

Farmers' Guide to COVID-19 Relief

First Edition

April 14, 2020

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Farmers' Guide to COVID-19 Relief

First Edition

April 14, 2020

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Table of Contents

	Page
Chapter One: Introduction	1
A. Current as of April 13, 2020	1
B. Overview of What this Guide Covers	1
1. Recovery Rebates for Individuals	1
2. SBA Paycheck Protection Program (PPP)	1
3. SBA Economic Injury Disaster Loan (EIDL) Program.....	1
4. Unemployment Insurance	1
5. Foreclosure Moratorium and Loan Forbearance	2
6. Funding for the Commodity Credit Corporation (CCC)	2
7. Funding for Specialty Crop and Other Producers	2
8. Changes to the Bankruptcy Code.....	2
9. Regulatory Guidance for Financial Institutions	2
10. USDA Administrative Actions	2
11. Crop Insurance and Non-Insured Crop Disaster Assistance Program (NAP)	3
12. Court and State and Tribal Government Responses	3
13. Scams and Discrimination.....	3
Chapter Two: The CARES Act General Programs	4
A. Recovery Rebates for Individuals	4
B. Small Business Administration	4
1. SBA and Farmers	5
2. Paycheck Protection Program.....	5
a. Eligibility Rules—PPP	6
(i) Various Kinds of Smaller Businesses are Eligible	7
(ii) Self-Employed Individuals, Sole Proprietorships, and Independent Contractors can be Eligible	7
(iii) Farm Eligibility and PPP	7
(iv) Farms and SBA Affiliation Rules	8
(v) Immigration Status	9
(vi) Business Must Have Been in Operation as of February 15, 2020	9
(vii) Other Eligibility Rules	9
(viii) Documenting a Claim	9

b.	The Loan Amount, Terms, and Potential Forgiveness.....	10
(i)	Payroll Costs Defined.....	10
(ii)	Amount of Loan	11
(a)	Borrowers in Business Between February 15, 2019 and June 30, 2019	11
(b)	Borrowers Not in Business Between February 15, 2019 and June 30, 2019 ...	11
(c)	Seasonal Employers	12
(iii)	Cost of the PPP.....	12
(iv)	Terms	12
(v)	Use of PPP Loan Funds.....	12
(vi)	Forgiveness and Potential Repayment	13
3.	Economic Injury Disaster Loans (EIDL) Program	14
a.	EIDL Loans for Businesses	14
b.	EIDL Emergency Advances.....	15
c.	Farms and COVID-19 EIDL Program Loans	16
(i)	Farms—Seem Not Eligible Except for Aquaculture and Nurseries	16
(ii)	Value-Added Businesses—Potentially Eligible	17
C.	Unemployment Insurance and Farmers.....	17
1.	General Changes to Unemployment Insurance.....	18
2.	Farmers and Self-Employed Unemployment Assistance	18
3.	Rules for Unemployment Assistance under PUA.....	19
a.	Maybe Has COVID-19	20
b.	Household Diagnosis	20
c.	Providing Care for Family Member with COVID-19.....	20
d.	Primary Caregiver	20
e.	Unable to Reach or Go to Work Due to Quarantine	20
f.	Unable to Reach or Go to Work Due to Self-Quarantine	20
g.	Become Breadwinner After Death	21
h.	Place of Employment Closed.....	21
i.	Quit Job Due to COVID-19	21
j.	Scheduled to Begin Work but Could Not.....	21
k.	Additional Criteria—Could Possibly Help Farmers	21
D.	Foreclosure Moratorium and Consumer Right to Request Forbearance— Unlikely to Apply to Farms	22

1. Only Federally Backed Mortgage Loans Protected by the CARES Act.....	22
a. Federally Backed Mortgage Loan.....	22
b. Secured by Lien on Residential Real Property.....	23
2. Forbearance and Foreclosure Moratorium	23
a. Forbearance.....	23
b. Foreclosure Moratorium	24
3. Farms, Mortgage Forbearance, the Foreclosure Moratorium.....	24
Chapter Three: The CARES Act Agricultural Provisions.....	26
A. Commodity Credit Corporation (CCC): 14 Billion Dollars	26
B. Specialty Crop and Other Producers: 9.5 Billion Dollars	26
Chapter Four: The CARES Act Bankruptcy Provisions.....	27
Chapter Five: Regulatory Guidance for Banks and Other Financial Institutions....	28
A. Statement on Loan Modification	28
B. Statement on Small-Dollar Loans and Workouts.....	28
C. Statement on Low- and Moderate-Income Customers, Small Businesses and Small Farms.....	30
D. Statements by the Farm Credit Administration	30
Chapter Six: Farm Service Agency (FSA) Programs and Actions	31
A. FSA Availability	31
B. Loan Program Processing	31
1. Application Deadlines Extended	31
2. Lien Searches	31
C. Direct Loan Servicing.....	32
1. Direct Loan Servicing Deadlines Extended	32
2. Accelerations and Some Foreclosures are Suspended.....	32
D. Guaranteed Loans.....	32
Chapter Seven: Federal Crop Insurance and NAP Coverage.....	33
A. Farmers with Crop Insurance: The Policy is Crucial	33
B. RMA Changes to Crop Insurance	34
C. Farmers with NAP Coverage—Be Cautious	36
Chapter Eight: State, Local, and Tribal COVID-19 Relief Efforts.....	37
Chapter Nine: State, Federal, and Tribal Courts Respond	38
Chapter Ten: Scams	39
Chapter Eleven: Discrimination is Illegal	40

Chapter One: Introduction

This Farmers' Guide to COVID-19 Relief offers a brief description of various programs that might benefit farmers.

A. Current as of April 13, 2020

This Guide is current as of April 13, 2020. As of this writing, much is yet to be decided about how the programs discussed will work. Please check the FLAG website for updates that will be ongoing.¹

B. Overview of What this Guide Covers

Several of the programs discussed in this Guide are the product of the CARES Act—technically known as the Coronavirus Aid, Relief, and Economic Security Act.² The CARES Act became law on March 27, 2020.

The following topics are discussed in this Guide.

1. Recovery Rebates for Individuals

The CARES Act creates individual recovery rebates, also known as economic impact payments. Farmers are eligible for these payments. Details on the individual recovery rebates are in Chapter II of this Guide.

2. SBA Paycheck Protection Program (PPP)

The CARES Act creates a new Small Business Administration (SBA) program called the Paycheck Protection Program (PPP). PPP provides loans to small businesses that can be forgiven so long as the business continues to employ workers. Farmers are eligible for the PPP. It is discussed in Chapter II of this Guide.

3. SBA Economic Injury Disaster Loan (EIDL) Program

The CARES Act changes and expands upon an existing SBA program, the Economic Injury Disaster Loan (EIDL) program, in order to make it available during the COVID-19 crisis. Under the CARES Act, small businesses can receive EIDL program loans with relaxed eligibility rules. The CARES Act also provides for a 10,000 dollar emergency advance on the loan that businesses will not need to repay. As of now, this program is unavailable to most farms. Exceptions are made for aquaculture, nurseries, and potentially some value-added businesses. Chapter II describes the CARES Act changes to the EIDL program.

4. Unemployment Insurance

The CARES Act makes a number of changes to unemployment insurance. This Guide focuses on the Pandemic Unemployment Assistance (PUA) program, which increases

¹ The Farmers' Guide to COVID-19 Relief can be found on FLAG's website, at: <http://www.flaginc.org/>.

² Coronavirus Aid, Relief, and Economic Security Act (CARES Act), 116 Public Law 136, 134 Stat. 281 (March 27, 2020). As a bill, it was known as H.R. 748 (March 27, 2020). A copy can be found here: <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

the amount and length of unemployment benefits that those affected by COVID-19 may receive. Farmers, who count as unemployed self-employed individuals under the PUA, may be eligible for the program. Chapter II discusses PUA.

5. Foreclosure Moratorium and Loan Forbearance

The CARES Act mandates a foreclosure moratorium and loan forbearances for some federally backed residential mortgages. As the rules for these programs are currently being interpreted, it is unlikely that they will apply to most farm mortgages, even if those mortgages include a farm homestead. Chapter II of this Guide discusses the foreclosure moratorium and loan forbearance parts of the CARES Act.

6. Funding for the Commodity Credit Corporation (CCC)

Under the CARES Act, the Commodity Credit Corporation (CCC) will receive fourteen billion dollars. The Act does not say how that money is to be spent. Chapter III describes this funding.

7. Funding for Specialty Crop and Other Producers

The CARES Act gives 9.5 billion dollars to USDA to assist specialty crop and other producers, including livestock producers and those supplying local food systems. Chapter III describes what we know about this funding.

8. Changes to the Bankruptcy Code

Changes to bankruptcy laws are made in the CARES Act. Under the Act, it becomes easier for a small business to use a Chapter 11 bankruptcy, and income eligibility rules for Chapters 7 and 13 will not include any payments related to COVID-19. For the most part, these changes are likely to impact farmers in only minimal ways. Chapter IV discusses the bankruptcy changes.

9. Regulatory Guidance for Financial Institutions

Regulators of banks and other financial institutions have issued guidance that encourages loan modifications and other measures to help ease the financial burdens resulting from COVID-19. The guidance applies to farm loans. The guidance is mainly suggestive, but it could be used to help convince lenders that they should work with struggling farmers. Chapter V describes the various regulatory guidance that has been issued to date.

10. USDA Administrative Actions

FSA has issued a news release outlining certain changes to rules for FSA direct and guaranteed loans. These changes include deadline extensions and deferral actions for direct loans as well as the suspension of some direct loan accelerations and foreclosures. FSA says it will also consider allowing temporary deferrals of loan payments for guaranteed loans. USDA also describes its availability of staff in local offices. Chapter VI discusses USDA's administrative response to COVID-19.

11. Crop Insurance and Non-Insured Crop Disaster Assistance Program (NAP)

Federal crop insurance is an important risk management tool for many farmers. The Risk Management Agency (RMA) has issued internal rules that relax a few requirements for crop insurance. In general, though, it is important for farmers to understand and follow the crop insurance policies they have signed—even if the result seems to not make sense in the face of the COVID-19 crisis. Losses due to COVID-19 are not eligible losses for many crop insurance policies. For farmers with crop insurance, changes in the farming operation, especially changes to things like the type of crop raised or the acreage for various crops, should be approved by the insurance provider in advance.

The Noninsured Crop Disaster Assistance Program (NAP) is another important risk management tool for farmers. NAP provides crop loss assistance for farmers who are otherwise unable to obtain federal crop insurance for a specific crop. To date, USDA has not released any information about how NAP coverage may be affected by COVID-19. Farmers with NAP coverage should be especially careful before making any changes to their operation, and before doing so should consult FSA.

Chapter VII discusses federal crop insurance and NAP.

12. Court and State and Tribal Government Responses

A number of state and tribal governments have responded to COVID-19. These responses include moratoriums on foreclosures and evictions, as well as limits on debt collection activities. Some courts have made changes as well, including postponing certain in-person hearings. These policy and court changes can directly affect farmers. Chapters VIII and IX discuss these efforts.

13. Scams and Discrimination

Scams targeting farmers arise during times of crisis, and discrimination continues to be a problem for farmers. These issues are discussed in Chapter X and XI.

Chapter Two: The CARES Act General Programs

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law on March 27, 2020.³ That means that many parts of the law are not yet well understood and plans for how parts of the CARES Act will be carried out are still not well defined. This chapter is focused on those parts of the CARES Act that are most likely to affect farmers.

A. Recovery Rebates for Individuals

The CARES Act creates what it calls “Recovery Rebates for Individuals.”⁴ Sometimes they are also being called “Economic Impact Payments.”⁵ These payments, which have been widely discussed, will go to eligible individuals—which can include farmers.⁶

In general, a household will receive 1,200 dollars per eligible person. So, for many married couples there will be a combined payment of 2,400 dollars. Five hundred dollars per qualifying child will also be paid. There will be what is often called “means testing” to ensure individuals meet the eligibility requirements, and the amount paid amount will be reduced if the household has over a certain amount of income. The income restriction can kick in at 75,000 dollars for an individual who does not file a joint return and is not a head of household.⁷ The Internal Revenue Service (IRS) will rely largely on income tax filings for 2018 and 2019 for information such as household income and the household’s address.

A great deal has been written about this program, and on what public officials are saying they plan to do, but the actual rules for how the program will be run are not yet final. For now, some basic information on who is eligible for the payment is available from the IRS.⁸

B. Small Business Administration

Two types of programs are available through the CARES Act under the Small Business Administration (SBA). First, the CARES Act creates what is called the Paycheck Protection Program (PPP). Second, the CARES Act creates a program, also through the SBA, called the Emergency EIDL Grants program. EIDL stands for Economic Injury Disaster Loans. Both PPP and the Emergency EIDL Grants program are somewhat similar to existing SBA programs, but there are important differences created by the CARES Act.⁹

³ Coronavirus Aid, Relief, and Economic Security Act (CARES Act), 116 Public Law 136, 134 Stat. 281 (March 27, 2020). As a bill, it was known as H.R. 748 (March 27, 2020). A copy can be found here: <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

⁴ CARES Act, Division A, Title 2, Subtitle A, Section 2201(a).

⁵ Internal Revenue Service (IRS), Economic Impact Payments: What You need to Know (April 1, 2020) at <https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know>.

⁶ CARES Act § 2201(a). A nonresident alien is not an eligible individual for purposes of the recovery rebates. CARES Act § 2201(a).

⁷ For taxpayers who file joint returns, the restriction kicks in when the joint gross income is more than 150,000 dollars, and for a head of household the restriction is triggered at 112,500 dollars. CARES Act § 2201(a).

⁸ See Internal Revenue Service (IRS), Economic Impact Payments: What You Need to Know (March 30, 2020), at: <https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know>; see also Department of the Treasury, Social Security Recipients Will Automatically Receive Economic Impact Payments (April 1, 2020) at <https://home.treasury.gov/news/press-releases/sm967>.

⁹ The Paycheck Protection Program becomes a part of what is known as SBA’s section 7(a) Business Loan Program. See 15 U.S.C. § 636(a). Section 7(a) loans are the main SBA small business loans. See

1. SBA and Farmers

Historically, the question of the extent to which SBA programs are available to farms has been confusing. In general, SBA rules have tended to discourage loans to farms.¹⁰ Economic Injury Disaster Loans (EIDLs) from SBA have been around for many years but have mainly been unavailable to farms.¹¹ Meanwhile, under other SBA programs, business loans have gone to some farms in some circumstances, and have also gone to value-added enterprises that are connected to farms.¹² Farm-related businesses which are not agricultural enterprises are eligible businesses under SBA's business loan programs.¹³

For the purpose of COVID-19 relief, the central question for farmers is whether the two programs discussed below are available to farmers. As will be explained below, the short answer appears to be that farms are eligible for PPP loans, but farms are not eligible for COVID-19 EIDL programs.

2. Paycheck Protection Program

The Paycheck Protection Program (PPP) was created by the CARES Act.¹⁴ Under this program, banks and other lenders, including the Farm Credit System, make loans guaranteed by the federal government to small businesses.¹⁵ The loans are designed to be forgiven—so long as the business continues to employ workers.

SBA, Type of 7(a) Loans, at <https://www.sba.gov/partners/lenders/7a-loan-program/types-7a-loans>. EIDL loans are under what is known as SBA's section 7(b) program. See 15. U.S.C. § 636(b). Section 7(b) loans are usually made after a natural disaster. EIDL stands for Economic Injury Disaster Loans. For more information see SBA, Disaster Loan Assistance, at <https://disasterloan.sba.gov/ela/Information/Index>. For an example of an effort to clarify the interaction between FSA and SBA see Farm Service Agency, Increasing USDA Collaboration with SBA, Notice FLP-663 (December 16, 2013). It discusses SBA loans for value-added facilities—such as cheese production for a dairy farm and a fruit drink stand at a shopping center for a small fruit producer.

¹⁰ SBA rules, for example, say that assistance for agricultural enterprises is usually made by USDA, but loans “may be made by SBA.” 13 C.F.R. § 120.103 (2020). The rules also say “farm-related businesses which are not agricultural enterprises are eligible businesses under SBA's business loan programs.” In addition, SBA states that its Section 7(a) loans are available for “farms and agricultural businesses.” See SBA, 7a Loan Program, Terms, Conditions, Eligibility, Special Considerations, at <https://www.sba.gov/partners/lenders/7a-loan-program/terms-conditions-eligibility#section-header-17>. According to SBA, however, those applicants should first explore FSA loans, particularly if the applicant has a prior or existing relationship with FSA.

¹¹ For a discussion of the limited role SBA has had with farmers in the EIDL program, see Government Accountability Office, Disaster Assistance: USDA and SBA Could do More to Help Aquaculture and Nursery Producers, GAO-12-844 (September 11, 2012), at: <https://www.gao.gov/assets/650/648076.pdf>.

¹² A USDA and SBA Memorandum of Understanding regarding lending can be found here: <https://www.usda.gov/sites/default/files/documents/usda-sba-mou.pdf>.

¹³ 13 C.F.R. § 120.103 (2020).

¹⁴ CARES Act § 1102(a).

¹⁵ Lenders can be existing SBA lenders, federally insured depository institutions, federally insured credit unions, and the Farm Credit System. CARES Act § 1102(a).

Rules for the PPP were released on April 2, 2020.¹⁶ SBA says the rules will become official once they are published in the Federal Register.¹⁷ In addition, a final application form has been published.¹⁸ SBA has also issued a Paycheck Protection Program (PPP) Information Sheet.¹⁹ This information sheet refers borrowers to SBA information about eligibility for businesses based on their size.²⁰

The application deadline for PPP is June 30, 2020.²¹ The funds are available through June 30, 2020 but will be used on a first come first serve basis.²² It may be, therefore, that the money will run out. If the PPP funds do run out, it is possible Congress would give the program more money, but no one knows for sure if that would happen.

Small businesses and sole proprietorships could apply for the PPP beginning April 3, 2020.²³ Independent contractors and self-employed individuals could apply starting April 10, 2020.

a. Eligibility Rules—PPP

The following sections describe PPP eligibility rules.

¹⁶ Business Loan Program Temporary Changes; Paycheck Protection Program, Small Business Administration, Interim Final Rule (to be codified at 13 C.F.R. part 120), at: <https://content.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL.pdf>. SBA released this version of the rules on April 2, 2020.

¹⁷ To date, rules for the PPP have not been published in the Federal Register. On April 13, 2020, the Department of Treasury issued an interim final rule and a request for comment, which provides PPP guidance for financial institutions. See Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans, 85 Fed. Reg. 20387 (April 13, 2020) (to be codified at 12 C.F.R. pts. 3, 217, 324 (interim final rule).

¹⁸ Paycheck Protection Program, Borrower Application Form (2020), at:

<https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>

¹⁹ Paycheck Protection Program (PPP) Information Sheet: Borrowers, at:

<https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf>.

²⁰ Small Business Administration (SBA), Contracting Guide, Size Standards, at:

<https://www.sba.gov/federal-contracting/contracting-guide/size-standards>.

²¹ PPP Interim Final Rule, at 2. When filling out an application for PPP, the borrower must certify that the borrower complies with civil rights requirements and does not discriminate in any business practice. See PPP Borrower Application Form, pages 2, 4. Specifically, borrowers must comply with 13 C.F.R. Parts 112, 113, and 117.

²² PPP Interim Final Rule, at 13

²³ Paycheck Protection Program (PPP) Information Sheet: Borrowers, at 1.

(i) Various Kinds of Smaller Businesses are Eligible

The CARES Act and SBA rules say that “small business concerns” are eligible for PPP.²⁴ In addition, “tribal business concerns” are eligible.²⁵ Also eligible are nonprofits²⁶ and tax-exempt veterans organizations.²⁷ The PPP application includes a variety of other possible business entities as well.²⁸

An eligible business must be small in that they must not have more than 500 employees, whether employed on a part-time, full-time, or other basis.²⁹ In addition, the business’ employees must have been paid salaries and payroll taxes or been paid as independent contractors.³⁰ Only individuals whose principal place of residence is in the United States are considered employees under PPP.

(ii) Self-Employed Individuals, Sole Proprietorships, and Independent Contractors can be Eligible

PPP allows self-employed individuals, sole proprietorships, and independent contractors to be eligible as borrowers.³¹

(iii) Farm Eligibility and PPP

Despite some confusion on this question, farms can be eligible for PPP. The vast majority of farms will qualify as sole proprietorships or under the category of self-employed individuals.

Farms that have year-round workers are likely to be most benefited by the program. For farms with employees, independent contractors are not

²⁴ CARES Act § 1102(2); PPP Interim Final Rule, at 6. Both the CARES Act and the PPP Interim Final Rule refer to the statute that defines small business concerns, 15 U.S.C. § 632. SBA also has extensive rules defining small businesses. See 13 C.F.R. part 121, subpart A. Some of these rules are not in effect for PPP due to the CARES Act. The definition of a small business concern is also found in SBA, Small Business Compliance Guide: Size and Affiliation (June 2018), at: https://www.sba.gov/sites/default/files/2018-09/2018-07-13%20AFFILIATION%20GUIDE_Updated%20%281%29.pdf.

²⁵ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 6. A tribal business concern is further described according to 15 U.S.C. § 657a(b)(2)(C).

²⁶ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 6. Eligible nonprofits are those described in the Internal Revenue Code as 501(c)(3) organizations.

²⁷ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 6. Eligible veterans organizations are those described in the Internal Revenue Code as 501(c)(19) organizations.

²⁸ The PPP application form allows applicants to check boxes if they are a: (1) partnership; (2) C Corporation; (3) S Corporation; (4) limited liability company (LLC); (5) 501(c)(3) nonprofit; (6) 501(c)(19) veterans organization; (7) tribal business; and (8) “other.” PPP Borrower Application Form, at 1.

²⁹ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 5.

³⁰ PPP Interim Final Rule, at 6; PPP Borrower Application Form, at 2.

³¹ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 6. The PPP application form allows applicants to check boxes if they are a: (1) sole proprietor; (2) independent contractor; or (3) eligible self-employed individual. PPP Borrower Application Form, at 1.

counted when calculating the farm's PPP loan amount.³² This is because independent contractors can themselves apply for a PPP loan.

(iv) Farms and SBA Affiliation Rules

In order to be eligible for a PPP loan, the borrower must meet what SBA calls "affiliation" rules.³³ The goal of these rules is to address the possibility that a large company (with over 500 employees) that would not be eligible for an SBA Section 7(a) loan might control a small company that would otherwise be eligible for an SBA loan. SBA affiliation rules try to identify when a smaller company is under the control of another company such that the smaller company does not operate independently. In those situations, SBA will not make a loan to the smaller company. SBA says that it will issue additional rules for the way affiliation will apply to PPP loans.³⁴

Affiliation rules would often be a small technical detail, but they have been important and controversial when it comes to some SBA loans to farms.³⁵ In the past, SBA has made significant loans to contract poultry growers. However, an argument has been made that contract poultry farmers are so closely tied to poultry integrators that they should not be allowed to receive SBA loans under the normal Section 7(a) SBA loan program.³⁶ In response to that argument, and in an attempt to ensure that "only independently owned and operated small businesses" receive Section 7(a) SBA loans, an interim final rule was published that went into effect on March 11, 2020.³⁷ This rule modified the affiliation rules to make it harder for some businesses, such as contract poultry growers, to receive Section 7(a) SBA loans.³⁸ The CARES Act, however, permanently rescinded that interim final rule.³⁹ It is therefore unclear, for purposes of PPP loans, how SBA will treat businesses that arguably are affiliated with a larger business. This means that farms that have production contracts—

³² PPP Interim Final Rule, at 11. In addition, to benefit from the program, farms need to have employment costs now. If hired labor is only used seasonally, there might not be enough labor costs to allow forgiveness of the loan.

³³ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 6; 13 C.F.R. §§ 121.103, 121.301(f) (2020). A few types of business have this requirement waived. General SBA affiliation rules can be found at 13 C.F.R. parts 103, 301 (2020). See, as well, 13 C.F.R. § 121.103 (2020) for a discussion of how affiliation is determined.

³⁴ PPP Interim Final Rule, at 7. These rules should be published at 13 C.F.R. §§ 121.103, 121.301.

³⁵ See, for example, the SBA, Office of Inspector General, Evaluation of SBA 7(A) Loans Made to Poultry Farmers, Report Number 18-13 (March 6, 2018), at: <https://www.sba.gov/sites/default/files/2019-07/SBA-OIG-Report-18-13.pdf>. In this Report, SBA's Office of Inspector General concluded that loans to contract poultry farmers had violated SBA affiliation rules.

³⁶ See SBA, Office of Inspector General, Evaluation of SBA 7(A) Loans Made to Poultry Farmers, Report Number 18-13.

³⁷ Express Loan Programs: Affiliation Standards, 85 Fed. Reg. 7622, 7638 (Feb. 10, 2020) (to be codified at 13 C.F.R., parts 103, 120, and 121) (interim final rule)).

³⁸ Express Loan Programs: Affiliation Standards, 85 Fed. Reg. 7622, 7651 (Feb. 10, 2020) (to be codified at 13 C.F.R., parts 103, 120, and 121) (interim final rule)).

³⁹ CARES Act § 1102(e) (rescinding Express Loan Programs; Affiliation Standards, 85 Fed. Reg. 7622 (Feb. 10, 2020) (to be codified at 13 C.F.R., parts 103, 120, and 121) (interim final rule)).

such as those to raise poultry or hogs—may be in danger of not being eligible for PPP because of affiliation rules.

(v) Immigration Status

Immigration status appears not to play any role in the PPP program—either for applicants or an applicant's employees.

(vi) Business Must Have Been in Operation as of February 15, 2020

To be eligible as a PPP borrower, the business, sole proprietorship, independent contractor, or self-employed individual must have been in operation as of February 15, 2020.⁴⁰

(vii) Other Eligibility Rules

SBA rules explain that certain potential borrowers are not eligible for PPP.⁴¹ These include those that: (1) have received an SBA loan in the past and are delinquent on the loan or defaulted on it; (2) are engaged in any activity that is illegal under federal, state, or local law; (3) are considered a “household employer,” meaning individuals who employ household employees such as nannies or housekeepers;⁴² and (4) have an owner, with a twenty percent or greater interest in the business, who is incarcerated, on probation, on parole, has been convicted of a felony within the last five years, or is presently subject to formal criminal charges.⁴³

(viii) Documenting a Claim

PPP borrowers must provide documentation, such as payroll processor records, payroll tax filings, Form 1099-MISC forms, or income and expense sheets from sole proprietors.⁴⁴ If no documents of these types are available, the borrower must provide other supporting documentation, such as bank records, that demonstrate the qualifying payroll amount.⁴⁵

⁴⁰ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 6.

⁴¹ PPP Interim Final Rule, at 7. Nonprofits are allowed, although they are not usually under SBA rules. General SBA rules that apply are at 13 C.F.R. 120.100. Business not eligible are identified in 13 CFR 120.110. Further SBA rules that apply for PPP can be found in SBA, Lender and Development company Programs, SOP 50 10 5(k), pages 91-145 (April 1, 2019), at:

<https://www.sba.gov/sites/default/files/2019-02/SOP%2050%2010%205%28K%29%20FINAL%202.15.19%20SECURED%20copy%20paste.pdf>

⁴² PPP Interim Final Rule, at 7. According to the PPP Interim Final Rule, household employers do not qualify as businesses.

⁴³ PPP Interim Final Rule, at 7.

⁴⁴ The CARES Act seems to suggest that only sole proprietors, independent contractors, and self-employed individuals need to document eligibility. CARES Act § 1102(a)(2). The regulations created by SBA can be read to suggest documentation requirements are not required for all borrowers, but in a different place to suggest that they are. Compare PPP Interim Final Rule, at 6 with PPP Interim Final Rule, at 23. See, as well, Application Form, at 2.

⁴⁵ PPP Interim Final Rule, at 6, 23.

b. The Loan Amount, Terms, and Potential Forgiveness

A PPP loan is intended to help keep workers on payroll by providing forgivable loans to small businesses. The amount of the loan is based on business payroll costs.

The following sections describe payroll costs, how PPP loan amounts are calculated, the terms of the loans, and how they can be forgiven.

(i) Payroll Costs Defined

PPP loans are based on a borrower's payroll costs, which are essentially the compensation costs for workers.⁴⁶

For businesses that are eligible for PPP, payroll costs are defined as: (1) salaries, wages, commissions, or similar compensation; (2) cash tips; (3) employee benefits, such as payment for vacation, parental, family, medical or sick leave;⁴⁷ (4) allowance for separation or dismissal; (5) payments for the provision of employee group health care coverage, including insurance premiums; (6) retirement benefits; and (7) payment of state and local taxes assessed on compensation of employees.⁴⁸

To be included in a business' eligible payroll costs, employees must have their principal residence in the United States.⁴⁹ Further, because independent contractors can apply on their own for a PPP loan, a business cannot count any independent contractor's wages, commissions, income, or similar compensation when calculating the business' payroll costs.⁵⁰

For independent contractors, sole proprietors, and, probably, the self-employed, payroll costs are defined as wages, commissions, income, and net earnings from self-employment or similar compensation.⁵¹

The amount of payroll costs that will be considered under the PPP are capped at \$100,000 per year for every employee.⁵²

Federal payroll taxes imposed or withheld between February 15, 2020 and June 30, 2020 are not included in PPP payroll costs.⁵³

⁴⁶ PPP Interim Final Rule, at 10.

⁴⁷ Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116-127) do not count towards payroll costs for PPP. CARES Act § 1102(a)(2); PPP Interim Final Rule, at 11.

⁴⁸ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 10.

⁴⁹ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 11.

⁵⁰ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 11.

⁵¹ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 10. The PPP Rule does not expressly include the definition of payroll costs for the self-employed. But this seems likely to be an oversight.

⁵² CARES Act § 1102(a)(2); PPP Interim Final Rule, at 8, 11.

⁵³ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 11. This includes income taxes that are required to be withheld from employees.

(ii) Amount of Loan

The calculation of a PPP loan amount will differ depending on whether a borrower was in business during the period between February 15, 2019 and June 30, 2019, and whether the borrower is a seasonal employer.

(a) Borrowers in Business Between February 15, 2019 and June 30, 2019

For borrowers that were in business between February 15, 2019 and June 30, 2019, the PPP loan will be calculated using the following steps.⁵⁴

Step One: Take the borrower's total payroll costs (as defined above) from the previous twelve months and subtract any compensation paid to any employee that was in excess of 100,000 dollars per year. For borrowers who are independent contractors, sole proprietors, or self-employed, any amounts paid in excess of 100,000 dollars per year per borrower should also be subtracted from the total payroll costs.

Step Two: Calculate the borrower's average monthly payroll costs by dividing the result of Step One by twelve.

Step Three: Multiply the result of Step Two by 2.5.

Step Four: If the borrower also received an Economic Injury Disaster Loan (see below) between January 31, 2020 and April 3, 2020, add the outstanding amount of that balance to the result of Step Three. For this purpose, the outstanding balance does not include the amount of an "advance" made under the COVID-19 EIDL program, because that amount will not need to be repaid.

(b) Borrowers Not in Business Between February 15, 2019 and June 30, 2019

For startups that were not in business between February 15, 2019 and June 30, 2019, it appears that the PPP loan will be calculated based on the borrower's average monthly payroll costs (as defined above) from the period beginning January 1, 2020 through February 29, 2020.⁵⁵ That average monthly cost is then multiplied by 2.5 to get the PPP loan amount.

⁵⁴ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 8-9. For examples of how PPP loans are calculated, see PPP Interim Rule, at 9-10.

⁵⁵ CARES Act § 1102(a)(2). This provision was not included in the PPP Interim Final Rule. It is also not clear from the CARES Act whether outstanding EIDL loans should be included.

(c) Seasonal Employers

For seasonal employers, the PPP loan amount is calculated by taking the following steps.⁵⁶

Step One: Determine the seasonal employer's average monthly payroll costs (as defined above) for either the twelve-week period beginning February 15, 2019, or the period between March 1, 2019 and June 30, 2019. The seasonal employer may decide which period to use.

Step Two: Multiply the result of Step One by 2.5.

(iii) Cost of the PPP

The cost of PPP loans are covered by the federal government.⁵⁷ Lenders receive payment from the federal government for making the loans.

(iv) Terms

There are few requirements for a PPP loan. No personal guarantees are required, and no collateral is required.⁵⁸ There are no upfront guarantee fees payable by the borrower, nor any lender service fees. Agents who assist borrowers with applications may not charge borrowers any fees; instead, the agent must charge the lender.

No eligible borrower may receive more than one PPP loan.⁵⁹

The interest rate for a borrower on a PPP loan is one percent.⁶⁰ Payments do not need to begin for the first six months after the loan is disbursed.⁶¹

(v) Use of PPP Loan Funds

On the PPP application form, borrowers must certify that the current economic uncertainty makes the loan necessary to support ongoing operations and that the loan proceeds will be used to retain workers and maintain payroll or make mortgage, rent, and utility payments.⁶²

More specifically, the PPP loan can only be used for the following purposes: (1) payroll costs; (2) cost of continuing health care benefits; (3) employee salaries, commissions or similar compensation; (4) payment of interest on a mortgage (but not mortgage principal or prepayment); (5) rent; (6) utilities; and (7) interest on other debts that were incurred before

⁵⁶ CARES Act § 1102(a)(2).

⁵⁷ PPP Interim Final Rule, at 25-26.

⁵⁸ PPP Interim Final Rule, at 25.

⁵⁹ PPP Interim Final Rule, at 12. The CARES Act does not include this requirement.

⁶⁰ PPP Interim Final Rule, at 25.

⁶¹ PPP Interim Final Rule, at 13.

⁶² PPP Borrower Application Form at 2.

February 15, 2020.⁶³ It is also possible to use a PPP loan to refinance an SBA Economic Injury Disaster Loan (EIDL), discussed below, that was made between January 31, 2020 and April 3, 2020. SBA will seek repayment of funds used in an unauthorized way.⁶⁴ If done knowingly, there could be additional liability and criminal charges.⁶⁵

(vi) Forgiveness and Potential Repayment

The principle and any interest on a PPP loan can be forgiven.⁶⁶ In general, to have the loan forgiven, the money must be spent on qualifying payroll costs, interest, rent, covered mortgage obligations, and utilities over the first eight weeks after the loan is received.⁶⁷ According to SBA, no more than 25 percent of the forgiven amount may be for non-payroll costs.⁶⁸ So, if the business borrows 10,000 dollars, to have the whole loan forgiven at least 7,500 dollars of the loan would need to go to payroll expenses. Documentation of these expenses will be required.⁶⁹

In order to receive full loan forgiveness, the borrower must keep the same number of full-time staff (or their equivalents), and keep the level of payroll wages within 75 percent of what it was in the most recent quarter.⁷⁰ Any employment or salary changes made between February 15, 2020, and April 26, 2020, must be reversed by June 30, 2020.⁷¹ This means that full-time employment equivalents and salary levels must not be reduced during the eight-week period following when the loan is received. If the borrower does not comply with these requirements, the amount of the loan forgiveness will be reduced.⁷²

If the loan is forgiven, the forgiven loan will not be subject to federal income tax.⁷³ Usually when a debt is forgiven, it will be considered taxable income, but not for PPP loan forgiveness.

⁶³ CARES Act § 1102(a)(2); PPP Interim Final Rule, at 15.

⁶⁴ PPP Interim Final Rule, at 17.

⁶⁵ PPP Borrower Application Form, page 2.

⁶⁶ CARES Act § 1106; PPP Interim Final Rule, at 13.

⁶⁷ CARES Act § 1106(a)-(b); PPP Interim Final Rule, at 13.

⁶⁸ PPP Interim Final Rule, at 13-14. Although the CARES Act allows for forgiveness of the total amount of payroll costs and non-payroll costs, SBA made the decision to cap non-payroll costs at 25 percent. Compare CARES Act § 1106(b) with PPP Interim Final Rule, at 14.

⁶⁹ CARES Act § 1106(e); PPP Interim Final Rule, at 16; PPP Borrower Application Form, page 2.

⁷⁰ CARES Act § 1106(d)(3)(A).

⁷¹ CARES Act § 1106(d)(5); Paycheck Protection Program (PPP) Information Sheet: Borrowers, at 3.

⁷² CARES Act § 1106(d).

⁷³ CARES Act § 1106(i).

If not forgiven, PPP loans are due in two years.⁷⁴ Payments on loans are deferred for six months, although interest will accrue in that period.⁷⁵

SBA will issue more rules about forgiveness of PPP loans.⁷⁶

3. Economic Injury Disaster Loans (EIDL) Program

The CARES Act makes additional money available through what is known as the Economic Injury Disaster Loan (“EIDL”) Program.⁷⁷ This program is run by the Small Business Administration (SBA), and under the CARES Act EIDL has been modified and expanded to address the COVID-19 crisis.⁷⁸

The COVID-19 EIDL program does two things. First, it offers EIDL business loans to eligible entities. Some requirements SBA usually has for an EIDL are relaxed. Second, an eligible business that applies for a COVID-19 EIDL program loan can also receive an advance on that loan of up to 10,000 dollars that the business will not need to repay. These advances are known as both “EIDL Emergency Advances” and “Emergency EIDL Grants.”⁷⁹

SBA has released very little in the way of rules for how the COVID-19 EIDL program will work. In some respects, the rules will follow SBA’s usual EIDL rules. In other respects, however, the rules have been changed for the COVID-19 crisis. As described in more detail below, it does not appear that most farms are eligible for SBA’s COVID-19 EIDL assistance.

a. EIDL Loans for Businesses

COVID-19 EIDL program loans are available to a wide variety of businesses that have suffered substantial economic injury.⁸⁰ These eligible businesses include small businesses, tribal small business concerns,⁸¹ and employee stock ownership plans (ESOPs), so long as each business has fewer than 500 employees.⁸² In some cases, businesses with more than 500 employees may be eligible for an EIDL

⁷⁴ PPP Interim Final Rule, at 12-13. The CARES Act provides for a loan maturity of up to ten years, but SBA has determined that two years is sufficient. Compare CARES Act § 1102(a)(2) with PPP Interim Final Rule, at 12.

⁷⁵ PPP Interim Final Rule, at 13. The CARES Act provides that loans should be deferred for not less than six months, but no more than one year; SBA, however, has determined that a six-month deferment is appropriate. Compare CARES Act § 1102(a)(2) with PPP Interim Final Rule, at 13.

⁷⁶ PPP Interim Final Rule, at 14.

⁷⁷ CARES Act, Division A, Title I, Section 1110. The EIDL program becomes part of what is known as SBA’s 7(b) Disaster Assistance Program, found at 15 U.S.C. § 636(b)(2).

⁷⁸ CARES Act § 1110.

⁷⁹ See CARES Act § 1110; see also Small Business Association, Economic Injury Disaster Loan Emergency Advance page, at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>.

⁸⁰ CARES Act § 1110(a)-(b).

⁸¹ For the meaning of “tribal business concerns,” the CARES Act cites to the description found in 15 U.S.C. § 657a(b)(2)(C). CARES Act § 1110(a)(2)(E).

⁸² CARES Act § 1110(a)(2).

program loan.⁸³ In addition, small business concerns,⁸⁴ private nonprofit organizations, and small agricultural cooperatives are also eligible, as are sole proprietorships and independent contractors.⁸⁵

To be eligible for a COVID-19 EIDL program loan, the business must have been in operation on January 31, 2020.⁸⁶

The maximum COVID-19 EIDL program loan is two million dollars.⁸⁷ No personal guarantees are required for loans up to 200,000 dollars that are made between January 31, 2020, and December 31, 2020.⁸⁸ No collateral is required for loans up to 25,000 dollars.⁸⁹ SBA may approve the loan based solely on a credit score or on other “alternative appropriate methods.”⁹⁰ Tax returns are not required. The loans have a 3.75 percent interest rate for up to thirty years.⁹¹ The interest rate for nonprofits is 2.75 percent.

These relaxed eligibility rules for the COVID-19 EIDL program apply to EIDL program loans made between January 31, 2020, and December 31, 2020.⁹²

b. EIDL Emergency Advances

COVID-19 EIDL applicants may request that SBA give them an advance on the loan of up to 10,000 dollars.⁹³ If approved, the money would arrive within three days.⁹⁴ The advance can be used to, among other things: (1) pay sick leave for employees who are unable to work due to COVID-19; (2) maintain payroll; (3) meet increased costs of materials due to COVID-19's impact on the supply chain; (4) make rent or mortgage payments; and (5) pay existing debts.⁹⁵ Business are

⁸³ For a very brief description of COVID-19 EIDL eligibility, see SBA, Economic Injury Disaster Loan Emergency Advance, at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>. SBA size standards for various industries may allow some to businesses have more than 500 employees. See SBA, Table of Size Standards, at: <https://www.sba.gov/document/support--table-size-standards>. Additional size eligibility rules can be found at 13 C.F.R. § 121.201 (2020).

⁸⁴ CARES Act §§ 1101(2), 1110(b). The definition of a “small business concern” for purposes of the CARES Act comes from Section 3 of the Small Business Act, which can be found at 15 U.S.C. § 632(a). Although this definition includes various farming, ranching, and other agricultural industries, the Small Business Act expressly excludes “agricultural enterprises” from eligibility for EIDL program loans. See 15 U.S.C. § 636(b)(2). Accordingly, it is unlikely that most farms will be eligible for relief under the CARES Act EIDL provisions.

⁸⁵ CARES Act § 1110(a)-(b).

⁸⁶ CARES Act § 1110(c)(2).

⁸⁷ 15 U.S.C. § 636(B)(8)(A); see also, SBA, SBA Disaster Assistance in Response to the Coronavirus, at: <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>.

⁸⁸ CARES Act § 1110(c)(1).

⁸⁹ 13 C.F.R. § 123.11(a) (2020).

⁹⁰ CARES Act § 1110(d).

⁹¹ See SBA, SBA Disaster Assistance in Response to the Coronavirus, at: <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>.

⁹² CARES Act § 1110(a)(1).

⁹³ CARES Act § 1110(e)(3).

⁹⁴ CARES Act § 1110(e)(1)-(3).

⁹⁵ CARES Act § 1110(e)(4).

not required to repay this money.⁹⁶ This is true even if the business is not ultimately approved for the COVID-19 EIDL program loan.

The COVID-19 EIDL emergency advances will be available until December 31, 2020.⁹⁷

c. Farms and COVID-19 EIDL Program Loans

The central question for EIDL assistance under the CARES Act is its availability for farmers. This can be subdivided into two questions. First, are the COVID-19 EIDL program benefits available to farms? Second, are they available to value-added businesses that are connected to farms?

(i) Farms—Seem Not Eligible Except for Aquaculture and Nurseries

SBA appears to believe that most farms are not eligible for EIDL assistance.⁹⁸ While few details have been released about the COVID-19 EIDL program, an application is available online that suggests SBA will treat COVID-19 EIDL program loans similarly to traditional EIDL loans.⁹⁹

According to the application, agricultural cooperatives, aquaculture enterprises, nurseys, and producer cooperatives are eligible if they are found to be small by SBA standards. This suggests that aquaculture and nurseries are two types of farming operations that are eligible for COVID-19 EIDL program loans.

A second part of the application expressly says that an applicant is not eligible if it is “an agricultural enterprise (e.g. farm),” except for an aquaculture enterprise, an agricultural cooperative, or a nurseys.¹⁰⁰ The form asks applicants to verify that they are not an agricultural enterprise other than one of those exceptions.

The application for COVID-19 EIDL assistance is consistent with SBA’s handling of the regular EIDL program that applies when there is a natural disaster. For those losses, agricultural enterprises are similarly not eligible.¹⁰¹

⁹⁶ CARES Act § 1110(e)(5).

⁹⁷ CARES Act § 1110(e)(8).

⁹⁸ See, for example, 13 C.F.R. § 123.300(c) (2020), stating that EIDL “eligible businesses do not include agricultural enterprises,” with the exception of small agricultural cooperatives, producer cooperatives, and small aquaculture enterprises.

⁹⁹ SBA, Disaster Loan Assistance, COVID-19 Economic Injury Disaster Loan Application (2020), at: <https://covid19relief.sba.gov/#/>.

¹⁰⁰ SBA, Disaster Loan Assistance, COVID-19 Economic Injury Disaster Loan Application (2020), at: <https://covid19relief.sba.gov/#/>.

¹⁰¹ 13 C.F.R. § 123.300(c) (2020).

(ii) Value-Added Businesses—Potentially Eligible

A separate question is whether the EIDL program under the CARES Act will make loans to farms that have a value-added element.

If a farm and a value-added operation are part of the same business, SBA is unlikely to think of the farm and the value-added part of the business as being separate. Instead, SBA tends to view both aspects of the business as one, and therefore it is unlikely to consider making a loan for just the value-added part of the business.¹⁰²

If, however, SBA believes that the business is mainly a value-added processing business, it might be willing to call the business something other than an agricultural enterprise and make an EIDL loan. When classifying businesses, SBA looks to what the “primary industry” is of the business.¹⁰³ To do this, SBA considers the distribution of receipts, employees, and costs of doing business among the different industries in which business operations occurred for the most recently-completed fiscal year.¹⁰⁴ SBA may also consider other factors, such as assets. In theory, if SBA relied on this regulation, it might try to figure out if the number of employees, the costs, or the assets were more in the farming part of the business or in the value-added part of the business. So far, however, there has been no clear indication that SBA will extend the COVID-19 EIDL assistance to value-added enterprises.

C. Unemployment Insurance and Farmers

The CARES Act includes a number of changes to unemployment insurance.¹⁰⁵

In general, unemployment insurance is run by individual states and therefore varies from state to state, although the United States Department of Labor provides some oversight of the programs.¹⁰⁶ This will continue to be the case.

The CARES Act expands unemployment insurance coverage and provides federal funds for states to implement the changes made under the Act. The Department of Labor will also create rules based on the CARES Act to administer the changes, and they have issued an

¹⁰² In general, SBA tends to look at a business on what it calls an “enterprise basis.” So, when SBA calculates the number of employees, it counts all of the employees that are a part of the legal entity, and also any subsidiaries or affiliates that are under the control of the business. See SBA, SBA’s Size Standards Methodology, 12 (April 2019), at: <https://www.sba.gov/sites/default/files/2019-04/SBA%27s%20Size%20Standards%20Methodology%20White%20Paper%20%28April%202018%29.pdf>.

¹⁰³ See, for example, 13 C.F.R. §§ 121.107, 123.201(a), 123.301 (2020).

¹⁰⁴ 13 C.F.R. § 121.107 (2020).

¹⁰⁵ See generally, CARES Act, Title II, Subtitle A, Section 2101-2116.

¹⁰⁶ The federal government provides the funds for COVID-19 unemployment insurance changes. For a short summary of unemployment insurance, see Congressional Research Service, The Fundamentals of Unemployment compensation (February 8, 2019) at <https://crsreports.congress.gov/product/pdf/IF/IF10336>. For a longer version, see Congressional Research Service, Unemployment Insurance: Programs and Benefits (October 18, 2019), at: <https://fas.org/sgp/crs/misc/RL33362.pdf>.

Unemployment Insurance Program Letter that begins to set out the CARES Act rules for unemployment.¹⁰⁷

There are many unemployment provisions within the CARES Act.¹⁰⁸ This Chapter focuses primarily on the key rules under the Pandemic Unemployment Assistance (PUA) program.

1. General Changes to Unemployment Insurance

The CARES Act changes unemployment insurance benefits in several ways. First, the federal government will add an extra 600 dollars per week in benefits to those receiving unemployment.¹⁰⁹ Second, the CARES Act effectively increases the number of weeks that a person may receive unemployment to thirty-nine weeks.¹¹⁰

2. Farmers and Self-Employed Unemployment Assistance

Under a new temporary program called the Pandemic Unemployment Assistance (PUA) program, the CARES Act expands unemployment coverage to include people who would not normally be eligible for unemployment benefits under state law.¹¹¹ This includes people who are self-employed, those seeking part-time employment, and those who do not have sufficient work history to qualify for regular unemployment benefits.¹¹² PUA benefits last for up to thirty-nine weeks.¹¹³

The possibility of being eligible for unemployment as a self-employed person is of special interest to farmers. The Department of Labor says that PUA will be administered similarly to the already existing Disaster Unemployment Assistance (DUA) program.¹¹⁴ DUA is available during a disaster and makes that assistance

¹⁰⁷ Department of Labor, Unemployment Insurance Program Letter, UL No. 16-20 (April 5, 2020), at: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_acc.pdf; Department of Labor, Unemployment Insurance Program Letter, UL No. 14-20 (April 2, 2020), at: https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390. An earlier Department of Labor Program Letter addressed unemployment insurance flexibility in light of Covid-19. See Department of Labor, Unemployment Compensation (UC) for Individuals Affected by Coronavirus Disease 2019 (COVID-19, (March 12, 2020), at: https://wdr.doleta.gov/directives/corr_doc.cfm?docn=8893. Another Letter addressed changes required by the Families First Coronavirus Response Act, Pub. L. 116-127 (March 18, 2020). See Department of Labor, Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020, UL No. 13-20 (March 22, 2020), at: https://wdr.doleta.gov/directives/corr_doc.cfm?docn=8634.

¹⁰⁸ See generally, CARES Act, Title II, Subtitle A, Section 2101-2116.

¹⁰⁹ CARES Act § 2104(b)(1); DOL Letter No. 14-20, at 3-4. This is technically known as Federal Pandemic Unemployment Compensation (FPUC). The benefit applies beginning the date after the state enters into an unemployment agreement with the Department of Labor, and an unemployment agreement is entered, and ends no later than July 31, 2020. CARES Act § 2107; DOL Letter No. 14-20, at 4, and Attachment 1; DOL Letter No. 16-20, at 1.

¹¹⁰ CARES Act §§ 2102(c)(2), 2107; DOL Letter No. 14-20, at 5, and Attachment I; DOL Letter No. 16-20, at 1. The CARES Act increases the number of weeks that a person would be eligible by 13 weeks—from 26 weeks to 39 weeks. This occurs in two ways. First, the Pandemic Emergency Unemployment Compensation (PEUC) program adds 13 weeks of unemployment for people who have already exhausted their rights to regular unemployment. Second, the Pandemic Unemployment Assistance (PUA) program provides 39 weeks of unemployment.

¹¹¹ CARES Act § 2102; DOL Letter No. 16-20, at 1-2.

¹¹² CARES Act § 2102(a)(3)(A)(ii)(II); DOL Letter No. 14-20, at 3.

¹¹³ CARES Act § 2102(c)(2); DOL Letter No. 16-20, at 3.

¹¹⁴ DOL Letter No. 14-20, at 3.

available to those that are self-employed.¹¹⁵ For purposes of DUA, self-employed individuals include farmers.¹¹⁶ DUA defines a self-employed individual as someone “whose primary reliance for income is on the performance of services in the individual’s own business, or on the individual’s own farm.”¹¹⁷ Because PUA is to be administered similarly to DUA, it is reasonable to expect that farmers will be eligible for unemployment under the PUA program as well.

3. Rules for Unemployment Assistance under PUA

The CARES Act and the Department of Labor created rules to govern the Pandemic Unemployment Assistance (PUA) program.

In order to be eligible for PUA, an individual, including a self-employed individual, must be ineligible or have exhausted all rights under regular unemployment programs as well as under the CARES Act’s Pandemic Emergency Unemployment Compensation (PEUC) program.¹¹⁸

In addition, the individual must be unemployed, partially unemployed, or unable or unavailable to work for reasons related to COVID-19.¹¹⁹

Listed below are the conditions under which individuals—including self-employed farmers—can receive PUA. The list comes from the CARES Act, and has some added details and examples provided by the Department of Labor.¹²⁰ The Department of Labor says that the examples provided are “illustrative explanations” of circumstances that fall into each category, and “are not an exhaustive list of all COVID-19 related circumstances that may qualify an individual for PUA benefits.”¹²¹ States can use other qualifying circumstances, but they must be consistent with the examples below.¹²²

It is important to note that the CARES Act created a general category, at the bottom of this list, that allows the Department of Labor to determine additional reasons that an individual could be eligible for PUA.¹²³ This means there is the potential that eligibility for PUA could be expanded by the Department of Labor to include more situations that are directly applicable to farmers.

¹¹⁵ DUA is described here by the Department of Labor in Disaster Unemployment Assistance (DUA), at: <https://oui.doleta.gov/unemploy/disaster.asp>, and by Federal Emergency management Agency (FEMA) Disaster Unemployment Assistance Fact Sheet, at: <https://www.fema.gov/media-library-data/1528984254955-49515ab3f8eeca0627f71`77a8abe4347a/DisasterUnemploymentAssistance.pdf>.

¹¹⁶ See 20 C.F.R. § 625.2(n) (2020). In addition, under Department of Labor regulations for DUA, an “unemployed self-employed individual” is eligible for assistance. 20 C.F.R. §§ 625.4(c), 625.5(b) (2020). An unemployed self-employed individual is someone who was unemployed due to the natural disaster. 20 C.F.R. § 625.2(t) (2020). The eligibility of farmers for DUA—based on the rules in effect in 2008—is discussed in FLAG, Farmer’s Guide to Disaster Assistance, Chapter 2 (2008), at: <http://www.flaginc.org/publication/farmers-guide-to-disaster-assistance-sixth-edition/>.

¹¹⁷ 20 C.F.R. § 625.2(n) (2020); DOL Letter No. 16-20, at I-3.

¹¹⁸ CARES Act § 2102(a)(3)(A)(i). For the rules of the Pandemic Emergency Unemployment Compensation program, see CARES Act § 2107.

¹¹⁹ CARES Act § 2102(a)(3)(A)(ii)(I); DOL Letter No. 14-20, at 3.

¹²⁰ CARES Act § 2102(a)(3)(A)(ii)(I); DOL Letter No. 16-20, at I-3 to I-6.

¹²¹ DOL Letter No. 16-20, at I-3 to I-4.

¹²² DOL Letter No. 16-20, at I-4.

¹²³ CARES Act § 2102(a)(3)(A)(ii)(I)(kk).

a. *Maybe Has COVID-19*

A person is eligible if he or she has been diagnosed with COVID-19 or is experiencing COVID-19 symptoms and is seeking a diagnosis.¹²⁴ This can also mean that the person has come in direct contact with someone else that has been diagnosed and a qualified medical health professional says the person should quarantine.¹²⁵

b. *Household Diagnosis*

A person is eligible if a member of that person's household has been diagnosed with COVID-19 or if the person is providing care for a member of the household that has been diagnosed with COVID-19.¹²⁶

c. *Providing Care for Family Member with COVID-19*

A person is eligible if that person is providing care for a family member that has been diagnosed with COVID-19.¹²⁷ The care must require enough attention that the person's ability to work is severely limited.

d. *Primary Caregiver*

A person is eligible if he or she is the primary caregiver for a child or household member that is unable to attend school or another facility that is closed due to COVID-19.¹²⁸

e. *Unable to Reach or Go to Work Due to Quarantine*

A person is eligible if he or she is unable to reach work due to a quarantine imposed as a result of COVID-19.¹²⁹

f. *Unable to Reach or Go to Work Due to Self-Quarantine*

A person is eligible if he or she is unable to reach work because the person was advised by a medical provider to self-quarantine due to COVID-19.¹³⁰ This could be true because the person has come into contact with someone else that has tested positive.

It could also be true if the person has a compromised immune system and is therefore advised by a health care provider to self-quarantine in order to avoid greater than average health risks if the person was to become infected.¹³¹

¹²⁴ CARES Act § 2102(a)(3)(A)(ii)(I)(aa); DOL Letter No. 16-20, at 3.

¹²⁵ DOL Letter No. 16-20, at I-4.

¹²⁶ CARES Act § 2102(a)(3)(A)(ii)(I)(bb)-(cc); DOL Letter No. 16-20, at 3, I-4.

¹²⁷ CARES Act § 2102(a)(3)(A)(ii)(I)(cc); DOL Letter No. 16-20, at 3, I-4.

¹²⁸ CARES Act § 2102(a)(3)(A)(ii)(I)(dd); DOL Letter No. 16-20, at 3, I-4.

¹²⁹ CARES Act § 2102(a)(3)(A)(ii)(I)(ee); DOL Letter No. 16-20, at 3, I-4.

¹³⁰ CARES Act § 2102(a)(3)(A)(ii)(I)(ee)-(ff); DOL Letter No. 16-20, at 3, I-4.

¹³¹ DOL Letter No. 16-20, at I-5.

g. Become Breadwinner After Death

A person is eligible if that person became the breadwinner or major support for a household because the head of household died from COVID-19.¹³²

h. Place of Employment Closed

A person is eligible if his or her place of employment is closed as a direct result of COVID-19.¹³³

i. Quit Job Due to COVID-19

A person is eligible if he or she had to quit work as a direct result of COVID-19.¹³⁴ This could mean that the person was previously diagnosed with COVID-19, and although the person no longer has the coronavirus, the illness caused health complications that make the person unable to perform essential job functions.

j. Scheduled to Begin Work but Could Not

A person is eligible if he or she was scheduled to begin work, but no longer has a job or cannot reach the job due to COVID-19.¹³⁵

k. Additional Criteria—Could Possibly Help Farmers

The CARES Act allows the Department of Labor to create additional reasons that would allow someone to qualify for PUA. The Department of Labor did so on April 5, 2020 and could expand the reasons further.¹³⁶

The one example so far released says that an independent contractor who has been forced to suspend work activity due to COVID-19 is eligible for PUA.¹³⁷ The example used by the Department of Labor is an independent contractor that works for a ride-share service that is forced to suspend operations because of COVID-19. This provision could be helpful to farmers when they are forced to suspend their usual farming operations.

While the Department of Labor has not said directly that farmers unable to sell products because of COVID-19 are eligible for PUA, there are a few situations farmers might face that are similar to the example used by the Department of Labor for independent contractors. For example, if a farmer usually sells at a farmers market, and the farmers market is shut down due to COVID-19, the farmer does not have a place of employment that has been closed, but the farmer has been forced to suspend work activities.¹³⁸ It also might be possible to assist

¹³² CARES Act § 2102(a)(3)(A)(ii)(I)(hh); DOL Letter No. 16-20, at 3, I-5.

¹³³ CARES Act § 2102(a)(3)(A)(ii)(I)(jj); DOL Letter No. 16-20, at 3, I-6.

¹³⁴ CARES Act § 2102(a)(3)(A)(ii)(I)(ii); DOL Letter No. 16-20, at 3, I-6.

¹³⁵ CARES Act § 2102(a)(3)(A)(ii)(I)(gg); DOL Letter No. 16-20, at 3, I-5.

¹³⁶ CARES Act § 2102(a)(3)(A)(ii)(I)(kk); DOL Letter No. 16-20, at I-6.

¹³⁷ DOL Letter No. 16-20, at I-6.

¹³⁸ The DOL Letter discussing this reason for eligibility says that the work must have been suspended as a direct result of the COVID-19 emergency, such as if a declaration or order restricting movement makes continued operations not sustainable. DOL Letter 16-20, at I-6, I-7. General rules regarding the meaning of “direct result” are at 20 C.F.R. 625.5(c) (2020). The letter also says that states should

dairy farmers when a milk processor refuses to accept milk from the dairy due to COVID-19. In such a situation, the farmer is then forced to dump milk and has been forced by COV-19 to suspend work activity. It might similarly apply to farmers who previously sold to institutions, such as schools, that are no longer accepting the farmers' production and there are no alternative markets available.

D. Foreclosure Moratorium and Consumer Right to Request Forbearance—Unlikely to Apply to Farms

The CARES Act includes two protections for borrowers with residential loans: (1) a moratorium on foreclosures; and (2) the right for a borrower to request forbearance on loans. These are powerful protections.¹³⁹ As of now, however, it looks like they will not be available for most farm mortgages—even if there is a home on the land that is mortgaged.

This section explains which home mortgage loans the CARES Act applies to, and then discusses the question of whether the protections are available to farmers.

1. Only Federally Backed Mortgage Loans Protected by the CARES Act

The CARES Act protects only certain types of loans. The loans must be federally backed, and the loans must be secured by residential real property.

a. Federally Backed Mortgage Loan

To receive foreclosure and forbearance protections under the CARES Act, the mortgage loan must be federally backed. The definition of a federally backed mortgage loan is included in the CARES Act.¹⁴⁰ In general, to be a federally backed mortgage, the loan must either be made, insured, or guaranteed by the government, or the loan must be made and then purchased or securitized by Fannie Mae or Freddy Mac.

Under the CARES Act, eligible federally backed mortgage loans include those that are: (1) insured by the Federal Housing Administration (FHA) or the National Housing Act;¹⁴¹ (2) guaranteed or insured by the Department of Veterans

take into account the “specific circumstance unique to the COVID-19 public emergency.” For example, when a business shuts down due to an emergency declaration or social distancing protocols, that would be a direct result of COVID-19.

¹³⁹ An excellent summary of how the mortgage protection in the CARES Act works is the Consumer Financial Protection Bureau, Guide to Coronavirus Mortgage Relief Options (April 6, 2020), at: <https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/>.

¹⁴⁰ CARES Act § 4022(a)(2).

¹⁴¹ Only FHA insured loans that are made under Title II of the National Housing Act are eligible under the CARES Act. See CARES Act § 4022(a)(2)(A); see also 12 U.S.C. § 1707 et seq. In addition, only loans insured under Section 255 of the National Housing Act qualify for this CARES Act provision. Section 255 mortgages are also known as home equity conversion mortgages, and they are generally available only to homeowners over age 62. See CARES Act § 4022(a)(2)(B); see also 12 U.S.C. § 1715z-20.

Affairs;¹⁴² (3) guaranteed under the Housing and Community Development Act;¹⁴³ or (4) made, guaranteed, or insured by the Department of Agriculture.¹⁴⁴

A federally backed loan can also mean that the loan was made and then purchased or securitized by what are commonly known as Fannie Mae or Freddy Mac.¹⁴⁵ Nearly half of the mortgages in the country are backed by either Fannie Mae or Freddie Mac.¹⁴⁶

There are ways to find out if a loan is federally backed. The first step is to call the people who service the loan.¹⁴⁷ According to the federal Consumer Financial Protection Bureau, the servicer has an obligation to help you to find out who holds or backs your mortgage. It is possible to check about Fannie Mae or Freddie Mac loans online.

b. Secured by Lien on Residential Real Property

In addition to being federally backed, in order to qualify for relief under the CARES Act, a loan must be secured by a lien on residential real property.¹⁴⁸ The residential real property must be designed principally for the occupancy of one to four families.

2. Forbearance and Foreclosure Moratorium

Both forbearance and a moratorium on foreclosure are available under the CARES Act to eligible borrowers.

a. Forbearance

Forbearance is available for borrowers of eligible residential mortgage loans, as described above.¹⁴⁹ During forbearance, the borrower does not need to make payments on the loan. To qualify, the borrower must be experiencing financial hardship due to the COVID-19 emergency. The financial hardship can be directly or indirectly caused by the emergency. Both delinquent and non-delinquent loans can be eligible.

¹⁴² CARES Act § 4022(a)(2)(D).

¹⁴³ The only eligible loans under the Housing and Community Development Act include those guaranteed under sections 184 (loans guaranteed for Indian Housing) or 184A (loans guaranteed for Native Hawaiian housing). See CARES Act § 4022(a)(2)(C); see also 12 U.S.C. §§ 1715z-13a, 1715z-13b.

¹⁴⁴ CARES Act § 4022(a)(2)(E)-(F).

¹⁴⁵ CARES Act § 4022(a)(2)(G). The official name for Fannie Mae is the Federal National Mortgage Association, and the official name for Freddy Mac is the Federal Home Loan Mortgage Corporation.

¹⁴⁶ See Consumer Financial Protection Bureau, Guide to Coronavirus Mortgage Relief Options (April 6, 2020), at: <https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/>.

¹⁴⁷ A website for the Consumer Financial Protection Bureau provides links to the relevant federal agencies and entities. See Consumer Financial Protection Bureau, Guide to Coronavirus Mortgage Relief Options (April 6, 2020), at: <https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/>.

¹⁴⁸ CARES Act § 4022(a)(2). The lien can either be a first lien or a subordinate lien.

¹⁴⁹ CARES Act § 4022(b)-(c).

The borrower must request forbearance.¹⁵⁰ The borrower does this by sending a request to whoever is servicing the loan. The borrower must tell the servicer that the borrower is experiencing financial hardship.

Forbearance can last up to 180 days.¹⁵¹ It may then be extended for another 180 days if the borrower asks that it be extended. Interest will continue to accumulate, but there will be no extra fees or penalties charged to the borrower.¹⁵²

b. Foreclosure Moratorium

The foreclosure moratorium means that for eligible borrowers the lender may not start a foreclosure process for the loan, ask a court for a foreclosure judgment or for an order to sell the property, or execute a foreclosure-related eviction or foreclosure sale.¹⁵³ The moratorium applies for not less than a sixty days beginning on March 18, 2020.

3. Farms, Mortgage Forbearance, the Foreclosure Moratorium

If a farm has a mortgage that only covers a residence—and not a large part of the farmland—that mortgage could be eligible for the CARES Act mortgage forbearance and foreclosure moratorium. The same rules described above would apply to that mortgage just as they would to any other residential mortgage.

A different question is whether the CARES Act protects home mortgages if the mortgage also covers a significant piece of farmland. As it stands right now, it looks as if federally backed mortgages on farm homes are not protected under the CARES Act the way every other federally backed residential mortgage is protected.

As noted above, the CARES Act protects loans that are secured by a lien on residential real property.¹⁵⁴ The residential real property must be designed principally for the occupancy of one to four families. It appears that government officials believe that means the lien must be on property that is principally used as a residence. If that is the way the term is understood, most loans that have a farm home as security will not be covered.

The CARES Act arguably could be read to cover liens on properties that include a residence designed for one to four families. Under this understanding, a loan would need to include a lien on the residence, but if the property covered by the lien included both a residence and other significant acreage—such as farmland—the CARES Act would still apply to the loan. Ironically, if a farmer had an FSA Guaranteed Farm Ownership loan for farmland that included a home, that home would appear not to be eligible under the CARES Act; but, if a neighbor to that farm had a USDA Rural Development Rural Housing Loan, that home would be protected.¹⁵⁵

¹⁵⁰ CARES Act § 4022(b)(1).

¹⁵¹ CARES Act § 4022(b)(2).

¹⁵² CARES Act § 4022(b)(3).

¹⁵³ CARES Act § 4022(c)(2).

¹⁵⁴ CARES Act § 4022(a)(2). The lien can either be a first lien or a subordinate lien.

¹⁵⁵ Although the CARES Act does not state which types of loans made, insured, or guaranteed by USDA should be eligible, USDA believes the CARES Act applies only to Rural Housing Loans. See USDA

As they are currently understood, the forbearance and foreclosure moratorium provisions under the CARES Act do not assist many farmers. Congress could change this. First, at present there is no forbearance or foreclosure moratorium for guaranteed FSA Farm Ownership loans that include a home on the mortgaged property. In addition, although there is currently a halt on FSA direct loan foreclosures, there is no automatic forbearance possibility for those borrowers. Congress could easily change the CARES Act to include FSA loans secured by real estate that serves as a home.

Second, Congress could assist more farmers if it changed the CARES Act to say that loans backed by Farmer Mac counted as federally backed loans for purposes of the Act.¹⁵⁶ This would benefit many farmers.

Rural Development COVID-19 Resources (April 7, 2020), at:

https://www.rd.usda.gov/files/USDA_RD_SA_COVID19_ProgramImmediateActions.pdf.

¹⁵⁶ Farmer Mac is the Federal Agricultural Mortgage Corporation. See 12. U.S.C. §§ 2279aa to 2279cc. It is regulated by the Farm Credit Administration. See Farm Credit Administration, About Farmer Mac (2020), at: <https://www.fca.gov/farmer-mac-oversight/about-farmer-mac>.

Chapter Three: The CARES Act Agricultural Provisions

The CARES Act devotes significant resources to agriculture. Two aspects of the Act will result in assistance to farmers¹⁵⁷

A. Commodity Credit Corporation (CCC): 14 Billion Dollars

The CARES Act gives fourteen billion dollars to the Commodity Credit Corporation (CCC).¹⁵⁸ The Act does not say how the money must be spent. The CCC is often used to making payments to farmers under nonrecourse marketing loans, and it was the source of money for the Market Facility Payments and other USDA programs. It is not yet clear how CCC will spend the CARES Act money.

B. Specialty Crop and Other Producers: 9.5 Billion Dollars

The CARES Act gives USDA 9.5 billion dollars.¹⁵⁹ This is in addition to the fourteen billion dollars that goes to the CCC. USDA must spend the 9.5 billion dollars to “prevent, prepare for, and respond to coronavirus by providing support for agricultural producers impacted by coronavirus.”

There are several things to note about this money. First, the 9.5 billion dollars must provide support for agricultural producers.¹⁶⁰ This likely means the money will go to producers themselves. Second, agricultural producers must include: (1) producers of specialty crops; (2) producers that supply local food systems, including farmers markets, restaurants, and schools; and (3) livestock producers, including dairy producers. USDA, in other words, must include all of these producers in the spending of the 9.5 billion dollars. The CARES Act, however, does not say how much money should go to each type of producer, only that it must be used to prevent, prepare for, or respond to the coronavirus.

These provisions of the CARES Act provide very little guidance to USDA as to how it should spend the money, and so USDA will have a great deal of flexibility in how it chooses to do so.

¹⁵⁷ The CARES Act committed about 24.8 billion to food assistance. Much smaller amounts were committed to USDA operational needs, rural development programs, and other programs.

¹⁵⁸ CARES Act § 11002.

¹⁵⁹ CARES Act, Division B, Title 1.

¹⁶⁰ CARES Act, Division B, Title 1.

Chapter Four: The CARES Act Bankruptcy Provisions

The CARES Act changes some of the statutes that govern bankruptcy.¹⁶¹ Many farmers who go through bankruptcy use Chapter 12 if they hope to continue farming. Chapter 12 is designed for family farmers and is useful in many situations. The CARES Act does not make changes to Chapter 12. It does, however, change Chapter 11 (often used by larger businesses), Chapter 7 (often used to bring the farming operation to a close), and Chapter 13 (often called wage-earner bankruptcy). For most farmers considering bankruptcy, the CARES Act changes will not have an impact on the usefulness of bankruptcy. Farmers thinking about bankruptcy, however, should make sure anyone they work with is aware of the changes made by the Act.

In general, there are two types of bankruptcy changes made in the CARES Act. First, the Act makes it easier for a small business to use Chapter 11 bankruptcy.¹⁶² Chapter 11 has often been seen as too difficult and expensive for all but very large farming operations. The practical usefulness of these changes for farmers will be easier to assess in the future.

Second, the CARES Act made short-term changes to bankruptcies in Chapter 7 and Chapter 13.¹⁶³ These changes allow people in Chapter 7 and Chapter 13 to exclude COVID-19 payments from income for bankruptcy eligibility purposes.¹⁶⁴ In addition, the CARES Act makes COVID-19 payments not a part of disposable income for a Chapter 13 plan.¹⁶⁵ The CARES Act also allows people in Chapter 13 to amend a confirmed plan and extend the period for the plan.¹⁶⁶

¹⁶¹ For a summary of farm bankruptcies “Chapter 12 Bankruptcy: Family Farm, and Family Fisherman Reorganization, 627-686 in Henry J Sommer et al, *Consumer Bankruptcy Law and Practice*, Volume One (12th ed. 2020).

¹⁶² CARES Act § 1113(a)(1) (2020).

¹⁶³ CARES Act § 1113(a)(1) (2020).

¹⁶⁴ CARES Act § 1113(b)(1)(A) (2020).

¹⁶⁵ CARES Act § 1113(b)(1)(B) (2020).

¹⁶⁶ CARES Act § 1113(b)(1)(C) (2020).

Chapter Five: Regulatory Guidance for Banks and Other Financial Institutions

Lending by financial institutions is highly regulated by several different government bodies.¹⁶⁷ Those regulators recently jointly issued four different statements encouraging lending institutions to respond to the COVID-19 crisis. One statement encourages lenders to work with people that are having trouble paying back loans. A second statement encourages lenders to make small-dollar loans to those that need them. A third supports efforts to assist those with low and moderate incomes and to support small businesses and farms. Fourth, the Farm Credit Administration issued a press release and informational memorandum encouraging lenders to help alleviate stress on borrowers from COVID-19.

Lenders who might be tempted to work with struggling farm borrowers are sometimes nervous that if they work with the farmer by deferring payments, or taking other actions, lending regulators will see this as a financial weakness for the lender. For example, if a lender deferred payment on a farm loan, that might be considered a troubled debt restructuring (TDR) by the regulators. The regulator's statements, as well as statements by the Farm Credit Administration, are mainly suggestive. They may be most useful as a broad effort to convince lenders to take the COVID-19 crisis into account when dealing with struggling farmers.

A. Statement on Loan Modification

On April 7, 2020, regulators of financial institutions released a revised Joint Statement on loan modifications for borrowers affected by COVID-19.¹⁶⁸ The Statement says that financial institutions are encouraged to work constructively with borrowers who are, or may be, unable to meet payment obligations because of the effects of COVID-19. The regulators view loan modification programs as a positive action that can mitigate adverse impact on borrowers due to COVID-19. The Statement also says that regulators will not criticize institutions for working with borrowers.

According to the Statement, short-term modifications that the regulators have in mind include payment deferrals, fee waivers, extensions of repayment terms, and other delays in payment. Lender actions must still be prudent and consistent with safe and sound practices, but the regulators consider loan modifications to be in the best interest of institutions, the borrowers, and the economy.

B. Statement on Small-Dollar Loans and Workouts

On March 26, 2020, regulators of financial institutions issued a Joint Statement encouraging financial institutions to offer responsible small-dollar loans to small

¹⁶⁷ A summary of how this confusing system works is Congressional Research Service, Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework (March 10, 2020), at: <https://fas.org/sgp/crs/misc/R44918.pdf>.

¹⁶⁸ Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, Consumer Financial Protection Bureau, Conference of State Bank Examiners, Interagency Statement on Loan Modification and Reporting for Financial Institutions Working with Customers Affected by Coronavirus (Revised) (April 7, 2020), at: <https://www.fdic.gov/news/news/press/2020/pr20049a.pdf>. An earlier version was released on March 22, 2020.

businesses.¹⁶⁹ The Statement encourages lenders to offer responsible small-dollar loans to consumers and small businesses. The Statement notes that because of COVID-19 these borrowers may need credit due to cash flow problems, unexpected expenses, or income shortages. Small-dollar loans, according to the Statement, can help borrowers meet these credit needs.

The Statement encourages a variety of loan structures through which to offer small-dollar loans. These include open-end lines of credit,¹⁷⁰ closed-end installment loans,¹⁷¹ single payment loans for those affected by COVID-19, as well as consideration of workout strategies with borrowers.¹⁷²

Historically, small-dollar loans have been a common source of abuse of consumers and small businesses.¹⁷³ Farmers should therefore be especially careful to read the terms of such loans.

¹⁶⁹ Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID-19 (March 26, 2020), at: <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200326a1.pdf>.

¹⁷⁰ Open-ended credit is credit that is not limited to a certain use and time limit, and there is no set timeframe for when the loan must be repaid. As an example, for purposes of the Truth in Lending Act, open-end credit is defined as consumer credit that is provided under a plan that is understood to involve repeated transactions, for which credit is made available up to any limit set by the creditor, and which could incur occasional finance charges from the creditor. See 12 CFR § 1026.2(20) (2020). A line of credit is an example of an open-ended loan.

¹⁷¹ A closed-end loan is a loan for a particular purpose and a set period of time. At the end of the period of time, the loan must be paid off. The Truth in Lending Act defines close-end credit as any consumer credit other than open-end credit. See 12 CFR § 1026.2(10) (2020). Mortgages and equipment loans are examples of loans that are typically closed end.

¹⁷² A workout is generally an informal process where a borrower and lender agree to debt forgiveness and a repayment plan when the borrower cannot repay the debt. A workout can be conducted outside of bankruptcy and prevent a foreclosure. See, for example, National Consumer Law Center, Guide to Surviving Debt, Glossary, "Workout," available at: <https://www.nclc.org/for-consumers/guide-to-surviving-debt.html>. Also, according to Black's Law Dictionary, a workout means the restructuring or refinancing of an overdue loan, and often means reducing or discharging the debt. See Black's Law Dictionary, at 1745 (9th ed. 2009). A workout generally is negotiated by the debtor and creditor and done outside of court.

¹⁷³ Small-dollar loans have sometimes been used, for example, to charge borrowers extremely high interest rates. See, The PEW Charitable Trusts, Standards Needed for Safe Small Installment Loans From Banks, Credit Unions (Feb. 15, 2018), at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/02/standards-needed-for-safe-small-installment-loans-from-banks-credit-unions>. For criticism of small-dollar loans, including the risks they pose during the COVID-19 pandemic, see, Center for Responsible Lending, Banks Should Not Read Federal Regulators' COVID-19 Small Dollar Guidance as Permitting Payday or Other High-Cost Loans (April 1, 2020), at: <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-covid19-small-dollar-guidance-onepager-2020.pdf>; see also National Consumer Law Center, Civil Rights and Consumer Groups Condemn "Emergency" Regulatory Guidance that Allows Banks to Make Payday Loans (March 26, 2020), at: <https://www.nclc.org/media-center/civil-rights-and-consumer-groups-condemn-emergency-regulatory-guidance-that-allows-banks-to-make-payday-loans.html>.

C. Statement on Low- and Moderate-Income Customers, Small Businesses and Small Farms

On March 19, 2020, lending regulators issued a Joint Statement encouraging lenders to meet the needs of low- and moderate-income customers, small businesses, and small farms.¹⁷⁴ It notes that working with these customers is in the long-term interests of the community and the financial system.

Examples provided in the Statement of actions that are encouraged include waiving late fees, overdraft fees and early withdrawal penalties; making more use of short-term unsecured loans for creditworthy borrowers; and allowing borrowers to skip payments without creating a delinquency for the borrower. The regulators also encourage lenders to ease the terms for new loans for small farms and businesses. The Statement specifically describes how such measures can ease cash flow pressure, improve the ability to service debt, and help borrower's recover. The regulators also say that prudent efforts to modify the terms of new or existing loans for small businesses and small farms will not result in criticism by the regulators.

Finally, the Statement supports activities that assist in the provision of food supplies and services for low- and moderate-income people or communities. This would seem to be particularly relevant for urban and direct marketing farmers.

D. Statements by the Farm Credit Administration

A large number of farmers have loans with the Farm Credit System. On March 17, 2020, the Farm Credit Administration, which regulates the Farm Credit System lenders, issued a press release.¹⁷⁵ In it, the Farm Credit Administration urges Farm Credit System lenders to take steps to alleviate stress for borrowers that are affected by COVID-19. The suggestions include extending the terms of loans, restructuring debt, and easing loan documentation or credit-extension terms for new loans.

The Farm Credit Administration also issued an Informational Memorandum, on April 1, 2020, stating that it views loan modification programs as positive actions that can mitigate the short-term economic difficulties arising from COVID-19 which have caused some borrowers to be temporarily unable to meet their loan obligations.¹⁷⁶ In particular, the Farm Credit Administration notes that if borrowers were provided payment deferrals, fee waivers, extensions of repayment terms, and other delays in payment that are relatively short, this would not be held against Farm Credit System lenders.

¹⁷⁴ Joint Statement, Pandemic Planning: Joint Statement on CRA Consideration for Activities in Response to COVID-19 (March 19, 2020), at: <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-19a.pdf>. CRA here refers to the Community Reinvestment Act. See 12. U.S.C. chapter 30.

¹⁷⁵ Farm Credit Administration, FCA Encourages Farm Credit System Institutions to Work with Borrowers Affected by COVID-19 (March 17, 2020), at: <https://www3.fca.gov/news/Lists/News%20Releases/Attachments/606/NR-20-04-03-17-20.pdf>.

¹⁷⁶ Farm Credit Administration, Informational Memorandum, Guidance on Reporting Troubled Debt Restructuring for Customers Affected by the National Emergency Declaration for the COVID-19 Outbreak (April 1, 2020), at: <https://www3.fca.gov/readingrm/infomemo/Lists/InformationMemorandums/Attachments/262/GuidanceOnTDRsforCustomersAffectedByCOVID-19.pdf>.

Chapter Six: Farm Service Agency (FSA) Programs and Actions

Farm Service Agency (FSA) administrative actions in response to COVID-19 were reported in a press release on March 26, 2020.¹⁷⁷ The changes announced in the news release affect FSA availability, and suggest some flexibility in servicing direct and guaranteed loans.¹⁷⁸ It seems likely that FSA eventually will make the changes official by releasing a Notice or changing a Handbook used by FSA officials. As of now, that has not happened, so it is difficult to know exactly how the changes discussed below will work.

USDA has also published a COVID-19 Federal Rural Resource Guide that lists various programs that could assist farmers affected by the coronavirus.¹⁷⁹

A. FSA Availability

USDA says Farm Service Agency (FSA) county offices are open by phone appointment.¹⁸⁰ This means that FSA should still be available to help farmers with program sign-up, loan servicing, and other important matters. Employees will still be going to the office but will be trying to work with farmers by phone, email, and through on-line materials “whenever possible.”

B. Loan Program Processing

FSA says some changes have been made to the loan-making process.¹⁸¹

1. Application Deadlines Extended

The deadline for farmers to complete a farm loan application is extended, though the press release does not say by how much. Usually, there is a certain time limit once an application is initially filed for a farmer to complete the application.

2. Lien Searches

When FSA makes a loan, it must do lien searches and other records searches. If the government offices that house these records are closed, and the searches cannot be completed, FSA says it will still prepare loan documents for closing. The closing, however, will not occur until the searches are completed.

If FSA can get the lien position it usually seeks for what it calls the primary security on the loan, it will close the loan even if there needs to be additional security, and even if

¹⁷⁷ USDA News Release, FSA makes Changes to Farm Loan, Disaster, Conservation and Safety Net Programs to make it Easier for Customers to Conduct Business (March 26, 2020), at: <https://www.fsa.usda.gov/news-room/news-releases/2020/fsa-makes-changes-to-farm-loan-disaster-conservation-and-safety-net-programs-to-make-it-easier-for-customers-to-conduct-business>.

¹⁷⁸ According to USDA, the most current updates on available services in response to COVID-19 can be found at: <https://www.farmers.gov/coronavirus>.

¹⁷⁹ USDA, COVID-19 Federal Rural Resource Guide (April 8, 2020), at: https://www.rd.usda.gov/sites/default/files/USDA_COVID-19_Fed_Rural_Resource_Guide.pdf.

¹⁸⁰ USDA News Release (March 26, 2020).

¹⁸¹ USDA News Release (March 26, 2020).

the lien searches, filings, and recordings cannot be completed because of the closing of a government building.

C. Direct Loan Servicing

The following changes have been made regarding the servicing of existing direct loans.¹⁸²

1. Direct Loan Servicing Deadlines Extended

FSA is extending the deadline for farmers to respond to deadlines for direct loan servicing actions, including loan deferral consideration.¹⁸³

2. Accelerations and Some Foreclosures are Suspended

FSA will temporarily stop taking several actions on direct loans. The actions to be suspended include loan accelerations, non-judicial foreclosures, and referring foreclosures to the Justice Department. For foreclosures and evictions that are already in the hands of the Justice Department, the U.S. Attorney's office will decide how to proceed.¹⁸⁴

D. Guaranteed Loans

Lenders that have guaranteed farm loans are allowed to self-certify when they give subsequent year operating loan advances on lines of credit.¹⁸⁵ This means the bank does not have to check with FSA first. The lender can also self-certify any emergency advancement of funds on lines of credit.

In addition, FSA will consider requests from lenders to allow temporary deferral of loan payments when borrowers do not have a feasible plan reflecting that family living expenses, operating expenses, and debt can be repaid if the lender asks for it.¹⁸⁶ FSA will also consider allowing temporary forbearance of loan liquidations and foreclosures if the lender asks for it.

¹⁸² USDA News Release (March 26, 2020).

¹⁸³ USDA News Release (March 26, 2020).

¹⁸⁴ In general, USDA will follow state law for foreclosures. There are considerable differences among states. Although foreclosures go by different names in different places, in general there are: (1) judicial foreclosures; and (2) non-judicial foreclosures, or foreclosures by advertisement. In a judicial foreclosure, the entire process must go through a court. In a non-judicial foreclosure, it does not. Many states have both types of foreclosures. Some states require judicial foreclosures. For a USDA loan foreclosure, the Department of Justice typically carries out a judicial foreclosure. FSA foreclosures, the role of the Justice Department, and the handling of judicial and nonjudicial foreclosures is discussed in FSA Handbook 5-FLP, Direct Loan Servicing—Special and Inventory Property Management, at page 15-4, para. 533.F; page 16-1-16.2, para. 551.A, D; page 16-31, para. 566.D; and pages 16-32 to 16-33, para. 567.A, D (June 4, 2019).

¹⁸⁵ USDA News Release (March 26, 2020).

¹⁸⁶ USDA News Release (March 26, 2020).

Chapter Seven: Federal Crop Insurance and NAP Coverage

The interaction between federal crop insurance and the COVID-19 crisis can be tricky.¹⁸⁷ This Chapter focuses on two aspects of COVID-19 and crop insurance: (1) obligations that farmers have agreed to in their crop insurance policies; and (2) policy changes made recently as a result of COVID-19 that affect crop insurance. This Chapter also discusses important considerations for farmers with NAP.

A. Farmers with Crop Insurance: The Policy is Crucial

For the 2020 crop year, if a farmer planned to buy federal crop insurance, that purchase likely has already been made.¹⁸⁸ Under federally insured crop insurance, the farmer has a written contract with the crop insurance provider—a company that sells crop insurance—that must be followed if the farmer wants to remain eligible for an indemnity in case of weather or other problems.¹⁸⁹

The existence of COVID-19, itself, will not create an insurable loss.¹⁹⁰ For many farmers, insured losses are those due to unavoidable natural causes. In other words, for many farmers affected by COVID-19, because those losses are not due to lack of rain, insects and plant diseases, or other natural causes, they are not insurable. In some instances, for example if the farmer has a Whole-Farm Revenue Protection policy, there may be coverage that covers a decline in market prices.¹⁹¹ Even then, however, the policy can be complicated.¹⁹²

A crop insurance policy is a contract. The farmer is required to follow the policy. Crop insurance policies set what the farmer must do, and the conditions under which the farmer might be able to receive an indemnity. The policy contains rules about the crops to be

¹⁸⁷ For a general summary of how crop insurance works, see Congressional Research Service, Federal Crop Insurance: Program Overview for the 115th Congress (May 10, 2018), at: <https://crsreports.congress.gov/product/pdf/R/R45193/4>.

¹⁸⁸ For the most basic crop insurance provision, see Federal Crop Insurance Corporation, Common Crop Insurance Policy (Nov. 2019), at: <https://www.rma.usda.gov/-/media/RMAweb/Policies/Basic-Provisions/2020/Basic-Provisions-20-BR.ashx>. Each crop has in addition its own set of policy provisions.

¹⁸⁹ Crop insurance providers sell the farmer a crop insurance policy, but the policies must be approved by USDA before they can be sold. The primary actors here are the Federal Crop Insurance Corporation (FCIC) and the Risk Management Agency (RMA).

¹⁹⁰ See, RMA, COVID-19 Response (April 6, 2020), at: <https://www.rma.usda.gov/News-Room/Frequently-Asked-Questions/COVID-19-Response>.

¹⁹¹ For the Whole Farm policy see Federal Crop Insurance Corporation, Whole-Farm Revenue Protection Pilot Policy, (Aug. 2019), at: <https://www.rma.usda.gov/-/media/RMAweb/Policies/Whole-Farm-Revenue-Protection/2020/Whole-Farm-Revenue-Protection-Pilot-Policy-20-0076.ashx>. For the regulations that govern Whole Farm see Risk Management Agency, Whole-Farm Revenue Protection Pilot Handbook: 2020 and Succeeding Policy Years ((March 30, 2020), at: <https://www.rma.usda.gov/-/media/RMAweb/Handbooks/Coverage-Plans---18000/Whole-Farm-Revenue-Protection---18160/2020-18160-1h-WFRP-Pilot-Handbook.ashx?la=en>.

¹⁹² The question of whether a cause of loss is insurable, for example, can be complicated. Among the issues that could arise in the wake of COVID-19 is whether the inability to market a commodity is covered as an insurable if it is due to quarantine or refusal of a person to accept the commodity, if a purchaser backs out of a contract with a farmer, if the buyer fails to pay the farmer, or if a farmer “abandons” a commodity that is likely not salable. In each of these cases chances are good that the loss is not covered. See Whole-Farm Handbook §§ 91-92 (crop year 2020); Whole-Farm Policy § 21 (crop year 2020).

planted, notice to the insurance provider of a loss, what can and cannot be done with crops that are part of a crop insurance claim, reports that must be made by the farmer, and other requirements that are essential to follow if the farmer is to receive the benefits of crop insurance.

The terms of a crop insurance policy are strict, and do not take into account the possibility of the current COVID-19 crisis. This means that when farmers respond to COVID-19 in ways most people would think are reasonable and responsible, they may accidentally be violating their federal crop insurance policy. For example, a farmer with crop insurance covering a crop that no longer has a market—such as a crop that was to be sold at a farmers market that is now closed, or sold to a school that is no longer in operation—cannot simply shift to a different crop and expect the crop insurance policy to follow. Any change in the planned production must be discussed with, and approved by, the crop insurance provider. It is important to get agreement on such changes in writing or in an e-mail.

B. RMA Changes to Crop Insurance

In response to the COVID-19 pandemic, the Risk Management Agency (RMA) has made several changes that affect crop insurance. Many of these changes have been announced through what RMA calls “Managers Bulletins,” which provide guidance for insurance providers that sell the insurance (known as Approved Insurance Providers, or AIPs), RMA field offices, and others. RMA’s website also includes a list of frequently asked questions and answers in order to provide clarity on the changes it is making in response to COVID-19.¹⁹³ RMA says it will update this list on an ongoing basis.

The first Managers Bulletin encourages the use of remote communications between AIPs and policyholders, and describes changes to crop insurance deadlines under the 2020 Common Crop Insurance Policy, Basic Provisions (BP).¹⁹⁴ In this Bulletin, RMA encourages AIPs to maximize their use of remote communications and authorizations, including e-signatures and web portals. The Bulletin also reminds AIPs that farmers have the right to submit a request for a written agreement after the sales closing date, but on or before the acreage reporting date.¹⁹⁵ To do so, farmers must demonstrate—including by self-certification of COVID-19 related issues—the physical inability to make the request on or before the sales closing date. Farmers can also request this extension if they need more time in which to provide any additional required documentation. In terms of providing information to AIPs, RMA states that farmer policyholders may communicate with their AIP electronically or over the phone in order to select policy elections (including coverage levels) and report any acreage or production. If farmers take advantage of this electronic option,

¹⁹³ See RMA, COVID-19 Response (April 6, 2020), at: <https://www.rma.usda.gov/News-Room/Frequently-Asked-Questions/COVID-19-Response>.

¹⁹⁴ RMA, Managers Bulletin: MGR-20-005, COVID-19 and Crop Insurance Deadlines (March 27, 2020) (expires Dec. 31, 2020), at: <https://www.rma.usda.gov/Policy-and-Procedure/Bulletins-and-Memos/2020/MGR-20-005>. See also, USDA News Release, USDA Adds Flexibilities for Crop Insurance to Support America’s Farmers and Ranchers (March 27, 2020), at: <https://www.rma.usda.gov/en/News-Room/Press/Press-Releases/2020-News/USDA-Adds-Flexibilities-for-Crop-Insurance-to-Support-Americas-Farmers-and-Ranchers>. See, as well, RMA, COVID-19 Response (April 6, 2020), at: <https://www.rma.usda.gov/News-Room/Frequently-Asked-Questions/COVID-19-Response>.

¹⁹⁵ Under the BP, a written agreement is a document that alters the designated terms of a policy. See, see Federal Crop Insurance Corporation, Common Crop Insurance Policy (Nov. 2019), at: <https://www.rma.usda.gov/-/media/RMAweb/Policies/Basic-Provisions/2020/Basic-Provisions-20-BR.ashx>.

they will be required to sign forms electronically, but then must provide the corresponding physical, signed forms no later than July 15, 2020.¹⁹⁶

The second Managers Bulletin announces changes to the production reporting date under RMA's Common Crop Insurance Policy, Basic Provisions (BP).¹⁹⁷ According to the Bulletin, for the 2019 and 2020 crop year, AIPs are authorized to accept production reports through the earlier of the acreage reporting date or thirty days after the applicable production reporting date.¹⁹⁸ This applies only to crops insured under the BP with a production reporting date of March 15, 2020, or later. If a farmer fails to provide an acceptable production report by this deadline, the farmer will be considered to have failed to meet the requirements of the BP policy, which could result in assigned yields and ineligibility for optional units.¹⁹⁹

RMA's third Managers Bulletin waives interest charges for crop insurance premiums and authorizes AIPs to provide additional time for certain deadlines.²⁰⁰ First, RMA authorizes AIPs to extend the deadline for payments of Written Payment Agreements that are due between March 1, 2020, and April 30, 2020, up to a maximum of sixty days after the scheduled payment due date. Any such extension will be considered timely and not a modification of the Payment Agreement. Second, RMA authorizes AIPs to waive interest accrual on premium payments and administrative fees to the earliest of an additional 60 days after the scheduled payment due date, or the termination date.²⁰¹ This waiver applies only to policies with premium billing dates between March 1, 2020 and April 30, 2020. Finally, this Bulletin states that RMA will defer collection of any unpaid premiums and

¹⁹⁶ The Bulletin states that farmers cannot change their initial certifications, unless authorized by RMA.

¹⁹⁷ RMA, Managers Bulletin: MGR-20-006, COVID-19 and Impact on Production Reporting Date (PRD) for Crops Insured Under the Common Crop Insurance Policy, Basic Provisions (March 27, 2020) (expires Dec. 31, 2020), at: <https://www.rma.usda.gov/Policy-and-Procedure/Bulletins-and-Memos/2020/MGR-20-006>. See also, USDA News Release, USDA Adds Flexibilities for Crop Insurance to Support America's Farmers and Ranchers (March 27, 2020), at: <https://www.rma.usda.gov/en/News-Room/Press/Press-Releases/2020-News/USDA-Adds-Flexibilities-for-Crop-Insurance-to-Support-Americas-Farmers-and-Ranchers>. See, as well, RMA, COVID-19 Response (April 6, 2020), at: <https://www.rma.usda.gov/News-Room/Frequently-Asked-Questions/COVID-19-Response>.

¹⁹⁸ The standard production reporting date under the Common Crop Insurance Policy, Basic Provisions, is the earlier of the acreage reporting date or 45 days after the cancellation deadline. See Federal Crop Insurance Corporation, Common Crop Insurance Policy, § 3(f) (Nov. 2019), at: <https://www.rma.usda.gov/-/media/RMAweb/Policies/Basic-Provisions/2020/Basic-Provisions-20-BR.ashx>.

¹⁹⁹ Specifically, farmers will be considered to have failed to meet the requirements of section 3(f) of the BP policy.

²⁰⁰ RMA, Managers Bulletin: MGR-20-007, COVID-19 Relief—Deferral of Interest Charges on Crop Insurance Premiums (March 27, 2020) (expires Dec. 31, 2020), at: <https://www.rma.usda.gov/Policy-and-Procedure/Bulletins-and-Memos/2020/MGR-20-007>. See also, USDA News Release, USDA Adds Flexibilities for Crop Insurance to Support America's Farmers and Ranchers (March 27, 2020), at: <https://www.rma.usda.gov/en/News-Room/Press/Press-Releases/2020-News/USDA-Adds-Flexibilities-for-Crop-Insurance-to-Support-Americas-Farmers-and-Ranchers>. See, as well, RMA, COVID-19 Response (April 6, 2020), at: <https://www.rma.usda.gov/News-Room/Frequently-Asked-Questions/COVID-19-Response>.

²⁰¹ Under the Common Crop Insurance Policy, Basic Provisions, interest begins to accrue starting the first day of the month following the AIP's issuance of notice that premiums are due, so long as a minimum of 30 days has passed from the premium billing date. See Federal Crop Insurance Corporation, Common Crop Insurance Policy, § 24 (Nov. 2019), at: <https://www.rma.usda.gov/-/media/RMAweb/Policies/Basic-Provisions/2020/Basic-Provisions-20-BR.ashx>.

administrative fees, and waive all related interest from AIPs, beginning with the April monthly accounting reports.

Finally, RMA has published on its website responses to various frequently asked questions relating to crop insurance and COVID-19.²⁰² The frequently asked questions address many of the issues covered in RMA's Managers Bulletins, as well as changes to self-certification, whether COVID-19 is an insurable cause of loss (it is not), replanting payments, and assignment of indemnities.

C. Farmers with NAP Coverage—Be Cautious

The Noninsured Crop Disaster Assistance Program (NAP), which is administered by the USDA, provides crop loss assistance for farmers who are unable to obtain federal crop insurance for a particular crop.²⁰³ Similar to crop insurance, coverage under NAP requires the payment of fees and premiums, as well as compliance with complicated program rules.²⁰⁴

USDA has not yet released any information regarding how losses related to COVID-19 will be handled under NAP. Under existing NAP rules, insurable losses are generally limited to damaging weather, adverse natural occurrences, and related conditions.²⁰⁵ Any farmer who purchased NAP coverage should be extremely careful before making changes to their farming operation, and should first contact FSA.

²⁰² RMA, COVID-19 Response (April 6, 2020), at: <https://www.rma.usda.gov/News-Room/Frequently-Asked-Questions/COVID-19-Response>.

²⁰³ See, generally, 7 U.S.C. § 7333.

²⁰⁴ For a detailed description of NAP, see FLAG, Farmers' Guide to Disaster Assistance, Volume 6: Noninsured Crop Disaster Assistance Program (Dec. 2019), at: <http://www.flaginc.org/wp-content/uploads/2019/12/FGDA-NAP-December-2019.pdf>.

²⁰⁵ 7 C.F.R. § 1437.10 (2020).

Chapter Eight: State, Local, and Tribal COVID-19 Relief Efforts

State, local, and tribal governments have the power to provide relief in response to COVID-19.²⁰⁶ This is especially true when it comes to the rights of farmers who face financial difficulty.

Many states have already enacted some forms of relief, including prohibiting foreclosure sales and evictions.²⁰⁷ For the most part, the moratoriums on foreclosures and evictions appear to apply to residential and commercial properties only. The extent to which they would apply to farmland that includes a homestead is not always clear. At least one state—Iowa—temporarily suspended foreclosure proceedings, including foreclosures of “agricultural real property.”²⁰⁸

Some states are also placing limits on debt collection activities and repossessions from private creditors.²⁰⁹ The exact nature of these limits varies, from prohibiting self-help repossessions²¹⁰ to putting temporary stays on debt collector’s telephone calls to home residences. In some states, as well, debt collectors are considered “non-essential businesses” and therefore cannot operate if their state has ordered the closure of such businesses.²¹¹

These and other changes are likely to continue. It is important to note that many of the reforms will be temporary.

²⁰⁶ For a discussion of mayoral actions, see United Conference of Mayors, COVID-19: What Mayors Need to Know (2020) at <https://www.usmayors.org/issues/covid-19/>. Tribal responses are discussed by the Native Governance Center (2020), at: <https://nativegov.org/native-governance-center-and-covid-19/>.

²⁰⁷ See, National Consumer Law Center, COVID-19 State Foreclosure Moratoriums and Stays (April 3, 2020), at: <https://www.nclc.org/issues/foreclosures-and-mortgages/covid-19-state-foreclosure-moratoriums-and-stays.html>.

²⁰⁸ See State of Iowa, Proclamation of Disaster Emergency (March 22, 2020), at: <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.03.22.pdf>.

²⁰⁹ See, for example, the discussion National Consumer Law Center, Major Consumer Protections Announced in Response to COVID-19 (April 9, 2020), at: <https://library.nclc.org/major-consumer-protections-announced-response-covid-19>. The relevant section is entitled “State Limits on Collection Lawsuits, Debt Collection, Repossessions (Private Creditors).”

²¹⁰ Self-help repossessions occur when a party claiming a right to ownership takes property back without going through the court system.

²¹¹ See, National Consumer Law Center, Major Consumer Protections Announced in Response to COVID-19 (April 9, 2020), at: <https://library.nclc.org/major-consumer-protections-announced-response-covid-19>.

Chapter Nine: State, Federal, and Tribal Courts Respond

For many farmers facing financial troubles with their lenders, courts are crucial to ensuring that farmers' rights are upheld. This is true for state, federal, and tribal courts. Even amidst the COVID-19 crisis, it is essential that farmers continue to pay attention to any creditor actions or potential loan defaults that could require the farmer to take specific actions and meet deadlines.

Many state courts are responding to COVID-19 by ordering delays on certain matters and restricting the types of in-person proceedings that can occur. The National Center for State Courts has put together a list of all state court changes made in response to COVID-19.²¹² The extent of the delays and the specific restrictions that are adopted differ from state to state, but farmers must still respond to any deadlines and timelines imposed by the courts. Unless a farmer learns or is directed otherwise by the court, it is best to assume that state court deadlines have not been changed. Some state courts are also providing relief in the form of delaying the due dates for fines or fees, and suspending license and vehicle registration revocations.²¹³

Federal courts have also begun to make changes in how they conduct themselves.²¹⁴

Tribal courts have begun to take action as well.²¹⁵ For example, one tribal court has delayed most civil matters.²¹⁶

²¹² The list by the National Center for State Courts was updated most recently on April 10, 2020, and is at: <https://www.ncsc.org/~media/Files/PDF/Newsroom/Coronavirus-News-Updates-Roundups/Coronavirus%20and%20the%20Courts%20State%20Profiles%204-10-2020.ashx>. The Brennan Center is collecting information on court changes generally. See Courts' Responses to the Covid-19 Crisis (April 8, 2020), at: <https://www.brennancenter.org/our-work/research-reports/courts-responses-covid-19-crisis>.

²¹³ See, National Consumer Law Center, Major Consumer Protections Announced in Response to COVID-19 (April 9, 2020), at: <https://library.nclc.org/major-consumer-protections-announced-response-covid-19>; see also, Fines and Fees Justice Center, COVID-19 Crisis: FFJC Policy Recommendations, Policy Tracker, and Advocacy Materials (April 10, 2020), at: <https://finesandfeesjusticecenter.org/articles/ffjc-policy-recommendations-for-the-covid-19-crisis/>.

²¹⁴ Most appellate courts are restricting in-person hearings, but the courts are still operating, and deadlines still need to be followed. Helpful summaries of ongoing federal court changes include: United States Courts, Court Order and Updates During COVID-19 Pandemic (April 10, 2020), at: <https://www.uscourts.gov/about-federal-courts/court-website-links/court-orders-and-updates-during-covid19-pandemic>; Robert Loeb et al, The Federal Courts Begin to Adapt to COVID-19 (March 18, 2020), at: <https://www.lawfareblog.com/federal-courts-begin-adapt-covid-19>; and Debra Cassens Weiss, SCOTUS and Other Courts Are Restricting Visitors or Canceling Proceedings Amid Coronavirus Concerns, ABA Journal (March 12, 2020), at: <https://www.abajournal.com/news/article/one-federal-court-suspends-court-appearances-others-restrict-visitors-amid-coronavirus-concerns>.

²¹⁵ For information, see National American Indian Court Judges Association, Pandemic Resources for Tribal Courts, at: <https://naicja.wildapricot.org/>; and The Tribal Law and Policy Institute, Court and Legal Resources (2020) at <https://www.home.tlpi.org/courts-courtstaff>.

²¹⁶ Nisqually Tribal Court Emergency Standing Order (March 17, 2020), at: <https://secureservercdn.net/50.62.172.232/tvl.3bf.myftpupload.com/wp-content/uploads/2020/03/Example-Tribal-Court-Emergency-Standing-Order.pdf>.

Chapter Ten: Scams

Unfortunately, scam artists often arrive soon after a disaster or emergency strikes. As we have already seen with price gouging, this reality remains true during this time of COVID-19 as well. Farmers should be careful. Be cautious and aware that during this time fraudulent charities and solicitations are out there. Look out for high-priced or low-quality products, and beware of any suspicious phone calls, texts, or emails. Loan modification scams may be especially common during the COVID-19 crisis.²¹⁷

As far as the day-to-day work that must go on, farmers should try to get any work proposals or commitments in writing. When possible, farmers should avoid paying for things in cash, and should not pay more than one-third of any costs up front. It is also important not to let contractors or others force on-the-spot decisions.

State attorneys general are responsible for enforcing consumer protection laws that prohibit scams. The website for the National Association of Attorneys General provides information on potential scams during this time of COVID-19, and also provides links to the website for each state's Attorney General.²¹⁸ The Small Business Administration (SBA) is warning people about scams related to SBA COVID-19 relief.²¹⁹ The Federal Trade Commission (FTC) is warning people about a number of COVID-19 scams, as is the Federal Communications Commission (FCC) and others.²²⁰

²¹⁷ For information on these types of scams, see Consumer Financial Protection Bureau, What Are Mortgage Loan Modification Scams? (Sept. 16, 2016), at: <https://www.consumerfinance.gov/ask-cfpb/what-are-mortgage-loan-modification-scams-en-272/>.

²¹⁸ Information on COVID-19 related scams can be found on the website for the National Association of Attorneys General, at: <https://www.consumerresources.org/beware-coronavirus-scams-and-price-gouging/>.

²¹⁹ Small Business Administration, SBA Programs—Scams and Fraud Alerts (March 31, 2020), at: <https://www.sba.gov/document/report--sba-programs-scams-fraud-alerts>

²²⁰ Federal Trade Commission, Avoid Coronavirus Scams (2020), at: <https://www.consumer.ftc.gov/features/coronavirus-scams-what-ftc-doing>; Federal Communications Commission (FCC), COVID-19 Consumer Warnings and Safety Tips (2020), at: <https://www.fcc.gov/covid-scams>.

Chapter Eleven: Discrimination is Illegal

Numerous laws make various types of discrimination illegal.²²¹ In USDA programs, for example, discrimination is prohibited on the bases of race, color, religion, sex, age, national origin, marital status, sexual orientation, familial status, disability, limited English proficiency, or because all or a part of an individual's income is derived from a public assistance program.²²²

²²¹ For a summary of some of these laws, see Federal Trade Commission, Protections Against Discrimination and Other Prohibited Practices, at: <https://www.ftc.gov/site-information/no-fear-act/protections-against-discrimination>.

²²² 7 C.F.R. § 15d.3(a) (2020).