §1307(f)
<b>Preconfirmation matters</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
Employment of debtor’s attorney and other professionals—court approval required	Yes §§1107(a), 327	Yes §§1203, 327	No §1303
Professional compensation—court must award	Yes §330	Yes §330	No. But court reviews under §329. District may have a customary fee
Property of estate includes property acquired postpetition and earnings from services performed postpetition	Yes, if debtor is an individual §1115	Yes §1207	Yes §1306
Official creditors’ committee appointed	Yes §1102	No	No
Case trustee appointed in every case	No, unless DIP removed §1104	Yes Standing Chapter 12 trustee	Yes Standing chapter 13 trustee
Codebtor stay protects individuals on consumer debts	None	Yes §1201	Yes §1301

Proof of claim deemed filed if scheduled by debtor and not shown as disputed, contingent or unliquidated	Yes §1111(a) BR 3003(c)(2)	No Creditor must file proof of claim to participate in distribution BR 3002(a)	No Creditor must file proof of claim to participate in distribution BR 3002(a)
Debtor must file periodic business operating reports including statement of receipts and disbursements	Yes §§704(a)(8), 1107(a), BR 2015(a)(3)	Yes §§704(a)(8), 1203 & BR 2015(a)(3), (b)	Yes, if debtor operates a business §§704(a)(8), 1304 (c) BR 2015(c)(1)
Rights, powers and duties of debtor or DIP	DIP has most of the powers of trustee §1107	Debtor has most of the powers of trustee §1203	Debtor has limited powers of trustee §§1303, 1304
Automatic stay limited if <u>individual</u> debtor had one prior chapter 7, 11, or 13 case pending within previous year that was dismissed (except certain exceptions for dismissal under §707(b))	Stay terminates “with respect to the debtor” on the 30 <sup>th</sup> day unless extended by court §362(c)(3)	No limitation	Same as chapter 11 §362(c)(3))  Codebtor stay not subject to the stay limitation.
No automatic stay if <u>individual</u> debtor had two or more prior cases under any chapter of title 11 pending within the previous year that were dismissed (except certain exceptions for dismissal under §707(b))	No stay in effect except by court order §362(c)(4)	Same as chapter 11  Codebtor stay not subject to the stay limitation	Same as chapter 11  Codebtor stay not subject to the stay limitation

<b>Plan of Reorganization</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
Disclosure statement required	Yes Small business case exception §1125(b),(f)	No	No
Who can propose plan	Debtor only during first 120 days unless court orders otherwise; then debtor or party in interest unless court grants debtor an extension of time §1121	Debtor only must file plan within 90 days unless extension granted §1221 BR 3015(a)	Debtor only can file plan with petition or within 14 days thereafter §1321; BR 3015(b)
Term of plan	No minimum or maximum term	3 or less years unless court approves a longer term 5 year maximum term §1222 (c)	3 years if below median income debtor, court can extend up to 5 years §1325(b)(4)(A)(I), (B)  5 years if above median income debtor §1325(b)(4)(A)(ii), (B)
Modify rights of holders of claims secured only by debtor's principal residence	No §1123(b)(5)	Yes §1222(b)(2)	No §1322(b)(2)
Modify mortgage on debtor's principal residence if last payment is due before final plan payment	No	Yes	Yes §1322(c)(2)

§506 valuation on 910 motor vehicle claims and one year on other secured claims	Yes	Yes	No §1325(a) hanging paragraph
§506(a)(2) valuation of personal property is replacement value	N/A Case law may give same result, depending on the facts	N/A Same as Chapter 11	Yes §506(a)(2)
Liquidating plan allowed	Yes §1123(a)(5)(D)	Yes §1222(b)(8)	Yes §1322(b)(8)
Absolute priority rule applies	Individual debtor Yes-majority view No-minority view  Yes-all other debtors §1129(b)(2)(B)(ii)	No	No
Section 1111(b) election available to secured creditors	Yes	No	No
<b>Confirmation hearing</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
Time for holding hearing	No deadline or limits except for small business cases. § 1129(e)	Except for cause, confirmation hearing must be concluded no later than 45 days after plan filed §1224	Within 20 to 45 days after §341 meeting of creditors, unless the court, without an objection, determines an earlier meeting is in best interest of creditors or estate § 1324(b)
Notice of hearing on confirmation	28 day notice unless enlarged or reduced for cause BR 2002(b),(d) ; 9006(b), (c)	21day notice unless enlarged or reduced for cause BR 2002(a)(8), 9006(b), (c)	Same as chapter 11

Creditors vote to accept or reject proposed plan	Yes §1126	No	No
<b>Discharge</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
When granted or received	Individual debtor- upon completion of plan payments §1141(d)(5)(A)  Partnership or corporation- confirmation of plan §1141(d)(1)	After completion of plan payments §1228(a)	After completion of plan payments §1328(a)
No discharge for debtor corporation	(1) Plan provides for liquidation of all or substantially all of property of estate (2) debtor does not continue in business, and (3) debtor would be denied a discharge under §727(a) if this case were a chapter 7 case §1141(d)(3)	No similar limit	No corporate chapter 13 case allowed
Debts excepted from discharge	Individual debtor-all debts excepted from discharge under §523 §1141(d)(2)  Corporation debtor- certain debts excepted § 1141(d)(6)	All debts excepted from discharge under §523(a) and long term debts §1228(a)(2)	Certain, but not all, designated debts excepted from discharge under §523(a) and long term debts §1328(a)

Effect of discharge in a prior case on obtaining a discharge in present case	None	None	<p>Discharge denied if debtor obtained a discharge in a prior chapter 7, 11 or 12 case within past four years</p> <p>Discharge denied if debtor obtained a discharge in a prior chapter 13 case within past two years §1328(f)</p>
Effect of discharge in present case on obtaining a discharge in a subsequent case	None	<p>None if subsequent case is under chapter 11 or 12</p> <p>Discharge denied in subsequent chapter 7 case filed within six years if chapter 12 case payments on allowed unsecured claims totaled less than 70% §727(a)(9)</p>	<p>Discharge denied in subsequent chapter 13 case filed within four years. §1328(f)(2)</p> <p>Discharge denied in subsequent chapter 7 case filed within six years if chapter 13 case payments on allowed unsecured claims totaled less than 70% §727(a)(9)</p>
Hardship discharge if debtor is an individual	Yes-if (1) distribution to unsecured creditors are equal to a chapter 7 liquidation, and (2) modification of plan not practical §1141(d)(5)(B)	Yes-same two requirements as chapter 11 plus (3) debtor's failure to complete plan payments is due to circumstances which he should not be justly held accountable §1228(b)	Yes- same as chapter 12 §1328(b)

Postpetition personal financial management course required	Yes, if debtor is an individual, confirmed plan is a liquidation plan, debtor does not engage in business postconfirmation and would be denied a discharge under §727(a) if the case were a chapter 7 case. §§1141(d)(3), 727(a)(11) BR 1007(b)(7)(B)	No	Yes §1328(g)(1) BR 1007(b)(7)(A)
<b>Postconfirmation matters</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
Modify plan postconfirmation	Yes, until substantial consummation of plan §1127(b)	Yes §1229 (c)	Yes §1329
Remedy for default on plan payments or other plan provisions	Sue for breach in nonbankruptcy court	Modify plan Dismiss or convert case Relief from stay	Modify plan Dismiss or convert case Relief from stay
Revocation of confirmation	Must request within 180 days of confirmation Confirmation obtained by fraud Revoke discharge of debtor §1144	Must request within 180 days of confirmation Confirmation obtained by fraud Debtor can propose a plan modification §1230	Same as chapter 12 §1330
Special tax provisions	Yes §§1146, 346	Yes §§1231, 346	Yes §346

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# Inflation Reduction Act Section 22006

## First Phase of Assistance for Distressed Borrowers

### Overview

On August 16, 2022, President Biden signed the Inflation Reduction Act (IRA) into law. Section 22006 of the IRA provided \$3.1 billion for USDA to provide relief for distressed borrowers with certain Farm Service Agency (FSA) direct and/or guaranteed loans and to expedite assistance for those whose agricultural operations are at financial risk. USDA is implementing this provision with the goals of keeping borrowers farming, removing obstacles that currently prevent many borrowers from returning to their land, and improving the way that USDA approaches borrowing and loan servicing in the long-term. For many farmers, including those who have been hard hit by pandemic-induced market disruptions exacerbated by more frequent, more intense, climate-driven natural disasters, this assistance is vital if they are to continue producing the food, fiber, and fuel that are essential to the well-being of not only our rural communities but our Nation as a whole.

### First Phase: How It Works

#### Automatic Assistance

USDA has already provided nearly \$800 million in assistance to distressed borrowers to help cure delinquencies and resolve uncollectable farm loan debts, including:

- ◆ Nearly \$600 million in payments to the accounts of approximately 11,000 borrowers who were 60 or more days delinquent on their FSA direct or guaranteed loan, as of September 30, 2022. For direct loan borrowers, the assistance includes payments to make their loans current and to cover their next annual installment. For guaranteed borrowers, these payments were equal to the amount the borrower was delinquent as reported in their most recent report from their lender and may require an additional true-up.
- ◆ Just over \$200 million in payments to resolve the remaining debts for approximately 2,100 borrowers who had their loan collateral liquidated but had remaining debt that was or was due to be referred to the Department of Treasury for offset or collections. This action will mean that these borrowers will no longer face garnishment of their tax refunds, social security benefits, or other Federal benefit payments.

With the announcement of this assistance on October 18, 2022, USDA also began a process to provide approximately \$66 million in payments from available pandemic assistance funds to provide similar levels of assistance to direct loan borrowers who used disaster set-aside as an option in response to the COVID-19 pandemic. Up to 7,000 borrowers who were struggling to make their scheduled direct loan payment during the pandemic and used disaster set-aside to delay their payment to the final maturity date of their loan will automatically receive a payment for the set-aside amount that remains outstanding.

#### Case-by-Case

Following the initial automatic payments, about 1,600 farm loan borrowers with more complex cases, including borrowers facing bankruptcy and foreclosure, with delinquencies of about \$330 million have the opportunity to receive similar assistance to cure delinquencies and, if a direct loan borrower, cover their next annual installment. These accounts will require manual, case-by-case review by the FSA. The aid provided in these cases may vary based on the necessities of the case and may include additional payments to resolve foreclosure fees.

Another case-by-case process as part of the October 18, 2022, announcement adds an option under existing loan servicing procedures that are used to identify

whether an operation has sufficient cashflow to make the next loan installment payment (also known as financially distressed borrowers under existing FSA procedures). USDA will provide new assistance upon borrower request to cover the next installment that is due for qualifying borrowers facing these cashflow challenges. USDA estimates that up to 14,000 borrowers may qualify for estimated assistance of \$175 million. Direct loan borrowers will also be reminded of the process to initiate a review of sufficient cashflow that triggers potential assistance.

### What's Next

This first round of payments is focused on “stopping the bleeding” and helping to ensure distressed farm loan borrowers can stay in or re-enter the business of agriculture and continue feeding their communities. The October 18 announcement is just the first step to provide assistance to distressed farm loan borrowers. This effort will ultimately also include adding more tools and relaxing unnecessary restrictions by leveraging the remaining assistance made available by Congress through the IRA. Further assistance and changes to the approach will be made in subsequent phases.

### Learn More

For more information:

- ◆ Visit [farmers.gov/inflation-reduction-investments](https://farmers.gov/inflation-reduction-investments);
- ◆ Contact the FSA call center at 877-508-8364 between 8 a.m. and 7 p.m. Eastern.
- ◆ Related to tax resources, visit [farmers.gov/taxes](https://farmers.gov/taxes).