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## COVID-19 Response: Resources for Small and Mid-Size Farms in Mississippi

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# COVID-19 RESPONSE: RESOURCES FOR SMALL AND MID-SIZE FARMS IN MISSISSIPPI

May 1, 2020

The COVID-19 pandemic presents a number of new and difficult challenges for families, small business owners, and food producers across the country. This Issue Brief provides an overview of the resources available to small and mid-size farms facing such challenges in Mississippi. The first section outlines current benefit programs that these farms can utilize, including loans and unemployment benefits, as a result of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and related federal actions. The second section provides policies that the State of Mississippi could enact to provide additional assistance to farms dealing with the crisis.

## Current Benefits Available to Farmers

### Small Business Administration (SBA) Paycheck Protection Program

Created under the CARES Act, the SBA's Paycheck Protection Program (PPP) is designed to provide loans to businesses to retain and continue paying their workers.<sup>1</sup> Small and mid-size farms that employ 500 or fewer employees are eligible for the program.<sup>2</sup> If the farm applies for and receives a loan through PPP, the payout will be the farm's monthly payroll expenses multiplied by 2.5.<sup>3</sup> "Monthly" payroll expenses are based on the one-year period prior to the loan or, for seasonal employers, the average monthly payments for the period beginning February 15, 2019 or March 1, 2019, and ending June 30, 2019;<sup>4</sup> the most recent guidelines indicate that a lender could consider any 8-week period in that window to calculate benefits.<sup>5</sup> The Department of the Treasury has also indicated it may instead consider the 12-week period between May 1, 2019 and September 15, 2019 for businesses that principally operate over summer months, but has not finalized this change.<sup>6</sup> Payroll costs cannot include compensation for an employee whose principal place of residence is outside of the United States (e.g., H-2A workers) or compensation of an individual employee in excess of an annual \$100,000 salary.<sup>7</sup>

Importantly, PPP loans are forgivable and do NOT need to be paid back as long as the requirements are met. At least 75% of the payout must be spent on payroll expenses in the eight week period following receipt of the loan to be eligible for such forgiveness.<sup>8</sup>

Farmers can apply for PPP by submitting an application through their bank or any federally insured depository institution, federally insured credit union, or Farm Credit System institution that is participating.<sup>9</sup> While the CARES Act funding allocation, \$350 billion, was quickly used up, Congress just infused the program with another roughly \$320 billion on April 24, 2020.<sup>10</sup>

- **Farmers should reach out to an eligible lender in their region immediately to take advantage of this additional funding. A full list of eligible lenders can be found by searching the [SBA website](#).**

- For up-to-date information on applying for PPP, please refer to the [SBA's Paycheck Protection Program website](#) or [this FAQ](#) created by the Food and Beverage Law Clinic at the Elisabeth Haub School of Law at Pace University.

### Small Business Administration (SBA) Economic Injury Disaster Loans

The CARES Act provides additional funding for the SBA's Economic Injury Disaster Loan (EIDL) Program to extend loans to small businesses facing challenges due to COVID-19. It also created an emergency grant program for EIDL applicants that provides a \$10,000 "advance" on the loan to cover allowable expenses, with no obligation to pay back the advance even if the loan is later denied.<sup>11</sup> Though SBA did not initially include farms amongst the entities eligible to receive loans, or advances, under the program,<sup>12</sup> on April 24, Congress amended the CARES Act to expressly include "agricultural enterprise[s]" "with not more than 500 employees" in the EIDL program. Farms may now receive loans and advances pursuant to the program's terms. Loans are capped at \$2 million, with a 3.75% interest rate for small businesses and 2.75% for non-profits.<sup>13</sup>

- Farmers should visit the [SBA Disaster Assistance in Response to the Coronavirus website](#) for additional instructions and to submit their application.

### Unemployment Benefits for Farmers

In addition to expanding funding and eligibility for state-run Unemployment Insurance (UI) programs, the CARES Act introduced a new, temporary unemployment program called **Pandemic Unemployment Assistance (PUA)** for such individuals who are now under-employed or unable to work due to the COVID-19 pandemic.<sup>14</sup> The assistance is available for those who do not ordinarily qualify for unemployment benefits, including self-employed workers and independent contractors, making it particularly relevant for farmers experiencing loss of work.<sup>15</sup>

Under the program, Mississippi is required to pay newly eligible recipients the minimum weekly unemployment compensation amount plus an additional \$600 for the Federal Pandemic Unemployment Compensation payment.<sup>16</sup> Benefits may be paid for up to 39 weeks.<sup>17</sup> An applicant's loss of work must be due to coronavirus and fall under a qualifying situation, such as a business closing due to COVID-19 or an individual being unable to work due to primary caregiving responsibilities.<sup>18</sup>

- Farmers facing unemployment or underemployment due to COVID-19 should [apply for PUA online at the Mississippi Department of Employment Security website](#), or by calling MDES at 1-833-919-0334 from 7 a.m. to 10 p.m. Monday through Sunday.<sup>19</sup>

### USDA COVID-19 Programs

On April 17, the United States Department of Agriculture (USDA) announced it would implement a \$19 billion Coronavirus Food Assistance Program to support farmers and ranchers during the COVID-19 pandemic.<sup>20</sup> USDA has earmarked \$16 billion of these funds for direct support to producers based on actual losses.<sup>21</sup> Funding restrictions are still being determined, but current discussions point to a \$125,000 per commodity payment cap and \$250,000 total cap per individual or entity, and only for commodities that declined by at least 5% between January and April of 2020.<sup>22</sup>

Additionally, to connect producers with those in need, USDA will use \$3 billion to purchase and distribute agricultural products through the USDA Farmers to Families Food Box Program.<sup>23</sup> The Agricultural Marketing Service will procure around \$100 million per month in fresh fruits and vegetables, \$100 million per month in dairy products, and \$100 million per month in meat products to support the program.<sup>24</sup> Program contracts will be awarded to distributors who will purchase, assemble, and distribute the boxes to non-profit organizations to distribute to those experiencing food insecurity.<sup>25</sup>

- **Farmers should watch for regional distributors participating in the Food Box Program to take advantage of the new market opportunities. Once contracts are awarded, USDA will post the list of awardees on the [Farmers to Families Food Box website](#).**

## State Actions to Support Farmers

### Create In-State Farm to Family Programs

Building on the increasingly-common farm-to-food bank model, several states have announced programs to connect regional farmers with families in need to ensure that products that might otherwise go to waste reach those experiencing the brunt of the pandemic's negative impacts. California announced an expansion of its Farm to Family Program, a partnership between the California Department of Food and Agriculture and the California Association of Food Banks that offsets the costs of harvesting, packing, and transporting donated food (that would otherwise go to waste) from California farmers and ranchers to food banks.<sup>26</sup> New York launched a similar program, the Nourish New York Initiative, which will "purchase food and products from Upstate farms and direct it to food banks across the state."<sup>27</sup> New York's initiative will also target dairy producers and support the processing of excess milk into dairy products for distribution to food banks.<sup>28</sup>

- **Mississippi could support farmers and families by funding the procurement of local agricultural products for Mississippi food banks and emergency feeding organizations, in partnership with the Mississippi Food Network.**
- **Alternatively, Mississippi could fund the harvesting, packing, and transportation of donated food products to food banks to reduce unnecessary food waste and connect families to those recovered products.**

### Suspend Farm Foreclosures and Private Debt Collection

Governors and agencies in most states have issued executive orders placing a moratorium on foreclosures or evictions in response to the pandemic.<sup>29</sup> These measures protect tenants and homeowners from losing housing during this critical time. Although Governor Reeves has suspended evictions in Mississippi,<sup>30</sup> his order does not appear to protect farmers from foreclosures or private debt collection.

- **Mississippi could place a moratorium on foreclosures, including, specifically, foreclosures on agricultural real property.<sup>31</sup> Though Mississippi has yet to act, USDA Farm Service Agency has temporarily suspended loan accelerations, Department of Justice referrals, and non-judicial foreclosures for those loans under its jurisdiction.<sup>32</sup>**
- **Mississippi could follow the example of other states and limit private debt collection actions, including repossessions and writs of garnishment, to lift pressure off farmers and other small businesses.<sup>33</sup>**

### Provide Additional Assistance to Small Businesses

In addition to the SBA's loan programs, several states have created their own payment programs to assist small businesses. New Jersey, for example, created the Small Business Emergency Assistance Grant Program in early April to provide direct cash assistance to small businesses.<sup>34</sup> To help meet outsized demand, the state has invited private funders to contribute to the program.<sup>35</sup> In addition, New Jersey has begun partnering with community development financial institutions to provide \$20 to \$30 million in low-interest loan assistance to affected businesses.<sup>36</sup>

- **Mississippi could fund direct assistance programs for small and mid-size farms experiencing hardship due to COVID-19, especially as the federal programs experience high demand. The state could partner with private businesses or capital institutions to help fund such a program.**

## Additional Resources

- American Farmland Trust has a Farmer Relief Fund offering grants of \$1000 to small farmers experiencing financial loss. The first round of applications is closed, but we anticipate additional rounds of funding: <https://farmland.org/farmer-relief-fund/>.
- The organization Farm Aid has a webpage on [Resources for Farmers Affected by COVID-19](#) that includes information on financial assistance and other resources. Farm Aid also hosts a Farmer Resource Network and, through their [online directory](#), can help connect farmers to support organizations in their region. Farmers can call their farmer hotline directly at 1-800-FARM-AID, Monday through Friday from 9 a.m. to 5 p.m. EST (8 a.m. to 4 p.m. Central Time).
- For a comprehensive guide to COVID-19 relief, see the [Farmers' Legal Action Group Updated Farmers' Guide to COVID-19 Relief](#) (April 27, 2020).
- For free legal services and support, call the Farmers' Legal Action Group toll-free hotline at 877-860-4349.
- For a detailed, shorter guide, see the [FAQ on Funding Programs Available to Small and Mid-Size Farms in Response to COVID-19](#) by the Food and Beverage Law Clinic at the Elisabeth Haub School of Law at Pace University. The FAQ includes a list of additional low or no interest loan opportunities for farmers.

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*The ideas expressed in this Brief are those of the author(s) and do not necessarily reflect Delta Directions as a whole or its partner organizations.*

## ENDNOTES

<sup>1</sup> See *Paycheck Protection Program*, SMALL BUS. ADMIN. (last visited April 28, 2020), <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>.

<sup>2</sup> See FOOD & BEV. L. CLINIC AT THE ELISABETH HAUB SCHOOL OF LAW AT PACE UNIV., *FAQ ON FUNDING PROGRAMS AVAILABLE TO SMALL AND MID-SIZE FARMS IN RESPONSE TO COVID-19 2* (2020), <https://law.pace.edu/sites/default/files/UpdatedFAQ.pdf> [hereinafter "FAQ ON FUNDING"].

<sup>3</sup> Coronavirus Aid, Relief, and Economic Security Act, P. L.: 116-136, § 1102 (2020).

<sup>4</sup> *Id.*

<sup>5</sup> U.S. DEP'T OF TREASURY, *PAYCHECK PROTECTION PROGRAM LOANS, FREQUENTLY ASKED QUESTIONS* (as of April 28, 2020), <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>.

<sup>6</sup> Small Business Administration Business Loan Program Temporary Changes; Paycheck, Dkt. No. TREAS-DO-2020-0009, (since removed from the Dept. of Treasury website), <https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Additional-Criterion-for-Seasonal-Employers.pdf>.

<sup>7</sup> Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20811 (interim final rule, published Apr. 15, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> FAQ ON FUNDING, *supra* note 2.

<sup>10</sup> See Alana Wise, *READ: What's In The Latest Coronavirus Relief Bill*, NPR (April 22, 2020), <https://www.npr.org/2020/04/22/838870536/read-whats-in-the-latest-coronavirus-relief-bill>.

<sup>11</sup> Coronavirus Aid, Relief, and Economic Security Act, P. L.: 116-136, § 1110 (2020).

<sup>12</sup> See *Agriculture Must Be Included in Disaster Loan Program*, FARM BUREAU (last visited April 28, 2020) <https://www.fb.org/newsroom/agriculture-must-be-included-in-disaster-loan-program>.

- <sup>13</sup> *Notice: Additional Economic Injury Disaster Loan Funding*, U.S. SMALL BUS. ASS'N (last visited Apr. 28, 2020), <https://www.sba.gov/disaster-assistance/coronavirus-covid-19#section-header-0>.
- <sup>14</sup> Coronavirus Aid, Relief, and Economic Security Act, P. L.: 116-136, § 2102 (2020).
- <sup>15</sup> *Resources for Workers and Businesses on COVID-19*, MISS. DEPT. OF EMP. SECURITY (last visited Apr. 28, 2020), <https://mdes.ms.gov/unemployment-claims/covid19/#COVID19WorkerFAQs>.
- <sup>16</sup> U.S. DEP'T OF LABOR, UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-20: CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT OF 2020 – PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA) PROGRAM OPERATING, FINANCIAL, AND REPORTING INSTRUCTIONS 17 (Apr. 5, 2020), [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_16-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf). For those who typically would not qualify for a state's unemployment compensation, the weekly benefit amount is calculated pursuant to federal regulation (20 C.F.R. 625.6).
- <sup>17</sup> *See New Enhanced Unemployment Insurance Benefits Can Help You and Your Family*, JACKSON FREE PRESS (Apr. 2, 2020), <https://www.jacksonfreepress.com/news/2020/apr/02/new-enhanced-unemployment-insurance-benefits-can-h/>.
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- <sup>21</sup> *Id.*
- <sup>22</sup> Matthew Oresman, Warren A. Kessler, & Alexis N. Wansac, *USDA Outlines \$19 Billion in COVID-19 Relief*, PILLSBURY (Apr. 22, 2020), <https://www.pillsburylaw.com/en/news-and-insights/usda-cfap-covid-19-relief.html>.
- <sup>23</sup> *USDA Farmers to Families Food Box*, U.S. DEP'T OF AGRIC. (last visited Apr. 28, 2020), <https://www.ams.usda.gov/selling-food-to-usda/farmers-to-families-food-box>.
- <sup>24</sup> *Id.*
- <sup>25</sup> *USDA to Purchase Up to \$3 Billion in Agricultural Commodities, Issue Solicitations for Interested Participants*, U.S. DEP'T OF AGRIC. (Apr. 19, 2020), <https://www.ams.usda.gov/content/usda-purchase-3-billion-agricultural-commodities-issue-solicitations-interested-participants>.
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- <sup>27</sup> *Amid Ongoing COVID-19 Pandemic, Governor Cuomo Announces Phase II Results of Antibody Testing Study Showing 14.9% of Population has COVID-19 Antibodies*, GOVERNOR ANDREW CUOMO (Apr. 27, 2020), <https://www.governor.ny.gov/news/amid-ongoing-covid-19-pandemic-governor-cuomo-announces-phase-ii-results-antibody-testing-study>.
- <sup>28</sup> *Id.*
- <sup>29</sup> *See Covid-19 State Foreclosure Moratoriums and Stays*, NAT'L CONSUMER LAW CTR. (last visited April 22, 2020), <https://www.nclc.org/issues/foreclosures-and-mortgages/covid-19-state-foreclosure-moratoriums-and-stays.html>.
- <sup>30</sup> *See Executive Order No. 1465*, OFFICE OF THE GOVERNOR, MISSISSIPPI (Mar. 31, 2020), <https://www.sos.ms.gov/Education-Publications/ExecutiveOrders/1465.pdf>.
- <sup>31</sup> For an example of such an order, see *Proclamation of Disaster Emergency*, EXECUTIVE DEPARTMENT, IOWA (MAR. 22, 2020), <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.03.22.pdf>.
- <sup>32</sup> *Farm Loan Flexibilities*, U.S. DEP'T OF AGRIC. (last visited Apr. 28, 2020), <https://www.farmers.gov/coronavirus>.
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- <sup>36</sup> *See How is NJEDA Partnering with CDFIs to Support Low-Cost Financing for Small Businesses and Nonprofits Impacted by COVID?*, NEW JERSEY ECON. DEV. AUTH. (last visited April 22, 2020) <https://faq.business.nj.gov/en/articles/3835240-how-is-njeda-partnering-with-cdfis-to-support-low-cost-financing-for-small-businesses-and-nonprofits-impacted-by-covid>.