



On April 17, the U.S. Secretary of Agriculture announced the launch of the Coronavirus Food Assistance Program (CFAP), a U.S. Department of Agriculture (USDA) program that will provide \$19 billion in critical support to farmers, ranchers and consumers in response to the COVID-19 crisis. This alert describes the CFAP programs, when its funds are anticipated to be made available, how farmers and ranchers impacted by COVID-19 may qualify for CFAP funds and the maximum amount of direct payments that any one entity or individual may receive under the CFAP's Direct Payment Program. This alert also discusses the omission of biofuel producers from the CFAP programs.

This alert is in addition to the programs that may be available to support agricultural producers and/or other agricultural enterprises pursuant to the Coronavirus Aid, Relief and Economic Security (CARES) Act, including (a) \$9.5 billion allocated pursuant to the Disaster Relief Program, (b) \$14 billion allocated pursuant to the Commodity Credit Program and (c) the Paycheck Protection Program (PPP). Although the original \$349 billion in funding for the PPP has been fully allocated, it is widely anticipated that Congress will move quickly to approve additional funding for the PPP in the range of an additional \$250-300 billion. For more information on these CARES Act programs, please see our [prior alert](#).

WHAT IS THE CFAP?

President Trump directed the USDA to develop the \$19 billion relief program to provide critical support to farmers and ranchers, maintain the integrity of the U.S. food supply chain and ensure that Americans have access to the food that they need during this unprecedented time. The CFAP aims to achieve these goals through two initiatives:

- i. Direct Support to Farmers and Ranchers.* The CFAP will provide \$16 billion in direct payments based on actual and expected losses for agricultural producers where prices and market supply chains have been impacted due to the COVID-19 pandemic (further described below as the Direct Payment Program); and
- ii. USDA Purchase and Distribution.* The USDA will partner with regional and local distributors whose workforce has been significantly impacted by the closure of restaurants, hotels and other food service entities to purchase \$3 billion in fresh produce, dairy and meat that will subsequently be distributed by the distributors and wholesalers to food banks, community and faith-based organizations and other non-profits serving Americans who are in need (Food Purchase and Redistribution Program). Each of these initiatives is described in greater detail below.

DOES CFAP PROVIDE AID FOR ETHANOL AND BIOFUELS PRODUCERS?

The CFAP does not provide relief for producers of biofuels such as ethanol. It has been widely reported in the media that sinking oil prices and flagging demand due to COVID-19 and the oil price war have forced ethanol plans to shutter, further depressing corn prices. On April 6, a bipartisan group of 15 U.S. Senators, including 4 Republican and 4 Democrat Senators serving on the Senate Agriculture, Nutrition & Forestry Committee, sent a [letter](#) to Secretary Perdue urging that the USDA allocate funds provided to the Credit Commodity Corporation (CCC) under the CARES Act to the biofuels industry, citing the direct link that the biofuels industry has to farm income and prices for corn and other crop commodities. In a meeting with reporters on April 17, Secretary Perdue acknowledged "huge challenges" facing the ethanol industry and corn farmers and that there is not enough money to go around.

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In addition, due to the high cost, the oil refining industry has asked the Trump administration to reduce the requirement for them to blend corn-based ethanol into gasoline. Governors from five states – Texas, Oklahoma, Wyoming, Utah and Louisiana - have submitted letters to the Environmental Protection Agency requesting a nationwide waiver exempting the oil refining industry from the nation's 2020 Renewable Fuel Standard blending requirements to help the industry survive the demand meltdown caused by COVID-19. A copy of the letter jointly submitted by the Governors of Texas, Oklahoma, Wyoming and Utah can be found [here](#).

On the other side of the conversation is the corn lobby, which advocates in favor of the blending requirements to support farmers who have watched demand for their crops fall as biofuel plants across the country have shuttered. While Secretary of Agriculture Sonny Perdue has acknowledged “huge challenges” facing the ethanol industry and corn farmers, he said that there is not enough money to go around.

HOW IS CFAP FUNDED?

The USDA's [press release](#) states that CFAP will be funded by the CARES Act, the Families First Coronavirus Response Act (FFCRA) and other USDA existing authorities, but it does not specify which Act or authority will fund each CFAP initiative or the amount that each will be responsible for funding. However, in a [statement](#) on April 17 following the USDA's announcement, Senator John Hoeven, chairman of the Senate Agriculture Appropriations Committee that oversees USDA spending, stated that the \$16 billion Direct Payment Program will be funded using (1) \$9.5 billion allocated in the CARES Act for the Disaster Relief Act to support agricultural producers, including producers of specialty crops, producers that supply local food systems, including farmers markets, restaurants and schools, and livestock producers, including dairy farmers and (2) \$6.5 billion in CCC funding.

Senator Hoeven's press release does not state how the \$3 billion for the Food Purchase and Redistribution Program will be funded.

WHEN WILL FUNDING FOR THE DIRECT PAYMENT PROGRAM BE AVAILABLE?

The USDA's press release does not specify when direct payments under the Direct Payment Program will be available. Senator Hoeven's [press release](#) states that the USDA is expediting the rule making process and anticipates that the application process will start in May and payments will be available for producers by the end of May or early June.

HOW WILL THE DIRECT PAYMENT PROGRAM WORK?

As of the date of this alert, the USDA has not issued guidance implementing the Direct Payment Program. However, Senator Hoeven's [press release](#) states that the USDA will provide \$16 billion in direct payments to farmers and ranchers as follows:

- \$9.6 billion for the livestock industry
 - \$5.1 billion for cattle;
 - \$2.9 billion for dairy; and
 - \$1.6 billion for hogs
- \$3.9 billion for row crop producers;
- \$2.1 billion for producers of specialty crops; and
- \$500 million for other crops.

According to Senator Hoeven's press release, agricultural producers will receive a single payment based on actual and expected losses. Senator Hoeven further provided that the payment is capped at \$125,000 per qualifying commodity, with an overall limit of \$250,000 per producer. His press release provides that the payment will equal the sum of (a) 85 percent of actual price losses that occurred from January 1, 2020 through April 15, 2020 and (b) 30 percent of expected losses from April 15, 2020 through the next two quarters. The press release does not provide further details on how expected losses are to be determined.

Senator Hoeven further notes in his press release that in order to qualify for a direct payment, a commodity must have experienced a 5 percent price decrease between January and April of this year.

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WHAT IS THE FOOD PURCHASE AND REDISTRIBUTION PROGRAM?

The Food Purchase and Redistribution Program provides that the USDA will partner with regional and local distributors whose workforce has been significantly impacted by the closure of restaurants, hotels and other food service entities to purchase \$3 billion in fresh produce, dairy and meat that will subsequently be distributed by the distributors and wholesalers to food banks, community and faith-based organizations and other non-profits serving Americans who are in need. Distributors and wholesalers will then provide a pre-approved box of agricultural products to food banks, community and faith-based organizations and other non-profits serving Americans in need.

The USDA will begin with a procurement of \$300 million per month for this initiative, including: (i) \$100 million per month in fresh fruits and vegetables, (ii) \$100 million per month in a variety of dairy products, and (iii) \$100 million per month in meat products.

EXCLUSIONS

The CFAP does not provide relief for producers of biofuels such as ethanol.

ADDITIONAL FUNDING

In addition to the two CFAP initiatives, the USDA plans to utilize other funding sources to purchase and distribute food to those in need. The 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.

In addition, the FFCRA and CARES Act provide 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 based on food bank need and product availability.

Please contact one of Gray Reed's attorneys to assist you with your CFAP questions.

ABOUT THE AUTHORS



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Leader of Gray Reed's Agriculture Industry Team and an active member of the American Agricultural Law Association, Bill has played a key role in pioneering nationwide litigation involving genetically-modified crops. He served as a court-appointed member of the federal plaintiffs' executive committee that helped farmers, mills and exporters reach a \$750 million settlement due to contamination of U.S. rice supplies with a genetically-modified variety developed by an international chemical and agricultural company. He is currently serving as co-lead and class counsel in the ongoing Syngenta corn class action, focused on helping farmers and others hold GMO seed developers accountable for introducing unapproved genetically-modified seeds to U.S. corn supplies. In December 2018, a \$1.51 billion settlement was announced.



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USDA ANNOUNCES \$19 BILLION CORONAVIRUS FOOD ASSISTANCE PROGRAM TO SUPPORT FARMERS, RANCHERS AND CONSUMERS – AND WHERE DO BIOFUELS PRODUCERS STAND?

by Nancy Bostic, Bill Chaney, Amy Lott, Lynsey Hyde and Chad Kell
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