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7th Annual Mid-South Agricultural & Environmental Law Conference

June 4, 2020



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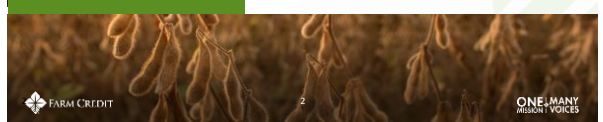
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 DIVISION OF AGRICULTURE
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 University of Arkansas System

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7th Annual Mid-South Agricultural and Environmental Law Conference

Greg Cole, President & CEO
 AgHeritage Farm Credit Services



FARM CREDIT

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Farm Credit Facts

- Nationwide customer-owned cooperative
- Created in 1916
- Provides loans and financial services
- Agriculture Committee Jurisdiction
- Regulated by Farm Credit Administration
- FCS total assets in excess of **\$387 billion**, capital **\$63 billion**, earnings **\$5.4 billion**
- FCS paid **\$2.37 billion** of patronage in 2020

100-Year-Old Mission
 Support rural communities and agriculture with reliable, consistent credit and financial services today and tomorrow.

FARM CREDIT

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Farm Credit Facts

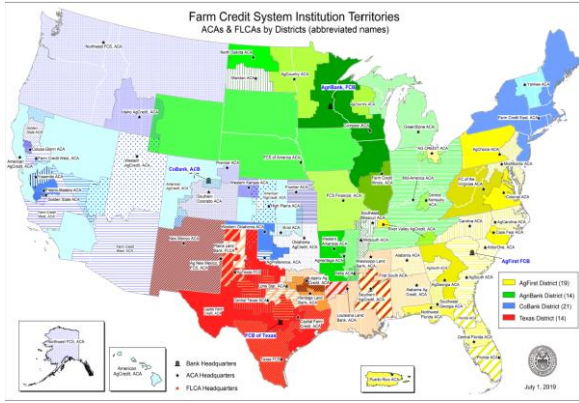
- **68** Associations, **4** District Banks, Farm Credit Funding Corporation
- No government funding
- Funding source – sell Farm Credit bonds on Wall Street
- GSE status
- **Largest single lender to agriculture**

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 Support rural communities and agriculture with reliable, consistent credit and financial services today and tomorrow.

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Economic Impact from COVID-19

Unprecedented (**black swan**) event – impact will be felt for years to come

Highest unemployment rate since the Great Depression (*projected 15%+*)

Substantial shock to GDP (*negative 35% 2Qtr 2020*)

Federal deficit for 2020 is projected to be \$3.7 billion + (quadruple 2019)

Highest federal debt to GDP ratio since the end of World War II (*101%*)

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Economic Impact from COVID-19

The duration of this event and the level of government intervention will drive the degree of pain

The level of government intervention may only trade the timeline of the pain

There's nowhere to hide in the economy from this event; all sectors will be affected, some more than others

What kind of recovery will we have?

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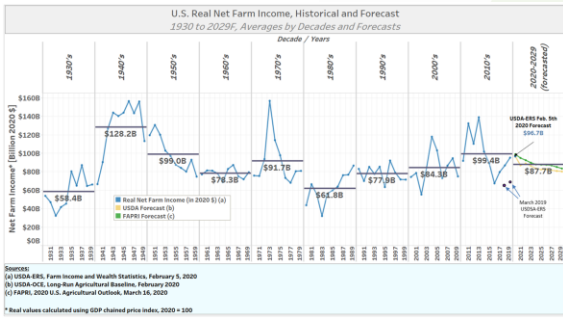
Economic Impact from COVID-19

All sectors of the ag economy have been impacted, some more than others

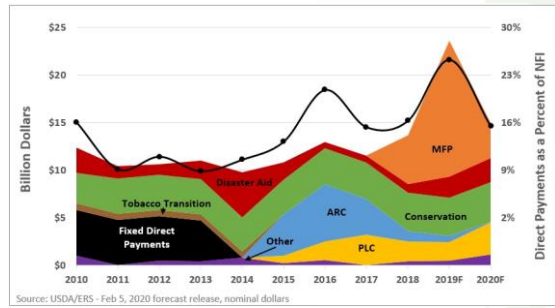
- Livestock/poultry
- Dairy
- Ethanol
- Timber
- Nuts and vegetables
- Crops

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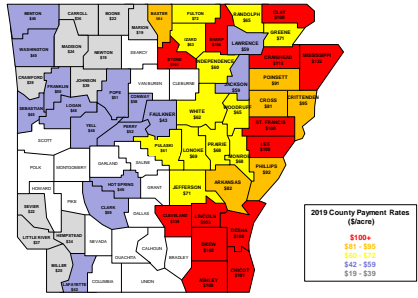
U.S. Net Farm Income (2020\$)



Farm Program Payment Composition



Market Facilitation Program 2019 County Payment Rates (\$/acre)



PLC Payment on Rice

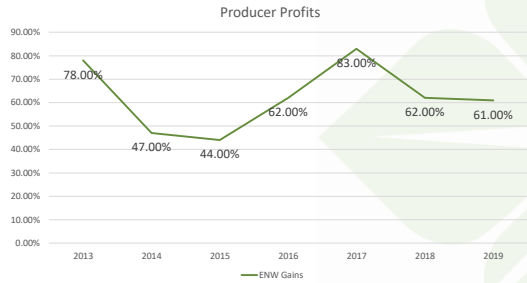


Current Agricultural Environment

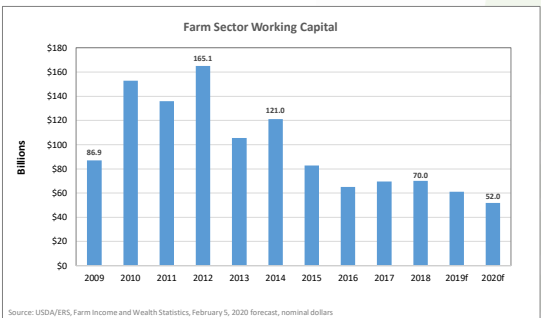
Transitioned to new farm bill structure in 2014, fundamental structure continues in the 2018 farm bill

- Philosophy changed, you only get help when things aren't good
- Price Loss Coverage (PLC) & Agriculture Risk Coverage (ARC) - PLC Payment on rice has provided a **strong safety net**
- Market Facilitation Payment (MFP)
- COVID-19 Food Assistance Program (CFAP)
- Additional COVID-19 legislation relief is being considered; agriculture is expected to be included

Customer Profitability Trends % of operating customers with gains

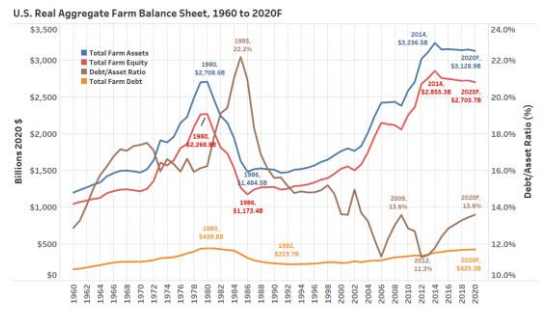


Farm Sector Financial Trends



Source: USDA/ERS, Farm Income and Wealth Statistics, February 5, 2020 forecast, nominal dollars

U.S. Farm Sector Debt-Asset Ratio (2012 Lowest Level in at least 50 years)



Source: USDA-ERS, Data as of 2/5/2020.

Producer Profile

Highly Stressed	Less Stressed
Rents most of their land	Owms high percentage of their land
Unfavorable rent structure	Favorable rent structure
High variable, fixed and living costs	Lower variable, fixed and living costs
High off farm spending	Modest off farm spending
Less efficient (>80%)	More efficient (<80%)
Highly leveraged (<50%)	Less leveraged (>50%)
Low or no liquidity (<15%)	Strong liquidity (>15-25%)
Lost money or broke even in the most recent good times	Made money in the most recent good times
Less rice base – PLC's	More rice base – PLC's
Less willing to make changes	Willing to make changes
Weak management skills (production, marketing, finance and risk management)	Strong management skills (production, marketing, finance and risk management)
View farming as a lifestyle	View farming as a business

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Bank Prime Loan Rate through April 2020

Source: Board of Governors of the Federal Reserve System (US) myf.redig/qWGe

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U.S. Treasury Yield Curve

as of May 28, 2020

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2019 Farm Real Estate Value by State

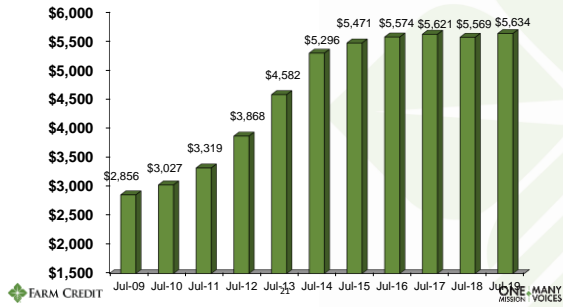
Dollars per Acre and Percent Change from 2018

USDA - NASS August 6, 2019

Land Values 2019 Summary (August 2019)
USDA, National Agricultural Statistics Service

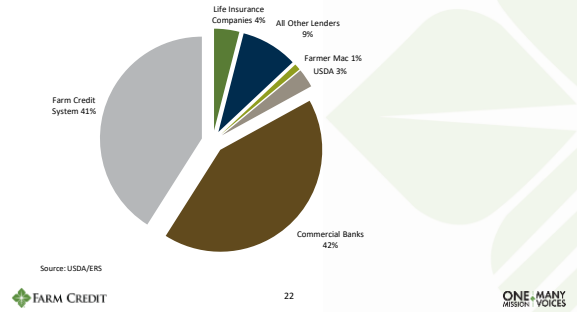
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Eastern Arkansas & Missouri Delta Region 16 Farmland Value Trends



Who Supplies Agricultural Debt?

Market Share of Total U.S. Farm Debt



Agricultural Credit Markets

Mid-South continues to enjoy a very healthy and competitive ag credit market

Who are the players? How have they reacted to our current event and what are the keys to the game going forward?

- Farm Credit System
- Commercial Banks
- Dealer Financing
- Supplier Financing
- Insurance Companies
- International Banks
- Non-traditional lenders

Agricultural Credit Markets

Lots of credit counseling and refinancing of debt over the last 6 years

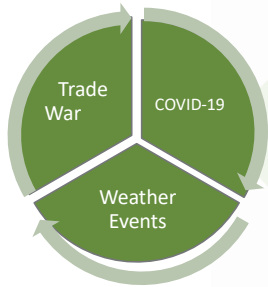
Credit quality has declined and delinquencies have edged higher but are at historically low levels

Some increase in A/R issues, collections, mediation cases and bankruptcies but not material

Still an average number of equipment auctions

- Keys to obtaining financing
- Producers that have good financial records, balance sheets (liquidity and equity) and business plans that can demonstrate their ability to manage their risk

Factors to Watch



Final Thoughts

Our current ag situation is not as bad as the 80's; however, we haven't seen this level of stress since that time period

Farm program safety net is working in the Mid-South so far but it won't save all producers in a continued stressed environment

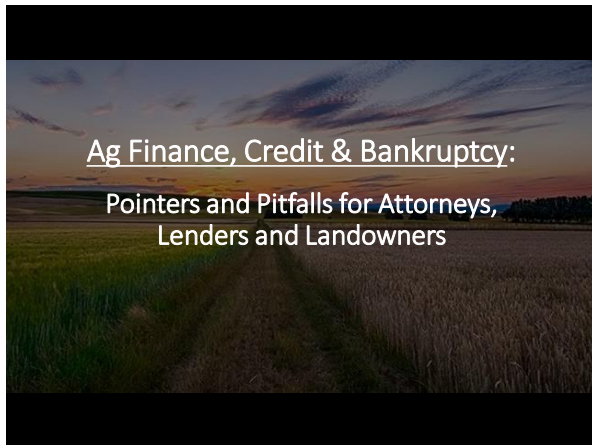
Current fundamentals suggest a continued bearish outlook for net farm income in the near term; we need some positive game changing events

Who are the producers and lenders that will make the future?

Capitalism, realities of scale and succession will continue to drive consolidation in agriculture and ag lending (*few & larger*)

Short-term headwinds, long-term tailwinds

Questions



Ag Finance, Credit & Bankruptcy:
Pointers and Pitfalls for Attorneys,
Lenders and Landowners

Example of Chapter 12

- Farmer Brown owns 200 acres valued at \$600,000 (\$3,000 per acre).
- Local Bank is owed \$800,000.00, secured by the 200 acres.
- Farm Brown owns equipment valued at \$1,000,000. Deere Credit is owed \$1,400,000, which is secured by the equipment.
- Farmer Brown owes unsecured debts of \$500,000.
- Local Bank has a "secured claim" of \$600,000 (or value of collateral) and an unsecured claim of \$200,000. The secured claim is amortized over 30 years at 5.5%.
- Deere Credit has a "secured claim of \$1,000,000 (or value of collateral) and unsecured claims of \$400,000. The secured claim is amortized over 7 years at 6%.
- Total unsecured claims are \$1,100,000 (\$500,000 + 200,000 + 400,000). Unsecured creditors share pro-rata in "disposable income" for 3-5 years.



Before bankruptcy – state law lending rules:

- O.C.G.A. § 11-9-322.1 (crop enabling loan)
- O.C.G.A. § 11-9-334 (priority over mortgage)
- O.C.G.A. § 11-9-502 (financing statement requirements)
- O.C.G.A. § 11-9-306 (proceeds)
- Prepetition perfection – see In re Coody, 59 B.R. 164 (Bankr. M.D. Ga. 1986).

After bankruptcy: 11 U.S.C. § 364
Fed. R. Bankr. P. 4001

- Section 364(a) – unsecured credit. Ordinary course of business. Section 503(b)(1) administrative expense priority. No court permission required.
- Section 364(b) – unsecured credit. Outside of ordinary course of business with court authorization. Section 503(b)(1) administrative expense priority is authorized.

C. Section 364(c) states:

- (c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—
- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
 - (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
 - (3) secured by a junior lien on property of the estate that is subject to a lien.

D. Section 364(d) states:

- (d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—
- (A) the trustee is unable to obtain such credit otherwise; and
 - (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.
- (2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

E. Section 364(e) states:

- (e) The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

Fed. R. Bankr. P. 4001(c)(2)

Hearing. The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

11 U.S.C. § 552(a):

(a) Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

11 U.S.C. § 552(b):

(b)(1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property, then such security interest extends to such proceeds, products, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

11 U.S.C. § 363(a) provides:

(a) In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

Situation 1

Farmer Brown has a \$1,000,000.00 operating line with AgBank prior to bankruptcy. After collecting his 2019 crops, which were secured by the line, there is a deficiency of \$500,000.00. Farmer Brown collected \$100,000.00 of the 2019 crop proceeds in early 2020 and paid land rent for the 2020 crop. In April 2020, Farmer Brown files chapter 12. New Lender, in order to finance Farmer Brown, wants a first priority security interest in all crops and government benefits. AgBank claims that it should be compensated for the rent proceeds that went into the 2020 crop.

Situation 2

Farmer Brown files chapter 12 in May 2020. As a peanut planting deadline approaches, Lender advances \$50,000.00 without Bankruptcy Court approval. The lender wishes to advance an additional 500,000.00 to be secured by 2020 crops and government payments. How does the Court deal with the initial, unauthorized \$50,000.00 advance?

Situation 3

In 2019, prepetition lender takes an assignment of 2019, 2020, and 2021 crops for government payments to secure a multi-year credit line. Debtor executes a CCC form 36 assignment. Debtor files chapter 12 in March 2020. Can new lender take the 2020 government payments?

Situation 4

Lender does not get Bankruptcy Court approval to loan funds even though Farmer Brown has filed chapter 12. Lender advances crop money, takes a security agreement in crops, and files an otherwise appropriate UCC financing statement. What are the results?

Situation 5

Lender has 2019 deficiency of \$400,000.00 and is undercollateralized by that amount. Debtor files Chapter 12. Lender is willing to make a new operating loan provided that \$400,000.00 deficiency can be "rolled into" the new loan.

Situation 6

Farmer Brown files for chapter 12 in January 2020. Lender will advance \$500,000.00 if secured by 2020 crops, crop insurance and government benefits. Farmer must pay \$100,000.00 land rent within seven days. Fed. R. Bankr. P. 4001 states that a preliminary hearing on financing may be held on less than 15 days' notice, during which debtor can borrow only enough to prevent irreparable damage to estate. Lender does not want to lend \$100,000.00 for rent and then risk being denied authority to lend the rest at a final hearing.

Situation 7

Farmer Brown cannot obtain financing. He has prepetition crop proceeds of \$500,000.00, which are sufficient for his currently planned crop. The prepetition crops are pledged to AgBank.

Situation 8

Farmer Brown has a 200-acre farm tract that is unencumbered. It was inherited many years ago and has a very low tax basis. If he can sell it, he will have sufficient funds to operate the current year.

Chapter 11

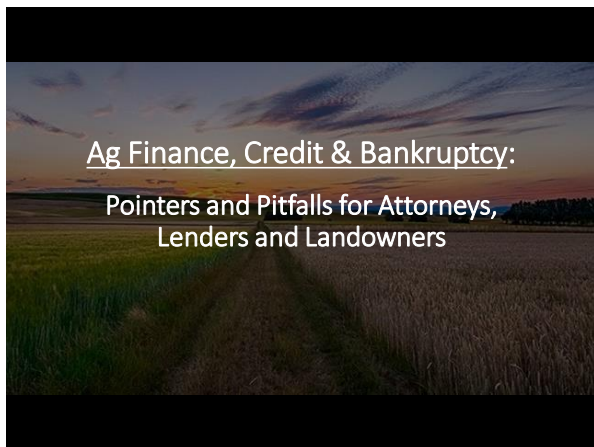
- No debt limits
- Individuals and entities
- Cramdown secured creditors § 1123(b)(5)
- No home mortgage modification
- Absolute priority/voting
- Committees possible
- United States trustee fees
- No absolute right to dismiss
- No residential mortgage modification
- Universal tests:
 - Best interest of creditors
 - Value of collateral paid
 - Priority paid in full
 - Feasible

Chapter 12

- Eligibility (now \$10,000,000 in debts)
- Cramdown
- Value
- Disposable income
- Chapter 12 trustee and fees
- Residence mortgage modifiable
- Individuals and entities
- Absolute right to dismiss
- Universal tests:
 - Best interest of creditors
 - Value of collateral paid
 - Priority paid in full
 - Feasible

Chapter 11 Subchapter V

- Effective February 19, 2020
- Small business owners and individuals
- "Commercial or business activity"
- Modeled after Chapter 12
- No absolute priority
- Disposable income concept
- Plan in 90 days
- No absolute right to dismiss
- "Trustee" role unclear
- Debts < \$2,725,625
- 50% of debt from commercial or business activity
- Residence debt not subject to modification
- Universal tests:
 - Best interest of creditors
 - Value of collateral paid
 - Priority paid in full
 - Feasible



Ag Finance, Credit & Bankruptcy:
Pointers and Pitfalls for Attorneys,
Lenders and Landowners

Mid- South Agricultural & Environmental Law Conference

- Autumn Price, VP Government Relations, Land O'Lakes, Inc.
- Hunt Shipman, Principal & Director, Cornerstone Government Affairs

• June 4, 2020

Land O' Lakes, Inc. Key Stats



LOL CV-19 Government Relations Response

- **Priorities:**
- Economic Relief and Access to Capital for Farmers
- Broadband Infrastructure

LAND O'LAKES, INC.

Beth E. Ford
President & Chief Executive Officer

March 30, 2020

The Honorable Mitch McConnell
U.S. Majority Leader
Washington, D.C. 20530

The Honorable Nancy Pelosi
U.S. Speaker of the House
Washington, D.C. 20515



Looking Ahead

- **The Congressional Road Ahead:**
- In the House, with proxy voting, Members may not return until September
- Senate prefers a “wait and see” approach
 - Unemployment numbers released Friday
- Appropriations: June to mid-July
- Enactment next bill: July at the earliest
- Infrastructure bill to clear the House floor in July – **broadband**
- Fear over meat shortages have reignited Congressional interest in food supply chain consolidation
- Protectionism vs Free Trade (i.e. China/US trade deal)



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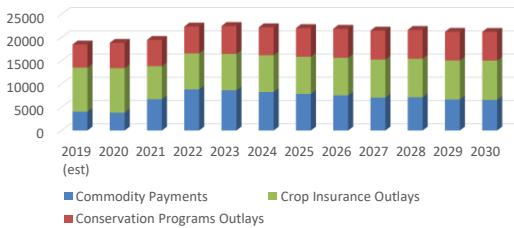
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Issues for the Next Farm Bill

- Budget
- Political
- Policy & Trade

Projected CCC & FCIC Expenditures



Farm Bills of the Past

Year	Environment	Time to Pass	Fiscal Environment	Unemployment	Debt as a Percent of GDP	House	Senate	White House
1985	Farm stress & commodity surpluses	8 months	\$\$\$*	7.2%	41.78%	D	R	R
1990	Reducing spending significantly	9 months	\$\$\$	5.6%	53.63%	D	D	R
1996	Republican "Revolution" drives major policy changes & spending reductions	7 months	\$\$\$*	5.4%	64.5%	R	R	D
2002	Began "early" in 2001 to cover 2002 crop	10 months	\$\$\$	5.8%	56.61%	R	D	R

Farm Bills of the Past

Year	Environment	Time to Pass	Fiscal Environment	Unemployment	Debt as a Percent of GDP	House	Senate	White House
2008	Controversial & protracted – “2007” bill enacted well into 2008 crop year. Enacted over President Bush’s veto (twice).	12 months	\$\$\$	5.8%	67.4%	D	D	R
2014	Controversial & protracted – began with attempted short circuit in 2012 and finally enacted in 2014.	24 months	\$\$\$	6.2%	101.47%	R	D	D
2018	Controversial, “reform” in the House; status-quo in the Senate	8 months	\$\$\$	3.9%	104.96%	R	R	R

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- *Thank you for attending today*
- *Tomorrow will start at the same time – make sure to click on the link for Friday*



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