

House Harvests Increase in Farmer Eligibility for Bankruptcy – Senate Sows Seeds to Match

by Steven T. Waterman and Erin Bryan

On July 26, 2019, the U.S. House of Representatives passed H.R. 2336, the Family Farmer Relief Act of 2019. The primary purpose of the bill, sponsored by Rep. Anthony Delgado (D-NY), is to increase the debt limit for filing a petition under chapter 12 of the Bankruptcy Code, which is the chapter providing for the adjustment of debts of "family farmers" or "family fishermen" with "regular annual income." The debt limit was last set in 2005, when it increased from \$1.5 million to \$3.2 million. The limit is indexed to inflation and adjusted automatically every three years. H.R. 2336 would raise the limit from the current rate of \$4.3 million to \$10 million.

Supporters of the bill have argued that the \$4.3 million limit places chapter 12 relief out of reach for many family farmers and fishermen who would otherwise benefit from it. Citing a National Farm Bureau report, Rep. Delgado stated, "last year, just 498 farms filed for Chapter 12 bankruptcy. By comparison: 766,000 consumers filed under Chapters 7 and 13. Over the last ten years, Chapter 7 and Chapter 13 have seen 10 million total filings; compared to just 5,000 Chapter 12 filings." Recent tariffs have added to the urgency of farm relief measures, as family farmers have seen lower prices for many crops while their equipment costs have increased.

Although the bill has bipartisan and bicameral support, it has drawn polarized responses from industry groups. Industry supporters (which include the American College of Bankruptcy, the American Farm Bureau and the American Farmers Union) have argued that the economics of family farming have changed significantly since the enactment of chapter 12 of the Bankruptcy Code in the 1980s, and that the \$4.3 million filing limit has become outdated as average farm size has increased and average net farm income has decreased.

Critics of H.R. 2336 have argued that doubling the limit in a single bill is a rash response to a problem that should be addressed incrementally. In a July 25, 2019 letter, the American Bankers Association expressed concern that "[r]aising the debt limit on Chapter 12 bankruptcies from \$4.3 to \$10 million in one fell swoop will make the cost of

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borrowing higher for farmers and reduce the availability of credit” and that “such a large increase will be detrimental to the costs of credit for farmers in the long run.”

Sen. Chuck Grassley (R-IA) introduced a companion bill in the Senate, which has bipartisan support and appears likely to pass.