Stimulus Aid for Agriculture
April 10, 2020

This document outlines how money for agriculture from the federal stimulus package might be allocated to the states and where some of the key decision points may be. While it seems that governors and their executive branches will direct much of the disaster recovery, state legislators could have opportunities to weigh in on the process and direct where some of the money will be spent via state appropriations processes.

Please note: *There is still a lot of uncertainty and there are many assumptions made as to how aid will come through states. We continue to monitor the situation closely and our commitment to you is to get you the most up-to-date information as it becomes available so that you can be prepared to weigh in at key decision points if you choose.*

Disaster declaration: On Friday, March 13, President Trump issued a nationwide disaster declaration, which appears to be unprecedented. Baker Donelson has an extremely useful guide to understanding the process.

Trump is also issuing "major disaster declarations" on a state-by-state basis. FEMA has a training manual with an overview of the process that begins on page 15.

Disaster dollars flow from an invocation of the Stafford Act which allows the President discretion in whether to declare a disaster. This triggers FEMA, and the funds go to each state as Community Development Block Grant dollars. Funds have to go through a project/action plan approval process with public comment. The governor or governor-appointed disaster office submits the action plan on behalf of the state.

The money comes down in pieces. After every quarter or year, the state submits reports on how the money was allocated. That report triggers the next round of disbursement. The public weighs in at the action plan level. The state has to submit the plan for public comment before the money is released.

Typically, disaster funds are split between the state and the federal government, with the state kicking in 25 percent and the feds covering the remaining 75 percent. In this case, the feds have the ability to cover all 100 percent.

Stimulus money: Stimulus money tends to flow to the states in the form of grants with pre-existing formulas for disbursement. The National Conference of State Legislatures has a document about what the stimulus means for the states. They marked the following as being relevant to agriculture:

- $14 billion for the Commodity Credit Corporation (CCC). The CCC was previously used in 2018 and 2019 to provide funding to farmers and other agricultural producers in response to retaliatory tariffs.
- $9.5 billion in additional assistance for livestock and specialty crops, such as fruit, vegetables and nuts. Funding would also be available for dairy producers, and producers who support local food systems such as farmers markets and schools.
- $25 million to the USDA's Rural Development Grant Program for Distance Learning and Telemedicine Program, as well as $100 million to the USDA's ReConnect program to help ensure rural Americans have access to broadband.
- $20.5 million to the Rural Business Development Grant Program to support business and industry loans.

The $9.5 billion for specialty crops is allocated to the Office of the Secretary of the United States Department of Agriculture (see p. 609 of the final document, but it's not very specific). USDA has not issued any statements yet on how the $9.5 billion will be administered, but there are several possibilities for how the money would be distributed, including, for example:

- The FSA Noninsured Crop Disaster Assistance Program.
- The Specialty Crop Block Grant Program. If this was the case, money would be given to states' departments of agriculture and legislators would have more oversight.
- The Local Agricultural Marketing Program, which, in the last Farm Bill, combined several existing programs targeting local food producers.
- USDA could establish a new program like it has following hurricanes and wildfires.
    - Two of these are the Livestock Indemnity Program and the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program.
- Through the CCC. When the USDA provided direct payments to farmers for tariff relief, the money was distributed through the Market Facilitation Program (MFP) under the FSA. Presumably Congress did not have this in mind when they earmarked the specialty crop funds separately from the CCC funds.

The Washington Post is reporting that President Trump is using the distribution of disaster money to aid his reelection campaign. This could provide a clue for how the USDA money will be distributed. The administration may choose to give money to the states but maintain control over how much money is allocated to each state. When distributing tariff relief, USDA calculated a per-acre amount that varied by individual counties within every state.

USDA has also issued immediate actions to help rural communities, including stopping foreclosures and utility shutoffs, making it easier to get loans, and extended deadlines to apply for business development grants.

The law firm Arnold and Porter also has an itemized list of what is contained in the CARES Act. Items potentially relevant to farms:

Foreclosure Moratorium & Forbearance: Section 4022 creates a forbearance program for borrowers impacted by COVID-19 and imposes a temporary 60-day moratorium on foreclosures and foreclosure-related evictions. This relief applies with respect to all "Federally backed mortgage loans," which include, among others, loans insured or guaranteed by the FHA, the VA, and the Department of Agriculture, as well as loans purchased or securitized by Fannie Mae or Freddie Mac.

Disaster and EIDL: The CARES Act appropriates an additional $562 million for SBA disaster loans in response to COVID-19, including, but not limited to, economic injury disaster loans (EIDLs). Generally, EIDLs provide up to $2 million for working capital and have a 3.75% interest rate for small businesses and a 2.75% rate for nonprofits.

Under current law, EIDLs are available to small businesses, small agricultural cooperatives, small businesses engaged in aquaculture, and most private, nonprofit organizations. The Act expands eligibility for EIDL to include tribal businesses, cooperatives, and ESOPs with fewer than 500 employees or any individual operating as a sole proprietor or independent contractor between January 31, 2020 and December 31, 2020. Private nonprofits are also eligible for both grants and EIDLs. Until December 31, 2020, the SBA can approve EIDLs based solely on an applicant's credit score or an alternative appropriate method for determining an applicant's ability to repay.

The CARES Act has officially passed, and Baker Donelson has a guide for businesses getting SBA loans. It is not clear whether farmers can apply for SBA and are not limited to FSA loans.

State oversight: Andreanecia Morris, executive director of Housing NOLA, has extensive experience with disaster and stimulus funding in the housing sector. She predicts that CARES and disaster funding will ultimately flow through the executive offices of the states via block grants. While the required action plans for federal disaster/stimulus funding are normally accompanied by public hearings, it is unclear how public hearings can be held during quarantine/curfew conditions.

Morris predicts that hearings will be suspended and state legislators will be called on to act as representatives for their constituencies through the action plan process. The legislators would have the same power as the general public, but have more influence given their positions. Morris recommends immediate and intensive political education for state legislators and reminding them that large numbers of people are at home with time to pay attention to the political process and are supportive of bold government action right now.

Legislators will also have an important oversight role to play during the normal budgetary process for years to come. After the 2009 stimulus, researchers noticed a “crowd out” effect in which states accepted the federal stimulus money and instead of using it as additional money to spend, they decided to cut taxes or use existing state revenue on other projects. Generally, this is why the federal government prefers to match funds rather than provide the money in unrestricted grants. Governors in 2009 had to certify that they wouldn’t cut spending, but it happened anyway. Higher education remembers the ineffectiveness of the “maintenance of effort” pledge and criticized the CARES Act. Legislators must be vigilant to ensure that disaster/stimulus money is not redirected to other programs or used to justify tax cuts for the wealthy.