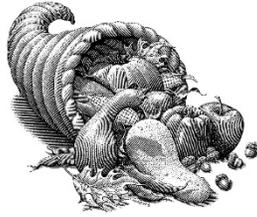


ACT NOW!

Federal COVID-19 Support for Food Producers



By: [Richard M. Blau](#), Chairman
Nationwide Food Law Group



On April 17, 2020, USDA Secretary Sonny Perdue announced the **Coronavirus Food Assistance Program (CFAP)**, which will provide \$16 billion in direct support related to the coronavirus pandemic. CFAP will use the funding and authorities provided in the **Coronavirus Aid, Relief, and Economic Security Act (CARES)**, the **Families First Coronavirus Response Act (FFCRA)**, and other USDA existing authorities. The program includes two major elements to achieve these goals.

1. **Direct Support to Farmers and Ranchers:** The program will provide \$16 billion in direct support based on actual losses for agricultural producers where prices and market supply chains have been impacted and will assist producers with additional adjustment and marketing costs resulting from lost demand and short-term oversupply for the 2020 marketing year caused by COVID-19.
2. **USDA Purchase and Distribution:** USDA will partner with regional and local distributors, whose workforce has been significantly impacted by the closure of many restaurants, hotels, and other food service entities, to purchase \$3 billion in fresh produce, dairy, and meat. We will begin with the procurement of an estimated \$100 million per month in fresh fruits and vegetables, \$100 million per month in a variety of dairy products, and \$100 million per month in meat products. The distributors and wholesalers will then provide a pre-approved box of fresh produce, dairy, and meat products to food banks, community and faith based organizations, and other non-profits serving Americans in need.

The USDA will begin accepting applications for direct payments to farmers **Tuesday, May 26th**.

Eligibility: The USDA expanded eligible producer groups to the categories listed below. Additionally, the USDA seeks comment from ineligible producers “who believe they’ve suffered a five percent-or-greater

price decline between January and April 2020, and who face additional marketing costs due to COVID-19,” especially regarding nursery products, aquaculture products, and cut flowers.

Eligible categories include:

- *Non-specialty Crops*: malting barley, canola, corn, upland cotton, millet, oats, soybeans, sorghum, sunflowers, durum wheat, and hard red spring wheat
- Wool
- *Livestock*: cattle, hogs, and sheep (lambs and yearlings only)
- Dairy
- Specialty Crops
 - *Fruits*: apples, avocados, blueberries, cantaloupe, grapefruit, kiwifruit, lemons, oranges, papaya, peaches, pears, raspberries, strawberries, tangerines, tomatoes, watermelons
 - *Vegetables*: artichokes, asparagus, broccoli, cabbage, carrots, cauliflower, celery, sweet corn, cucumbers, eggplant, garlic, iceberg lettuce, romaine lettuce, dry onions, green onions, peppers, potatoes, rhubarb, spinach, squash, sweet potatoes, taro
 - *Nuts*: almonds, pecans, walnuts
 - *Other*: beans, mushrooms

Applications

To apply, producers should use this [link](#) and either (i) download and complete the posted PDF application form, or (ii) download and complete the posted Excel workbook payment calculator. The table below summarizes required reporting information:

Category	Amounts
Dairy	Pounds produced by month in January, February, and March of this year
Non-specialty crops and wool	Production in 2019 and production remaining unsold as of January 15, 2020
Livestock	Animals sold between January 15 and April 15, 2020, and animals remaining unsold between April 16 and May 14, 2020
Aquaculture/Nursery	Value of sales between January 15 and April 15, 2020, and value of inventory as of April 15, 2020
Specialty crops	Volume sold between January 15 and April 15, 2020; volume shipped but not sold between January 15 and April 15, 2020; and acres with production not shipped or sold between January 15 and April 15, 2020

To finalize an application, a producer must print, sign, and electronically submit the completed application to the local **Farm Service Agency (FSA)** office.

In addition to implementing the CARES Act, the **FSA**, the **Small Business Administration (SBA)**, the **Natural Resources Conservation Service (NRCS)**, and the **Risk Management Agency (RMA)** are working to provide additional flexibilities to help farmers, ranchers, dairymen and foresters impacted by the coronavirus outbreak.

FSA: Set-Aside Delays Loan Payments for Borrowers

For example, FSA will broaden the use of the **Disaster Set-Aside (DSA)** loan provision, normally used in the wake of natural disasters, to allow farmers with USDA farm loans who are affected by COVID-19, and are determined eligible, to have their next payment set aside. In some cases, FSA may also set aside a second payment for farmers who have already had one payment set aside because of a prior designated disaster.

FSA direct loan borrowers will receive a letter with the details of the expanded Disaster Set-Aside authorities, which includes the possible set-aside of annual operating loans, as well as explanations of the additional loan servicing options that are available. To discuss or request a loan payment Set-Aside, borrowers should call or email the farm loan staff at their local FSA county office.

The set-aside payment's due date is moved to the final maturity date of the loan or extended up to twelve months in the case of an annual operating loan. Any principal set-aside will continue to accrue interest until it is repaid. This aims to improve the borrower's cashflow in the current production cycle.

FSA previously announced it was relaxing the loan-making process and adding flexibilities for servicing direct and guaranteed loans to provide credit to producers in need. Direct loan applicants and borrowers are encouraged to contact their local FSA county office to discuss loan making and servicing flexibilities and other needs or concerns. Customers participating in FSA's guaranteed loan programs are encouraged to contact their lender. Information on these flexibilities, and office contact information, can be found on farmers.gov/coronavirus.

FSA will be accepting most forms and applications by facsimile or electronic signature. Some services are also available online to customers with an eAuth account, which provides access to the farmers.gov portal where producers can view USDA farm loan information and certain program applications and payments. Customers can track payments, report completed practices, request conservation assistance and electronically sign documents. Customers who do not already have an eAuth account can enroll at farmers.gov/sign-in.

USDA Service Centers are open for business by phone appointment only, and field work will continue with appropriate social distancing. While program delivery staff will continue to come into the office, they will be working with producers by phone and using online tools whenever possible.

All Service Center visitors wishing to conduct business with the FSA, Natural Resources Conservation Service or any other Service Center agency are required to call their Service Center to schedule a phone appointment. More information can be found at farmers.gov/coronavirus.

SBA: EIDL Applications Open for Agricultural Businesses

On May 4, 2020, the SBA opened the **Economic Injury Disaster Loan (EIDL)** program specifically for agricultural businesses. According to SBA, "Applicants who have already submitted their applications will continue to be processed on a first-come, first-served basis. For agricultural businesses that submitted an EIDL application through the streamlined application portal prior to the legislative change, SBA will process these applications without the need for re-applying."

The new EIDL program eligibility is made possible as a result of the latest round of funds appropriated by Congress in response to the COVID-19 pandemic. "Agricultural businesses" are defined to include those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries, as defined by section 18(b) of the Small Business Act (15 U.S.C. 647(b)).

The SBA is encouraging all eligible agricultural businesses with 500 or fewer employees wishing to apply to begin preparing their business financial information needed for their application. Eligible agricultural businesses may apply for the Loan Advance [here](#).

Support for the Food Insecure

USDA also will utilize other available funding sources to purchase and distribute food to those facing food insecurity. USDA has up to an additional **\$873.3 million available in Section 32 funding** to purchase a variety of agricultural products for distribution to food banks. The use of these funds will be determined by industry requests, USDA agricultural market analysis, and food bank needs.

Also, the FFCRA and CARES Act provided an at least \$850 million for food bank administrative costs and USDA food purchases, of which a minimum of \$600 million will be designated for food purchases. The use of these funds will be determined by food bank need and product availability.

Partnering with food suppliers to purchase and distribute fresh products to food banks and other non-profits serving people in need is an admirable objective. At a time when some food suppliers are experiencing a decrease in demand and food banks are seeing increased need for their services, it makes complete sense to try to address these problems together.



Richard Blau is the chair of GrayRobinson's Alcohol Beverage & Food Department and presides over the firm's Food Law Team. Richard and his colleagues focus on the rules, regulations, and business practices that govern the production and processing, importation, marketing, distribution, sale, and consumption of food products as well as beverages, including distilled spirits, wine, beer, and other licensed beverages.

Richard works with all levels of the food industry. He has represented international importers and domestic manufacturers, statewide wholesaler trade groups and regional distributors, and retailers (including multistate restaurant and grocery store chains) across the United States.