



**PennState Law**

Center for Agricultural  
and Shale Law

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

*Understanding Agricultural Law Webinar Series*

# Understanding Agricultural Law Webinar Series

*Understanding the Basics of*  
**Agricultural Finance**

**January 27, 2023**





# Ag Law Center Website Resources

[aglaw.psu.edu](http://aglaw.psu.edu)

- Agricultural Law Weekly Review
- Agricultural Law Virtual Resource Rooms
- Agricultural Law Tracker
- Shale Law Tracker
- Agricultural Law Podcast
- Social Media
  - Twitter, Facebook, LinkedIn
- Videos/Presentations
- PA Ag Mediation Program



## Agricultural Law Weekly Review

[SEE ALL AGRICULTURAL LAW WEEKLY REVIEWS »](#)

### [Agricultural Law Weekly Review—Week Ending November 11, 2022](#)

Agricultural Antitrust: Federal Court Denies Tyson's Motion to Dismiss Poultry Renderers' Antitrust Suit 🌟 On November 8, 2022, the U.S. District Court for the Northern District of Georgia issued an order denying a motion to dismiss filed by River Valley Ingredients, LLC; Tyson Poultry, Inc.; and Tyson Farms, Inc.—the defendants in an antitrust case filed by three southeast poultry rendering companies. *American Proteins, Inc. v. River Valley Ingredients, LLC*, No. 2:22-cv-00091. According to the complaint, filed May 11, 2022, River Valley and Tyson acquired ten-year exclusive

### Tweets from @AgShaleLaw

 PSU Ag & Shale ...  
@AgShaleLaw · 2h

Today at noon (ET):  
"Understanding the Basics of Licensing & Regulation of Direct Agricultural Product Sales" 🍷  
1 CLE credit available for PA attorneys  
[Learn more and register:](#)



# Pennsylvania Agricultural Mediation Program

## Who can request mediation?

### USDA-related issues:

- Agricultural Loans
- Wetlands determinations
- Compliance with farm programs, including conservation programs
- National organic program established under the Organic Foods Production Act of 1990
- Agricultural Credit
- Rural water loan programs
- Grazing on National Forest System land
- Pesticides

### Non-USDA issues:

- Land and Equipment Lease issues.
- Family farm transition.
- Farmer-neighbor disputes.
- As approved by PA Secretary of Agriculture



## Contact us:

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# ***Understanding Agricultural Law***

**A Legal Educational Series for General Practice Attorneys and  
Business Advisors Representing Agricultural and Rural Clients**

This webinar series is specifically tailored to create subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.





# ***Understanding Agricultural Law Webinar Series: Past Topics***

## *Understanding the Basics of*

1. Agricultural Labor Laws (April 29, 2022)
2. Leasing Farmland for Energy Development (May 20, 2022)
3. Local Land Use Regulation of Agriculture (June 24, 2022)
4. Statutory Protections for Ag Operations (July 22, 2022)
5. Agricultural Cooperatives (Aug. 26, 2022)
6. Livestock Market Regulation (Sept. 23, 2022)
7. Crop Insurance (Oct. 21, 2022)
8. Federal & State Conservation Programs (Nov. 18, 2022)
9. Licensing & Regulation of Direct Agricultural Product Sales (Dec. 16, 2022)



# Understanding Agricultural Law Webinar Series

## Upcoming Topics:

Friday, February 24, 2023, noon–1:00 ET

- *Understanding the Basics of:*

**Pennsylvania's "Clean & Green" Preferential Tax Assessment Program**



# Housekeeping

- This webinar is being recorded.
- Please Use the Q&A feature for questions.
- CLE credits:
  - Link to CLE form will be posted in the chat
  - Please fill out form
  - Listen for code word, enter code word in form



## *Understanding the Basics of Agricultural Finance*

- This webinar will provide an overview of a range of legal topics within the field of agricultural finance, including agricultural ***lending***, agricultural ***bankruptcy***, and agricultural ***security interests***.
- The ***sources of capital*** for agricultural operations will be discussed along with the special servicing options available for ***USDA Farm Service Agency Loans***.
- Additionally, an overview of the ***bankruptcy chapters*** available for agricultural operations will be presented.
- Finally, ***agricultural liens*** and the ***Federal Farm Products Rule*** will be addressed within a discussion of agricultural security interests.





# Agricultural Finance Topics

- Agricultural Lending
- Agricultural Security Interests
- Agricultural Bankruptcy
- Taxation
- Farm Transition Planning



# Agricultural Finance—Key Points

- Agriculture is a very capital-intensive business.
- Assets often are accumulated over time.
  - Often through multiple generations
- Borrowing is often critical for short-term and long-term needs.



## 3 Agricultural Revolutions per Frey and Behrens

- Mechanical revolution (early 1900s)
  - Horse to tractor / machine
  - Yields increased; costs increased
- Technological revolution (1950s to 1970s)
  - Increased use of technology / inputs—hybrid seeds, fertilizer, pest control, irrigation
  - Yields increased; costs increased



## 3 Agricultural Revolutions per Frey and Behrens

- Financial and management era (1980s)
  - Use of cash budgeting, accounting systems, business structures to take advantage of tax laws
  - Greater use of debt, leasing resources
  - Transition from way of life to business model
  - Business efficiency increased; costs increased



# 4<sup>th</sup> Agricultural Revolution?

- Information era (2000s)
  - Success depends upon timely information
    - Market prices, market demand, input prices
  - Collection and use of on-farm data
    - Historic yields, weather, micro-level farm data, early detection of plant and animal disease
  - Increased yields, increased business efficiency, increased costs



# Agricultural Finance—Capitalization

- Each revolution requires additional capitalization.
- Capitalization often is required when farms are transferred from one generation to the next.
- Capitalization often is required when a generation is added to the farm operation—farm operation is expanded or diversified.
- Are highly leveraged operations more vulnerable to failure?



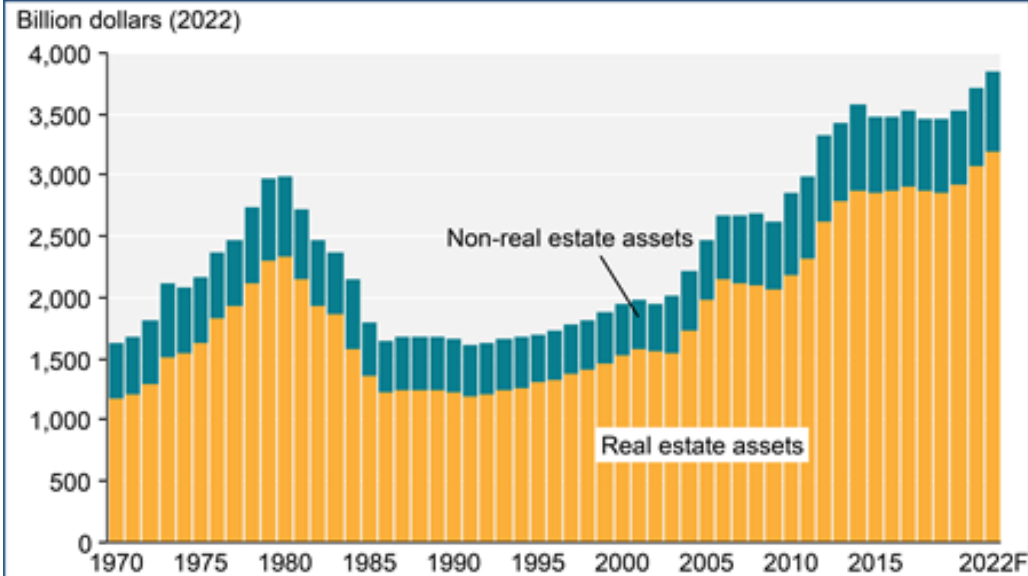
# Agricultural Finance—1980s Farm Crisis

- Landmark event in agricultural industry
  - Similar in impact to Great Depression / Dust Bowl
- Followed time of government encouragement to increase production and increase borrowing
  - “plant fence row to fence row”
  - “get big or get out”
- Prices collapsed in 1980 following grain embargo on shipments to USSR.
- Impact on rural communities
- Impetus for political reforms



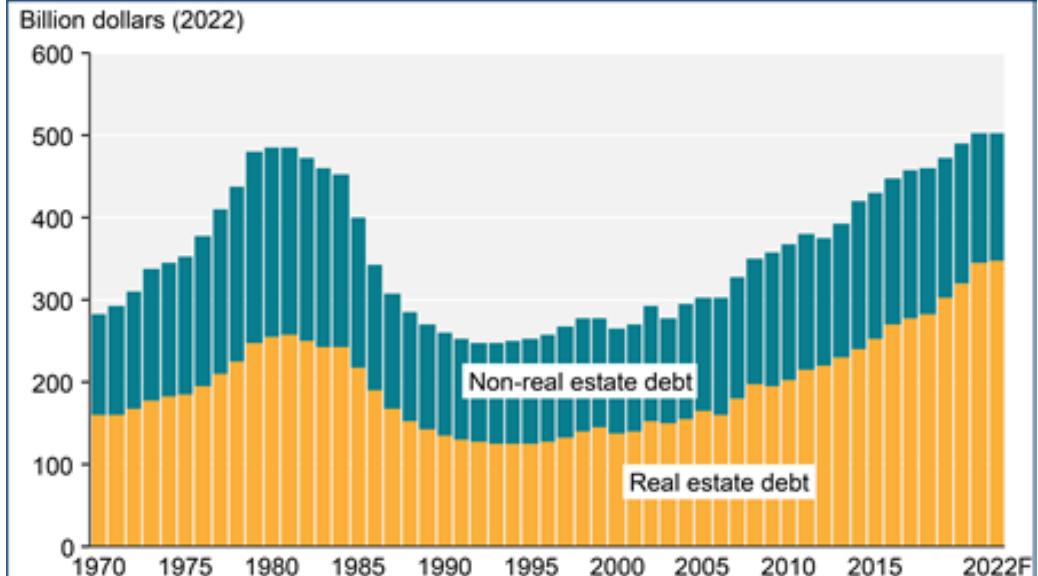
# Agricultural Finance—1980s Farm Crisis

**U.S. farm sector assets, inflation adjusted, 1970–2022F**



Note: F = forecast. Real values are adjusted for inflation using the U.S. Bureau of Economic Analysis Gross Domestic Product Price Index (BEA API series code: A191RG) rebased to 2022 by USDA, Economic Research Service.  
 Source: USDA, Economic Research Service, Farm Income and Wealth Statistics.  
 Data as of December 1, 2022.

**U.S. farm sector debt, inflation adjusted, 1970–2022F**

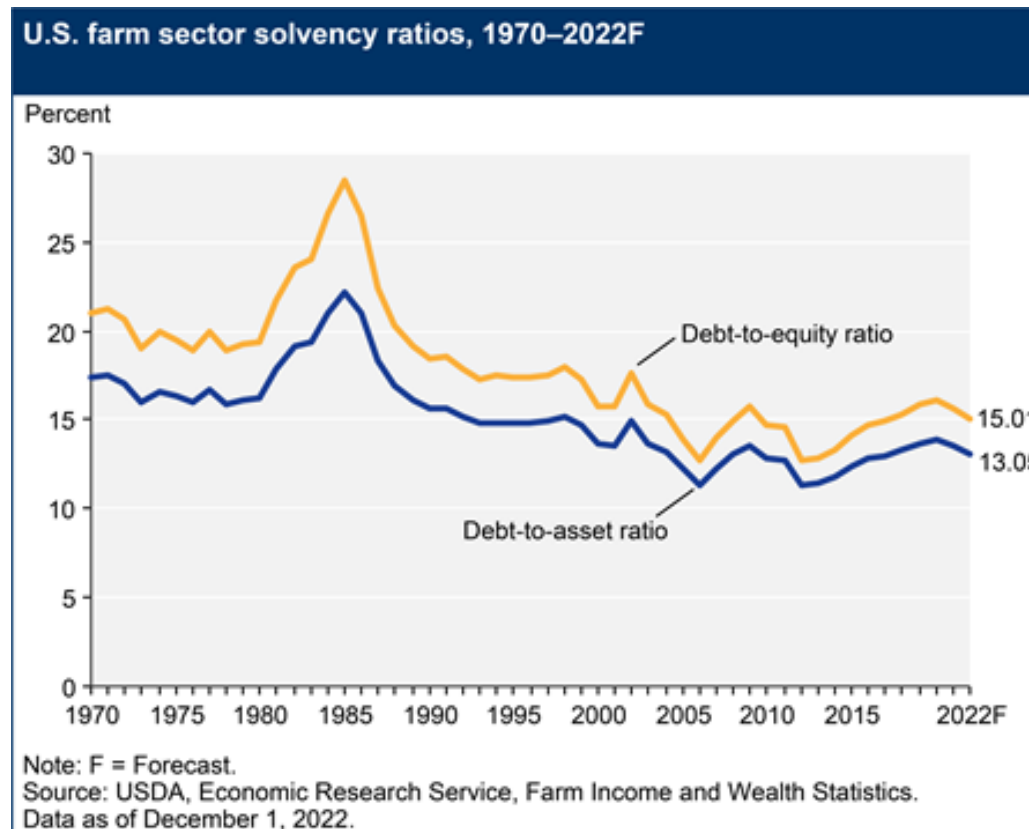


Note: F = forecast. Real values are adjusted for inflation using the U.S. Bureau of Economic Analysis Gross Domestic Product Price Index (BEA API series code: A191RG) rebased to 2022 by USDA, Economic Research Service.  
 Source: USDA, Economic Research Service, Farm Income and Wealth Statistics.  
 Data as of December 1, 2022.





# Agricultural Finance—1980s Farm Crisis





It started with an offhand remark made by Bob Dylan during his performance at Live Aid, the massive fundraising concert held at Wembley Stadium, London, and JFK Stadium, Philadelphia, in the early summer of 1985. As television viewers around the world phoned in donations in support of African famine relief, Dylan said from the stage, "I hope that some of the money...maybe they can just take a little bit of it, maybe...one or two million, maybe...and use it, say, to pay the mortgages on some of the farms and, the farmers here, owe to the banks." Dylan would come under harsh criticism from Live Aid organizer Bob Geldof for his remarks ("It was a crass, stupid and nationalistic thing to say," Geldof would later write), but he planted a seed with several fellow musicians who shared his concern over the state of the American family farm. Less than one month later, Willie Nelson, Neil Young and John Mellencamp announced plans for "Farm Aid," a benefit concert for America's farmers held in Champaign, [Illinois](#), on September 22, 1985.

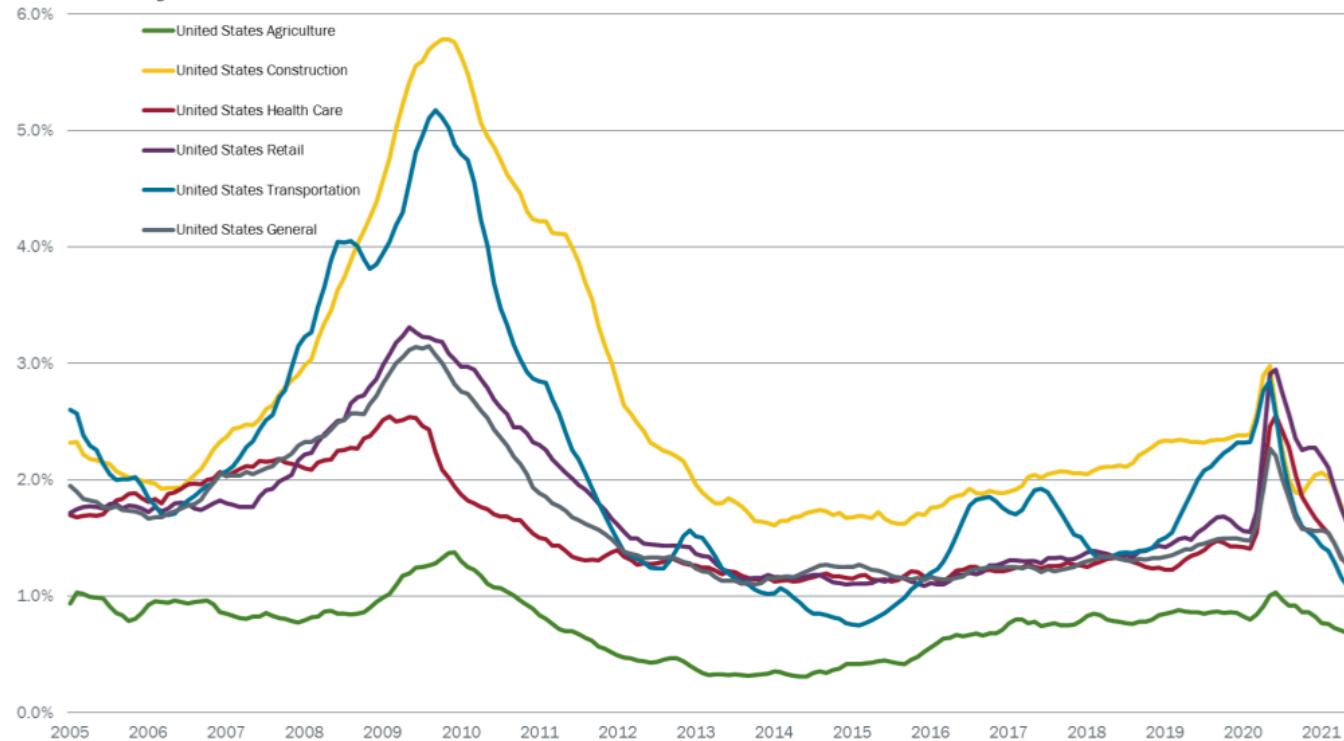






# Loan Default Rate—Agriculture vs. Others

SBDI 31-90% NATIONAL BY INDUSTRY  
JANUARY 2005–JUNE 2021





# Sources of Farm Capital

- Commercial Banks: 31% RE; 47% non-RE
- Farm Credit System: 52% RE; 35% non-RE
- Farm Service Agency: 3% RE; 3% non-RE
- Individual and Merchants (“captive finance”): 7% RE; 16% non-RE
- Insurance Companies: 7% RE

Data source: USDA ERS 12/1/22



# Sources of Farm Capital

- Commercial Banks: 37% of total ag capital
  - What is the problem with relying on commercial banks to provide lending to agricultural operations?



# Sources of Farm Capital

- Farm Credit System
  - Network of federally-chartered cooperatives charged with agricultural lending
  - Not part of USDA
  - Established in 1916 to ensure lending options in rural areas
  - Compete with commercial banks, but cannot accept deposits
  - Statutory authority: 12 U.S.C. §§ 2001–2279cc



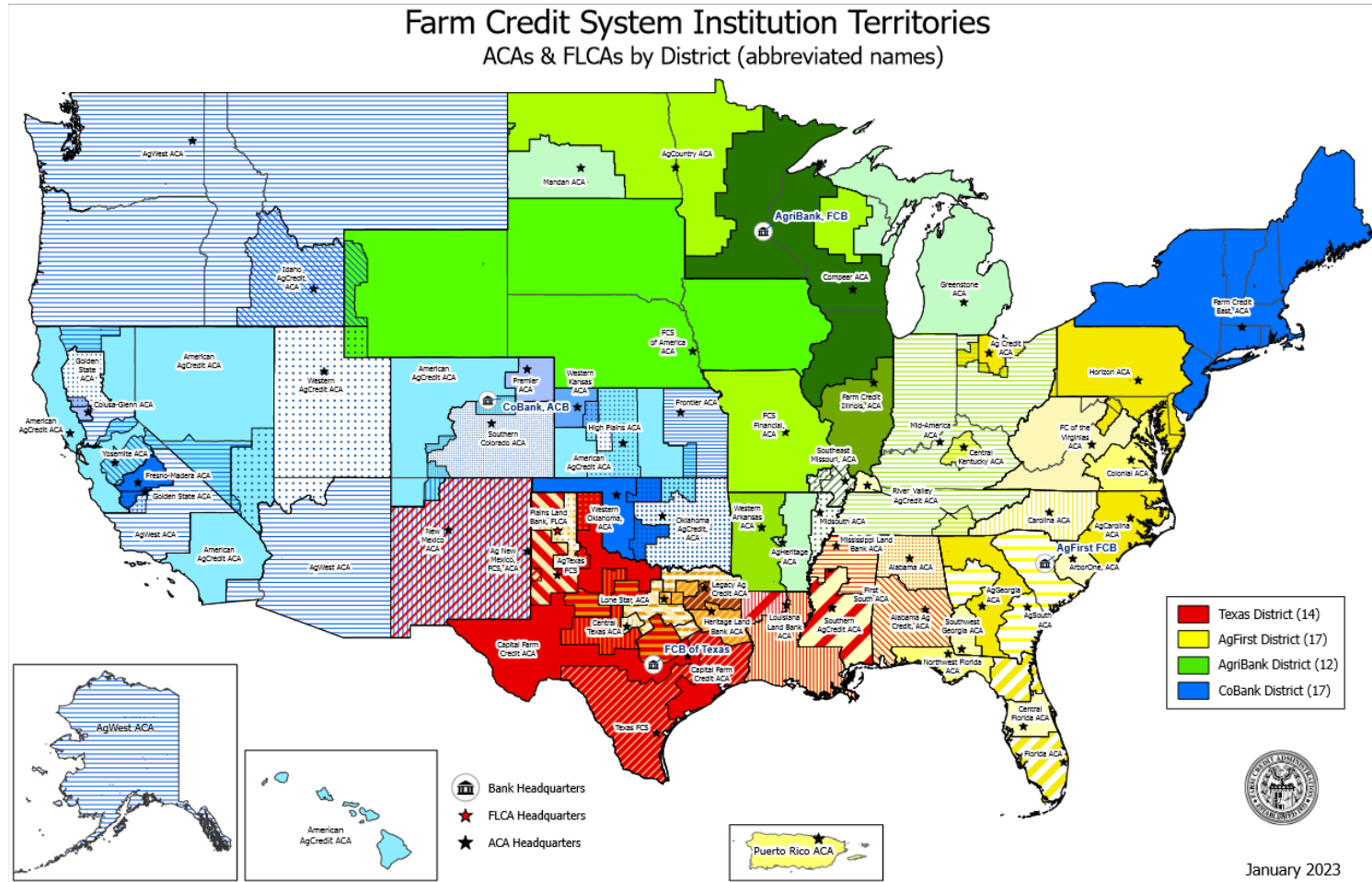
# Sources of Farm Capital

- Farm Credit System
  - Extent of authority is frequent topic of policy discussions
    - Can only lend per Congressional directives
    - Generally, cannot lend for rural housing and businesses



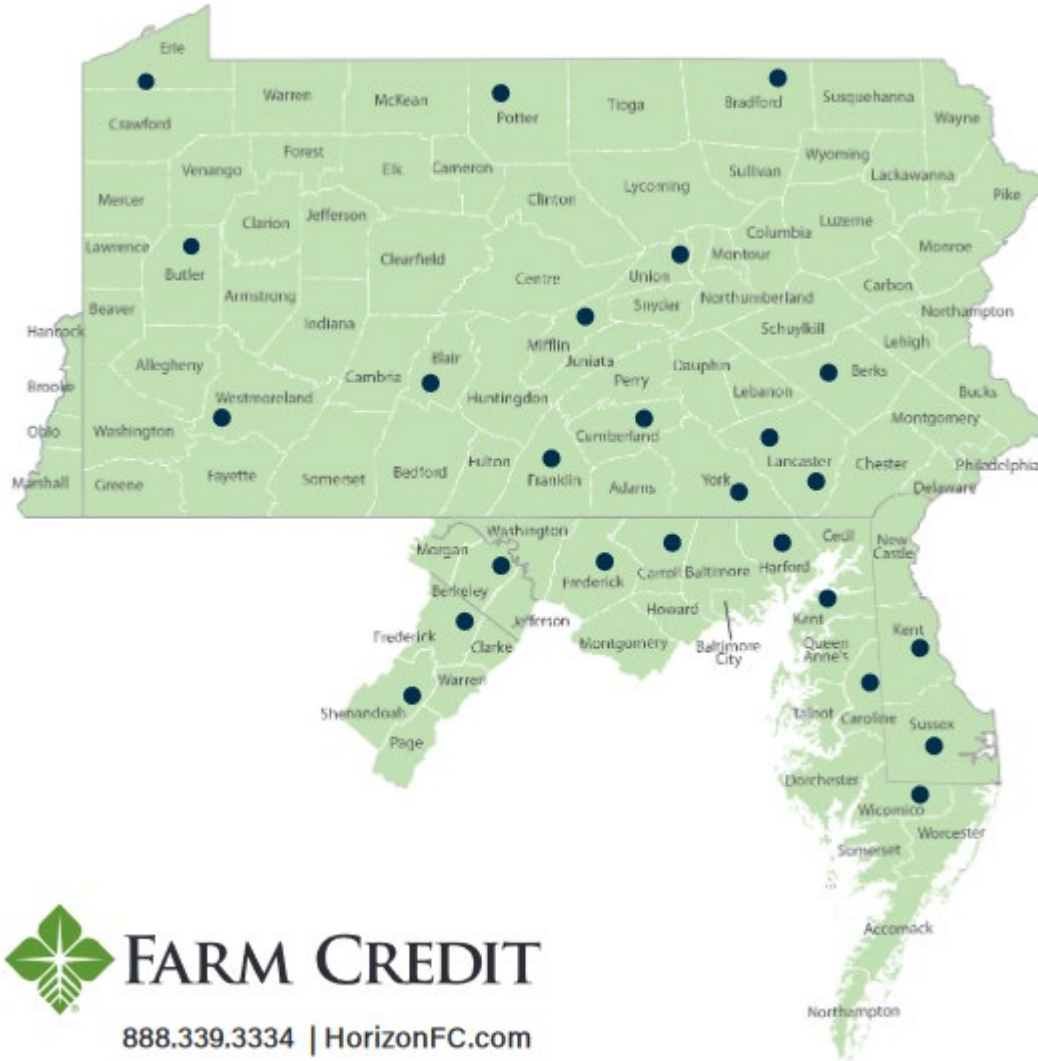


# Sources of Farm Capital – Farm Credit





# Sources of Farm Capital – Farm Credit





# Sources of Capital—Farm Service Agency

- Agency within USDA
- “Lender of last resort” / “Lender of first opportunity”
- Statutory mission to provide credit when it is unavailable elsewhere
- Graduation requirement
- Organizational structure of FSA



# Sources of Capital—Farm Service Agency

- Direct vs. Guaranteed
- Purposes of loans
  - Ownership loans
  - Operating loans
  - Emergency loans



# FSA Loan Eligibility

- Family-sized farmer
- Satisfactory credit history
- Undergo training or have experience
- Supervised credit
- Graduation requirement
- Priority for beginning, women, socially disadvantaged



# FSA Loan Servicing Options

- Reamortization
- Rescheduling
- Deferral
- Consolidation
- Lower interest rate
- Debt for Nature contract
- Writing down debt



# FSA Loan Servicing Options

- Must have feasible plan—use of eDALRS\$
  - FSA must receive at least as much as it would through foreclosure
- If no feasible plan,
  - Mediation available
  - Opportunity to buy-out at market value
  - Possible lease with option to purchase
- Servicing options have been implemented and greatly expanded following 1980s farm crisis
  - *Block v. Curry* class action litigation



# Agricultural Security Interests

- Security interests are governed by state law.
- States have adopted Uniform Commercial Code.
- Article 9 addresses secured transactions.





# Agricultural Security Interests

- UCC contains a number of agriculture-specific provisions:
  - [§ 9-302](#). LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS.
  - [§ 9-308](#). WHEN SECURITY INTEREST OR AGRICULTURAL LIEN IS PERFECTED; CONTINUITY OF PERFECTION.
  - [§ 9-310](#). WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.
  - [§ 9-317](#). INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF UNPERFECTED SECURITY INTEREST OR AGRICULTURAL LIEN.



# Agricultural Security Interests

- UCC contains a number of agriculture-specific provisions:
  - [§ 9-322](#). PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.
  - [§ 9-334](#). PRIORITY OF SECURITY INTERESTS IN FIXTURES AND CROPS.
  - [§ 9-606](#). TIME OF DEFAULT FOR AGRICULTURAL LIEN.



# Basic Definitions

- Security interest: § 1-201(37)
- Security agreement: § 9-102(a)(73)
- Collateral: § 9-102(a)(12)



# General Overview of Process

- Attachment
  - Value
  - Rights in collateral
  - Agreement
- Perfection



# Perfection of Security Interest

- Perfection is of critical importance in establishing priority among competing creditors.
- Perfection is most commonly accomplished by filing a financing statement.



# Financing Statements

- State Filing
- Five Year Term
- Filing Fee—\$84
- Modifications
- Little Mistake, Big Impact



# Agricultural Specific Provisions

- Farm Products
- Purchase Money Security Interest
  - Livestock
  - Crops
- Statutory Agricultural Liens



## UCC Section 9-315(a)

- Except as otherwise provided . . .
  - A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and
  - A security interest attaches to any identifiable proceeds of collateral.





## UCC Section 9-320(a)

- Except as otherwise provided . . . a buyer in the ordinary course of business, *other than a person buying farm products from a person engaged in farming operations*, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.



# Congressional Findings

- Buyers of farm products lack practical methods of discovering the existence of security interests.
- Existing laws subject buyers of farm products to double payment.
- Possibility of double payment inhibits free competition in the market for farm products.
- This constitutes a burden on an obstruction in interstate commerce for farm products.



# Federal Farm Products Rule

- Does not alter *requirements* for **attachment** or **perfection**
- Does not alter *relationship* between **secured creditor** and **debtor**
- Does not alter *priority rules* between **secured creditors**
- Affects the *relationship* between **buyers** of farm products and **secured creditors**



# Federal Farm Products Rule

- Allows buyers of farm products to purchase products free and clear of liens.
- Does provide a mechanism for secured creditors to retain their liens through notification.



## 7 USC Section 1631(d)

- Except as provided in subsection (e) . . . , a buyer who in the ordinary course of business buys a farm product from a seller engaged in farming operations shall take free of a security interest created by the seller, even though the security interest is perfected; and the buyer knows of the existence of such interest.



## 7 USC Section 1631(e)

- Direct Notice Provision (31 states including Pennsylvania)
- Central Filing System Provision (19 states)



# Direct Notice

- Secured party must provide notice to buyer within one year of sale of farm products.
- Notice must include:
  - Name and address of secured party
  - Name and address of debtor
  - SSN or approved unique identifier
  - Description of farm products subject to security interest

# Statutory Agricultural Lien

## Rapid Finder Chart:

### *Pennsylvania*

Originally published 1993 by **Martha L. Noble**

Updated 2008 by **Elizabeth R. Rumley & Jennifer Fiser**

Updated 2020 by **Micah Brown**

\* The statutes are current through the 2020 Regular Session of the Pennsylvania General Assembly



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture





TYPE OF LIEN/CLAIMANT	LIEN CLAIMANT	ATTACHED PROPERTY	POSSESSION REQUIRED	FILING REQUIRED	DATE LIEN ATTACHES	EXPRESS STATUTORY PRIORITY
<b>MECHANICS' LIEN</b> 49 PA. STAT. ANN. §§ 1101 ET SEQ.	CONTRACTOR OR SUBCONTRACTOR WHO FURNISHES LABOR OR MATERIALS FOR THE ERECTION, CONSTRUCTION, ALTERATION, REPAIR, OR IMPROVEMENT UPON REAL PROPERTY	ALL REAL PROPERTY OF THE LANDOWNER AND THE IMPROVEMENT UPON THE REAL PROPERTY	NO	YES, CLAIMANT MUST FILE A LIEN CLAIM WITH THE PROTHONOTARY WITHIN SIX MONTHS AFTER COMPLETING WORK, AND SERVE WRITTEN NOTICE TO PROPERTY OWNER WITHIN ONE MONTH AFTER FILING LIEN CLAIM  MUST FILE AFFIDAVIT OR ACCEPTANCE OF SERVICE AFTER PROVIDING LANDOWNER WITH NOTICE WITHIN TWENTY DAYS AFTER SERVICE	DATE OF VISIBLE COMMENCEMENT OF FURNISHING LABOR, WORK, OR MATERIALS	SUBORDINATE TO A PURCHASE MONEY MORTGAGE AND AN OPEN-END MORTGAGE WHERE AT LEAST SIXTY PERCENT OF THE PROCEEDS ARE INTENDED TO PAY OR ARE USED TO PAY ALL OR PART OF THE COSTS OF CONSTRUCTION
<b>LANDLORD'S LIEN</b> 68 PA. STAT. ANN. §§ 321 – 322	LANDLORD	PROPERTY ON DEMISED LAND, TENEMENT OR MESSAGE	NO	NO	NOT SPECIFIED	ENTITLES LANDLORD TO FIRST PAYMENT FROM PROCEEDS OF A SALE OF THE PROPERTY



# Bankruptcy Chapters

- Chapter 7: Liquidation
- Chapter 11: Business Reorganization
- Chapter 12: Family Farmer Reorganization
- Chapter 13: Individual Reorganization



# Background of Chapter 12

- Created in 1986 on a temporary basis
  - Congressional response to Farm Crisis of early 1980s
  - Recognition that existing bankruptcy chapters did not adequately address farm bankruptcies



# Background of Chapter 12

- Problems with other bankruptcy chapters:
  - Chapter 11 is more complex than necessary for most farm bankruptcies.
  - Chapter 13:
    - Requires a regular income
    - Is limited to individuals
    - Has a low debt threshold



# Background of Chapter 12

- Original legislation had a sunset of October 1, 1993.
- Sunset date was extended 11 times.
- Authorized as permanent chapter of Bankruptcy Code in 2005 through the Bankruptcy Abuse Prevention and Consumer Protection Act.



# Chapter 12 Eligibility

- Chapter 12 is limited to a family farmer or family fisherman with “regular annual income.”
  - Family fishermen were added in 2005 revision.



## “Family Farmer” / “Family Fisherman”

- Individual or individual and spouse
- Corporation or partnership



# Individual Eligibility

- Must be engaged in a farming operation or commercial fishing operation
- Total debts must not exceed \$11,097,350 (\$2,268,550 for fishing operation)
- At least 50% of total debt excluding residence must be related to operation (80% for fishing operation)





# Individual Eligibility

- More than 50% of gross income for preceding tax year must have come from operation
  - For family farmers only, this requirement also can be met if 50% of income in 2<sup>nd</sup> and 3<sup>rd</sup> prior tax year come from operation.



# Corporate / Partnership Eligibility

- More than 50% of outstanding stock or equity in entity must be owned by one family
- More than 80% of the value of entity assets must be related to farming or fishing operation
- Any issued stock cannot be publicly traded



# Corporate / Partnership Eligibility

- Family must conduct the farming or fishing operation
- Total debt cannot exceed \$11,097,350 (\$2,268,550 for fishing operation)
- At least 50% of total debt excluding one residence must be related to operation (80% for fishing operation)



# Chapter 12 Process

- The case is initiated by the debtor filing a Petition in Bankruptcy with the appropriate U.S. Bankruptcy Court.
  - Chapter 12 does not permit filing of involuntary petition.
- The debtor(s) must file the appropriate schedules listing all assets and debts.
- The debtor must pay a filing fee.
- The debtor must receive pre-bankruptcy credit counseling.



# Chapter 12 Process

- A trustee will be appointed by the court to perform certain administrative functions.
  - Chapter 13 concept of collecting and disbursing plan payments
  - Chapter 11 concept of “debtor-in-possession”



# Chapter 12 Process

- A meeting of creditors is scheduled shortly after filing of petition.
  - Debtors must attend and answer questions under oath.
  - Creditors may attend.



# Chapter 12 Plan

- A debtor is required to file a plan within 90 days of filing petition.
- Plan must provide for reorganization within a three-to-five year time period.
- Creditors have the opportunity to object to the plan, but do not vote on plan.
- The court will rule on the plan at a confirmation hearing.



# Contents of Chapter 12 Plan

- Plan must be proposed in good faith and be feasible.
- Secured claims can be reduced to FMV of collateral.
- Debtor can surrender collateral.
- The repayment of secured debt will often extend past the length of the plan.
- Unsecured claims must be paid at least as much as would be done in a Chapter 7.





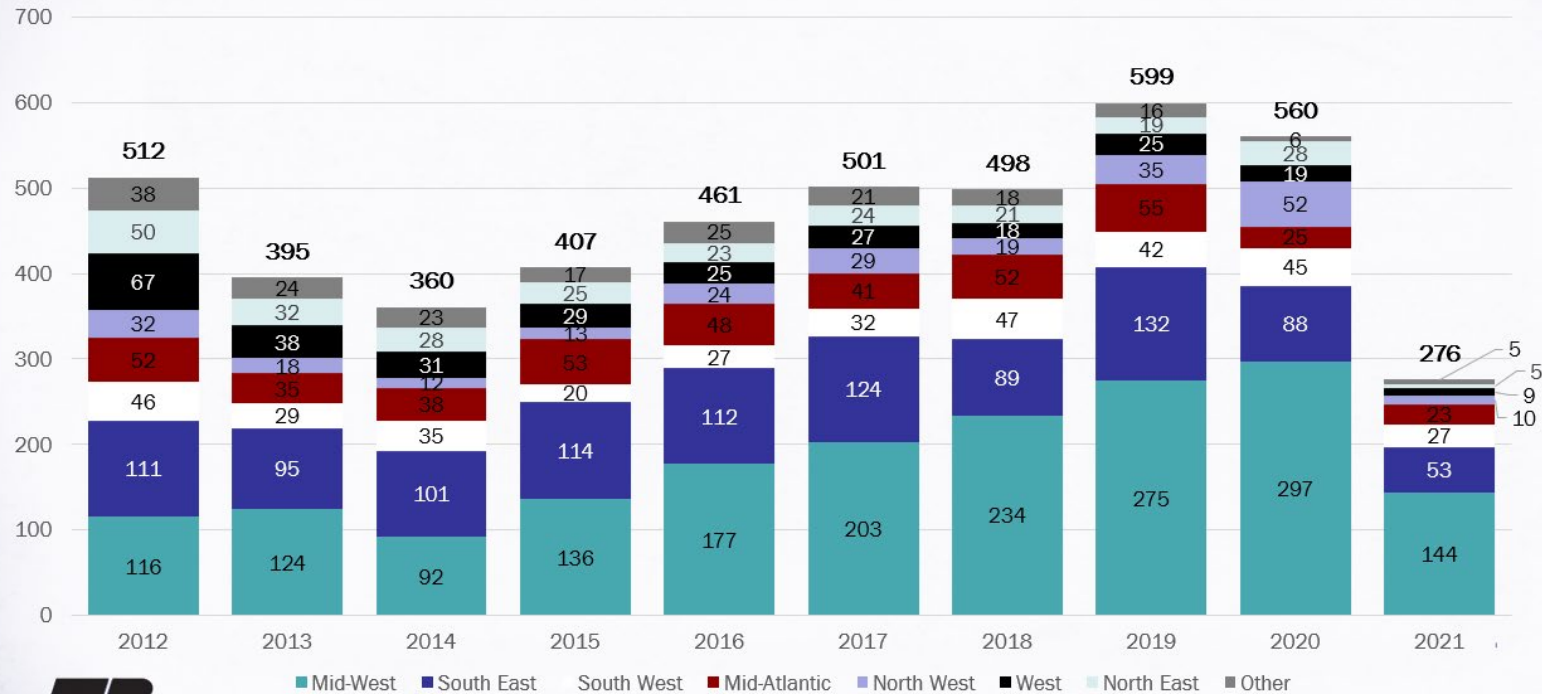
# Bankruptcy Discharge

- When debtor makes all payments required by plan, debtor receives a bankruptcy discharge.
- If debtor fails to propose a confirmable plan or fails to make all required payments, bankruptcy may be dismissed.



# Chapter 12 Bankruptcy Data

### Figure 1. Calendar Year Chapter 12 Farm Bankruptcies By Region 2021 Filings Down 50% from 2020



AMERICAN FARM BUREAU FEDERATION\*

Source: U.S. Courts, Farm Bureau Calculations



# THANK YOU!

*Upcoming—Save the Date:*

## ***Understanding Agricultural Law Series***

- Fri. Feb. 24, 2023—Understanding the Basics of Pennsylvania's "Clean & Green" Preferential Tax Assessment Program

*Registration available soon!*