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Research Report

Initial COVID-19 response for agricultural producers

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Agricultural and Food Policy Center
Texas A&M University

April 16, 2020

Initial COVID-19 Response for Agricultural Producers



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General Overview

On January 20, 2020, the Centers for Disease Control and Prevention (CDC) confirmed the first case of novel coronavirus (COVID-19) in the United States. As of April 15, 2020, the number of cases in the United States has ballooned to more than 605,000, and more than 24,500 people have lost their lives. In response, Congress has passed three separate aid packages which are briefly summarized below. The purpose of this briefing paper is to identify the provisions in those bills that are most directly applicable to agricultural producers.

- Phase 1. On March 4, 2020, Congress passed H.R. 6074, the *Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020*. The act “provided \$8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak related to developing a vaccine, medical supplies, grants for public health agencies, small business loans, and assistance for health systems in other countries. The act allowed for temporarily waiving Medicare restrictions and requirements regarding telehealth services.”
- Phase 2. Two weeks later on March 18, 2020, Congress passed H.R. 6201, the *Families First Coronavirus Response Act* which “guaranteed free coronavirus testing, established paid leave, enhanced unemployment insurance, expanded food security initiatives, and increased federal Medicaid funding.”
- Phase 3. A little over a week later on March 27, 2020, Congress passed H.R. 748, the *Coronavirus Aid, Relief, and Economic Security Act (CARES Act)*, a “\$2 trillion coronavirus relief bill, which will send \$1,200 to each American making \$75,000 a year or less, adds \$600/week to unemployment benefits for four months, gives \$100 billion to hospitals and health providers, makes \$500 billion of loans or investments to businesses, states and municipalities, and \$32 billion in grants to the airline industry, and more.”¹

Funding for Agricultural Producers

While the CARES Act infused an estimated \$2 trillion into the U.S. economy, the approach for agriculture was very targeted. The act provided \$9.5 billion “to prevent, prepare for, and respond to coronavirus by providing support for agricultural producers impacted by coronavirus, including producers of specialty crops, producers that supply local food systems, including farmers markets, restaurants, and schools, and livestock producers, including dairy producers.” This funding was provided independent of the Commodity Credit Corporation (CCC), the traditional funding arm of the U.S. Department of Agriculture (USDA). While the authority applies broadly to “agricultural producers,” most expect the funding to be used primarily for beef, pork, dairy, and specialty crop producers.

¹ <https://www.govtrack.us/covid-19>

Authorities available to the Secretary under Section 5 of the CCC Charter Act:

- (a) supporting the prices of agricultural commodities (other than tobacco) through loans, purchases, payments, and other operations;
- (b) making available materials and facilities required in connection with the production and marketing of agricultural commodities (other than tobacco);
- (c) procuring agricultural commodities (other than tobacco) for sale to other Government agencies, foreign governments, and domestic, foreign, or international relief or rehabilitation agencies, and to meet domestic requirements;
- (d) removing and dispose of or aid in the removal or disposition of surplus agricultural commodities (other than tobacco);
- (e) increasing the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities;
- (f) exporting or causing to be exported, or aid in the development of foreign markets for, agricultural commodities (other than tobacco) (including fish and fish products, without regard to whether such fish are harvested in aquacultural operations);
- (g) carrying out conservation or environmental programs authorized by law; and
- (h) carrying out such other operations as the Congress may specifically authorize or provide for.

Commodity Credit Corporation (CCC) Funding

The act also provided additional funding for the CCC. Despite efforts to increase borrowing authority for the CCC to \$50 billion (from the current level of \$30 billion), the act simply replenished the existing borrowing authority by \$14 billion relative to the June 2020 audit report.² Under the CCC, the Secretary can draw on a number of authorities under Section 5 of the CCC Charter Act (highlighted above) to provide assistance to agricultural producers. For example, the Secretary invoked Section 5(e) in crafting both the Cotton Ginning Cost Share (CGCS) program and the Market Facilitation Program (MFP).

Section 32

While the CARES Act did not address Section 32, it is nevertheless a popular tool when responding to unexpected events. Section 32 (specifically, Section 32 of the Agricultural Adjustment Act of 1935 (Public Law 74-320, 7 U.S.C. 612c, as amended)) is a permanent appropriation that sets aside 30% of annual customs receipts to support the farm sector through (1) encouraging the export of farm products through producer payments

²The CCC is the funding mechanism for most farm-related programs at USDA, including USDA loans and farm program assistance that does not require repayment. The borrowing limit for CCC has been set at \$30 billion since 1987. The CCC will periodically estimate net realized losses (outlays minus inlays) and the appropriators will “replenish” the CCC up to its statutory borrowing limit. This is typically done as a routine matter, although even replenishment has become less routine as evidenced by the debate over the continuing resolution in Fall 2019.

or other means; (2) encouraging the domestic consumption of farm products by diverting surpluses from normal channels or increasing their use by low-income groups; and (3) reestablishing farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. The vast majority of the appropriation goes to USDA's child nutrition programs and the Department of Commerce's fisheries activities, with the remaining amount to be used at the discretion of the Secretary for the purposes outlined above. The 2008 Farm Bill permanently capped the amount USDA is permitted to spend for discretionary activities at \$1.33 billion in FY2017 (thereafter indexed to inflation). In addition, the FY2020 Further Consolidated Appropriations Act (P.L. 116-94) prohibited the Secretary from using clause (3) above—with the exception of using up to \$350 million in carryover balances. For all practical purposes, discretionary use of Section 32 primarily has been limited to commodity purchases.

Other Authority

Beyond CCC and Section 32, Section 1101(g) of Phase II (H.R. 6201) stipulates that “during fiscal year 2020, the Secretary of Agriculture may purchase commodities for emergency distribution in any area of the United States during a public health emergency designation.” The act goes on to provide “such sums as are necessary” to carry about the provision. While Section 32 is traditionally used for discretionary commodity purchases, it appears as though this provision provides an open-ended authorization for commodity purchases in response to COVID-19.

USDA is in the process of assembling an aid package using all of the authorities at their disposal. We will provide an overview of the details once they are publicly available.

Other Changes to Agricultural Programs

Marketing Loans

The CARES Act also notably extended the maturity date for marketing loans. To our knowledge, this is the only farm bill-related agricultural provision amended by the CARES Act. As noted by Secretary Perdue on April 9, 2020, “Producers of eligible commodities now have up to 12 months [rather than the traditional 9 months] to repay their commodity loans. The maturity extension applies to nonrecourse loans for crop years 2018, 2019 and 2020. Eligible open loans must be in good standing with a maturity date of March 31, 2020, or later or new crop year (2019 or 2020) loans requested by September 30, 2020. All new loans requested by September 30, 2020, will have a maturity date 12 months following the date of approval. Eligible commodities include barley, chickpeas (small and large), corn, cotton (upland and extra-long staple), dry peas, grain sorghum, honey, lentils, mohair, oats, peanuts, rice (long and medium grain), soybeans, unshorn pelts, wheat, wool (graded and

nongraded); and other oilseeds, including canola, crambe, flaxseed, mustard seed, rapeseed, safflower, sunflower seed, and sesame seed.”³

Lending Provisions for Agricultural Producers

While producers eagerly await details from USDA about the upcoming aid package, the CARES Act included other authorities for which farmers and ranchers may now be eligible, primarily Small Business Administration (SBA) lending programs.

Paycheck Protection Program (PPP)

Section 1102 of the CARES Act temporarily added a new product—the Paycheck Protection Program (PPP)—to SBA’s 7(a) Loan Program. The PPP’s main aim is to keep workers paid and employed. The act provided \$349 billion for the program which operates on a first-come-first-served basis. SBA began taking applications on April 3, 2020 (April 10, 2020, for sole proprietors and independent contractors). As of April 13, 2020, SBA had guaranteed over 1 million loans under PPP totaling \$247.5 billion, with \$2.97 billion for “agriculture, forestry, fishing, and hunting.” Importantly, despite a lot of confusion to the contrary, farmers and ranchers are eligible for PPP.

To be eligible for PPP, borrowers must have 500 or fewer employees (whose principal place of residence is in the United States) or meet certain size-based restrictions for that particular industry. Borrowers must certify that current economic uncertainty makes the loan necessary to support ongoing operations.

Generally, PPP loans are based on 2.5 times monthly payroll costs over the past 12 months. SBA has outlined a list of costs that qualify as “payroll costs,” including compensation paid to employees in the form of salary, wages, and commissions and, in the case of sole proprietors, wages, commissions, income, or net earnings from self-employment or similar compensation. Importantly, in calculating payroll costs, any compensation paid to an employee or any amounts paid to a sole proprietor in excess of \$100,000 are excluded. PPP loans must be used for very specific purposes defined by SBA (e.g. payroll costs, mortgage interest payments, rent payments, utility payments, etc).

Interest accrues at a rate of 1%, and the loan matures in two years. Payments on the loan will not have to be made for six months following the disbursement date of the loan, but interest will continue to accrue. The most compelling feature of PPP loans is the fact that the entire principal and interest are forgivable as long as certain conditions are met. According to the interim final rule issued by SBA on April 3, 2020, “the actual amount of loan forgiveness will depend, in part:

³ <https://www.fsa.usda.gov/news-room/news-releases/2020/usda-announces-loan-maturity-for-marketing-assistance-loans-now-extended-to-12-months>

- on the total amount of payroll costs,
- payments of interest on mortgage obligations incurred before February 15, 2020,
- rent payments on leases dated before February 15, 2020,
- and utility payments under service agreements dated before February 15, 2020,

over the eight-week period following the date of the loan.” In addition, the rule requires that “not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs,” and it requires borrowers to certify that “funds will be used to retain workers and maintain payroll.” In other words, as long as you spend the entire loan amount on authorized expenses over the eight weeks following loan disbursement and at least 75% is spent on payroll, the entire loan (including interest) will be forgiven.

In a second interim final rule issued on April 14, 2020, SBA provided additional details for sole proprietors and partnerships (including LLCs filing taxes as partnerships). For sole proprietors, payroll costs include net profit from 2019 IRS Form 1040 Schedule C Line 31 (in addition to compensation paid to employees noted above). SBA further clarified that partners in a partnership “may not submit a separate PPP loan application for yourself as a self-employed individual” and limited “a partnership and its partners (and an LLC filing taxes as a partnership) to one PPP loan.” Regarding loan forgiveness for self-employed individuals, SBA clarified that “owner compensation replacement” was an authorized expense, with forgiveness of that particular expense limited to eight weeks (8/52) of 2019 net profit.

Example: What if you are a sole proprietor with **no** employees?

- Assume your farm has no employees and that your net profit in 2019 was \$60,000. Your net profit was less than \$100,000, so the entire \$60,000 qualifies.
- Your qualifying monthly payroll is \$5,000 ($\$60,000 / 12$).
- Your PPP loan amount is \$12,500 ($\$5,000 \times 2.5$).
- Because the farm had no employees, the payroll costs eligible for forgiveness are limited to “owner compensation replacement” of \$9,230.77 ($\$60,000 \times 8 / 52$). While an additional amount could be forgiven based on other authorized expenses, 75% of the amount forgiven must be attributable to payroll costs. As a result, in this example, \$12,307.69 ($\$9,230.77 / 75\%$) is the most that could be forgiven.

Example: What if you are a sole proprietor with **few** employees?

- Assume your farm has one employee with an annual salary of \$45,000. Further assume that your net profit in 2019 was \$51,000. Your total “payroll costs” are \$96,000 ($\$45,000 + \$51,000$). Your employee clearly makes less than \$100,000, and your net profit was less than \$100,000, so the entire \$96,000 qualifies.
- Your qualifying monthly payroll is \$8,000 ($\$96,000 / 12$).

- Your PPP loan amount is \$20,000 ($\$8,000 \times 2.5$).
- As long as you spend \$15,000 ($\$20,000 \times 75\%$) on payroll costs over the eight weeks following disbursement of the loan (with the remaining amount spent on other authorized expenses), the entire \$15,000 loan balance (and any accrued interest) would be eligible for forgiveness as long as all other conditions are met. In this example, forgiveness for “owner compensation replacement”—as a component of payroll costs—would be limited to \$7,846.15 ($\$51,000 \times 8 / 52$).

Example: What if you have a large operation with **many** employees?

- Assume your farm has 20 employees with an annual payroll of \$1,100,000; none of the employees make more than \$100,000, so the entire \$1,100,000 qualifies. Further, assume you had \$200,000 in net profit in 2019; you are limited to \$100,000 in qualifying net profit. As a result, your “payroll costs” are \$1,200,000 ($\$1,100,000 + \$100,000$).
- Your qualifying monthly payroll is \$100,000 ($\$1,200,000 / 12$).
- Your PPP loan amount is \$250,000 ($\$100,000 \times 2.5$).
- As long as you spend \$187,500 ($\$250,000 \times 75\%$) on payroll costs over the eight weeks following disbursement of the loan (with the remaining amount spent on other authorized expenses), the entire \$250,000 loan balance (and any accrued interest) would be eligible for forgiveness as long as all other conditions are met. In this example, forgiveness for “owner compensation replacement”—as a component of payroll costs—would be limited to \$15,384.62 ($\$100,000 \times 8 / 52$).

There are a variety of outstanding issues where SBA is expected to offer additional guidance. For example, wages paid to H-2A workers currently do not count as eligible “payroll costs.” This naturally places a burden on those segments of agriculture who rely heavily on H-2A employees. On April 9, 2020, Republican Members of the House Agriculture Committee sent a letter to SBA Administrator Carranza arguing that “[m]any U.S. producers are fully reliant on H-2A workers, and thus employers ought to be able to include their wages when calculating employer eligible payroll costs under the PPP.” Congress is also currently debating adding additional funding to PPP.

We’ve received a litany of questions from farmers and ranchers and agricultural lenders, and we’ve attempted to address a few of them in Appendix A. And, while there are a lot of resources available online, nothing substitutes for simply contacting a PPP-approved lender and discussing your specific circumstances with them.

Economic Injury Disaster Loan (EIDL) Program

The CARES Act also provided \$10 billion for the Economic Injury Disaster Loan (EIDL) program. An EIDL can be up to \$2 million and must be used for working capital needs (e.g. payroll). Historically, farms have been *ineligible* for the EIDL program, and as of the date of publication, SBA still does not allow farms to qualify (ex-

cept for aquaculture enterprises, agricultural cooperatives, and nurseries). A number of leaders on Capitol Hill are challenging SBA's decision. For example, on April 3, 2020, Senators Pat Roberts and Debbie Stabenow sent a letter to SBA Administrator Carranza arguing the CARES Act "creates new requirements for an [EIDL] program for COVID-19 for a limited time" and "Congress intended farmers to qualify provided they fit within one of the specific criteria for eligibility." In the letter noted above, Republican Members of the House Agriculture Committee similarly urged Administrator Carranza to "clarify this matter so farmers and ranchers may apply for this assistance in a timely fashion."

Conclusion

Congress has stepped in on three occasions to respond to the COVID-19 outbreak. The CARES Act in particular provided significant resources for USDA to respond to current needs due to COVID-19. USDA is in the process of determining how to deploy those resources. The act also provided additional flexibility for marketing loans, extending the maturity date by three months for loan commodities. Perhaps most notably, the act provided \$349 billion for the Paycheck Protection Program (PPP), a new lending program under SBA's 7(a) program for which farmers and ranchers are eligible. Despite being eligible, there have been a number of growing pains through which SBA continues to work. We will provide additional details as they become available.

Appendix A: Paycheck Protection Program (PPP) Frequently Asked Questions

1. Are farms and ranches eligible for SBA's PPP?

Yes. There are a variety of criteria that have to be met (e.g. 500 or fewer employees, etc) but farmers and ranchers are eligible.

2. Doesn't USDA already do this?

USDA offers a variety of loans, including emergency loans, but PPP loans are forgivable as long as certain conditions are met.

3. What will farmers/rancher qualify for? What is the maximum amount of the loan?

Generally speaking, applicants are eligible for 2.5 times the average monthly payroll over the past 12 months. The total amount of the loan cannot exceed \$10 million.

4. Do I go to SBA, Commercial bank, or Farm Credit?

Borrowers apply through a participating lender. All SBA 7(a) lenders are automatically approved and the CARES Act made others eligible, including Farm Credit institutions.

5. Will the loans be forgiven? What are the qualifications?

Yes, the PPP loans will be forgiven as long as certain criteria are met. Most importantly, non-payroll costs are limited to 25 percent of the forgiven amount.

6. Are sole proprietors eligible for PPP? If so, does your salary (income) count in a sole proprietorship? If so, what documentation is needed?

Yes, sole proprietors are eligible if they were in operation as of February 15, 2020 (and SBA is expected to provide additional details for those who were not in operation in 2019 but who were by February 15, 2020, and who will file a Form 1040 Schedule C for 2020). SBA began taking applications for sole proprietors and independent contractors on April 10, 2020. According to the second interim final rule, "owner compensation replacement" is a forgivable expense and will be limited to eight weeks (8/52) of 2019 net profit (from 2019 IRS Form 1040 Schedule C Line 31).

7. How is contract labor counted (other than machine hire) counted? For example, day labor?

It depends. Independent contractors have the ability to apply for a PPP loan on their own, so they do not count for purposes of a borrower's PPP loan forgiveness.

Additional questions and answers are available at: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

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