

## Farm Bankruptcies are Stabilizing

*Robert Dinterman and Ani L. Katchova*

*Farm Income Enhancement Program*

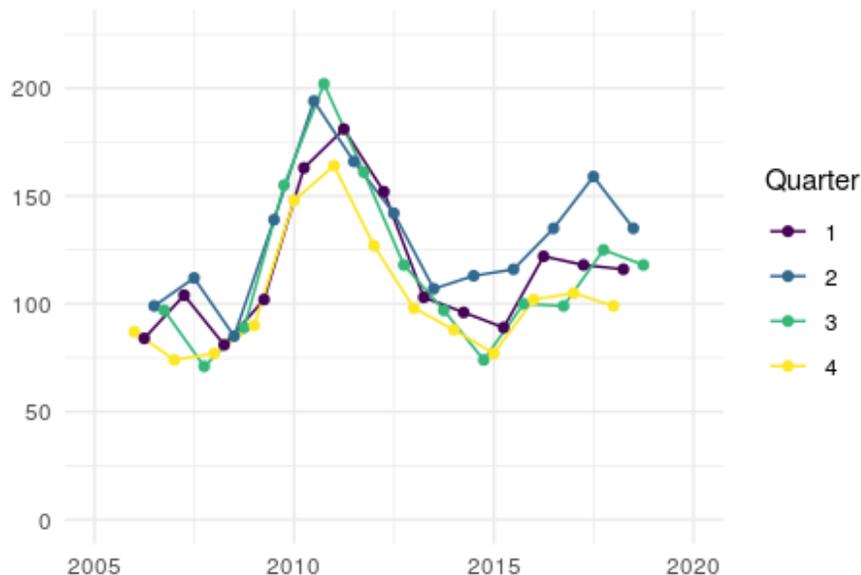
*Department of Agricultural, Environmental and Development Economics*

*The Ohio State University*

December 2018

Chapter 12 bankruptcy filings have been fairly stable over the past few quarters and have stabilized to around the same levels as when chapter 12 became a permanent fixture of the bankruptcy code in 2005. The US experienced elevated levels of chapter 12 filings towards the end of 2009 through mid-2012, but aside from the second quarter of 2017 there has not been a quarter with more than 150 chapter 12 bankruptcies filed and that is a good sign for the agricultural sector. In general, the second quarter, which consists of the period between April 1st and June 30th, is the quarter that typically has the highest number of bankruptcies in a year.

National Quarterly Filings of Chapter 12



source: US Courts  
Dinterman and Katchova

Chapter 12 bankruptcy, more commonly referred to as farm bankruptcy, is a bankruptcy procedure where family farmers or family fisherman can restructure their debts to be repaid over a period of three to five years conditional on income and debt limit requirements being met. There are many factors which influence a farmer's decision to file for bankruptcy, but at the crux of the issue is that a farmer is likely to file if their current cash flow does not meet their current debt obligations.



THE OHIO STATE UNIVERSITY

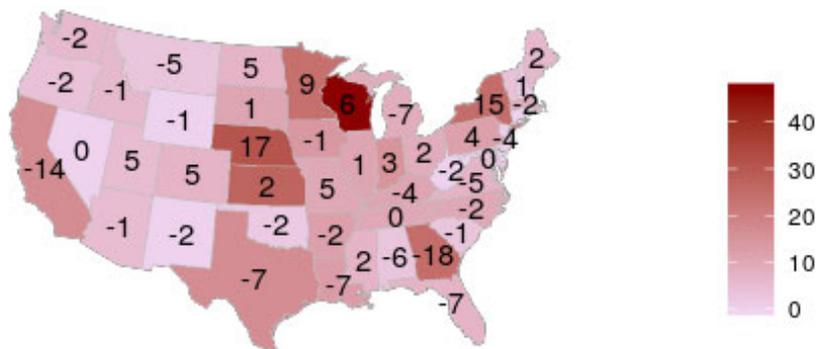
COLLEGE OF FOOD, AGRICULTURAL,  
AND ENVIRONMENTAL SCIENCES

Farm Income Enhancement Program

While nationally there has been a stabilization of farm bankruptcies, there is still substantial regional variation in farm bankruptcies and some areas are doing better than others across the US. For instance, Wisconsin led the nation in farm bankruptcies over the past year with 47 chapter 12 cases filed between October of 2017 and September of 2018. This has been a recent trend for Wisconsin as they had 41 filed the 12 month period before October 2017 and 36 the 12-month period before that. While Wisconsin has had an upward trend, they have not seen the largest increase in bankruptcies year-over-year as Nebraska, New York, and Minnesota have seen larger gains in the number of farm bankruptcies filed since October 1st of 2017.

### Chapter 12 Cases Filed, from 2017-10-01 to 2018-09-30

numbers represent change from previous year



source: US Courts  
Dinterman and Katchova

Research, from Robert Dinterman and Ani Katchova at The Ohio State University, has shown that there are many factors that affect regional variation of farm bankruptcies which include farmland values, commodity prices, the financial profile of a farmer, interest rates, and other regional economic factors. By and large, the recent agricultural downturn which has led to steady declines in net farm income since 2013 has not manifested itself in elevated levels of farm bankruptcies.

It is important to note that chapter 12 bankruptcies are only one indicator of the financial health of the agricultural sector and it is a testament to farmers' resiliency that there have not been more chapter 12s filed over the past 5 years of declining net farm incomes. At the same time, not *all* bankruptcies filed by farmers are chapter 12 and so the measure of chapter 12 as farm bankruptcies under reports the amount of bankruptcies that farms undertake. Chapter 12 is the preferable option for a farmer filing for bankruptcy if they wish to continue farming although only farms with fewer than \$4,153,150 in debts can qualify for chapter 12 bankruptcy. For example, Zacky Farms [filed for chapter 11](#) bankruptcy earlier this November because they had more than \$50 million in estimated debts at the time of their filing.

The other major options for farmers aside from chapter 12 is to file for chapter 7 or 11. Chapter 7 is a straight liquidation of all assets in order to repay their debts and allow the farmer to walk away from operation with no debt obligations – this option does not allow a farmer to continue farming but it does absolve them from debts. A chapter 11 bankruptcy is a structural reorganization of a business – that must be approved by creditors – in order to keep the business running to achieve a more economically feasible outcome. A chapter 11 can result in the business continuing operations at the conclusion of the case with the [GM Bankruptcy](#) as a high profile case of chapter 11 bankruptcy that did not end with the business ceasing operations. However, there are still instances in chapter 11 cases where a business will eventually liquidate remaining assets and end its operation.

### Extended Completion Times

There are four main types of bankruptcies available to businesses – which are what farmers would qualify as opposed to consumer bankruptcies – in the US bankruptcy code in chapter 7, 11, 12, and 13. The chapter 13 bankruptcy contains most of the same procedural aspects to the chapter 12 bankruptcy procedure except chapter 13 has much lower debt limits (currently no more than \$1,578,925) which would make chapter 12 by far the preferable option for farmers to file for. However, chapter 13 bankruptcies are a good comparison group for looking at how completion times for bankruptcy cases have trended since 2008:

#### *Average Time to Completion for Business Bankruptcies*

Year	Chap 7	Chap 11	Chap 12	Chap 13
2008	219 days	1277 days	1258 days	1245 days
2009	245 days	1223 days	1285 days	1269 days
2010	296 days	879 days	1099 days	1233 days
2011	359 days	914 days	1035 days	1141 days
2012	421 days	916 days	1040 days	1150 days
2013	485 days	1007 days	1033 days	1140 days
2014	530 days	1080 days	1187 days	1183 days
2015	572 days	1094 days	1352 days	1241 days
2016	557 days	1125 days	1311 days	1203 days
2017	569 days	1136 days	1499 days	1175 days
2018	518 days	1080 days	1286 days	1059 days

Chapter 12 bankruptcies consistently take longer to complete, however while the chapters 7, 11, and 13 have either stagnated or declined in completion times since 2015, the chapter 12 cases have trended towards increased time to completion. One reason for the increased time to completion is that farmers’ repayment plans for chapter 12 have not seen the expected incomes that their creditors were expecting – which leads to extensions in their repayment plans.

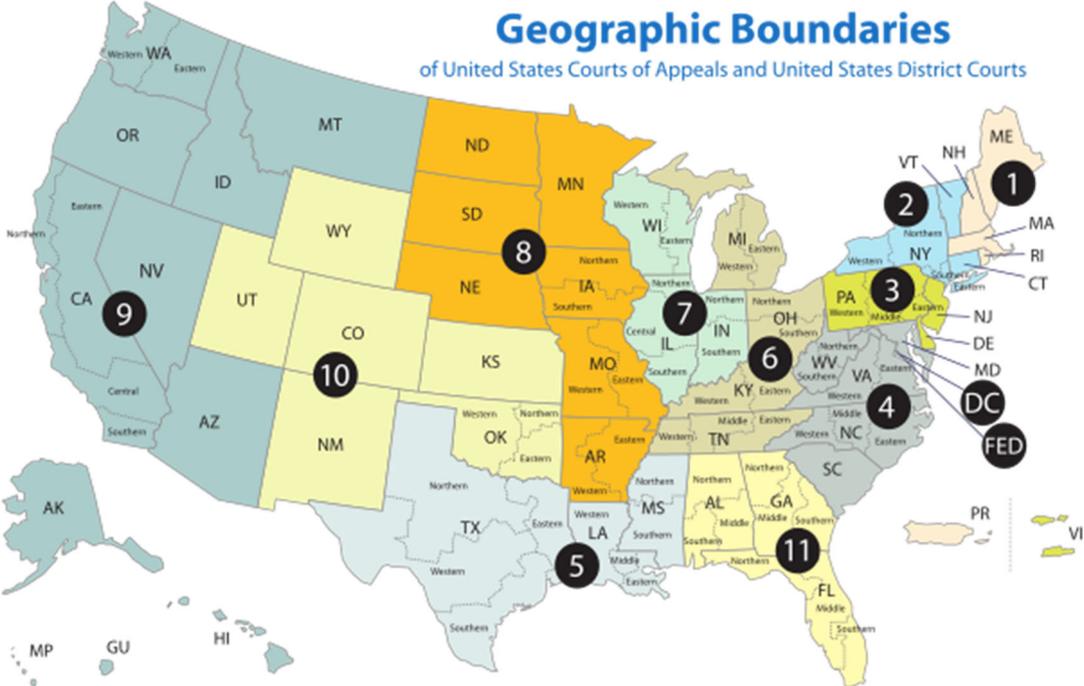


**Farm Income Enhancement Program**

Farmers have recently seen a bit of relief in their chapter 12 procedures with the passage of the Family Farmer Bankruptcy Clarification Act of 2017 which reclassified the debt category of capital gains taxes in their filings. Because farmers typically hold on to land for a long period of time and there has been a steady increase in farmland values, selling off land in order to repay creditors is often an attractive option for farmers but also results in substantial capital gains taxes. The act reclassified capital gains taxes as non-priority claims and no longer gives the Internal Revenue Service’s power to halt a chapter 12 repayment plan and can partially explain the decreased completion time for cases closing in 2018.

### Helpful Reference Data

Bankruptcy data can be found from the [US Courts](http://www.uscourts.gov) which provide quarterly reports of the bankruptcies filed for each bankruptcy court district. There are 94 court districts in the US with each state having at least one district and no district court crossing state boundaries. The 94 district courts make up 11 circuit courts across the United States:



<http://www.uscourts.gov/uscourts/images/CircuitMap.pdf>

The main culprits of increased farm bankruptcies over the past government fiscal year are the 7th and 8th court districts. For reference, the government fiscal year runs from October 1st through September 30th and the trends since the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act in 2005 can be seen here:

*Chapter 12 Cases Filed by Circuit*

FISCAL_YEAR	1ST	2ND	3RD	4TH	5TH	6TH	7TH	8TH	9TH	10TH	11TH
2006	24	10	14	14	53	38	34	75	53	29	23
2007	14	23	18	13	72	28	31	52	38	35	37
2008	35	15	10	20	30	36	36	43	38	32	37
2009	32	28	14	19	31	65	40	68	77	32	80
2010	32	33	34	29	66	76	65	88	126	54	104
2011	85	23	21	34	50	65	46	77	127	55	89
2012	78	39	21	29	38	49	47	43	108	26	61
2013	53	15	15	20	17	52	35	49	69	31	49
2014	54	21	18	18	29	30	28	35	62	19	57
2015	37	25	10	22	19	50	49	54	34	20	62
2016	39	28	17	33	26	45	56	77	46	27	64
2017	34	21	13	33	49	48	63	75	71	34	66
2018	27	29	13	23	37	39	73	109	42	41	35