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Briefing Report to Congressional Requesters

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FARM FINANCE

Participants' Views on Issues Surrounding Chapter 12 Bankruptcy

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Resources, Community, and
Economic Development Division

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May 15, 1989

The Honorable Richard Stallings
House of Representatives

The Honorable Mike Synar
House of Representatives

On the basis of a request from you and from the former Chairman of the Subcommittee on Conservation, Credit, and Rural Development, House Committee on Agriculture, we are providing you with information on the implementation of new family farmer bankruptcy provisions--referred to as Chapter 12--legislated by the Congress in 1986. Specifically, we are providing Chapter 12 participants' views on (1) the effects of Chapter 12 bankruptcy on credit availability and the cost of credit to farmers, (2) mandatory mediation as an alternative to Chapter 12 to resolve repayment problems, (3) eligibility criteria for Chapter 12 filers, (4) appropriateness of legislatively mandated plan-filing and -confirmation milestones, and (5) sunset provisions of Chapter 12 bankruptcy. As agreed, we are also providing background information on Chapter 12, including statistical information on Chapter 12 activity and a case study.

On October 27, 1986, the Congress enacted the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, creating a new form of bankruptcy for farmers. The family farmer bankruptcy provisions of the act took effect on November 26, 1986, and are scheduled to expire on October 1, 1993. According to the conference report accompanying the act, the Congress intended that Chapter 12 bankruptcy would give family farmers[1] facing bankruptcy a better chance to reorganize debt and keep their land than they would have had under existing bankruptcy legislation.

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[1]Generally, the act defines family farmers as individuals, individuals and spouses, and family partnerships and corporations engaged in farming with (1) total debts of not more than $1.5 million of which at least 80 percent arose out of a farming operation owned or operated by the debtor and (2) over 50 percent of gross income derived from farming for the taxable year preceding the year of the Chapter 12 petition.

The Congress found that existing forms of bankruptcy (1) precluded most family farmers from filing because their debt levels were too high or (2) were too expensive, time-consuming, complicated, and unworkable. Accordingly, the new legislation stipulated a higher debt limit, which would enable more family farmers to file for Chapter 12, and added certain protections from creditors that would make it easier for family farmers to obtain confirmed bankruptcy reorganization plans.

The number of farmers that have filed for Chapter 12 bankruptcy has fallen short of the number estimated when the act was being considered by the Congress. Some estimates indicated that about 30,000 family farmers could potentially file in the first year of the program. However, from the inception of Chapter 12 through December 31, 1988, only 8,527 petitions had been filed. (See section 1 for more detailed background information on Chapter 12 implementation and program activity.) (See app. I for a case study that illustrates the chronology and content of a Chapter 12 case.)

PARTICIPANTS' VIEWS

We obtained views from Chapter 12 creditors and legal practitioners--judges, trustees, and debtor and creditor attorneys--involved in the Chapter 12 process on five aspects of implementation of the law and issues surrounding Chapter 12 bankruptcy. We relied on debtor attorneys' views to provide insights into their clients'--farmer borrowers'--views. The following summarizes information the participants told us on each of the five aspects.

Creditors' Views on Chapter 12's Impact on the Availability and Cost of Credit to Farmers

A majority of the creditors we interviewed expressed a reluctance to lend to farmers, and over a third said they have raised interest rates to farmers as a result of the Chapter 12 bankruptcy law. Most creditors said they were much less willing to lend to farmers that had filed Chapter 12 than to other family farmers. In addition, most creditors that said they raised interest rates to farmers to cover losses from Chapter 12 bankruptcies said they raised interest rates to all farmers--not just Chapter 12 filers.

Private creditors, including the Farm Credit System, which operate under a profit motive, indicated a greater reluctance to lend and a greater willingness to raise interest rates as a result of Chapter 12, than the Farmers

Home Administration (FmHA). FmHA officials told us that, as the government's lender of last resort to farmers, they had little discretion to deny loans to farmers that otherwise meet FmHA loan criteria and that bankruptcy itself cannot be considered an unacceptable credit history. They also said that FmHA's interest rates are not affected by Chapter 12 bankruptcy. (See section 2.)

Creditors' Views on Mandatory Mediation Versus Chapter 12

Mandatory mediation, which is legislated by some states, allows the farmer to require the creditor to negotiate debt repayment prior to taking other legal remedies for nonpayment of debt. Under mandatory mediation, if a contract is signed as a result of the negotiations, it is legal and binding. Most creditors that we interviewed preferred mandatory mediation to Chapter 12 bankruptcy. Creditors said that mandatory mediation is less costly because debt reduction is determined through negotiation versus a court-ordered process. In addition, they said it provided a better working environment because in negotiation more face-to-face contact usually occurs between the creditor and the borrower, which can result in more trust and understanding between the participants. (See section 3.)

Creditors' and Legal Practitioners' Views on Chapter 12 Eligibility Requirements

A majority of individuals that we interviewed expressed concerns that the eligibility requirements to file for Chapter 12 bankruptcy were either too restrictive or too lenient. Generally, of those that had concerns with the requirements, legal practitioners said that more farmers should be allowed to file and creditors said that fewer farmers should be allowed to file. Suggestions for accomplishing these goals focused on changing the debt and income criteria to be either more restrictive or more lenient, and ensuring that procedural requirements allow only farmers that the Congress intended to file could file a Chapter 12 bankruptcy petition. (See section 4.)

Creditors' and Legal Practitioners' Views on Plan-Filing and -Confirmation Milestones

The initial milestones for filing and confirming Chapter 12 cases were not met in a substantial number of cases. The act requires that within 90 days of filing a petition for debt relief, the debtor must file a plan of reorganization with the court, specifying the terms by which the debtor plans to repay his or her debts and that within 45 days after the plan is filed, the court must hold a confirmation hearing or extend the 45-day period. The court may extend both time periods for cause. Of the 811 Chapter 12 cases filed in the 4 bankruptcy courts in our review, between the law's inception and November 15, 1987, 36 percent did not have plans filed within the initial 90-day filing period and, of those that had filed plans, 93 percent did not have plans confirmed within the initial 45-day confirmation period.

Most Chapter 12 participants we talked with said that the milestones are reasonable, but they added that creditors, debtors, and the courts contribute to the missed milestones. Interviewees told us that the 90-day plan-filing requirement is not met because debtors and creditors do not negotiate feasible plans during the time period and courts do not enforce the requirement. Interviewees attributed the high number of cases missing the 45-day plan-confirmation milestone to crowded court dockets and the inability of debtors and creditors to negotiate a plan. (See section 5.)

Creditors' and Legal Practitioners' Views on Chapter 12's Sunset Provision

Although a majority of both legal practitioners and creditors told us that the law should expire on or before the current sunset date, interviewees' responses varied according to their geographic location and role in the Chapter 12 process. Many more interviewees in Minnesota and Nebraska than in Colorado and Louisiana told us the sunset date should be deleted, thus making the law permanent--7 percent in Colorado and 0 percent in Louisiana versus 40 percent in Minnesota and 67 percent in Nebraska. In Minnesota and Nebraska, legal practitioners' and creditors' views varied--63 percent of the legal practitioners versus 36 percent of the creditors said that the sunset date should be deleted. (See section 6.)

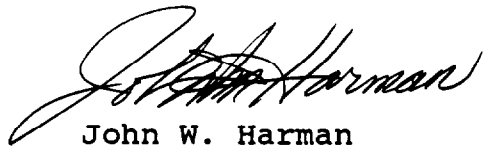
We conducted our work primarily by interviewing 59 participants in the Chapter 12 bankruptcy process--6 judges,

5 trustees, 11 debtor attorneys, 8 creditor attorneys, and 29 creditors--and reviewing case information and statistics in Colorado, Western Louisiana, Minnesota, and Nebraska. Our objectives, scope, and methodology are described in greater detail in section 7 of this briefing report. We conducted our review between June 1987 and February 1989.

The information contained in this briefing report cannot be projected to the districts reviewed, other judicial districts, or the nation overall. Our data collection efforts and interviews were limited generally to areas covered by only 4 of the 94 U.S. bankruptcy courts, and within those areas our audit work was too limited to develop projectable information.

Copies of this briefing report are being sent to the Chairman, House Committee on Agriculture; the Chairman, Subcommittee on Conservation, Credit, and Rural Development, House Committee on Agriculture; the Chairman, Senate Committee on Agriculture, Nutrition, and Forestry; interested members of the Congress; and the Director, Office of Management and Budget. We are also sending this report to the Honorable Ed Jones, the former Chairman of the Subcommittee on Conservation, Credit, and Rural Development, House Committee on Agriculture, who initially requested this assignment. Copies will also be made available to other interested parties who request them. If we can be of further assistance, please contact me at (202) 275-5138.

Major contributors to this briefing report are listed in appendix III.



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Agriculture Issues

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APPENDIX

TABLE

ABBREVIATIONS

ASCS	Agricultural Stabilization and Conservation Service
CCC	Commodity Credit Corporation
FCS	Farm Credit System
FLB	Federal Land Bank
FmHA	Farmers Home Administration
GAO	General Accounting Office
RCED	Resources, Community, and Economic Development Division

SECTION 1

INFORMATION ON CHAPTER 12 BANKRUPTCY IMPLEMENTATION AND PROGRAM ACTIVITY

On October 27, 1986, the Congress enacted the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554, 100 Stat. 3088.) which, among other things, added to the U.S. Bankruptcy Code (Title 11, U.S.C.) a new emergency bankruptcy chapter for family farmers: Chapter 12 (11 U.S.C. 1201 et seq.). Formally titled "Adjustment of Debts of a Family Farmer With Regular Annual Income," Chapter 12 took effect on November 26, 1986, and is legislatively mandated to expire on October 1, 1993.

According to the conference report accompanying the act, the Congress intended that Chapter 12 bankruptcy would give family farmers facing bankruptcy a better chance to reorganize debt and keep their land than they would have had under previous bankruptcy legislation. The Congress found that existing forms of bankruptcy (1) precluded most family farmers from filing because their debt levels were too high or (2) were too expensive, time-consuming, complicated, and unworkable. Accordingly, the new legislation stipulated a higher debt limit, which would enable more family farmers to file for Chapter 12, and added certain protections from creditors that would make it easier for family farmers to obtain confirmed bankruptcy reorganization plans.

Generally, the act defines family farmers as individuals, individuals and spouses, and family partnerships and corporations engaged in farming with (1) total debts of not more than $1.5 million of which at least 80 percent arose out of a farming operation owned or operated by the debtor and (2) over 50 percent of gross income derived from farming for the taxable year preceding the year of the Chapter 12 petition. We use this definition for family farmers throughout the report.

The following provides summary information on (1) how the Chapter 12 process works and (2) Chapter 12 program statistics including the total number of Chapter 12 filings, the timeliness of the plan-filing and -confirmation process in certain court districts, and the amount of potential debt reduction on selected Chapter 12 cases.

CHAPTER 12: THE PROCESS

The Chapter 12 bankruptcy process consists of essentially six steps: (1) the debtor files a petition for debt relief, (2) the court appoints a trustee to the case, (3) the debtor meets with the creditors to discuss debts and repayment terms, (4) the debtor files a reorganization plan outlining how he or she plans to repay his or her debts, (5) the court acts on the plan, confirming it if

it meets certain qualifications, and (6) the debtor, after completing payments during the plan's 3-to-5-year period, is discharged from further indebtedness.

Within 90 days of filing the petition for debt relief, the debtor must file a plan of reorganization with the court, specifying the terms by which the debtor plans to repay his or her debts. The court can grant extensions to the filing period for cause. Generally, reorganization plans cover a 3-year period, but the court may extend them an additional 2 years. This does not mean, however, that all debts must be paid in that period. Secured debts--debts for which the debtor's promise to pay is backed by collateral such as real estate--that are scheduled for repayment under the confirmed plan may be paid over a longer period of time. For example, repayment schedules for real estate mortgages in confirmed plans spread over 20- to 30-year periods.

Within 45 days after the plan is filed, the court must hold a confirmation hearing or extend the 45-day period for cause. After the debtor has completed payments as prescribed by the plan, the court will grant the debtor a discharge from the plan. The discharge, however, does not apply to debts with payment terms extending beyond the term of the plan. In certain cases, the court may grant a hardship discharge to the debtor who has not completed the payments as called for in the plan.

The court-ordered bankruptcy reorganization plan--referred to as the confirmed plan--determines the amount of debt that a farmer must pay and the amount to be written off as a result of the Chapter 12 proceedings. The creditor does not have a right to recover amounts written off under the terms of the bankruptcy reorganization plan. If the debtor does not carry out the plan as ordered by the court, the terms of the reorganization plan can be changed by the court and the creditor's rights of loan collection could be restored in accordance with the terms of original loan agreements with the debtor. The content and chronology of the Chapter 12 process is illustrated by our case study in appendix I.

CHAPTER 12: PROGRAM STATISTICS

To obtain general background information on implementation of Chapter 12 bankruptcy, we obtained statistics on (1) the total number of Chapter 12 petitions filed, (2) plan-filing and -confirmation statistics on all Chapter 12 cases in bankruptcy district courts in our review, and (3) potential debt-reduction statistics on selected cases in bankruptcy district courts under our review.

National Filing Statistics

The number of farmers that have filed for Chapter 12 bankruptcy has been much less than the number estimated by some

when the act was being considered by the Congress. Some estimates indicated that about 30,000 family farmers could potentially file during the first year of the Chapter 12 program. However, from the inception of Chapter 12 through December 31, 1988, only 8,527 petitions had been filed. By the end of 1987, when it appears that the agricultural financial stress had begun to abate, over 76 percent, or 6,492, of the 8,527 petitions had been filed. (See app. II for national Chapter 12 bankruptcy filings by district bankruptcy court.)

Some creditors and legal practitioners involved in the Chapter 12 process told us that the potential to file a Chapter 12 bankruptcy was used as leverage by some family farmers to encourage creditors to negotiate debt restructuring outside of the bankruptcy courts. This could partially explain the smaller number of bankruptcies and diminish the ability to determine the actual impact of Chapter 12. Others indicated that the improved economic and financial conditions in the farm community during 1987 may have resulted in fewer Chapter 12 filings.

Plan-Filing and -Confirmation Statistics

Of the total number of Chapter 12 cases in the four bankruptcy courts included in our review--Colorado, Western Louisiana, Minnesota, and Nebraska--the initial 90-day plan-filing and 45-day plan-confirmation milestones were not met in a substantial number of cases. Of the 811 cases filed in the 4 bankruptcy courts between the law's inception and November 15, 1987, 36 percent did not have plans filed within the 90-day filing period and 93 percent did not have plans confirmed within the 45-day confirmation period.

The plan-filing experiences varied by court district.[1] For example, the percentage of cases with plans filed after 90 days for each district was 54 percent for Colorado, 31 percent for Western Louisiana, 57 percent for Minnesota, and 32 percent for Nebraska. The average time beyond the 90-day filing requirement for all cases in the four districts was 12 days. The average time beyond the filing requirement for cases in Colorado was 17 days, Western Louisiana--20 days, Minnesota--6 days, and Nebraska--8 days.

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[1]Our analysis does not include cases pending under 90 days because they have not exceeded the initial filing-requirement time limit.

Except for Minnesota, the plan-confirmation experience was consistent across court districts.[2] In Minnesota the percentage of cases without confirmation of filed plans within 45 days was 74 percent; in each of the other three districts, it was 94 percent. Overall, 93 percent of the cases did not have reorganization plans confirmed within 45 days. Fifty-seven percent had been confirmed after 45 days, and 36 percent had been on file more than 45 days without confirmation. Of the 57 percent that were confirmed after 45 days, it took an average 53 days beyond the 45-day confirmation period to confirm the cases. The average time for cases to be confirmed beyond the 45-day confirmation period in Colorado, Western Louisiana, Minnesota, and Nebraska was 62, 56, 50, and 49 days, respectively.

Debt-Reduction Statistics

We selected in each court district up to 25 Chapter 12 cases that had been confirmed between July and November 15, 1987, to obtain potential debt-reduction information. Potential debt reduction refers to the amount of actual loan value that creditors would have to write off if debtors completed their Chapter 12 plans as approved by the courts. The amount could change if some debtors do not complete their plans and the court-ordered debt reductions are reversed.

In total, we selected 93 cases. In Colorado and Minnesota, we reviewed all cases confirmed during our review period, 20 and 23, respectively; and in Western Louisiana and Nebraska, we judgmentally selected 25 cases for review. Of the 93 confirmed Chapter 12 bankruptcy cases we reviewed, we found 82 that involved court-ordered debt reductions. Of those 82, the potential average debt reduction per case was $239,044.[3]

The potential average debt reduction in cases we reviewed in Colorado was $179,161 for 12 cases; in Western Louisiana it was $339,363 for 25 cases; in Minnesota it was $206,825 for 22 cases; and in Nebraska it was $192,062 for 23 cases. In these cases, real estate debt was the most prevalent potential debt-reduction

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[2]These figures do not include (1) cases that did not have a plan filed as of November 15, 1987, and (2) pending cases that had plans on file 45 days or less.

[3]The potential debt-reduction amount was determined by subtracting from the amount of debt that the farmer claimed was owed in the initial petition filed for Chapter 12 the value, if any, of assets voluntarily surrendered by the farmer to pay off debt and the amount of debt to be paid according to the plan. Then the number of cases reviewed in each court district was divided into the total debt-reduction amount for all of the cases we selected in that district.

category of all other categories of debt, such as debt secured by equipment and livestock.

SECTION 2

CREDITORS' VIEWS ON THE IMPACT OF CHAPTER 12 ON CREDIT AVAILABILITY AND THE COST OF CREDIT TO FARMERS

A majority of creditors we contacted indicated they were less willing to lend to farmers, and over a third said they have increased interest rates to farmers as a result of the Chapter 12 bankruptcy law. Most of those creditors said they were much less willing to lend to farmers who had filed for Chapter 12 bankruptcy than to other family farmers, as defined by the Chapter 12 legislation. In addition, most creditors that said they raised interest rates as a result of Chapter 12 bankruptcy said they raised them for all their farm borrowers.

To obtain views from creditors on effects on credit availability and cost to farmers as a result of the Chapter 12 bankruptcy legislation, we interviewed officials associated with 29 entities that extend credit to farmers. These creditors included commercial banks, the Farm Credit System (FCS), an insurance company, a farm implement dealer, a farm implement financier, farm input suppliers, and the Farmers Home Administration (FmHA). We asked them to tell us about any changes in their willingness to lend and the cost of credit to farmers based purely on the Chapter 12 bankruptcy legislation. We asked them to provide responses for three categories of farmers: (1) farmers that qualify as family farmers under the Chapter 12 legislation and that have filed for bankruptcy, (2) other farmers that qualify to file as family farmers under the Chapter 12 legislation and that have not filed under Chapter 12, and (3) all other farmers that do not qualify as family farmers under the Chapter 12 legislation.

In general, some lending institutions were more willing than others to lend to family farmers, as defined by the Chapter 12 legislation. For example, private creditors that operate under a profit motive indicated a greater willingness to restrict credit availability than FmHA--the federal government's lender of last resort for family farmers who cannot get credit elsewhere at affordable rates and terms. In addition, other creditors that are essentially restricted by law to lend to agriculture, such as FCS, indicated less willingness to restrict credit availability to farmers. Also, small commercial banks located in predominantly agricultural areas indicated a greater willingness to lend to family farmers than larger urban commercial banks that have more opportunity to diversify their portfolios into other industries.

Generally, the private creditors that said they were less likely to restrict credit availability to farmers as a result of Chapter 12 bankruptcy were the ones most likely to say that they raised interest rates to recover losses taken as a result of the Chapter 12 process. All creditors that said they increased

interest rates as a result of Chapter 12 also said they had experienced losses in the Chapter 12 process. Those lenders said they also raised interest rates to all family farmers as defined by the Chapter 12 legislation. Most of them also raised interest rates to other farm borrowers.

Those creditors that told us they were less likely to reduce their lending to farmers as a result of Chapter 12 told us they must increase interest rates to recover losses taken as a result of Chapter 12. In contrast, officials at FmHA told us that, although they have little choice but to lend to farmers during financially stressed periods, they do not raise interest rates to cover actual or anticipated losses from those loans.

IMPACT ON CREDIT AVAILABILITY

Many creditors we interviewed said they were less willing to lend to certain farmers as a result of the Chapter 12 bankruptcy law. Sixty-two percent, or 18 of 29 creditors, said they were less willing to lend to farmers who filed Chapter 12. Twelve of the 18 said their willingness to lend decreased greatly. Seven of the 18 also said they were somewhat less willing to lend to other family farmers who are eligible to file Chapter 12 but have not. No creditors indicated a reluctance to lend to farmers not eligible to file under Chapter 12. Private creditors indicated a greater reluctance than FmHA to lend to farmers as a result of Chapter 12. Some creditors told us that, in addition to an overall reduced willingness to lend, there are other side effects resulting from Chapter 12, such as reductions in individual loan amounts and increases in collateral requirements.

Private Creditors' Views on Credit Availability

A large majority of private creditors--commercial banks, FCS institutions, farm implement and input suppliers, a farm implement financier, and an insurance company--indicated a reduced willingness to lend to farmers who had filed under Chapter 12 bankruptcy. In addition some commercial banks, the insurance company, and farm implement and farm input suppliers indicated a reduced willingness to lend to other family farmers who are eligible to file for Chapter 12 bankruptcy but have not.

Officials at private creditor institutions gave several reasons for reducing their willingness to lend, including (1) an inability to contest the courts' confirmation of a Chapter 12 plan, (2) the absence of procedures to allow creditors to recover some of their losses under Chapter 12 by sharing in some way in future appreciation, if any, of an asset used as collateral for a loan reduced in value by a confirmed plan, (3) lost interest as a result of court-ordered reductions in interest rates on debt under the confirmed plan, and (4) court-related costs of Chapter 12, including attorney and trustee fees.

Commercial Banks

Officials of most commercial banks said they were less willing to lend to farmers as a result of Chapter 12. Seven of the nine we interviewed said their willingness to lend to farmers who filed Chapter 12 had decreased and five of those said their willingness to lend to Chapter 12 filers decreased greatly. Two said Chapter 12 has had little or no impact on their willingness to lend. In addition, five of the nine said they were somewhat less willing to lend to other family farmers who would be eligible but have not filed for Chapter 12. All of the commercial bank officials told us that Chapter 12 had little or no impact on their willingness to lend to farmers not eligible to use Chapter 12. Most commercial bank representatives told us family farmers, as defined by the Chapter 12 legislation, constitute about 90 percent of their farm borrowers.

Some officials also stated that Chapter 12 has had a significant impact on the lending policies of small commercial banks toward Chapter 12 filers and other family farmers eligible to file. Officials at four of the five small banks we contacted indicated that their willingness to lend to farmers after they file Chapter 12 had decreased, and officials at three of the four banks indicated that they would not lend to them at all. Officials at one of the four banks said that their willingness to lend to Chapter 12 filers had somewhat decreased. Officials at three of the four banks also told us their willingness to lend decreased somewhat to other family farmers that are eligible to file but have not filed under Chapter 12. Officials at the fifth bank said Chapter 12 has little or no impact on their willingness to lend to farmers. Chapter 12 did not affect the willingness of the small banks to lend to other farmers not eligible to file under the Chapter 12 legislation.

Officials of large banks also indicated a reluctance to lend to Chapter 12 filers and other family farmers eligible to file under Chapter 12. Three of the four large-bank respondents said that once a farmer had filed Chapter 12, their willingness to lend to that farmer was reduced, and two of the three said their willingness to lend was greatly reduced. Officials from the remaining large bank said Chapter 12 has not affected their willingness to lend. In addition, officials at half of the large banks indicated that Chapter 12 had somewhat decreased their willingness to lend to other family farmers who are eligible but have not filed. Chapter 12 has not affected the willingness of the large banks to lend to farmers who are not eligible to file.

Although a majority of officials of both large and small banks we visited indicated a reduced willingness to lend to farmers that filed or are eligible to file under Chapter 12, it appears small banks are more likely to continue lending to family farmers, as defined by Chapter 12, than large banks. Generally, officials at

large banks told us they lend only to farmers they consider good credit risks, and most of their loans were to farmers who had large farming operations and did not fit the Chapter 12 family farmer definition. In contrast, officials at most small banks that we visited told us that about 90 percent of their farmer borrowers are family farmers as defined by the Chapter 12 legislation. In addition, large banks we visited generally had much smaller existing agricultural loan portfolios as a percentage of their total loan portfolios than small banks we visited, indicating that the larger banks were less involved in agricultural lending as a product line. Also, large banks we visited that were located in urban areas had more diversified portfolios. Officials of small banks we visited that were in rural areas said that they had little chance to diversify outside of agriculture. Although smaller banks were also reluctant to lend to poor credit risks, officials at small banks realized that the family farmer as defined by Chapter 12 was their primary customer.

Farm Credit System

FCS is a private national network of creditors that has been chartered by the Congress to make loans to the farm sector and in recent years its organizational structure has been changing. FCS had been composed of 12 farm credit districts. Each district had a Federal Land Bank that made farm mortgage loans through Federal Land Bank Associations; a Federal Intermediate Credit Bank that provided production and equipment loan funds to Production Credit Associations and to other financial institutions that, in turn, made loans to farmers; and a Bank for Cooperatives that made loans to agricultural cooperatives. As a result of recent legislation--the Agricultural Credit Act of 1987--FCS' organizational structure is changing. One of the changes is the mandatory merger of the Federal Land Bank and Federal Intermediate Credit Bank functions in each district.

Although we were told that no general change in policy on credit availability to farmers as a result of Chapter 12 has occurred at the four district-level FCS institutions, officials at most of the lending associations in the districts we visited expressed less willingness to lend to farmers who have filed for Chapter 12. Officials at five of the six FCS lending associations, made up of Production Credit Associations and Federal Land Bank Associations, reported that they were less willing to lend to Chapter 12 filers. However, these officials also stated that their institutions' lending policies toward other family farmers eligible to file and farmers who do not qualify for Chapter 12 had not been affected to any extent by Chapter 12. Some creditors told us that because of Chapter 12, all borrowers will be more closely scrutinized to determine creditworthiness.

Other Private Creditors

Four of the five other private creditors--all but a farm implement dealer--we contacted expressed a greatly decreased willingness to lend to Chapter 12 filers, and two of the five--an insurance company and a farm input supplier--also were less willing to lend to other eligible family farmers who have not filed. None of the creditors had a decreased willingness to lend to farmers other than family farmers as defined by the Chapter 12 legislation.

FmHA Views on Credit Availability

In general, FmHA officials told us Chapter 12 bankruptcy has had little or no impact on their willingness to lend to Chapter 12 filers, other farmers eligible to file for Chapter 12, and other farmers. However, officials at two FmHA state offices said they now look more closely at all applicants' creditworthiness because of Chapter 12. FmHA officials told us that according to regulations, bankruptcy by itself cannot be considered an unacceptable credit history when evaluating a farmer's creditworthiness. They said FmHA historically has been the government lender of last resort to farmers, and if farmers would otherwise meet FmHA loan criteria, FmHA officials do not have the discretion to exclude farmers from receiving FmHA loans because they have filed or are eligible to file Chapter 12 bankruptcy.

IMPACT ON COST OF CREDIT

Many creditors stated they had raised interest rates to some farm borrowers as a result of their experiences with Chapter 12 bankruptcy. Eleven of 29 creditors, or 38 percent of those we visited, said they increased interest rates to one or more categories of farm borrowers as a result of Chapter 12. All 11 were private creditors. Eight of the 11 said they raised interest rates to all farm borrowers--family farmers and nonfamily farmers alike.

The 11 creditors told us they increased their interest rates from 1 to 50 basis points to offset costs associated with Chapter 12 bankruptcy. (One hundred basis points equals 1 percent.) About half, or 5 of 11 creditors, told us they raised interest rates by at least 12 basis points to all farmers. The remaining six creditors said they raised their rates in the range of 1 to 25 basis points, but they could not be more specific. All of the creditors that said they raised rates had experienced losses as a result of Chapter 12 bankruptcy cases. Lending officials told us that the increased rates reflect the need to recover the costs associated with Chapter 12 bankruptcy, including debt reduction and restructuring by the courts; and additional expenses, such as attorney fees, appraisals, and other administrative costs; and the greater risk posed by Chapter 12 borrowers.

Some banking officials provided us with readily available information on the types of costs they incurred in the Chapter 12 process, including court-ordered debt reduction, attorney fees, and administrative costs associated with Chapter 12. According to data provided by some small banks, the average amount of debt written off ranged from about $1,900 to $100,000; attorney fees ranged from $500 to $20,000; and administrative costs ranged from $500 to $7,500. Most large banks had very few or no Chapter 12 confirmed cases or write-offs. One large bank with six confirmed cases had an average amount of written-off debt of about $200,000, and an average attorney fee per case of $8,000. This bank had a much larger percentage of its total loan portfolio in agricultural loans than the other large banks we visited.

Based on our interviews, creditors that did not raise their interest rates had at least one of several characteristics. They (1) were not heavily involved with agricultural loans, (2) had an opportunity to diversify their lending portfolios, (3) accepted only good credit risks, (4) had not experienced any significant negative impacts from Chapter 12 as of the date of our interview, or (5) indicated that the family farmer was their primary client and could not increase rates if they wanted to remain competitive.

Private Creditors

Eleven of 24, or 46 percent, of the private creditors stated that they increased interest rates to one or more categories of farm borrowers. The private lending institutions that did raise interest rates were mainly those whose primary clients were farmers and that had experienced some losses as a result of Chapter 12. Of the 11 creditors that said they raised their interest rates, 9 said they raised rates from 1 to 25 basis points and 2 said that they raised rates 26 to 50 basis points. These responses are based on the creditors' judgments of how Chapter 12 affected interest rate increases at their organizations separate from other factors such as the farm economy in general. These creditors had not performed independent analyses to isolate the precise impact of Chapter 12 on their lending institutions' interest rate structures.

Commercial Banks

More small banks than large banks that we visited said they increased interest rates as a result of Chapter 12. Officials at four of the nine commercial banks we contacted said they raised their interest rates. Of those, three of the five small banks raised their rates and one of the four large banks raised its rates. Of the three small banks that raised their rates, one increased the rate of interest charged to Chapter 12 filers and all other family farmers as defined by the Chapter 12 legislation by 1 to 10 basis points; one would not lend to Chapter 12 filers and increased the rates to all other family farmers by 1 to 25 basis points; and one would not lend to Chapter 12 filers and

increased its rates to all other farm borrowers, including family farmers, by 26 to 50 basis points. In addition, one small bank that would not raise its rates also would not lend to Chapter 12 filers. The large commercial bank--one that had a larger percentage of its loans to agriculture compared with the other large banks--raised its rates to Chapter 12 filers and all other family farmers from 1 to 25 basis points.

Farm Credit System

Officials from 5 of the 10 FCS institutions we contacted said they raised their interest rates to all farm borrowers because of Chapter 12. These institutions raised their rates from 1 to 50 basis points: two raised rates by 1 to 10 basis points, one raised rates by 1 to 25 basis points, one raised rates by 12 to 14 basis points, and one raised rates by 26 to 50 basis points.

Other Private Creditors

Two of the five other private creditors would not lend to Chapter 12 filers but increased their interest rates to all other farm borrowers. These creditors--an insurance company and a farm implement financier--increased their rates by 12-1/2 basis points. One other creditor--an input supplier--that did not raise interest rates also would not lend to Chapter 12 filers.

SECTION 3

CREDITORS' VIEWS ON MANDATORY MEDIATION VERSUS CHAPTER 12 BANKRUPTCY

Mandatory mediation is a debt-resolution process legislated by some states that allows farmers to require creditors to negotiate debt repayment prior to taking other legal actions. Under mandatory mediation, if a contract is signed as a result of negotiations, it is legal and binding. Because mandatory mediation was available to residents of Minnesota, one of the four states in our review, we obtained some specific information on the mandatory mediation program activity in that state.

A majority of creditors we interviewed preferred mandatory mediation to Chapter 12 bankruptcy as a method to resolve farmers' debt repayment problems. About half of the other creditors preferred Chapter 12 to mandatory mediation as a debt-resolution process. The remaining creditors had no preference. Some creditors that preferred some form of mandatory mediation suggested provisions for such programs to, in their opinions, ensure that debt resolution under such programs is achieved on a timely basis. Some that had no preference said they would prefer Chapter 12 if certain provisions were added to make the process more equitable for creditors.

MINNESOTA'S MANDATORY MEDIATION PROGRAM

On March 22, 1986, Minnesota became the first state to adopt a mandatory mediation program.[1] The program, which is funded by the state and administered by the Minnesota Extension Service, is scheduled to expire on July 1, 1989. Under this program, a creditor may not foreclose a mortgage on secured debt of more than $5,000 unless a mediation notice is served on the mortgagor and a copy is filed with the Director of the Minnesota Extension Service. The debtor then has 14 days to request mediation through the Extension Service. Within 10 days of receiving the mediation request, the Extension Service shall notify the debtor and all creditors of the first mediation meeting. Upon receipt of the meeting notice, creditors must stop collection actions for 90 days or until an agreement is reached, whichever comes first. Farmers who have filed for bankruptcy are not eligible for mediation, and farm debt that has been mediated is not eligible for a second mediation. However, if no agreement is reached by the end of the mediation period, creditors may begin legal proceedings to collect

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[1]Our fact sheet entitled Farm Finance: Minnesota and North Dakota Assistance Programs Available to Farmers (GAO/RCED-87-143FS, June 9, 1987) provides additional information on Minnesota's mandatory mediation program.

on the debt and farmers may decide to file for bankruptcy, including Chapter 12 bankruptcy.

CREDITORS' VIEWS ON MANDATORY MEDIATION VERSUS CHAPTER 12 BANKRUPTCY

Most of the creditors we interviewed preferred mandatory mediation to Chapter 12 bankruptcy. Sixteen of 29, or about 55 percent, preferred some form of mandatory mediation to Chapter 12 bankruptcy; 6 of 29, or about 21 percent, preferred Chapter 12; and 7 of 29, or about 24 percent, had no clear preference or no basis on which to judge since they had little or no experience with mandatory mediation. All six Minnesota creditors, the only state in our review that had mandatory mediation legislation for farmers, preferred mandatory mediation. (See table 3.1 for a summary of interviewee responses.)

Table 3.1: Creditors' Preferences for Chapter 12 Versus Mandatory Mediation

Type of creditor	Prefer mandatory mediation	Prefer Chapter 12	No preference/ basis[a]	Total
Colorado				
Small bank			1	1
Large bank	1			1
FmHA			1	1
FCS	1	1	1	3
Farm implement dealer[b]	1			1
Louisiana				
Small bank		1		1
Large bank			1	1
FmHA	1			1
FCS	2		1	3
Minnesota				
Small bank	2			2
Large bank	1			1
FmHA	1			1
FCS	2			2
Nebraska				
Small bank	1			1
Large bank		1		1
FmHA		1		1
FCS	1	1		2
Other creditor				
FmHA headquarters	1			1
Farm input supplier	1		1	2
Farm implement financier		1		1
Insurance company	—	—	1	1
Total	16	6	7	29

[a]Creditors that provided these responses said that they either had no clear preference or had no basis on which to judge because they had little or no experience with mandatory mediation.

[b]This implement dealer lends primarily in Colorado and therefore is not included in the "other creditor" category.

Of the 18 creditors operating primarily in the three states in our review that did not have mandatory mediation legislation for farmers, 8 of 18, or about 44 percent, preferred mandatory mediation; 5 of 18, or about 28 percent, preferred Chapter 12; and 5 of 18, or about 28 percent, had no preference or basis on which to judge. Of the five creditors who were national headquarters organizations and/or whose lending territory crossed state lines, listed as other creditors in table 3.1, two preferred mandatory mediation, one preferred Chapter 12, and two had no preference.

Views of Creditors That Preferred Mandatory Mediation

The 16 creditors that preferred mandatory mediation to Chapter 12 bankruptcy as a method to resolve debt repayment problems provided two basic reasons why mandatory mediation was preferable to Chapter 12 bankruptcy as a debt-resolution process: (1) the mandatory mediation process is less costly and (2) it provides a better environment in which to come to resolution through compromise. Some, however, suggested provisions for mandatory mediation programs to ensure that the debt resolution under such programs is achieved on a timely basis.

Creditors said that mandatory mediation is a less costly process because debt reduction may not be as great under mediation as under Chapter 12, and litigation and the associated attorney fees and court costs are avoided. Under Chapter 12, secured debts are usually written down to the fair market value of the underlying security; however, under mandatory mediation, debt reduction is negotiated between the debtor and the creditor. In mandatory mediation creditors may rely primarily on rescheduling debt or lowering interest rates rather than writing down principal, which is the primary means of reducing debt under Chapter 12. In addition, under mandatory mediation the debtor and creditor can negotiate face-to-face and can avoid legal costs associated with Chapter 12.

Creditors told us that mandatory mediation provides a better working environment than Chapter 12 because of the potential for increased trust and understanding between the debtor and creditor, use of mediators that are more familiar with farming than a judge might be, and quicker debt resolution. They said that under mandatory mediation, debtors and creditors usually have more face-to-face contact and negotiation than under Chapter 12 proceedings, in which negotiations are normally handled by attorneys for both parties. In their opinions, the face-to-face contact that occurs under mandatory mediation can result in increased trust and understanding between the parties.

Creditors also said that under mandatory mediation, mediators who are knowledgeable in farm operations and finances are provided to facilitate the negotiations between the debtor and the creditor. They said that mediators are likely to be more familiar with the

problems of farming than judges, who must resolve a variety of bankruptcy situations and who may not be familiar with farming operations and finances.

In addition, creditors said that mandatory mediation provides the potential to resolve disputes more rapidly than Chapter 12 because mandatory mediation has a shorter allowable time period to reach agreements on debt resolution.

Creditors that preferred mandatory mediation suggested certain provisions for such a program to ensure that debt resolution is achieved on a timely basis. For example, a number of creditors preferred mandatory mediation if it could not be used, from their viewpoints, as a stalling device to delay foreclosure. Some of those creditors suggested that if a borrower uses the mandatory mediation process, that borrower should be prohibited from later filing for Chapter 12 for protection from creditors on the same debts. Some also suggested that mandatory mediation should have rigid time frames that a debtor must adhere to.

Views of Creditors' That Preferred Chapter 12

The six creditors that said they preferred Chapter 12 bankruptcy to mandatory mediation as a debt-resolution process generally told us that Chapter 12 (1) produces a more predictable outcome and (2) results in closure to the debt-resolution process. They told us that under Chapter 12 the write-down of debts to fair market value is an expected, predictable outcome. Under mandatory mediation, however, debt resolution is negotiated between the debtor and the creditor with no requirement that resolution be reached. Therefore, there is not a predictable outcome.

These creditors also told us that closure on debt resolution under Chapter 12 occurs because the bankruptcy court mandates that the debtor's plan is acceptable or unacceptable. An acceptable plan sets forth a schedule for payment of restructured debts and serves as a contract between the debtor and creditors for repayment of debts. If the court ultimately determines that a plan is unacceptable, the case is dismissed. Under mandatory mediation, however, there is no guarantee that an agreement on debt repayment will be reached and, if agreements are reached, they are made on an individual basis. In mediation the parties may simply agree to disagree or reach an impasse. If mandatory mediation fails, debtors may avail themselves of other debt-resolution processes, including Chapter 12 bankruptcy.

Views of Creditors That Had No Clear Preference
Or No Basis to Judge

The seven creditors that had no clear preference or basis on which to judge mandatory mediation or Chapter 12 bankruptcy told us that they (1) had little or no experience with mandatory mediation

and therefore had no basis on which to judge it, (2) believed that either process was acceptable, or (3) were better able to participate in mandatory mediation, but believed that Chapter 12 resulted in more enforceable outcomes.

Some said they would prefer Chapter 12 if the process could be modified in some respect. Suggested modifications included (1) requiring certified property appraisals for asset valuation purposes, (2) allowing creditors to initiate the Chapter 12 process, and (3) prohibiting debtors from filing other types of bankruptcy after filing Chapter 12.

SECTION 4

PARTICIPANTS' VIEWS ON CHAPTER 12 ELIGIBILITY REQUIREMENTS

A majority of individuals we interviewed expressed concerns about the appropriateness of Chapter 12's eligibility requirements. We interviewed legal practitioners--judges, trustees, debtor and creditor attorneys--and creditors. A majority of legal practitioners that raised concerns said that more farmers should be allowed to file for Chapter 12 bankruptcy, and a majority of creditors that raised concerns said that fewer farmers should be allowed to file. Specifically, the interviewees' concerns focused on the debt and income criteria that farmers must meet to qualify for Chapter 12 bankruptcy and potential procedural deficiencies that could result in farmers qualifying for Chapter 12 that the Congress may not have intended would qualify. Depending on their point of view, the interviewees suggested changes in the criteria that would either make it easier or more difficult for farmers to qualify for Chapter 12. (See table 4.1 for a summary of interviewee responses.)

The authorizing legislation allows family farmers to file for Chapter 12 bankruptcy if they meet certain criteria. The act generally defines qualified family farmers to be individuals, individuals and spouses, and family partnerships and corporations engaged in farming with (1) total debts that do not exceed $1.5 million, of which at least 80 percent arose out of a farming operation owned or operated by the debtor, and (2) over 50 percent of their gross income originating from farming for the taxable year preceding the tax year in which the petition is filed.

Table 4.1: Participants' Views on Chapter 12 Eligibility Requirements

Interviewee	Eligibility requirements are: Too lenient	About right	Too restrictive	No opinion	Total
Legal practitioner					
Colorado					
Judge			2		2
Trustee			1		1
Debtor attorney			2		2
Creditor attorney	1		1		2
Western Louisiana					
Judge		1	1		2
Trustee			1		1
Debtor attorney		1	1		2
Creditor attorney	1		1		2
Minnesota					
Judge		1			1
Trustee			2		2
Debtor attorney		1	3		4
Creditor attorney	1	1			2
Nebraska					
Judge		1			1
Trustee		1			1
Debtor attorney		1	2		3
Creditor attorney	_	2	_	_	2
Total legal practitioner responses	3	10	17	0	30

(continued)

Interviewee	Eligibility requirements are: Too lenient	About right	Too restrictive	No opinion	Total
Creditor					
Colorado					
Small bank		1			1
Large bank		1			1
FmHA	1				1
FCS		1	3		4[a]
Farm implement dealer[b]				1	1
Western Louisiana					
Small bank		1			1
Large bank				1	1
FmHA		1			1
FCS	2		1	1	4[c]
Minnesota					
Small bank	2				2
Large bank	1				1
FmHA		1			1
FCS		2			2
Nebraska					
Small bank	1				1
Large bank		1			1
FmHA	1				1
FCS		1	1		2
Other creditor					
FmHA headquarters		1			1
Farm input supplier		2			2
Farm implement financier	1				1
Insurance company	_	1	_	_	1
Total creditor responses	9	14	5	3d	31[e]
Total legal practitioner and creditor responses	12	24	22	3[d]	61[f]

(continued)

[a]These four responses include two responses from one creditor: one "too restrictive" response about the income requirements and one "about right" response about the debt requirements.

[b]This implement dealer lends primarily in Colorado and therefore is not included in the "other creditor" category.

[c]These four responses include two responses from one creditor: one "too lenient" response about the income requirements and one "too restrictive" response about the debt requirements.

[d]Because of their limited experience with Chapter 12 bankruptcy, these interviewees had no opinion on the Chapter 12 eligibility requirements.

[e]We interviewed a total of 29 creditors. Two creditors provided two views each on varying aspects of the requirements, and three other creditors had no opinion on the requirements. This total, 31, represents all interviewee comments, and "no opinions." Excluding "no opinions," there was a total of 28 creditor responses.

[f]This total, 61, includes 30 legal practitioner and 31 creditor comments. Excluding "no opinions," there was a total of 58 interviewee responses. See note e.

PARTICIPANTS' VIEWS

A majority of the interviewees raised concerns about the appropriateness of eligibility requirements for Chapter 12 bankruptcy. Of the 58[1] responses we received, 34 responses, or about 59 percent, indicated that the eligibility requirements are not appropriate. Of those that indicated that the requirements are not appropriate, 22, or about 38 percent, indicated that the requirements are too restrictive and work to exclude farmers from using Chapter 12; 12, or 21 percent, indicated that the requirements are too lenient. The remaining 24 responses, or about 41 percent, indicated that the requirements are about right.

Most of the responses indicating that the eligibility requirements are not appropriate focused on problems with the debt and income criteria set by the law. About 54 percent of the responses indicated problems with the debt requirements, about 41 percent indicated problems with the income requirements, and about 5 percent indicated potential procedural deficiencies that could

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[1]From the 59 interviewees, we received 58 responses. Three interviewees had no opinions on the Chapter 12 eligibility requirements because of their limited experience with the Chapter 12 bankruptcy process, and two interviewees expressed two views on varying aspects of the requirements, resulting in 58 interviewee responses.

result in farmers, that--in their views--the Congress did not intend to qualify, qualifying for Chapter 12. Generally, legal practitioners that had concerns with the eligibility criteria said that the criteria are too restrictive, while creditors leaned more toward the requirements being too lenient.

Debt Requirements

Twenty-two of the 41 responses, or about 54 percent, indicated problems with the Chapter 12 debt requirements.[2] Seventeen of the 22 indicated that the requirements are too restrictive and 5 indicated that they are too lenient. All legal practitioners that raised concerns about the debt requirements said they are too restrictive. Creditors' responses indicating concerns about the debt requirements were essentially divided between too restrictive and too lenient. (See table 4.2 for a summary of interviewee responses concerning the debt requirements.)

Thirteen of 30, or about 43 percent, of the legal practitioners we interviewed, expressed concerns about the debt requirements. All 13 said that the debt requirements are too restrictive. About 31 percent, or 9 of 29, of the creditors that we interviewed indicated concern about the debt requirements. Five indicated that the requirements are too lenient and four indicated that the requirements are too restrictive.

Those that said the debt requirements are too restrictive said (1) the $1.5 million debt limit is too low, (2) certain types of debt should be excluded from the eligibility calculation, and (3) the requirement that at least 80 percent of the debt arise out of the debtor's farming operation is too high.

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[2]Of the 34 interviewees that responded that the eligibility criteria are not appropriate, 7 provided views on both debt and income, resulting in 41 total responses. Of the 41 total responses, 22 indicated problems with debt requirements, 17 indicated problems with the income requirements, and 2 indicated that potential procedural deficiencies in the Chapter 12 process could result in farmers qualifying for Chapter 12 that the Congress did not intend to qualify.

Table 4.2: Participants' Views on Chapter 12 Debt Eligibility Requirements

Interviewee	Debt eligibility requirements are: Too lenient	Too restrictive	Total
Legal practitioner			
Colorado			
Judge		2	2
Trustee		1	1
Debtor attorney		1	1
Creditor attorney		1	1
Western Louisiana			
Judge		1	1
Trustee		1	1
Debtor attorney		1	1
Creditor attorney		1	1
Minnesota			
Judge			0
Trustee		1	1
Debtor attorney		2	2
Creditor attorney			0
Nebraska			
Judge			0
Trustee			0
Debtor attorney		1	1
Creditor attorney	_	_	0
Total legal practitioner responses	0	13	13

(continued)

Interviewee	Debt eligibility requirements are: Too lenient	Too restrictive	Total
Creditor			
Colorado			
Small bank			0
Large bank			0
FmHA			0
FCS		2	2
Farm implement dealer[a]			
Western Louisiana			
Small bank			0
Large bank			0
FmHA			0
FCS	1	1	2
Minnesota			
Small bank	1		1
Large bank	1		1
FmHA			0
FCS			0
Nebraska			
Small bank	1		1
Large bank			0
FmHA	1		1
FCS		1	1
Other creditor			
FmHA headquarters			0
Farm input supplier			0
Farm implement financier			0
Insurance company	—	—	0
Total creditor responses	5	4	9
Total legal practitioner and creditor responses	5	17	22

(continued)

[a]This implement dealer lends primarily in Colorado and therefore is not included in the "other creditor" category.

Those that said the debt limit is too low expressed concerns that the debt requirements exclude certain farmers from filing Chapter 12 based on the size and location of their farming operation. One interviewee said that some farmers, such as large-scale cattle ranchers, that need large acreage for their operations, may be excluded from filing Chapter 12 because the large amount of mortgage-related debt carried to support the farming operation may exceed the $1.5 million debt limit. In contrast, certain crop-farming operations may not need the same amount of land or debt to support their operations. The location of the farming operation can also have an effect on whether the debt limitation is exceeded. For example, one attorney pointed out that agricultural real estate prices are much higher in California than in many other states. As a result of the regional differences in farmland values, farmers in California that are carrying a proportionate amount of debt to their land costs as are farmers in other states may be less likely to qualify for Chapter 12 than farmers in the other states because of the higher agricultural real estate prices.

Some interviewees said that certain types of debt should not be counted in determining a farmer's ability to qualify for Chapter 12. They indicated that certain types of debts that may never have to be repaid, or may not require additional cash contribute to pushing the "family farmer" above the limit. Examples included (1) loans that farmers co-sign for others and (2) loans made to farmers by the Commodity Credit Corporation (CCC), which are secured by crops. For example, farmers that co-sign notes may be liable for repayment of those notes only if the principal borrower fails to pay. Also, farmers have the option of selling crops that secure CCC crop loans and can use the sale proceeds to repay the CCC loan, or forfeit the crops to cancel the entire debt, and never really have to come up with additional cash to repay a CCC crop loan.

One interviewee indicated that the debt requirement is too restrictive because of the provision that not less than 80 percent of the debt arise out of a farming operation owned or operated by the debtor because it precludes farmers from qualifying for Chapter 12 bankruptcy that should be able to qualify. He indicated that there are some farmers that have less than 80 percent of their debt arising out of their farming operation that farm as a primary occupation.

Those that told us the debt requirements are too restrictive suggested (1) changing the debt limit to between $2.5 million and $5 million or eliminating it altogether to permit more farmers to use the Chapter 12 process, (2) establishing higher debt limits in certain locations to take into account the higher costs of farming in those areas and/or the differences in size and debt load of certain types of farming operations, (3) using acres or other criteria, instead of debt, to define family farmers eligible to file Chapter 12, (4) allowing judges to exercise discretion in determining, on a case-by-case basis, the debt criteria for Chapter 12 filers, (5) eliminating from the debt calculation certain debts that may not have to be paid or do not require additional cash, such as debt obligations that farmers co-sign for others and CCC crop loans, (6) eliminating the 80-percent-of-debt requirement and allowing individuals that have a primary occupation of agriculture to file for Chapter 12, and (7) deleting the debt-limit test altogether in favor of an income test requiring that the filer's main source of income come from farming.

Two reasons given by those that said the requirements are too lenient were that (1) the $1.5 million debt limit already reaches the large-scale farmers and (2) it has become socially acceptable to file bankruptcy, and some farmers who are capable of paying their debts may qualify for Chapter 12. Some interviewees indicated that the current debt limit already reaches large-scale farmers that are not--in their view--"family farmers." Most of the creditors we interviewed indicated that family farmers, as defined by Chapter 12 legislation, constitute about 90 percent of their farm borrowers.

Those that expressed concerns that the debt limit is too lenient suggested reducing the $1.5 million limit to between $750,000 and $1 million to ensure that only "family farmers" in need of financial assistance, and not the large operators, have access to the Chapter 12 process.

Income Requirements

Of the 41 responses indicating concern about the eligibility requirements, 17, or about 41 percent, expressed concern about the income requirements. Eleven of the 17 indicated that the requirements are too restrictive, and 6 indicated they are too lenient. Of those expressing concern about the income requirements, most legal practitioners said that the requirements are too restrictive and creditors' responses were mixed between too restrictive and too lenient. (See table 4.3 for a summary of interviewee responses concerning the income requirement.)

Twelve of 30 of the legal practitioners we interviewed, or 40 percent, expressed concern about the income requirements. Of the 12, 10 said the requirements are too restrictive, and 2 said they are too lenient. Of the 29 creditors we interviewed, 5, or about

17 percent, expressed concern about the income requirements. Of the five, four said that the requirements are too lenient, and one said they are too restrictive.

Table 4.3: Participants' Views on Chapter 12 Income Eligibility Requirements

Interviewee	Income eligibility requirements are: Too lenient	Too restrictive	Total
Legal practitioner			
Colorado			
Judge		2	2
Trustee			0
Debtor attorney		2	2
Creditor attorney	1		1
Western Louisiana			
Judge		1	1
Trustee			0
Debtor attorney			0
Creditor attorney			0
Minnesota			
Judge			0
Trustee		2	2
Debtor attorney		2	2
Creditor attorney	1		1
Nebraska			
Judge			0
Trustee			0
Debtor attorney		1	1
Creditor attorney	—	—	0
Total legal practitioner responses	2	10	12

(continued)

Interviewee	Income eligibility requirements are Too lenient	Too restrictive	Total
Creditor			
Colorado			
Small bank			0
Large bank			0
FmHA	1		1
FCS		1	1
Farm implement dealer[a]			0
Western Louisiana			
Small bank			0
Large bank			0
FmHA			0
FCS	1		1
Minnesota			
Small bank	1		1
Large bank			0
FmHA			0
FCS			0
Nebraska			
Small bank			0
Large bank			0
FmHA	1		1
FCS			0
Other creditor			
FmHA headquarters			0
Farm input supplier			0
Farm implement financier			0
Insurance company	—	—	0
Total creditor responses	4	1	5
Total legal practitioner and creditor responses	6	11	17

(continued)

[a]This implement dealer lends primarily in Colorado and therefore is not included in the "other creditor" category.

Those that said the income requirements are too restrictive focused on three aspects of the farm-income rule, which requires that at least 50 percent of a farmer's income must come from farming in the taxable year preceding the year of filing. The interviewees said that (1) the 50-percent farm-income test is too high, (2) all rental income is not treated consistently by the courts for farm income purposes, and (3) the 1-year income-averaging rule is too short to provide a valid farm-income test.

Interviewees that said the 50-percent farm-income test is too high said that it penalizes farmers who are trying to find other sources of revenue to support the continued operation of the farm. Some said that off-farm income from a working spouse or a working couple has resulted in rulings of ineligibility because such income exceeded that generated by the farming operation.

Interviewees that told us certain income is not treated equitably for farm income purposes said the courts are accepting sharecrop but not cash-rent income as farm income. Sharecrop income is income received from an individual in the form of crops as payment for renting all or part of the farm. Cash-rent income is income received in cash for renting all or part of the farm.

Those indicating that the income-averaging rule of 1 year is too short said that the rule may disqualify farmers who must work off the farm to keep the farm operating. For example, farmers whose farm income is limited by a natural disaster, such as a drought, and who must work off the farm to keep the farm operating may lose his or her eligibility for Chapter 12 because the lack of farm income from the lost crop can make off-farm income a higher percentage of total income. In addition, those who said the 1-year rule is too short said that farmers who work off the farm and elect to hold over crops or livestock to the following year in anticipation of better market conditions and higher prices are also penalized because their off-farm income in the current year can become a higher percentage of total income.

Those who told us the income requirement is too restrictive provided solutions that included (1) eliminating the 50-percent income test and instead requiring that a farmer's primary occupation be in agriculture, (2) treating off-farm income and cash-rent income, which support the farming operation, as farm income for the 50-percent income test, (3) increasing the time period for the income test, from the previous year to an average of the previous 2 to 5 years, and (4) allowing judges discretion in determining, case-by-case, the criteria for farm income.

Those that indicated the income requirement is too lenient generally said the 50-percent income test allows landlord and hobby farmers to qualify for Chapter 12 without devoting substantial time to farming operations. They said that income farmers receive from cash rent or sharecropping demonstrates that they are not active participants in the farming operation and, unless individuals are actually doing the farming, they should not qualify as family farmers.

Those that indicated the income test is too lenient suggested (1) ensuring that sharecrop and cash-rent income cannot be used as farm income and (2) increasing the percentage for the income test from 50 percent to 75 percent or 80 percent.

Procedural Concerns

Of the 41 responses that indicated problems with the Chapter 12 eligibility requirements, 2, or about 5 percent, indicated concerns about procedural aspects of Chapter 12. Both a creditor attorney and a creditor indicated that the requirements are too lenient and could result in farmers qualifying for Chapter 12 that --in their views--the Congress did not intend to qualify. The creditor attorney was concerned about some farmers forming corporations or partnerships, or splitting assets to qualify for filing Chapter 12. For example, organizations with over $1.5 million in debt could form smaller farming units to attempt to qualify under the $1.5 million debt limit requirement. The creditor attorney indicated that the courts or some third party should screen out perceived abuses. A farm implement financier was concerned that, in his view, debts and assets can be manipulated easily and that, for example, debtors' appraisals may be performed by nonobjective appraisers. He suggested that the debtors' Chapter 12 plans and appraisals should be reviewed by a third party, other than the court, to determine whether they are accurate.

SECTION 5

PARTICIPANTS' VIEWS ON THE CHAPTER 12 PLAN-FILING AND -CONFIRMATION MILESTONES

Although the initial milestones for filing and confirming Chapter 12 cases were not met in a substantial number of the cases we reviewed, most interviewees we talked with said that the time limits set by legislation are adequate. The interviewees said that the time limit for filing was not enforced by the courts and that debtors and creditors do not negotiate feasible plans during the filing period. Interviewees generally attributed the high number of nonconfirmed cases to crowded court dockets and inability of debtors and creditors to negotiate a plan.

Chapter 12 provisions were designed, according to the conference report accompanying the act, to eliminate many of the obstacles found in other personal and business reorganization bankruptcy chapters so that a family farmer could, among other things, restructure his or her debts as quickly as possible. The act requires that a debtor file a reorganization plan with the court within 90 days after the debtor petitions for debt relief under Chapter 12, unless extended by the courts for cause. It also states that the court must "hold a hearing on confirmation of the plan" and that "except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan." Although the law allows the court to grant extensions to the filing and confirmation milestones, it appears that the law's intent is to have most plans filed and confirmed within the 90- and 45-day time frames, respectively.

PARTICIPANTS' VIEWS ON PLAN-FILING TIMELINESS

Forty-four of 59, or 75 percent, of the interviewees said that the 90-day plan-filing requirement was about right. Over 70 percent of each interviewee group--judges, trustees, debtor attorneys, creditor attorneys, and creditors--said the plan-filing requirement is about right. Three interviewees--all creditors--had no opinion. Of the remaining 56 interviewees, 8 legal practitioners and creditors, or 14 percent, said that the 90-day requirement is too long. Four of 56, or 7 percent, of the interviewees--all legal practitioners--that responded said the time limit is too short. (See table 5.1 for a summary of interviewee responses.)

Table 5.1: Participants' Views on the Appropriateness of the 90-Day Plan-Filing Requirement

Interviewee	Filing requirement is: Too short	About right	Too long	No opinion	Total
Legal practitioner					
Colorado					
Judge		2			2
Trustee		1			1
Debtor attorney		2			2
Creditor attorney		2			2
Western Louisiana					
Judge	1	1			2
Trustee		1			1
Debtor attorney	1	1			2
Creditor attorney		1	1		2
Minnesota					
Judge		1			1
Trustee		2			2
Debtor attorney	2	2			4
Creditor attorney		2			2
Nebraska					
Judge		1			1
Trustee			1		1
Debtor attorney		2	1		3
Creditor attorney	_	2	_	_	2
Total legal practitioner responses	4	23	3	0	30

(continued)

Interviewee	Filing requirement is Too short	About right	Too long	No opinion	Total
Creditor					
Colorado					
Small bank			1		1
Large bank		1			1
FmHA		1			1
FCS		3			3
Farm implement dealer[a]				1	1
Western Louisiana					
Small bank		1			1
Large bank				1	1
FmHA		1			1
FCS		1	1	1	3
Minnesota					
Small bank		1	1		2
Large bank		1			1
FmHA		1			1
FCS		1	1		2
Nebraska					
Small bank		1			1
Large bank		1			1
FmHA		1			1
FCS		2			2
Other creditor					
FmHA headquarters		1			1
Farm input supplier		1	1		2
Farm implement financier		1			1
Insurance company	-	1	-	-	1
Total creditor responses	0	21	5	3[b]	29
Total legal practitioner and creditor responses	4	44	8	3[b]	59

(continued)

[a]This implement dealer lends primarily in Colorado and therefore is not included in the "other creditor" category.

[b]Because of their limited experience with Chapter 12 bankruptcy, these interviewees had no opinion on the Chapter 12 plan-filing requirement.

Although the plan-filing requirement was viewed as adequate, the interviewees gave various reasons for not meeting the filing requirement including debtors and creditors do not negotiate feasible plans during the required period and courts do not enforce the requirement. Reasons given by those who said the current time period for filing was too long included (1) plans could be developed in much less time, (2) delays are costly in terms of lost interest on loans and nonearning assets while the plan is being developed, and (3) delays could result in a missed growing season by the debtor because debtors are more likely to get credit to plant if they have a confirmed plan. Those suggesting that more than 90 days should be allowed to submit a plan said that a longer period would provide greater negotiating time for the debtor and creditors, more time is needed for the debtor attorney to know the client better, and the time limit should be increased to 120 days, which is the time requirement for plan filing under Chapter 11 bankruptcy.

PARTICIPANTS' VIEWS ON PLAN-CONFIRMATION TIMELINESS

Forty-three of the 59 interviewees, or 73 percent, told us that the 45-day time frame for plan-confirmation hearings is about right. About 67 percent or more of each interviewee group--judges, trustees, debtor attorneys, creditor attorneys, and creditors--said the plan-confirmation requirement is about right. Four interviewees--a debtor attorney and three creditors--had no opinions. Of the 55 remaining interviewees, 8 legal practitioners and creditors, or 15 percent, said the time limit is too short. Four of the 55 interviewees that responded, or 7 percent--all creditors--said the time limit is too long. (See table 5.2 for a summary of interviewee responses.)

Table 5.2: Participants' Views on the Appropriateness of the 45-Day Plan-Confirmation Requirement

Interviewee	Confirmation requirement is: Too short	About right	Too long	No opinion	Total
Legal practitioner					
Colorado					
Judge		2			2
Trustee		1			1
Debtor attorney	1	1			2
Creditor attorney		2			2
Western Louisiana					
Judge	1	1			2
Trustee		1			1
Debtor attorney		2			2
Creditor attorney	1	1			2
Minnesota					
Judge		1			1
Trustee		2			2
Debtor attorney	1	3			4
Creditor attorney		2			2
Nebraska					
Judge	1				1
Trustee		1			1
Debtor attorney		2		1[a]	3
Creditor attorney	_	2	_	_	2
Total legal practitioner responses	5	24	0	1[a]	30

(continued)

Interviewee	Confirmation requirement is: Too short	About right	Too long	No opinion	Total
Creditor					
Colorado					
Small bank			1		1
Large bank		1			1
FmHA		1			1
FCS		3			3
Farm implement dealer[b]				1	1
Western Louisiana					
Small bank		1			1
Large bank				1	1
FmHA		1			1
FCS	1		1	1	3
Minnesota					
Small bank		1	1		2
Large bank		1			1
FmHA		1			1
FCS		1	1		2
Nebraska					
Small bank		1			1
Large bank	1				1
FmHA	1				1
FCS		2			2
Other creditor					
FmHA headquarters		1			1
Farm input supplier		2			2
Farm implement financier		1			1
Insurance company	_	1	_	_	1
Total creditor responses	3	19	4	3[a]	29
Total legal practitioner and creditor responses	8	43	4	4[a]	59

(continued)

[a]Because of their limited experience with Chapter 12 bankruptcy, these interviewees had no opinion on the Chapter 12 plan-confirmation requirement.

[b]This implement dealer lends primarily in Colorado and therefore is not included in the "other creditor" category.

Although the plan-confirmation requirement was viewed as adequate, the interviewees gave various reasons for the inability to confirm a plan in the 45-day confirmation period, including crowded court dockets and the inability of debtors and creditors to negotiate acceptable plans. They also cited several obstacles to successfully negotiating a plan, including objections filed by creditors, the need to amend the original plan filed by the debtor, and requests for court continuances by either the creditor or debtor attorney. The continuances are requested for reasons such as inadequate preparation of the plan by the filer or inability to obtain proper documents, such as timely appraisals, from the debtor or the creditor.

Reasons given by those that said the time limit is too short included (1) a plan must be sent through so many channels after it has been filed that creditors do not always have enough time to respond and prepare their objections to the plan, (2) the courts' backlogs for all bankruptcies make it difficult to confirm a plan in 45 days, and (3) more time is needed to properly prepare a case.

Those suggesting that fewer than 45 days should be allowed to confirm a plan said that Chapter 12 plans should be confirmed as quickly as possible so that the debtor can proceed with his work and the creditors can begin to collect their debts and interest on loans. They also said a plan should be filed at the time of petition and 30 days should be allowed for confirmation.

SECTION 6

PARTICIPANTS' VIEWS ON THE APPROPRIATENESS OF THE CHAPTER 12 SUNSET DATE

A majority of interviewees said that the Chapter 12 law should expire on or before its current sunset date of October 1, 1993, with a majority of those saying that the law should sunset as planned. Although a majority of both creditors and legal practitioners--judges, trustees, and debtor and creditor attorneys--told us the law should expire on or before the current sunset date, interviewees' responses varied according to their geographic location and role in the Chapter 12 process. For example, all but one of the interviewees in Colorado and Louisiana told us that the law should sunset on or before the planned sunset date. However, in Minnesota and Nebraska over 50 percent of the creditors and legal practitioners said that the sunset date should be extended or deleted--making the law permanent. In these two states, about 75 percent of the legal practitioners favored extension or deletion of the sunset date while 36 percent of the creditors held that view. Other creditors that generally operate across state lines all told us that the law should sunset on or before the scheduled sunset date. (See table 6.1 for a summary of interviewee responses.)

The differences in responses among states on the appropriateness of the Chapter 12 expiration date could be due to the different legal climates existing within each of the states. In states viewed as having a more favorable debt-resolution environment for farmers, the respondents leaned more towards making Chapter 12 permanent. For example, Minnesota has various laws and programs to assist farmer borrowers facing the consequences of delinquent debt. In addition, according to many individuals we talked with in Nebraska, the Nebraska bankruptcy court has leaned toward aiding the farmers. In contrast, interviewees in Louisiana told us that Louisiana has no laws specifically directed towards farmers with delinquent debt, and interviewees in Colorado told us that the Colorado court has leaned toward creditors.

Table 6.1: Participants' Views on the Appropriateness of the Sunset Provision

Interviewee	The sunset date should be: Left as is	Shortened	Extended	Deleted	No opinion	Total
Legal practitioner						
Colorado						
Judge	2					2
Trustee	1					1
Debtor attorney	1			1		2
Creditor attorney	2					2
Western Louisiana						
Judge	2					2
Trustee	1					1
Debtor attorney	1	1				2
Creditor attorney	1	1				2
Minnesota						
Judge				1		1
Trustee			2			2
Debtor attorney	1			3		4
Creditor attorney	1			1		2
Nebraska						
Judge				1		1
Trustee				1		1
Debtor attorney				2	1	3
Creditor attorney	1	-	-	1	-	2
Total legal practitioner responses	14	2	2	11	1[a]	30

(continued)

Interviewee	The sunset date should be: Left as is	Shortened	Extended	Deleted	No opinion	Total
Creditor						
Colorado						
Small bank	1					1
Large bank		1				1
FmHA		1				1
FCS	2	1				3
Farm implement dealer[b]	1					1
Western Louisiana						
Small bank	1					1
Large bank		1				1
FmHA	1					1
FCS		3				3
Minnesota						
Small bank		2				2
Large bank	1					1
FmHA				1		1
FCS		2				2
Nebraska						
Small bank		1				1
Large bank				1		1
FmHA		1				1
FCS				2		2
Other creditor						
FmHA headquarters	1					1
Farm input supplier	2					2
Farm implement financier		1				1
Insurance company	_	1	_	_	_	1
Total creditor responses	10	15	0	4	0	29
Total legal practitioner and creditor responses	24	17	2	15	1[a]	59

(continued)

[a]Because of their limited experience with Chapter 12 bankruptcy, these interviewees had no opinion on the Chapter 12 sunset provision.

[b]This implement dealer lends primarily in Colorado and therefore is not included in the "other creditor" category.

PARTICIPANTS' VIEWS

Although a majority of interviewees said that the Chapter 12 law should terminate on or before its current sunset date, responses differed by state and according to the participants' roles in the Chapter 12 process. In states that had a more favorable debt-resolution environment, the interviewees leaned more toward making Chapter 12 permanent. However, within those states, a greater percentage of legal practitioners than creditors favored that position.

Legal Practitioners' Views

Although 14 of the 29 legal practitioners that responded, or about half, told us the expiration date should be left as is, 11 of 29, or over a third, said it should be deleted, making the law permanent. One legal practitioner--a debtor attorney--did not respond to this question. Generally, views differed among the states, with most legal practitioners in Colorado and Louisiana stating that the expiration date should be left as is, and those in Minnesota and Nebraska favoring deletion.

Judges' Views

The judges' views on the appropriateness of the Chapter 12 sunset provision varied among states. Four of the six judges said that the sunset date should be left as is. All four judges interviewed in Colorado and Louisiana said the sunset date should remain at October 1, 1993, most stating that the law should be reexamined before the sunset date to determine whether it should be repealed or retained. In contrast, the judges interviewed in Minnesota and Nebraska said that the sunset provision should be deleted, making the law permanent. The Minnesota judge said that a special type of bankruptcy should be available to farmers because Chapter 11 bankruptcy does not meet the needs of a farmer trying to reorganize his farming operations. He said that either Chapter 12 should be retained or Chapter 11 bankruptcy should be modified to make it less expensive for farmers by relaxing some of the requirements, such as the disclosure statements, which would reduce attorney fees and other costs. Similarly, the Nebraska judge said that farm problems will continue and Chapter 12 should be retained or Chapter 11 bankruptcy should be modified.

Trustees' Views

The trustees' views also varied among states in our review. Three of the five trustees that we interviewed in the four states favored retaining the law beyond the sunset date. These three trustees were in states that, based on interviewees' comments, tend to lean more toward assisting farmers facing the consequences of delinquent debt. The two Minnesota trustees interviewed thought that the sunset date should be extended. According to one of them, there was no good reason not to "leave it on the books." The Nebraska trustee, anticipating future economic stress in agriculture, said that Chapter 12's sunset provision should be deleted to ensure the law's continued availability. Trustees from Colorado and Louisiana, states that, we were told, lean toward creditors, were less supportive of keeping Chapter 12 as a permanent fixture. The Colorado trustee said that Chapter 12 is a good statute because it is quicker and costs less in attorney fees than Chapter 11. However, he said that the sunset date should remain in effect because it is too early to determine whether it is appropriate. The Louisiana trustee said that Chapter 12 will be unnecessary if economic conditions improve, in which case the law should sunset.

Debtor Attorneys' Views

The debtor attorneys' views differed by state. Most debtor attorneys we interviewed said that the law should be made permanent. Of the 11 debtor attorneys interviewed, 6 said that the sunset date should be deleted; 3 said it should be left as is; 1 said it should be sooner; and 1--in Nebraska--had no opinion. In Minnesota and Nebraska, five of six debtor attorneys that responded said that the law should be made permanent. In contrast, three of the four debtor attorneys in Colorado and Louisiana said that the sunset date should be left as is or shortened.

Those supporting retention of the law indefinitely gave several reasons, including (1) it is needed by debtors to promote settlements with creditors without litigation, (2) it should be permanent legislation that is available in the future if needed, and (3) it would do no harm to leave the statute on the books.

Those favoring the current sunset date said that (1) there is a tendency to blame farm failure on the public sector or on uncontrollable factors, when much of the problem rests in the business practices of the Chapter 12 farmer, and, according to one attorney, special interest legislation designed to protect farmers should be allowed to expire as scheduled, (2) Chapter 12 might not be used much in the future if the agricultural economy improves, and (3) the Agricultural Credit Act of 1987 might reduce the number of Chapter 12 filings because it allows FmHA to voluntarily write down farm debt.

An attorney that favored an earlier sunset date said that it would force farmers to file for Chapter 12 sooner instead of delaying the filing and prolonging their financial problems.

Creditor Attorneys' Views

Creditor attorneys' views also differed by state in our review. Of the eight creditor attorneys interviewed, five said the law should expire on the original sunset date, two said the sunset date should be deleted, and one said the sunset date should be accelerated. Two of the four creditor attorneys in Minnesota and Nebraska favored making the law permanent. The other two favored the current sunset date. However, all four creditor attorneys in Colorado and Louisiana favored leaving the sunset date as is or accelerating it.

Reasons given for keeping the current sunset date included: farmers who need Chapter 12 relief have already filed or will have done so by the sunset date and the improving economy will diminish the need for Chapter 12.

Those favoring retaining the law indefinitely said that although Chapter 12 filings are declining, there will always be a need for Chapter 12, and Chapter 12 is better for farmers than alternative types of bankruptcy and should be available for future use unless other bankruptcy chapters are tailored better to farmers' use.

Creditors' Views

While 86 percent of the creditors we interviewed favored either accelerating the sunset date or leaving it as is, views again varied by state. No creditors in Colorado or Louisiana favored making Chapter 12 permanent, but over a third of the total creditors interviewed in Minnesota and Nebraska favored making it permanent. In Nebraska, three of five creditors favored permanency, and in Minnesota one of six favored permanency. Other creditors, or those that generally operate across state lines, favored either keeping the sunset date as is or accelerating it.

Those favoring termination of the law on or before the scheduled sunset date generally said that the improving economy will diminish the need for Chapter 12, and farmers who need Chapter 12 relief have already filed or will have done so by the sunset date. Several creditors also told us that Chapter 12 favors the debtor, and one said that if Chapter 12 were revised to provide greater protection for creditors, it would be acceptable to make it a permanent law. Many creditors said the debt-reduction provision, which allows courts to write down the value of a loan to the current market value of the asset used as collateral without providing for future recovery of the amount written down if the collateral appreciates later, should be changed. Some FmHA

officials suggested using the same methodology for debt reduction set out in the Agricultural Credit Act of 1987 which provides for FmHA to share in the future appreciation of assets used as collateral for which a loan is written down by FmHA under its debt-restructuring process. Most other creditors generally recommended that creditors should be permitted to recapture at least some of the lost loan value in the event of asset appreciation.

Reasons cited for making the law permanent included (1) Chapter 11, an alternative bankruptcy process, is not as fast or as effective for farmers as Chapter 12, (2) based on economic conditions, the need for Chapter 12 might continue beyond the current sunset date, and (3) Chapter 12 makes it more possible for a debtor and creditor to negotiate.

SECTION 7

OBJECTIVES, SCOPE, AND METHODOLOGY

The former Chairman, Subcommittee on Conservation, Credit, and Rural Development, House Committee on Agriculture, and Congressmen Richard Stallings and Mike Synar requested that we provide information on the implementation of the family farmer bankruptcy provisions of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986. As agreed in subsequent discussions with their offices, our objective was to provide Chapter 12 participants' views on (1) effects of Chapter 12 on credit availability and the cost of credit to farmers, (2) mandatory mediation as an alternative to Chapter 12 as a debt-resolution process, (3) eligibility criteria for Chapter 12 filers, (4) plan-filing and -confirmation timeliness, and (5) sunset provisions of Chapter 12. In addition, we agreed to provide background information on Chapter 12, including statistical information on the number of Chapter 12 filings, plan-filing and -confirmation timeliness, and potential debt reduction resulting from a selected number of cases having confirmed Chapter 12 reorganization plans.

We performed our work in Washington, D.C., and in Colorado, Louisiana, Minnesota, and Nebraska. Specifically, we did detailed work at the Administrative Office of the U.S. Courts in Washington, D.C., and in the U.S. bankruptcy courts in Colorado, Western Louisiana, Minnesota, and Nebraska. With the exception of Louisiana, each of these states has only one bankruptcy court.[1] Louisiana has three bankruptcy courts, and we selected the bankruptcy court for the western district, which had the largest number of Chapter 12 filings in the state.

We selected these states because they had different levels of Chapter 12 filings and provided geographic diversity. As of December 31, 1987, Nebraska had the largest number of Chapter 12 filings in the nation, Louisiana[2] ranked third, Minnesota ranked nineteenth, and Colorado ranked twenty-fourth.

The information contained in this briefing report cannot be projected to the districts reviewed, other judicial districts, or the nation overall because our data collection efforts and

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[1]U.S. bankruptcy courts are adjunct to U.S. district courts in each federal judicial district. Bankruptcy courts hear bankruptcy cases other than Chapter 12. Each bankruptcy court has a chief judge, sometimes supported by other judges.

[2]If all three Louisiana bankruptcy courts were added together, Louisiana as a state would have still ranked third behind the states of Nebraska and South Dakota.

interviews were limited generally to areas covered by only 4 of the 94 U.S. bankruptcy courts, and within those areas our audit work was too limited to develop projectable information.

INFORMATION ON CHAPTER 12 BANKRUPTCY IMPLEMENTATION AND PROGRAM ACTIVITY

We gathered information on Chapter 12's (1) purpose, (2) process, (3) plan-filing and -confirmation experience, and (4) potential debt-reduction. To obtain an overall understanding of Chapter 12's purpose and process, we reviewed the legislation and reports, studies, and publications related to its implementation, interviewed judgmentally selected creditors and legal practitioners--judges, trustees, and debtor and creditor attorneys--involved in the Chapter 12 process, and reviewed actual Chapter 12 cases.

We gathered national statistics on the number of Chapter 12 filings since the inception of the program on November 26, 1986, through December 31, 1988, from the Administrative Office of the U.S. Courts in Washington, D.C. To obtain more detailed information on the Chapter 12 plan-filing and -confirmation timeliness experience, we gathered statistics from each of the four U.S. bankruptcy courts under our review. In each of these districts, we determined the status of all Chapter 12 petitions filed from inception of Chapter 12 through November 15, 1987, and the extent to which those Chapter 12 cases met the 90-day plan-filing and 45-day plan-confirmation requirements.

To determine the amount of potential average debt reduction resulting from confirmed Chapter 12 cases, we judgmentally selected from 20 to 25 petitions with reorganization plans confirmed between July 1, 1987, and November 15, 1987, at each of the four districts. In total, we selected 93 cases--20 in Colorado, 23 in Minnesota, and 25 each in Western Louisiana and Nebraska. From those cases, we also selected one case from the Nebraska bankruptcy court and included it in appendix I as a case study to illustrate the chronology and content of a Chapter 12 case.

PARTICIPANTS' VIEWS ON ISSUES SURROUNDING CHAPTER 12

We conducted interviews with individuals involved in the Chapter 12 process to obtain their views on issues surrounding the Chapter 12 experience. In general, we obtained interviewees' views on (1) effects of Chapter 12 on credit availability and the cost of credit to farmers, (2) preferences for Chapter 12 bankruptcy versus mandatory mediation as a debt-resolution process, (3) eligibility criteria for Chapter 12 filers, (4) plan-filing and -confirmation timeliness, and (5) sunset provisions of Chapter 12.

Effects on Credit Availability and Cost of Credit to Farmers

We interviewed officials of 29 separate creditors that extend credit to farmers in the areas covered by the four bankruptcy courts under our review to determine their views on whether or not Chapter 12 bankruptcy affected the (1) availability of credit to farmers or (2) the cost of credit to farmers. We interviewed representatives of the U.S. Department of Agriculture's FmHA, FCS, commercial banks, a farm implement financier, a farm implement dealer, farm input suppliers, and an insurance company.

We conducted our interviews with officials who set policy and those who make loans. At FmHA we interviewed headquarters officials and officials in each of the four state offices. We interviewed officials of each of the four FCS districts responsible for the states where we conducted our review, as well as FCS officials responsible for making real estate and production loans in each of the four states. We interviewed officials of one large and one or two small commercial banks in each district. For purposes of our review, we defined small banks as having $50 million or less in assets. In Colorado we interviewed a farm implement dealer that provided credit to farmers primarily in Colorado. We also interviewed officials of a nationwide insurance company, a farm implement financier, and farm input suppliers that provided credit to farmers in several states, including some states included in our review.

Mandatory Mediation Versus Chapter 12

As requested, we asked creditors whether they preferred mandatory mediation to Chapter 12 bankruptcy as a debt-resolution process. We conducted interviews with the same 29 creditors that we interviewed to report their views on the impact of Chapter 12 on credit availability and cost. The requesters were especially interested in Minnesota creditors' responses to this question. Minnesota was the only state included in our work that had a mandatory mediation law. Because the remaining three states did not have a mandatory mediation law, some creditors' responses were very general since they were unfamiliar with the specifics of the law.

Other Issues

We interviewed creditors and legal practitioners involved in the Chapter 12 process in the four districts to obtain their views on issues of importance to them concerning Chapter 12 bankruptcy. We relied on their interviews to provide views on (1) eligibility criteria for Chapter 12 filers, (2) plan-filing and -confirmation timeliness, and (3) sunset provisions of Chapter 12. Some interviewees did not have views on all issues in our report.

We interviewed the same 29 creditors that we interviewed to report on the impact of Chapter 12 on credit availability and cost and mandatory mediation. We also interviewed 11 debtor and 8 creditor attorneys. We selected debtor attorneys that handled Chapter 12 cases so that their total caseloads represented at least 15 percent of the Chapter 12 cases filed in each of the districts through December 31, 1987. We selected creditor attorneys experienced in Chapter 12 bankruptcy through referrals from creditors that we interviewed.

We also interviewed five trustees: two from the Minnesota district and one from each of the other three districts. Their Chapter 12 caseloads represented at least 50 percent of the Chapter 12 petitions filed in each of the four districts as of December 31, 1987. In two states--Colorado and Nebraska--the trustee interviewed was the trustee for all Chapter 12 petitions filed in the state.

In addition, we interviewed six district bankruptcy judges including the chief bankruptcy judge in each of the four districts and a second judge in two districts--Colorado and Louisiana--to obtain additional information.

We conducted our review from June 1987 through February 1989, and our work was performed in accordance with generally accepted government auditing standards.

CASE STUDY: A CHAPTER 12 BANKRUPTCY CASE

The following is a case study based on an actual confirmed Chapter 12 case in Nebraska. The case illustrates the chronology and content of a Chapter 12 family farm bankruptcy case. The information in this case was obtained from the debtors' second amended Chapter 12 plan of reorganization and related documents. As of April 19, 1988, according to the bankruptcy trustee, the debtors were waiting to receive a judgment from the court in response to a March 6, 1989, petition for a discharge from Chapter 12 bankruptcy on the basis of having paid all payments in accordance with the confirmed plan. Because this case is being used for illustrative purposes, we have changed case identifiers including the borrowers' names and address and the names of solely private financial institutions.

Certain terms commonly used in a Chapter 12 bankruptcy case and critical to the understanding of this case study are priority debt, secured debt, undersecured debt, unsecured debt, and disposable income. Priority debt is a debt that generally must be paid before other liens against a Chapter 12 debtor. Priority debts include such items as county, federal, and state taxes; and certain court-ordered fees such as trustee, appraisal, consultant, and attorney fees. Secured debt is debt that is secured by real estate or other collateral and, under Chapter 12, may be written down, or reduced, to the current market value of the collateral. The amount of secured debt written down is commonly referred to as undersecured debt and may be uncollectible by the lender. Unsecured debt is debt for which other assets were not pledged as collateral to obtain the loan. Disposable income is income that is not reasonably necessary to be spent for the maintenance or support of the debtor or a dependent of the debtor, or for the payments necessary for continuing, preserving, and operating the debtor's business. During the plan period, generally, disposable income should be used to make payments on unsecured debts and undersecured debts. At the end of the plan period, any amounts left outstanding from unsecured and undersecured debts are discharged by the court.

BORROWER PROFILE

John and Betty Farmer have conducted a farming operation in Nebraska for nearly 4 decades. Their farming operation now consists entirely of cash crops--for example, corn, wheat, milo, soybeans, and sunflowers. They farm 480 acres of land: 160 owned and 320 leased on a two-third to lessee and one-third to lessor share of income. In addition to their personal farming operation, the Farmers' income was supplemented by John's custom farming

operation--contracting for farm work--and Betty's work as a nurse's aid. These two sources of income provided about 20 percent of the family's gross income.

CASE CHRONOLOGY

From the date of the Farmers' Chapter 12 petition, it took them 168 days to obtain a confirmed plan. They filed a petition for debt relief under Chapter 12 on May 1, 1987, and after two amended plans, a plan was confirmed on October 16, 1987, 81 days after the original plan was filed. The first reorganization plan was filed on July 27, 1987, meeting the statutory initial 90-day limit for plan filing by 3 days. The original confirmation hearing was initially set for September 9, 1987--44 days after the original plan was filed--but was postponed until October 16, 1987--35 days after the initial 45-day plan-confirmation limit. On September 8 and 16, 1987, respectively, the first and second amended plans were filed. The Farmers' second amended plan was confirmed on October 16, 1987, 30 days after it was filed. The Farmers' plan is a 3-year plan with certain debts to be repaid over 25 and 35 years.[1] Table I.1 summarizes the major events that occurred during the Farmers' Chapter 12 case.

Table I.1: Summary of Key Dates in Case Chronology

Date	Action
May 1, 1987	The Farmers file Chapter 12 bankruptcy. Petition indicates that the Farmers have agreed to pay their attorney $5,000 and have paid a $200 filing fee.
May 19, 1987	Schedules and statement of financial affairs dated May 12, 1987, are filed. Schedules list debts of $449,594 and assets of $341,393, or a debt-to-asset ratio of 1.32 to 1. (Subsequently revised during the petition process to debts of $567,456 and assets of $419,263, or a debt-to-asset ratio of 1.35 to 1.)
July 27, 1987	The Farmers file the first reorganization plan, 87 days after petitioning for

[1]In the event that the plan is successfully completed, all debts except those that extend beyond the life of the plan will be discharged at the end of the plan period. After the plan has been completed, the court no longer has jurisdiction over the case.

	Chapter 12 Bankruptcy. The court sets the confirmation hearing for September 9, 1987.
August 19, 1987	Milo State Bank objects to the reorganization plan.
August 21, 1987	Corn County and the Federal Land Bank (FLB) object to the reorganization plan.
September 8, 1987	The Farmers file the first of two amended reorganization plans.
September 16, 1987	The Farmers file the second amended plan to include an additional amendment to the first amended reorganization plan.
October 15, 1987	The FLB applies for attorney fees, costs and expenses. Motion is entered to authorize the debtor to apply for the Agricultural Stabilization and Conservation Service (ASCS) program.
October 16, 1987	Order is entered authorizing the payment of FLB attorney fees, costs, and expenses. The court confirms the Farmers' second amended reorganization plan.
November 24, 1987	Motion to authorize the Farmers to apply for the ASCS program is sustained.
March 6, 1989[a]	The Farmers file a petition for discharge from Chapter 12 bankruptcy on the basis of having paid in advance all payments that will have been due and payable over the full term of the plan and in accordance with the confirmed plan.

[a]We obtained this information from the trustee on April 19, 1989, and because our audit work had been completed, this is the last date we contacted the trustee for payment information. According to the trustee, as of April 19, 1989, the court had not notified him of a ruling in the case.

ESTIMATED INCOME AND EXPENSES

The Farmers' disposable income that would have been available for potential payments of unsecured debts,[2] during the first year of the plan increased from $1,158 to $2,718 from the Farmers' initial estimates during the petition period to those provided in the confirmed plan, for a net increase of $1,560. The increase, as shown in table I.2, was attributable to (1) a net increase in estimated on- and off-farm income of about $7,600, (2) an estimated decrease in operating and living expenses of $17,300, and (3) an increase in first-year debt payments of about $23,300. The increase in the income came mainly from the recognition of a 1986 ASCS program payment of $11,000 in the confirmed plan that was not recognized in the first plan. Another change in income figures included an increase by about $2,600 from the sale of crops and an $8,900 reduction in costs to produce those crops.

First-year payments required under the plan increased about 80 percent over the earlier estimate. Much of this can be attributed to (1) the recognition of accrued interest in the plan but not in the initial estimates, (2) underestimations of the secured claim of Milo State Bank, (3) exclusion of a priority debt owed for county taxes, and (4) exclusion of the repayment of an operating loan in the initial estimate.

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[2]For purposes of this case study discussion, unsecured debts also include undersecured debts.

Table I.2: Estimated Income and Expenses for Case Study

Income	Initial estimates	Confirmed Plan estimates	Changes
On-farm income	$ 53,721	$ 56,314	$ 2,593
ASCS payments	33,000	44,000	11,000
Custom farming	15,000	15,000	0
Off-farm income	6,000	0	(6,000)
Total income	$107,721	$115,314	$ 7,593
Expenses			
Priority debt	0	4,165	4,165
Secured debt payments	29,763	48,931	19,168
Operating expenses[a]	58,800	49,900[b]	(8,900)
Family living expenses	18,000	9,600	(8,400)
Total expenses	106,563	112,596	6,033
Disposable income	$ 1,158	$ 2,718	$ 1,560

[a]Includes items such as fuel, seed, fertilizer, electric and telephone bills, repairs, insurance, real estate and other taxes, combining and drying expenses, and legal and administrative fees.

[b]Includes a one-time flat rate trustee fee of $3,000 and a balance of $2,500 owed the debtor attorney.

Initial estimates

Initially, the Farmers' estimated funds available for future farm operations and to pay unscheduled payments to unsecured creditors, after paying scheduled first-year payments to secured creditors, was $1,158. Their estimated gross receipts for the first year of the plan were $107,721. Mrs. Farmer's off-farm income of $6,000 is included in that amount. Their initial estimated total operating and family living expenses of $76,800 would have left net funds available of $30,921 to be applied to repayment of the estimated secured debt of $29,763 and would leave $1,158 in disposable income.

Confirmed plan estimates

The Farmers' confirmed plan estimated that $2,718 would remain after paying scheduled first-year payments to priority and secured creditors. Gross receipts for the year commencing May 1, 1987, through April 30, 1988, were estimated at $115,314. ASCS payments of $44,000 are included in that amount. Their revised estimated total operating and family living expenses of $59,500 would leave net funds available of $55,814 in the first year of the plan to be applied to repayment of the reported priority and secured debts of $53,096, and would leave $2,718 in disposable income.

The confirmed plan requires the Farmers to make first-year payments of $53,096 to priority and secured debt holders. After paying priority and secured debts and expenses, the plan anticipates that the Farmers will have an estimated $2,718 in disposable income. If any payments were made to unsecured creditors from the disposable income, the trustee would receive an additional 10-percent fee on amounts paid to those creditors through the trustee's office.[3] Debts and first-year payments according to the confirmed plan are listed in table I.3.

[3]The courts have discretion when confirming plans on whether or not to require debtors to pay their plan payments through the trustee or directly to the creditors. However, the debtor has discretion to pay necessary and reasonable family living and farm operation and preservation expenses prior to paying unsecured and undersecured debts.

Table I.3: First-Year Payments of Priority Debts, Secured Debts, and Unsecured Debts for Case Study

Creditor	Amount at petition[a]	Court-approved amounts[b]	First-year payments[c]
Priority debts			
Corn County Treasurer[d]	$ 8,799	$ 8,799	$ 4,165
Total priority debt	8,799	8,799	4,165
Secured debts			
Milo State Bank			
Equipment loan	123,765	76,065	3,090[e]
Operating loans	31,970	31,776	31,776
Vehicle loan	8,200	8,200	0
Federal Land Bank	58,217	58,217	6,626
Farmers Home Administration	126,258	53,893	4,861
Implement Company	14,744	8,000	2,579
Commodity Credit Corporation	174,313	174,313[f]	0
Total secured debt[g]	537,468	410,464[h]	48,931
Total priority and secured debt	546,267	419,263[h]	53,096
Unsecured debt	21,189	0	0
Total debt	$567,456	$419,263[h]	53,096
Disposable income			2,718
Total first-year payments			$55,814

[a]This is the amount of debt to be paid to creditors at the date of petition based on the original loan contract between the debtor and the creditor.

[b]This is the amount that the court has set in the confirmed plan to be paid.

(continued)

[c]These first-year payments include interest where applicable.

[d]Real estate tax due Corn County is the only priority debt in this case.

[e]Interest payment only. Includes an interest-only payment on the vehicle loan.

[f]The U.S. Department of Agriculture makes nonrecourse loans to farmers for major crops at specified loan rates (support prices), with the crops used as collateral. If a farmer elects not to pay the loan and interest at a later date, the government agrees to accept the crop in storage as full payment. The confirmed plan provided for the debtor to forfeit the grain as full payment in the amount on this loan in the amount of $174,313.

[g]Totals may not add due to rounding.

[h]This total includes the $174,313 for delivered grain, which was accepted in full payment of amount due at time of the petition.

HOW CREDITORS WOULD FARE UNDER THE CONFIRMED PLAN

On the basis of the Farmers' income and expense estimates and the new debt restructuring outlined in their Chapter 12 plan, they are projected to be able to make all of their first-year payments on the priority and secured debts. However, this is predicated on the Farmers' being able to achieve the changes between their initial and confirmed plan estimates. Some of the changes come from increasing the estimates of crop proceeds while reducing production expenses. Another major cost-saving was to reduce family living expenses from $18,000 to $9,600. The plan states that there will be no payments made to the unsecured creditors. FmHA accounts for nearly one-half of the undersecured and unsecured debts. (Table I.4 lists the undersecured and unsecured debt by type of creditor.) Estimated disposable income of less than $3,000 will be available for future farm operations.

Table I.4: Schedule of Undersecured and Unsecured Debt for Case Study

Creditor	Amount
Milo State Bank - undersecured	$ 47,895
Farmers Home Administration - undersecured	72,365
Implement Co. - undersecured	6,744
Crandal Equity Exchange - unsecured	6,897
Guy's Equipment Supply - unsecured	390
Bank for Cooperatives - unsecured	11,542
Apache Co-op - unsecured	2,360
Total[a]	$148,192

[a]Total does not add due to rounding.

Priority and Secured Debts and Trustee Fees

Under the terms of their reorganization plan, the Farmers will pay in full their priority debts and the balance remaining on all secured debts after court-ordered reductions. These reductions occur because the court ordered that secured debt be reduced in value to what the court accepts as the fair market value of the securing asset. Because priority debts generally take precedence over other liens on the assets, the Farmers must pay the full indebtedness ($8,799) within the life of the plan plus accrued interest. The amount originally due to secured creditors was reduced by court order from $537,468 to $410,464. The potential total debt reduction for secured creditors, therefore, was $127,004. This amount becomes undersecured debt, which could be partially repaid if the Farmers had sufficient disposable income. However, the Farmers state in their plan that no payments will be made to unsecured creditors. The government and government-chartered institutions will be required to absorb over one-half of the total debt reduction if the Farmers comply with the confirmed plan.

Priority debt

The Farmers have $8,799 in priority debt, which was caused by nonpayment of real estate taxes for 1984, 1985, and 1986. The confirmed plan requires the Farmers to pay one-third ($2,933) plus $1,232 interest accrued at the time of the first-year payments in each year of the plan, or a total of $4,165 for the first year's payment.

Secured debt

The total amount of secured debt prior to filing for Chapter 12 of $537,468 was reduced by $127,004, leaving $410,464 in secured debt plus any accrued interest to be paid under the terms of the 3-year plan. The following provides information on the repayment terms for secured debt set by the court.

-- The Farmers' $123,765 secured farm equipment loan debt to Milo State Bank was reduced to a secured debt of $76,065, which was the court-ordered value of the collateral equipment. During the first year, the Farmers are to pay an interest-only payment of $3,090. The principal amount of $76,065 along with interest at 11 percent per annum is to be paid on the following schedule: $16,142 on or before December 1, 1988, and semiannual payments thereafter in the amount of $7,932, with the first payment due on June 1, 1989, the second on December 1, 1989, and the same amount on each June 1 and December 1 thereafter for a total of 12 semiannual payments.

-- The Farmers will pay, as payment-in-full, $31,776 on operating loans in the first year of the plan.

-- Milo State Bank will be paid $8,200, the court-assigned value of four vehicles. A fifth vehicle with a value of $3,000 is exempt because it is included in assets identified as the Farmers' homestead, and in the Farmers' state, items included in the homestead are exempt from repayment under bankruptcy. The principal amount of $8,200 along with interest of 11 percent per annum is to be paid on the following schedule--$2,219 on or before December 1, 1988, and semiannual payments thereafter in the amount of $1,088 with the first payment due on June 1, 1989, the second on December 1, 1989, and on each June 1 and December 1 thereafter for a total of 8 semiannual payments. As a result of this payment schedule, no payments are due on this debt during the plan's first year.

-- The Farmers' $56,992--principal of $55,534 and interest to August 1, 1987, of $1,458--secured real estate loan debt to the Federal Land Bank is to be paid in full. The security instrument also provides for the payment of attorney fees, costs, and expenses, which total $1,225. The total amount of secured debt--$58,217--is to be paid over a 25-year period at an interest rate of 10.5 percent per annum commencing August 1, 1987. Semiannual payments of $3,313 are to be made on February 1, 1988, August 1, 1988, and on February 1 and August 1 of each subsequent year until August 1, 2002, when a balloon payment of $43,737 is due.

According to this payment schedule, $6,626 is due during the plan's first year.

-- The Farmers' $126,258 loan debt to FmHA is secured by a second mortgage interest in the same land securing debts to Corn County and the Federal Land Bank. Therefore, FmHA will be paid $53,893, which is the remaining value of the asset in which they hold the mortgage. This principal amount of $53,893 along with interest at the rate of 8.5 percent per annum, computed from July 1, 1987, is to be paid over 35 years under the following schedule: on July 1, 1988, an installment of $4,861, along with interest computed from July 1, 1987, and further installments on the same day each year thereafter for an additional 34 years.

-- The Farmers' $14,744 secured farm equipment loan debt to Implement Company was reduced to a secured debt of $8,000, which was the court-ordered value of the collateral equipment, based on an appraisal provided by the Farmers. The principal amount of $8,000 along with interest of 11 percent per annum computed from July 1, 1987, is to be paid under the following 4-year schedule: 4 equal installments of $2,579 commencing on July 1, 1988, and on the same day each year thereafter for an additional period of 3 years.

-- The Commodity Credit Corporation has a lien on grain in the amount of $174,313. The Farmers agreed to deliver the grain covered by this security agreement to the creditor pursuant to the terms of the contract.

Trustee Fees

The trustee is to receive a one-time flat rate fee of $3,000 from the Farmers. This payment is included as an operating expense under the Farmers' first-year cash-flow projections and was paid to the trustee as required by December 1, 1987. Under the plan, all payments to secured creditors are to be paid by the Farmers directly to the respective creditors. These payments are therefore exempt from the payment of additional trustee fees. The trustee is entitled to an additional fee equal to 10 percent of any payments on unsecured debt. However, the Farmers state in their plan that there will be no payments to any of the unsecured creditors. The plan indicates that only $2,718 would remain after meeting first-year operating expenses, payments of secured debt, and family living expenses.

Undersecured and Unsecured Debt

The total undersecured and unsecured debt under the plan is $148,192--$83,907 of which the Farmers owe to government or

government-chartered institutions (FmHA and the Bank for Cooperatives). During the 3-year period covered by the reorganization plan, the Farmers could apply some of their income from operations toward payments on their undersecured and unsecured debts. However, the Farmers may also apply reasonably necessary amounts of income from operations toward future farm operations or family living expenses. The Farmers propose, within their plan, that there be no payments made to any of the unsecured and undersecured creditors and have estimated that only $2,718 will remain after the first year that could be applied toward future farm operations, family living expenses, or payment on undersecured and unsecured debts. At the end of the 3-year plan, the Farmers' payment obligation for all undersecured and unsecured debt balances will be discharged, and the creditors must forfeit all further recovery of such debts. A discussion of each undersecured and unsecured debt follows:

-- The $47,895, $72,365, and $6,744 undersecured debt to the Milo State Bank, FmHA, and the Implement Company, respectively, as a result of the debt reduction of secured debts, will be treated as an unsecured debt. The Farmers have proposed that no payments be made on this unsecured debt; however, payments could be made out of the Farmers' disposable income, if any, during the 3-year plan. At the end of 3 years, the remainder of the unsecured debt will be discharged.

-- The debts to Crandal Equity Exchange--$6,897, Guy's Equipment Supply--$390, Bank for Cooperatives--$11,542, and Apache Co-op--$2,360, are unsecured. As with other unsecured debts, the Farmers may make payments on the debts from their disposable income, if any, during the 3-year plan. However, the Farmers have proposed in their plan that no payments be made to unsecured creditors.

CHAPTER 12 DISTRICT BANKRUPTCY COURT FILINGS THROUGH DECEMBER 31, 1988

Court circuit/ district	1986[a] 4th qtr.	1987 1st qtr.	1987 2nd qtr.	1987 3rd qtr.	1987 4th qtr.	1988 1st qtr.	1988 2nd qtr.	1988 3rd qtr.	1988 4th qtr.	Total
First Circuit										
Maine	1	3	4	1	0	2	1	0	0	12
Massachusetts	0	0	0	0	0	0	0	0	0	0
New Hampshire	0	0	0	0	0	0	0	0	0	0
Rhode Island	0	0	0	0	0	0	0	0	0	0
Puerto Rico	1	7	0	0	7	5	0	4	0	24
Second Circuit										
Connecticut	0	1	0	0	0	0	0	0	0	1
New York										
Northern	1	6	9	4	11	1	8	3	4	47
Eastern	0	0	0	0	0	0	0	1	2	3
Southern	0	3	1	0	0	0	0	0	0	4
Western	3	8	10	3	2	1	0	3	0	30
Vermont	0	0	0	1	2	0	0	1	2	6
Third Circuit										
Delaware	0	0	1	0	0	0	0	0	0	1
New Jersey	1	1	0	1	1	0	0	0	1	5
Pennsylvania										
Eastern	0	1	3	0	1	0	0	0	0	5
Middle	2	3	5	0	0	0	2	0	0	12
Western	1	2	1	0	2	0	1	0	0	7
Virgin Islands	0	0	0	0	0	0	0	0	0	0
Fourth Circuit										
Maryland	0	3	1	3	1	4	0	1	1	14
North Carolina										
Eastern	38	68	33	10	22	8	2	3	2	186
Middle	0	3	8	1	2	0	3	3	0	20
Western	2	4	5	1	0	0	1	2	1	16
South Carolina	0	6	17	4	7	1	2	2	4	43
Virginia										
Eastern	1	11	4	5	3	1	3	0	2	30
Western	1	3	3	3	2	1	0	1	0	14
West Virginia										
Northern	0	2	3	1	1	0	1	0	0	8
Southern	0	0	0	1	1	0	0	0	0	2

(continued)

Court circuit/ district	1986[a] 4th qtr.	1987 1st qtr.	1987 2nd qtr.	1987 3rd qtr.	1987 4th qtr.	1988 1st qtr.	1988 2nd qtr.	1988 3rd qtr.	1988 4th qtr.	Total
Fifth Circuit										
Louisiana										
Eastern	1	7	6	1	1	1	0	0	0	17
Middle	2	7	10	5	3	4	1	1	0	33
Western	33	109	85	41	34	43	23	13	14	395
Mississippi										
Northern	1	29	33	18	19	12	3	3	4	122
Southern	1	16	13	0	1	0	1	2	2	36
Texas										
Northern	11	59	28	25	18	20	20	13	10	204
Eastern	1	5	4	2	1	4	3	2	3	25
Southern	0	7	8	9	7	3	6	3	1	44
Western	0	8	10	4	5	8	1	3	7	46
Sixth Circuit										
Kentucky										
Eastern	2	16	15	7	4	2	3	3	0	52
Western	19	39	42	18	20	7	9	3	4	161
Michigan										
Eastern	0	18	36	11	16	11	17	4	26	139
Western	10	13	45	12	13	7	4	3	4	111
Ohio										
Northern	4	24	29	12	13	4	9	4	10	109
Southern	4	48	45	17	30	15	20	10	20	209
Tennessee										
Eastern	6	15	8	0	4	1	1	4	1	40
Middle	4	5	8	3	4	7	1	6	3	41
Western	19	35	14	8	6	3	4	3	3	95
Seventh Circuit										
Illinois										
Northern	0	13	14	3	9	5	2	4	2	52
Central	16	52	71	19	25	15	23	10	15	246
Southern	13	20	21	10	23	13	6	2	5	113
Indiana										
Northern	11	38	37	12	8	9	15	8	7	145
Southern	5	42	46	30	26	20	20	5	9	203
Wisconsin										
Eastern	0	17	10	7	5	0	3	1	2	45
Western	15	49	36	30	19	17	17	3	10	196

(continued)

Court circuit/ district	1986[a] 4th qtr.	1987 1st qtr.	1987 2nd qtr.	1987 3rd qtr.	1987 4th qtr.	1988 1st qtr.	1988 2nd qtr.	1988 3rd qtr.	1988 4th qtr.	Total
Eighth Circuit										
Arkansas										
Eastern	5	24	29	14	18	12	6	6	10	124
Western	1	9	8	5	2	2	4	2	1	34
Iowa										
Northern	10	93	41	18	20	13	15	7	4	221
Southern	19	67	51	10	13	5	8	6	3	182
Minnesota	26	44	44	20	20	7	14	9	16	200
Missouri										
Eastern	4	21	31	7	10	14	9	9	5	110
Western	17	59	61	28	30	21	19	12	10	257
Nebraska	49	199	168	105	68	60	35	26	19	729
North Dakota	9	42	38	22	40	17	7	18	25	218
South Dakota	55	149	139	77	70	33	25	11	24	583
Ninth Circuit										
Alaska	0	0	0	0	0	0	0	1	0	1
Arizona	2	6	1	5	3	0	3	2	2	24
California										
Northern	3	4	2	1	1	1	3	2	1	18
Eastern	7	53	43	23	23	23	12	20	19	223
Central	0	5	4	0	2	0	2	1	0	14
Southern	0	2	0	1	0	1	0	0	1	5
Hawaii	0	0	0	0	0	0	0	0	0	0
Idaho	15	67	71	25	26	13	18	9	7	251
Montana	1	33	36	13	5	30	23	18	21	180
Nevada	2	5	0	1	0	0	3	4	0	15
Oregon	8	25	10	19	19	11	10	8	9	119
Washington										
Eastern	4	39	34	31	20	22	15	7	14	186
Western	2	0	0	1	1	2	0	2	1	9
Guam	0	0	0	0	0	1	0	0	0	1
No. Mariana Isl.	0	0	0	0	0	0	0	0	0	0
Tenth Circuit										
Colorado	6	36	44	34	10	17	9	13	18	187
Kansas	35	66	84	48	42	21	14	11	12	333
New Mexico	6	17	18	5	3	10	3	4	1	67
Oklahoma										
Northern	2	4	4	6	2	3	1	1	1	24
Eastern	9	7	11	13	9	8	3	3	5	68
Western	17	58	15	37	28	11	10	15	17	208
Utah	4	18	9	5	6	1	4	1	3	51
Wyoming	6	20	25	2	0	5	7	7	0	72

(continued)

Court circuit/ district	1986[a] 4th qtr.	1987 1st qtr.	1987 2nd qtr.	1987 3rd qtr.	1987 4th qtr.	1988 1st qtr.	1988 2nd qtr.	1988 3rd qtr.	1988 4th qtr.	Total
Eleventh Circuit										
Alabama										
Northern	3	20	17	3	7	9	3	0	1	63
Middle	7	19	12	1	3	5	1	0	4	52
Southern	1	0	5	1	4	1	2	0	0	14
Florida										
Northern	6	8	3	5	5	6	1	1	1	36
Middle	2	5	3	1	1	2	2	3	2	21
Southern	0	1	0	0	1	0	0	0	0	2
Georgia										
Northern	1	0	4	1	1	1	0	0	0	8
Middle	21	47	37	14	22	14	5	10	11	181
Southern	6	20	21	2	7	3	1	2	5	67
DC Circuit										
District of Columbia	0	0	0	0	0	0	0	0	0	0
Total	601	2118	1905	947	921	660	533	388	454	8527

Note: Information was obtained from the Administrative Office of the United States Courts and was not verified.

[a]This is a short quarter consisting of Chapter 12 filings from when the program began on November 26, 1986, through December 31, 1988.

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