

# LAW AND LENDING IN A DOWN FARM ECONOMY

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## **An In-House Lawyer's Perspective on Lending in the Down Farm Economy**

- ❖ Greg has given you some great information about the current agricultural environment
- ❖ I'm here to offer up a lawyer's thoughts, insights, observations and experiences in dealing with the law, the legal ramifications and working with borrowers in this environment
- ❖ I will discuss how GreenStone has reacted to this down economy, and the changes its has made

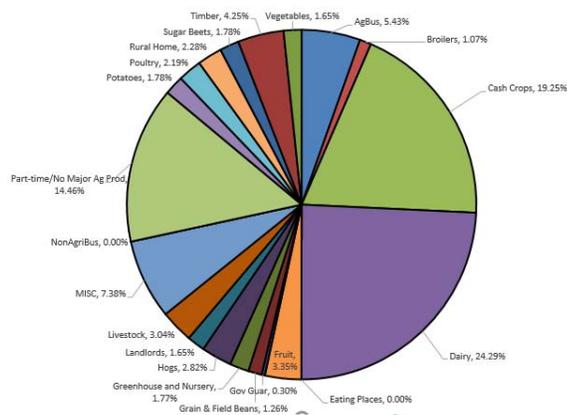


## GreenStone Farm Credit Services

- ❖ Headquartered in East Lansing, Michigan
- ❖ Territory covers all of Michigan and Northeast Wisconsin
- ❖ 36 Branches
- ❖ 70% agriculture debt market share
- ❖ 24,000 members
- ❖ Over \$9.5 Billion in assets
- ❖ In the AgriBank district
- ❖ Three attorneys



## GreenStone's Portfolio



## Down Farm Economy – Makes us Work Harder

### ❖ Educating Customers

- We provide a variety of tools and resources to customers looking for information concerning market trends and outlooks, financial metrics and other resources to support their farming operations.
- Information on critical financial metrics has been produced and distributed to customers as a means of helping them look deeper into their financial situation.



## Down Farm Economy – Makes us Work Harder

- Peer-based benchmarks are calculated, allowing customers insight on how they are performing in relation to their peers.
- For our younger customers, we offer a mentorship program pairing new producers with more experienced producers in their region.
- “No Surprise Rule”
  - All customers receive personal communication regarding their financial situation well-before formal tactics are put into play.



## Down Farm Economy – Makes us Work Harder

### ❖ Employee Education

- Beginning in 2015 GreenStone began providing specific training to the sales and credit teams to better equip them to have critical conversations with customers.
- Education on servicing options for customers including the involvement of the credit team in the discussion.



## Down Farm Economy – Makes us Work Harder

- Seasoned professionals team up with new professionals to lead difficult customer conversations.
- Working with Michigan State University Extension, provided training to the sales and credit teams to identify people exhibiting signs of depression, stress or other mental illness. Staff were also informed of appropriate responses and resources available when working with distressed customers.



## Down Farm Economy – Makes us Work Harder

### ❖ Accommodating Customers

- GreenStone works with its customers on an individual basis to find the solutions necessary for them to be sustainable during these difficult times.
- After evaluating the individual business structure of the farm, we may employ a variety of measures, including loan rebalancing, interest-only payments, loan restructuring, relaxing loan covenants and other options.



## Down Farm Economy – Makes us Work Harder

- In the years of 2017-18 we provided loan rebalancing to 530 customers (of the 3,398 that exhibited some level of risk).
- Total customers financially vulnerable with high level of probability of default: 329. Of those we have rebalanced 73 of them.
- From 2015 to 2018 we have provided an extension of payment and loan maturity dates to 2,956 customers.



## Additional Steps Taken when Loans Get Downgraded

- ❖ Accommodations may not be enough - moving toward legal action
- ❖ We've been much more aware of legal risks and plan accordingly
  - Legal review of loan and collateral files
  - Inspections and asset verifications
  - Pre-RAD consulting
  - Changes to internal communications
  - Different appraisals



## Loan Workouts

- ❖ Increased Focus on Reputation Risk
- ❖ Forbearance Arrangements
  - To provide an exit strategy
  - Success Fees
- ❖ Sale/Leaseback
- ❖ Foreclosures/Auctions
- ❖ Bankruptcies
  - Currently, we have only 30 or (0.3%) farm customers in either bankruptcy, foreclosure or both.



## Increase in Farm Bankruptcy Cases?

- ❖ 2018 saw an 8% decline in Chapter 12 bankruptcy cases.
- ❖ Still, filings for Chapter 12 were 25% higher than they were in 2014.
- ❖ More on the horizon, in my opinion

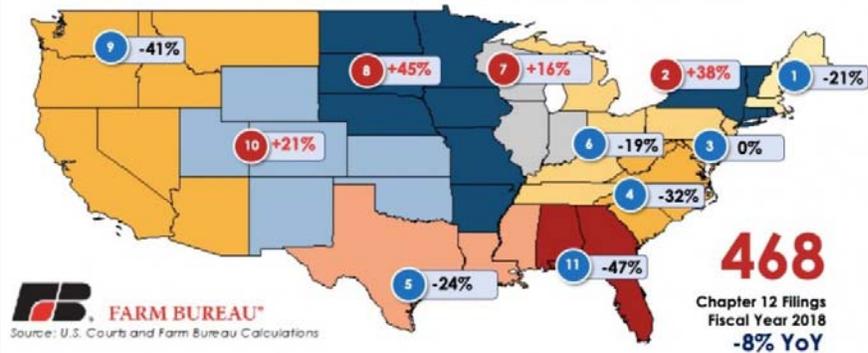


## Chapter 12 Bankruptcy Cases



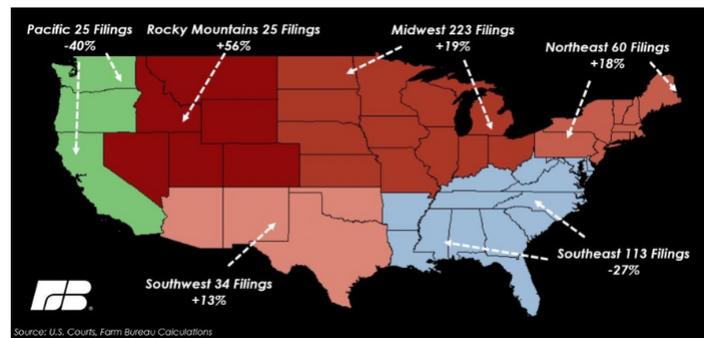
Source: U.S. Courts

## Chapter 12 Bankruptcy Cases

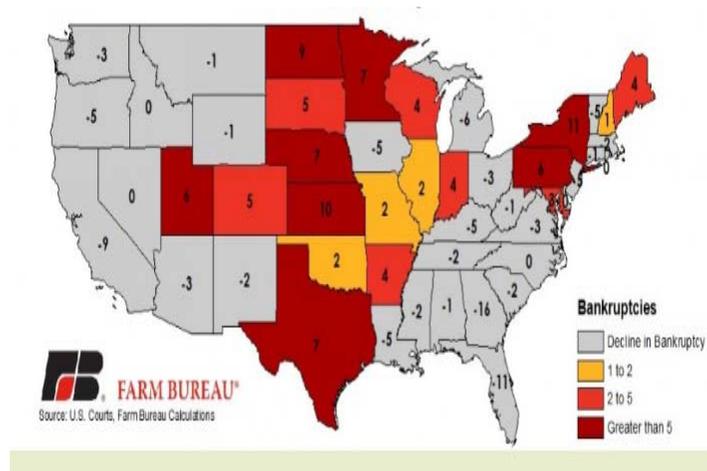


Comparing 2018 to 2017

## Chapter 12 Bankruptcy Cases



## Chapter 12 Bankruptcy Cases



## Chapter 12 Bankruptcies

### ❖ Key Characteristics

- Designed for “family farmers” and “family fisherman”
- Created in 1986
- Modeled after Chapter 13
- Advantages include seasonal repayment schedule, repayment of debts over 3 to 5 years, lower costs relative to other bankruptcies, and a quick and predictable process.
- Creditors do not have to approve of plan



## Chapter 12 Bankruptcies

◆ Under the Bankruptcy Code, “family farmers” fall into two categories: (1) an individual or individual and spouse or (2) a corporation or partnership. Farmers falling into the first category must meet each of the following four criteria:

1. The individual or husband and wife must be engaged in a farming operation or a commercial fishing operation.
2. The total debts (secured and unsecured) of the operation must not exceed \$4,153,150 (if a farming operation) or \$1,924,550 (if a commercial fishing operation).
3. If a family farmer, at least 50%, and if family fisherman at least 80%, of the total debts that are fixed in amount (exclusive of debt for the debtor’s home) must be related to the farming or commercial fishing operation.
4. More than 50% of the gross income of the individual or the husband and wife for the preceding tax year (or, for family farmers only, for each of the 2nd and 3rd prior tax years) must have come from the farming or commercial fishing operation.



## Chapter 12 Bankruptcies

◆ In order for a corporation or partnership to fall within the second category of debtors eligible to file as family farmers or family fisherman, the corporation must meet each of the following criteria:

1. More than one-half the outstanding stock or equity in the corporation or partnership must be owned by one family or by one family and its relatives.
2. The family or the family and its relatives must conduct the farming or commercial fishing operation.
3. More than 80% of the value of the corporate or partnership assets must be related to the farming or fishing operation.
4. The total indebtedness of the corporation or partnership must not exceed \$4,153,150 (if a farming operation) or \$1,924,550 (if a commercial fishing operation).
5. At least 50% for a farming operation or 80% for a fishing operation of the corporation’s or partnership’s total debts which are fixed in amount (exclusive of debt for one home occupied by a shareholder) must be related to the farming or fishing operation.
6. If the corporation issues stock, the stock cannot be publicly traded.



## Chapter 12 Limitations

- ❖ Debt limit cap of \$4.1 million
- ❖ Does not reflect the scale of debt structure for some agricultural producers
- ❖ Farmers with debt levels higher than \$4.1 million must consider less flexible and more expensive bankruptcy options such as Chapter 11 or Chapter 7.
- ❖ There is pending legislation that would raise the Chapter 12 debt cap to \$10 million.



## Chapter 12 Case

- ❖ *In re Perkins*, 581 B.R. 822 (6<sup>th</sup> Cir. BAP 2018)
  - Aggregate Debts:
    - Debtor's aggregate debts determined by Debtor's schedules if schedules were prepared in good faith (the cap was not exceeded)
    - Court can determine aggregate debts early in the case before parties expend significant resources pursuing bankruptcy protection; the court did not have to wait until all claims were filed and allowed
    - Chapter 12 eligibility is a gateway to the bankruptcy process, not an ongoing limitation on jurisdiction
  - Plan's cramdown rate of prime plus 1% over 20 years was appropriate where (1) Debtor had long history of successful farming; (2) farmland was rich; and (3) creditor was oversecured on an appreciating asset.
  - One year delay between confirmation and first payment to secured creditor was appropriate since the loan agreement itself called for yearly payments after harvest



**Questions?**

