COVID-19 Response & Farm Bill Policy[1]

INTRODUCTION

The COVID-19 pandemic has presented a number of new and difficult challenges for families, farmers and other small business owners, and food producers across the country. While closures of schools, restaurants, and hotels help slow the rapid spread of infection, they have also resulted in surges in unemployment and food insecurity. Moreover, these closures cut farmers off from key markets and led to supply chain disruptions that pervaded every level of the U.S. food system. In the absence of infrastructure to divert produce intended for these markets to grocery stores or emergency feeding organizations, millions of pounds of food rotted in fields, farmers went uncompensated, and food banks ran out of inventory at a time when demand was at an all-time high.[2]

As the U.S. food system weathered this economic stress, Congress passed a series of bills aimed at keeping businesses afloat and families fed. Since March 2020—and as of August 2020—Congress has passed four emergency response bills. This Backgrounder provides a chronological overview of the new legislation, summarizing the purpose of the bills and how funds were allocated. It will also take a closer look at how this legislation impacts domestic agricultural and nutrition policies included in the 2018 Farm Bill. As Congress prepares to pass the next stimulus package,[3] this Backgrounder maps the current landscape of farm-bill related, federal food and agriculture policy enacted during COVID-19.

I. SUMMARY OF FEDERAL COVID-19 RESPONSE ACTS

A. *Coronavirus Preparedness and Response Supplemental Appropriations Act*

Signed into law on March 6, 2020, the Coronavirus Preparedness and Response Supplemental Appropriations Act is the first relief bill that Congress passed in response to COVID-19. This Act provided $8.3 billion in emergency funding for federal agencies to devote resources to coronavirus prevention, preparation, and response efforts.[4] Focused on building a robust public health response, Congress prioritized vaccine development, support to public health providers, state emergency preparedness resources, and aid to small businesses.[5] In this early response to COVID-19, Congress focused on rapidly deploying funds to healthcare and specific provisions for farmers, agriculture, food assistance, and nutrition programs did not appear until the next bill.

B. *Families First Coronavirus Response Act (FFCRA)*

The second Congressional Act addressing the COVID-19 crisis was signed into law on March 18, 2020. Named the Families First Coronavirus Response Act (FFCRA), this relief bill shifted focus from public

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[1] The following people contributed to this report: Alexandra Schklair (Summer Intern, Harvard Law School Food Law and Policy Clinic), Bridgette Slater (Summer Intern, Harvard Law School Food Law and Policy Clinic), and Emma Scott (Harvard Law School Food Law and Policy Clinic).
[2] Helena Bottemiller Evich, *USDA let millions of pounds of food rot while food-bank demand soared*, POLITICO (Apr. 26, 2020), https://www.politico.com/news/2020/04/26/food-banks-coronavirus-agriculture-usda-207215.
[3] *See* Cong. Research Serv., *Summary: H.R.6800 – 116th Congress (2019-2020)*, CONGRESS.GOV, https://www.congress.gov/bill/116th-congress/house-bill/6800 (last visited Jul. 17, 2020).
[4] *See* Cong. Research Serv., *Summary: H.R.6074 – 116th Congress (2019-2020)*, CONGRESS.GOV, https://www.congress.gov/bill/116th-congress/house-bill/6074 (last visited Jul. 17, 2020); Coronavirus Preparedness and Response Supplemental Appropriations Act, Pub. L. No. 116-123, 134 Stat. 146 (2020).
[5] *Id.*

health response to food assistance, unemployment benefits, and paid sick leave.[6] Additionally, Congress appropriated funds in FFCRA for increased free testing availability and health access via Medicaid.[7] In total, the Congressional Budget Office (CBO) estimated that FFCRA will cost $192 billion.[8]

C. Coronavirus Aid, Relief, and Economic Security (CARES) Act

Signed into law on March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act is an economic relief package of more than $2 trillion dollars.[9] In the Act, Congress provided nearly $35 billion in funding for agricultural producers and nutrition assistance programs.[10] The provisions supporting agribusiness, farmers, and ranchers include supplemental disaster relief funds and increased borrowing authority for the Commodity Credit Corporation (CCC), a government entity administered by the U.S. Department of Agriculture (USDA) whose funds are used to stabilize farm income and prices.[11] Congress also bolstered nutrition assistance programs through set-asides for the Supplemental Nutrition Assistance Program (SNAP) and additional funding for The Emergency Food Assistance Program (TEFAP), an emergency food distribution program which supports both the economic needs of farmers and the nutritional needs of hungry individuals.[12]

D. Paycheck Protection Program and Health Care Enhancement Act

The Paycheck Protection Program and Health Care Enhancement Act was signed into law on April 24, 2020, granting additional lending authority to certain Small Business Administration (SBA) programs impacted by COVID-19. The Act provides $484 billion in total relief, dedicating $381 billion to two important small business coronavirus relief programs, the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loans (EIDL) program.[13] The Emergency EIDL Grant Program, which expands the existing EIDL program to offer forgivable emergency advances of up to $10,000 to small businesses, and the PPP were both established in the CARES Act.[14] The PPP allows the SBA to guarantee forgivable loans to small businesses, which helps them keep their workforce employed during the

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[6] Cong. Research Serv., *Summary: H.R. 6201 – 116th Congress (2019-2020)*, CONGRESS.GOV, https://www.congress.gov/bill/116th-congress/house-bill/6201 (last visited Jul. 17, 2020); Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 177 (2020).

[7] *Id.*; *see also Legislative Updates*, FOOD RES. & ACTION CTR., https://frac.org/covid-19-updates (last visited Jun. 12, 2020).

[8] Phillip L. Swagel, Director of the Congressional Budget Office, Letter to Honorable Nita M. Lowey, Chairwoman of the Committee on Appropriations, *Re: Preliminary Estimate of the Effects of H.R. 6201, the Families First Coronavirus Response Act* (Apr. 2, 2020), https://www.cbo.gov/system/files/2020-04/HR6201.pdf.

[9] *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020); *The CARES Act Works for All Americans*, U.S. DEP'T OF TREASURY, https://home.treasury.gov/policy-issues/cares (last visited Jun. 12, 2020).

[10] *See* Committee on Appropriations, Patrick Leahy, Vice Chairman, Senate, Title-By-Title Summary of H.R. 748 The Coronavirus Aid, Relief, and Economic Security Act (Mar. 25, 2020), https://www.appropriations.senate.gov/imo/media/doc/032520%20Title-By-Title%20Summary%20FINAL.pdf.

[11] *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020), § 11002; Katie P. Reed, *Agriculture Provisions in the CARES Act*, NAT'L LAW REVIEW (Apr. 12, 2020), https://www.natlawreview.com/article/agriculture-provisions-cares-act; CONG. RSCH. SERV., THE COMMODITY CREDIT CORPORATION: IN BRIEF (2019), https://fas.org/sgp/crs/misc/R44606.pdf.

[12] *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020), Div. B Tit. 1; Katie P. Reed, *Agriculture Provisions in the CARES Act*, NAT'L LAW REVIEW (Apr. 12, 2020), https://www.natlawreview.com/article/agriculture-provisions-cares-act.

[13] *Congress Approves New Small Business Relief Program Funding*, CONN. BUS. & INDUSTRY ASS'N, https://www.cbia.com/news/small-business/congress-approves-new-small-business-relief-program-funding/ (last visited Jun. 12, 2020).

[14] *See* Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, § 101, 134 Stat. 620 (2020); *see also Coronavirus Relief Options*, U.S. SMALL BUS. ADMIN., https://www.sba.gov/funding-programs/loans/coronavirus-relief-options (last visited Jul. 10, 2020).

pandemic.[15] Notably, the Act also expands eligibility for disaster loans and advances to include agricultural enterprises, which previously were excluded from SBA's EIDL program.[16]

E. HEROES Act & HEALS Act

The House passed the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act on May 15, 2020. Totaling over $3 trillion, the House version of the bill prioritized expanding the Paycheck Protection Program (PPP), paid sick days, family and medical leave, unemployment compensation, nutrition and food assistance programs, housing assistance, and payments to farmers.[17] At the end of July, Senate Republicans unveiled their—much cheaper, $1 trillion—response, known as the Health Economic Assistance, Liability, and Schools (HEALS) Act.[18] As of August 2020, negotiations between the two chambers and the White House had stalled without a clear path forward in sight.[19] Despite the impasse, lawmakers appear poised to pass new stimulus legislation in the early fall.

II. DOMESTIC AGRICULTURE & RURAL COMMUNITIES

The arrival of COVID-19 sent shockwaves through the U.S. food system, which several of the relief packages summarized above sought to address. In addition to the funding already appropriated in the 2018 Farm Bill and subsequent annual appropriations bills, each Act allocates critical supplemental funding to agricultural agencies. A broad look across these Acts traces how relief funds either buttress existing Farm Bill programs or form the basis for completely new initiatives, such as the Coronavirus Food Assistance Program (CFAP).

A. Rural Development

Even before the pandemic, USDA prioritized rural development, improvements to broadband service, and advancements in telemedicine.[20] The Rural Utilities Service (RUS), an agency within USDA, manages the Distance Learning and Telemedicine (DLT) grant program, which helps rural residents gain access to healthcare and educational opportunities by funding telecommunications equipment and software.[21] The arrival of COVID-19 has further strained the already wide "digital divide" between rural and urban areas and only made investment in rural communities more imperative. Given the enhanced necessity of broadband for remote learning and telemedicine during times of social distancing, the CARES Act dedicates additional funding for these types of rural development programs.

Prior to COVID-19, the 2020 Consolidated Appropriations Act allocated $50 million for DLT grants, which RUS typically awards to state and local governments, federally recognized tribes, nonprofits, and

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[15] *See* Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, § 101, 134 Stat. 620 (2020).
[16] Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, § 101, 134 Stat. 620 (2020).
[17] *See The Health and Economic Recovery Omnibus Emergency Solutions Act*, H.R.6800, Congress.gov, https://www.congress.gov/bill/116th-congress/house-bill/6800 (last visited June 26, 2020); *see also* Jim Chappelow, *HEROES Act: $3 Trillion Coronavirus Relief Bill*, INVESTOPEDIA (May 16, 2020), https://www.investopedia.com/democrats-usd3-trillion-coronavirus-relief-bill-4844752.
[18] *Federal Coronavirus Legislation – Senate Republican HEALS Act Top 10 Takeaways*, NAT'L LAW REV. (Jul. 28, 2020), https://www.natlawreview.com/article/federal-coronavirus-legislation-senate-republican-heals-act-top-10-takeaways.
[19] *See* Emily Cochrane & Jim Tankersley, *Republicans Float a Scaled-Back Stimulus Bill*, NEW YORK TIMES (Aug. 18, 2020), https://www.nytimes.com/2020/08/18/us/politics/republicans-coronavirus-stimulus-bill.html.
[20] *See* EMMA CLIPPINGER & JUDE LEE, FARM BILL LAW ENTERPRISE, RURAL DEVELOPMENT (2016), http://www.farmbilllaw.org/wp-content/uploads/2017/10/Title-6-Rural-Development.pdf.
[21] LENNARD G. KRUGER, CONG. RSCH. SERV., RL33816, BROADBAND LOAN AND GRANT PROGRAMS IN THE USDA'S RURAL UTILITIES SERVICE 9 (2019), https://crsreports.congress.gov/product/pdf/RL/RL33816/129.

for-profit corporations.[22] The CARES Act gives USDA Rural Development an additional $25 million for the DLT grant program.[23] On April 3, 2020, USDA announced that it would open a second grant application window of April 14 – July 13 for applicants who missed the first window of February 10 – April 10.[24] Additionally, the CARES Act provided a supplemental $100 million for the ReConnect Rural Broadband Program, which USDA will use to invest in qualified 100 percent grant projects.[25] Eligible grant recipients for the ReConnect program include states, local governments, nonprofits, and for-profit corporations.[26] Before the pandemic, the 2020 Consolidated Appropriations Act allocated $555 million for the ReConnect program, which marked a slight increase from the $550 million provided to the program in the 2019 version of the Act.[27]

The Business and Industry (B&I) Loan Guarantee Program is the latest rural development program to receive an influx of funding after its $20.5 million infusion from the CARES Act, a significant increase from the program's initial FY2020 funding amount of $1.4 million.[28] Through the B&I Loan Guarantee Program, USDA guarantees loans that commercial lenders, such as banks or credit unions, have made to rural businesses.[29] The CARES Act provided this program with additional funds to help rural businesses access more working capital during the pandemic, and USDA announced in May 2020 that it would support $1 billion in loan guarantees for rural businesses and agricultural producers.[30] Additional changes to the B&I Loan Guarantee Program include an increase in the maximum guarantee of the loan amount from 80% to 90%, meaning that USDA is taking on more liability than it does typically.[31]

B. Coronavirus Food Assistance Program (CFAP)

On April 17, 2020, USDA announced its Coronavirus Food Assistance Program (CFAP), which is designed to provide essential financial assistance to farmers. The program delivers aid to producers of agricultural commodities facing significant market losses with a focus on those who have suffered a five-percent-or-greater price decline or other losses due to supply chain disruptions.[32] Valued at $19 billion, CFAP funding flows from three sources. For direct payments to farmers and ranchers, USDA has $16 billion available, which is partly from $9.5 billion of additional funding authorized in the CARES Act and

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[22] *See* Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, Div. B Tit. 3, 133 Stat. 2634 (2019); KRUGER, *supra* note 21.

[23] *See USDA Announces Second Application Window for Distance Learning and Telemedicine Grant Program Funding*, U.S DEP'T OF AGRIC. (Apr. 3, 2020), https://www.usda.gov/media/press-releases/2020/04/03/usda-announces-second-application-window-distance-learning-and; Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020), Div. B Tit. 1.

[24] *See USDA Announces Second Application Window for Distance Learning and Telemedicine Grant Program Funding*, *supra* 23.

[25] *See USDA Announces Coronavirus Food Assistance Program*, U.S. DEP'T OF AGRIC. (Apr. 17, 2020), https://www.usda.gov/media/press-releases/2020/04/17/usda-announces-coronavirus-food-assistance-program; Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020), § 11004.

[26] *See Frequently Asked Questions*, U.S. DEP'T OF AGRIC., https://www.usda.gov/reconnect/frequently-asked-questions (last visited Jul. 10, 2020).

[27] *See* Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, § 787, 133 Stat. 2657 (2019); JIM MONKE, CONG. RSCH. SERV., R45974, AGRICULTURE AND RELATED AGENCIES: FY2020 APPROPRIATIONS 14 (2020), https://crsreports.congress.gov/product/pdf/R/R45974; KRUGER, *supra* note 21.

[28] *See USDA - Rural Development - Business and Industry (B&I) Guaranteed Loan Program*, BROADBAND USA, NAT'L TELECOMMUNICATIONS AND INFORMATION ADMIN., https://broadbandusa.ntia.doc.gov/funding-guide/usda-rural-development-business-and-industry-bi-guaranteed-loan-program (last visited June 25, 2020).

[29] *See id.*

[30] ALYSSA R. CASEY, CONG. RSCH. SERV., IN11391, USDA RURAL DEVELOPMENT AND COVID-19: SUPPLEMENTAL FUNDING AND AGENCY ACTIONS 1 (2020), https://crsreports.congress.gov/product/pdf/IN/IN11391.

[31] *Id.*

[32] *Coronavirus Food Assistance Program*, U.S. DEP'T OF AGRIC., https://www.farmers.gov/cfap (last visited Jun. 12, 2020).

partly from USDA's existing balance of $6.5 billion in the Commodity Credit Corporation (CCC).[33] Another $3 billion is from FFCRA, which "authorize[d] USDA to purchase commodities for emergency distribution."[34]

USDA created the Farmers to Families Food Box Program to purchase and distribute agricultural products to those in need.[35] This program sought to address the drop in industry demand that forced farmers to dump millions of pounds of produce, dairy, and eggs after the shutdown of their usual buyers, such as schools, restaurants, and hotels.[36] The Food Box Program targeted this supply chain because there was no existing infrastructure into which farmers could easily integrate to get their products directly into the hands of a growing number of hungry families. The Food Box Program has assisted farmers by creating partnerships with regional and local distributors to purchase $3 billion in fresh produce, dairy, and meat and deliver boxes to those in need.[37] After packaging food into family-sized boxes, suppliers transport them to food banks, community and faith-based organizations, and other nonprofits.[38] Initially USDA scheduled the program to run from May 15 – June 30, 2020, but its Agricultural Marketing Service (AMS) agency elected to extend the contracts of select vendors and accept some new vendor contracts for a second period of July 1 – August 31, 2020.[39] Moreover, USDA recently announced that it will launch a third round of the Farmers to Families Food Box Program from September 1 – October 31, 2020.[40]

In addition to the Food Box Program, USDA also will provide direct relief payments to farmers and ranchers. Drawn from the $16 billion safety net referenced above, these payments will flow from two funding sources — $9.5 billion from the appropriated funding provided in the CARES Act and the CCC's existing balance of $6.5 billion.[41] Overseen by USDA officials, the CCC buttresses the U.S. agricultural economy through authorized programs including commodity and income support when crop prices or revenues fall.[42] The CCC's annual borrowing authority from the U.S. Treasury is $30 billion, but the CARES Act provided the CCC with a $14 billion replenishment for the fiscal year 2020.[43]

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[33] RANDY SCHNEPF & JIM MONKE, CONG. RSCH. SERV., R46347, COVID-19, U.S. AGRICULTURE, AND USDA'S CORONAVIRUS FOOD ASSISTANCE PROGRAM (CFAP) 17 (2020), https://crsreports.congress.gov/product/pdf/R/R46347.
[34] *Id.*
[35] *See USDA Farmers to Families Food Box*, U.S. DEP'T OF AGRIC., AGRIC. MKTG. SERV., https://www.ams.usda.gov/selling-food-to-usda/farmers-to-families-food-box (last visited Jun. 12, 2020).
[36] David Yaffe-Bellany & Michael Corkery, *Dumped Milk, Smashed Eggs, Plowed Vegetables: Food Waste of the Pandemic*, NEW YORK TIMES (Apr. 11, 2020), https://www.nytimes.com/2020/04/11/business/coronavirus-destroying-food.html.
[37] *See USDA Announces Details of Direct Assistance to Farmers through the Coronavirus Food Assistance Program*, U.S. DEP'T OF AGRIC. (May 19, 2020), https://www.usda.gov/media/press-releases/2020/05/19/usda-announces-details-direct-assistance-farmers-through.
[38] *USDA Farmers to Families Food Box*, U.S. DEP'T OF AGRIC., AGRIC. MKTG. SERV., https://www.ams.usda.gov/selling-food-to-usda/farmers-to-families-food-box (last visited Jul. 10, 2020).
[39] *Id.*
[40] *USDA Announces a Third Round of Farmers to Families Food Box Program Purchases*, U.S. DEP'T OF AGRIC. (Jul. 24, 2020), https://www.usda.gov/media/press-releases/2020/07/24/usda-announces-third-round-farmers-families-food-box-program.
[41] *See USDA Announces Details of Direct Assistance to Farmers through the Coronavirus Food Assistance Program*, U.S. DEP'T OF AGRIC. (May 19, 2020), https://www.usda.gov/media/press-releases/2020/05/19/usda-announces-details-direct-assistance-farmers-through.
[42] MEGAN STUBBS, CONG. RSCH. SERV., R44606, THE COMMODITY CREDIT CORPORATION: IN BRIEF 3 (2019), https://fas.org/sgp/crs/misc/R44606.pdf.
[43] *See Reviewing the Commodity Credit Corporation's Borrowing Authority*, FARM BUREAU, https://www.fb.org/market-intel/reviewing-the-commodity-credit-corporations-borrowing-authority (last visited Jun. 12, 2020).

C. Farmers Eligible for Small Business Relief Programs

On April 24, 2020, the signing of the Paycheck Protection Program and Health Care Enhancement Act replenished the funding of two vital small business relief programs, the Paycheck Protection Program (PPP) and the Disaster Loans Program, which includes Economic Injury Disaster Loans (EIDL) Emergency Grants. The CARES Act played a significant role in expanding disaster relief for small businesses by establishing these two programs.[44] Appropriated in the CARES Act, the initial funding of $349 billion for the PPP provided forgivable loans of up to $10 million to help small businesses, including farm businesses, retain their workforce.[45] The EIDL program existed prior to COVID-19 as a financial safety net for small businesses during disasters and offered loans with interest rates of 3.75% for companies and 2.75% for nonprofits.[46] As part of the CARES Act, Congress expanded the EIDL program to establish Emergency EIDL Grants, which allows small businesses to request an EIDL Advance of up to $10,000 that does not have to be repaid.[47] Businesses urgently applied for these PPP and EIDL funds and depleted the initial pool of funding in less than two weeks, which led the SBA to momentarily stop accepting PPP and EIDL applications.[48]

To continue supplementing the small business relief effort, Congress responded by providing an additional $381 billion, allocating $321 billion towards PPP and $60 billion for Disaster Loans.[49] Of the $321 billion that the Act appropriated for PPP, Congress set aside $60 billion for Community Development Financial Institutions (CDFIs), minority depository institutions, and smaller lenders to ensure small businesses and farmers lacking access to large financial institutions received adequate funding.[50] Congress also specified that the appropriations of $60 billion for the Disaster Loans Program would provide $50 billion for EIDL and $10 billion for Emergency EIDL grants.[51] Following the replenishment of its small business relief funding, the SBA announced it would resume accepting PPP loan applications effective April 27, 2020.[52] The SBA also stated that it would resume processing EIDL

[44] *See Farmers Now Eligible for SBA Emergency COVID-19 Assistance*, NAT'L SUSTAINABLE AGRIC. COALITION, https://sustainableagriculture.net/blog/confusion-remains-over-sba-assistance-farmers/ (last visited Jul. 10, 2020).
[45] *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1107(a) (2020).
[46] *See* 13 C.F.R. § 123.302; SBA's Economic Injury Disaster Loans and Advance Program Reopened to All Eligible Small Businesses and Non-Profits Impacted by COVID-19 Pandemic, U.S. SMALL BUS. ADMIN. (Jun. 15, 2020), https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sbas-economic-injury-disaster-loans-and-advance-program-reopened-all-eligible-small-businesses-and.
[47] *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, §§ 1107(a), 1110 (2020).
[48] *See Economic Injury Disaster Loan Emergency Advance*, U.S. SMALL BUS. ADMIN., https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance#section-header-0 (last visited Jul. 10, 2020).
[49] *See* Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, § 101, 134 Stat. 620 (2020); *Summary of the Paycheck Protection Program and Health Care Enhancement Act (COVID 3.5)*, AMERICAN MEDICAL ASS'N, https://www.ama-assn.org/delivering-care/public-health/summary-paycheck-protection-program-and-health-care-enhancement-act (last visited Jun. 12, 2020).
[50] SEAN LOWRY, CONG. RSCH. SERV., IN11355, PAYCHECK PROTECTION PROGRAM (PPP) LENDING SET ASIDES FOR COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS (CDFIS) 1-2 (2020), https://crsreports.congress.gov/product/pdf/IN/IN11355.
[51] *See* Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, § 101, 134 Stat. 620 (2020); WILLIAM L. PAINTER ET AL., CONG. RSCH. SERV., R46325, FOURTH COVID-19 RELIEF PACKAGE (P.L. 116-139): IN BRIEF 1 (2020), https://crsreports.congress.gov/product/pdf/R/R46325.
[52] *Paycheck Protection Program*, U.S. SMALL BUS. ADMIN., https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program (last visited Jun. 12, 2020).

applications already in the queue before the portal stopped accepting applications on April 15 and would evaluate them on a first-come, first-served basis.[53]

The passage of the Paycheck Protection Program and Health Care Enhancement Act was especially important for agricultural small businesses. Prior to this Act, farmers were not eligible to participate in the EIDL program, which rattled the agriculture industry.[54] Although the SBA deemed aquaculture enterprises, agricultural cooperatives, and nurseries eligible to receive disaster assistance, farms were specifically excluded.[55] Farmers are not normally eligible for SBA programs, and SBA resisted making farmers eligible for the EIDL program when the CARES Act expanded it and established the Emergency EIDL Grant Program.[56]

Many members of Congress intended for the CARES Act language referencing the EIDL program to include agricultural businesses, so they were disappointed with the SBA's administration of the program and explicit exclusion of farmers.[57] Motivated to support these small producers, a bipartisan effort within Congress pushed to have the bill include farmers.[58] House Agriculture Committee Chairman Collin Peterson (D-Minn.), shared with his constituents during a virtual town hall that congressional leaders planned to add a specific provision to the bill directing the SBA to include farmers and to appropriate additional funds for the PPP.[59] The groundswell of support within Congress for expanding eligibility to farmers paid off. On May 4, 2020, to effectuate the new statutory requirements, SBA stated it would begin accepting new EIDL applications on a limited basis only from agricultural businesses since they had previously been unable to apply.[60]

D. The Emergency Food Assistance Program (TEFAP)

TEFAP is a federal food distribution program that supports food pantries, food banks, and other emergency feeding organizations.[61] Beyond providing nutrition assistance, TEFAP supports the domestic agricultural economy because the food purchases reduce market supply resulting in increased food prices and more revenue for farmers. Food aid and funds flow through TEFAP via a centralized framework. USDA purchases domestic food commodities in response to state agency requests for available items and coordinates delivery to state distribution centers. USDA allocates these commodities and administrative funds to the states using a statutory formula that factors in each state's poverty and unemployment rates.[62]

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[53] *See Disaster Loan Applications*, U.S. SMALL BUS. ADMIN., https://www.sba.gov/page/disaster-loan-applications (last visited Jul. 10, 2020).
[54] *See* Lynne Curry, *After 30 years of being shut out, the Small Business Administration just allowed farmers to apply for economic disaster loans*, THE COUNTER (May 11, 2020), https://thecounter.org/small-business-administration-sba-farmers-economic-disaster-relief-loans-covid-19-cares/.
[55] *See Non-profit addresses exclusion of farms from EIDL*, MORNING AG CLIPS (Apr. 2, 2020), https://www.morningagclips.com/non-profit-addresses-exclusion-of-farms-from-eidl/.
[56] PAINTER ET AL., *supra* note 51 at 3.
[57] *See* Josh Harder et. al, House of Rep. Letter to the Honorable Jovita Carranza (Apr. 2, 2020), https://harder.house.gov/sites/harder.house.gov/files/2020.4.2_To%20SBA%20Re%20EIDL%20for%20Small%20Farms.pdf.
[58] The Hagstrom Report, *Peterson: SBA fix should be in this week's coronavirus bill*, THE FENCE POST (Apr. 9, 2020). https://www.thefencepost.com/news/peterson-sba-fix-should-be-in-this-weeks-coronavirus-bill/.
[59] *Id.*
[60] *See SBA to Make Economic Injury Disaster Loans Available to U.S. Agricultural Businesses Impacted by COVID-19 Pandemic*, U.S. SMALL BUS. ADMIN. (May 4, 2020), https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-make-economic-injury-disaster-loans-available-us-agricultural-businesses-impacted-covid-19.
[61] KARA CLIFFORD BILLINGS, CONG. RSCH. SERV., R45408, THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP): BACKGROUND AND FUNDING (2020), https://fas.org/sgp/crs/misc/R45408.pdf.
[62] *Id.*

In addition to each state's entitlement, USDA may purchase "bonus commodities" to support certain crops and coordinate distribution of those foods as well. State agencies, typically state departments of health or human services, set program eligibility rules, determine allocations of aid to local organizations, and task food banks with the distribution of the food to feeding organizations, such as soup kitchens and food pantries.[63]

From the combined appropriations in FFCRA and the CARES Act, TEFAP received $850 million in supplemental funding for FY2020. Prior to COVID-19 relief packages, TEFAP had more than $400 million in appropriated funding in FY2020.[64] In response to the pandemic, the appropriated funds in FFCRA added $400 million to TEFAP to provide local food banks with extra support as they rushed to meet increased demand for food from low-income Americans.[65] Of that $400 million total, $300 million is designated for purchase of nutritious foods and $100 million for supporting the storage and distribution of the foods (i.e., program administration).[66] Additionally, the CARES Act gives TEFAP $450 million in supplemental funding with $150 million of this total available as administrative funds and the remainder available as food funds.[67] The funding for TEFAP is set to remain available through Sept. 30, 2021.[68]

III. NUTRITION ASSISTANCE

As COVID-19 and related closures caused unemployment, economic insecurity, and food insecurity to rise, Congress looked for ways to support families in meeting their nutritional needs. As the primary nutritional support mechanism in the United States, Congress turned to SNAP to meet the increased demand for monetary benefits alongside the additional appropriations for TEFAP, discussed in the preceding section.

A. Supplemental Nutrition Program (SNAP) Benefit Increases

Emergency supplemental benefits for SNAP recipients was introduced in the Families First Coronavirus Response Act (FFCRA).[69] The bill authorizes the Secretary of Agriculture, at the request of a state, to provide "emergency allotments" (supplemental benefits) to SNAP recipients "not greater than the applicable maximum monthly allotment for the household size."[70] USDA interpreted this to mean that SNAP recipients could only receive supplemental benefits to the extent that their total SNAP benefits remained at or under the existing maximum monthly threshold.[71] This maximum benefit amount remained the same as the pre-COVID-19 configuration, which is determined through an FNS formula that accounts for household income and size.[72] Before COVID-19, 40 percent of SNAP households already

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[63] *Id.*
[64] *Id.*
[65] *See* Families First Coronavirus Response Act, Pub. L. No. 116-127, Div. A Tit. 1, 134 Stat. 179 (2020); *Title-By-Title Summary of H.R. 6201 Families First Coronavirus Response Act*, HOUSE COMMITTEE ON APPROPRIATIONS (2020), https://gwenmoore.house.gov/uploadedfiles/families_first_summary.pdf.
[66] *See* Families First Coronavirus Response Act, Pub. L. No. 116-127, Div. A Tit. 1, 134 Stat. 179 (2020); *Title-By-Title Summary of H.R. 6201 Families First Coronavirus Response Act*, *supra* note 65.
[67] *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020), Div. B Tit. 1; *TEFAP: Allocation of Coronavirus Aid, Relief, and Economic Security Act Supplemental Appropriations*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., https://www.fns.usda.gov/tefap/allocation-coronavirus-aid-relief-and-economic (last visited Jun. 12, 2020).
[68] *See* Families First Coronavirus Response Act, Pub. L. No. 116-127, Div. A Tit. 1, 134 Stat. 179 (2020); *see also* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020), Div. B Tit. 1.
[69] Families First Coronavirus Response Act, Pub. L. No. 116-127, § 2302(a), 134 Stat. 188 (2020).
[70] Families First Coronavirus Response Act, Pub. L. No. 116-127, § 2302(a), 134 Stat. 188 (2020).
[71] *USDA Increases Monthly SNAP Benefits by 40%*, U.S. DEP'T OF AGRIC. (Apr. 22, 2020), https://www.usda.gov/media/press-releases/2020/04/22/usda-increases-monthly-snap-benefits-40.
[72] *SNAP Eligibility*, U.S. DEP'T OF AGRIC., https://www.fns.usda.gov/snap/recipient/eligibility (last visited Jul. 7, 2020).

received the maximum amount for their household.[73] Therefore, under the USDA's interpretation of FFCRA, 40 percent of SNAP households do not qualify for supplemental benefits. Understandably, many states and advocacy groups were outraged that the most vulnerable families are excluded from receiving additional benefits.[74] In court—but without avail thus far—advocates have argued that a more faithful reading of FFCRA authorizes emergency allotments in an amount up to the maximum monthly allotment per household *separate and in addition to* a household's regular monthly allotments even if the household already receives the maximum amount.[75]

Despite numerous appeals, on April 10, 2020, USDA expressly denied requests to increase maximum benefit amounts.[76] Just twelve days later, USDA published a press release announcing a "40 percent increase" in SNAP benefits.[77] While the announcement incited hope that the maximum benefit threshold would rise, the statement was simply an update on the number of states that applied for and received emergency benefits.[78]

B. Support for Children Participating in School Lunch Program

Along with SNAP increases, FFCRA also provides support to families and children who lost access to free or reduced-price school meals due to COVID-19 related school closures.[79] The Pandemic-EBT program (P-EBT) allows states to apply for additional benefits to provide families with EBT benefits amounting to the approximate free rate of school meals, around $5.70 per day per child.[80] Benefits can also apply retroactively, meaning families who apply weeks or even months after school closures can still receive reimbursements for the amount equivalent to the number of school meals lost.[81] For families already enrolled in SNAP, benefits automatically load to their EBT cards, while families not enrolled in SNAP receive a new EBT card in the mail.[82] As of August 2020, all 50 states and the District of Columbia had enrolled in the P-EBT program, with Idaho being the last state approved.[83] FFCRA

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[73] *Most States are Using New Flexibility in SNAP to Respond to COVID -19 Challenges*, CTR. ON BUDGET & POLICY PRIORITIES, https://www.cbpp.org/research/food-assistance/most-states-are-using-new-flexibility-in-snap-to-respond-to-covid-19 (last visited Jun. 12, 2020).

[74] *Why the Administration and Congress Need to Build on SNAP Down Payments Now*, FOOD RSCH. ACTION CTR., https://frac.org/blog/why-the-administration-and-congress-need-to-build-on-snap-down-payments-now (last visited Jul. 27, 2020); *Anti-Hunger Advocates and USDA at Odds Over Increasing Food Stamp Benefits for American's Poorest During Pandemic*, THE PHILADELPHIA INQUIRER (Apr. 10, 2020), https://www.inquirer.com/news/coronavirus-food-stamps-usda-snap-benefits-20200410.html.

[75] *See* Hall v. U.S. Dep't of Agric., 2020 WL 3268539 (N.D. Cal. Jun. 17, 2020).

[76] JESSICA SHAHIN, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., RE: SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) – DENIAL OF CERTAIN REQUESTS TO ADJUST SNAP REGULATIONS (2020), https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP-COVID19-Multiple-Adjustment-Denials.pdf.

[77] *USDA Increases Monthly SNAP Benefits by 40%*, U.S. DEP'T OF AGRIC. (Apr. 22, 2020), https://www.usda.gov/media/press-releases/2020/04/22/usda-increases-monthly-snap-benefits-40.

[78] *USDA Misleads on "Increased SNAP Benefits"*, CTR. FOR SCIENCE IN THE PUBLIC INTEREST (Apr. 22, 2020), https://cspinet.org/news/usda-misleads-increased-snap-benefits-20200422.

[79] Families First Coronavirus Response Act, Pub. L. No. 116-127, § 1101(a), 134 Stat. 179 (2020).

[80] FOOD RES. & ACTION CTR., PANDEMIC EBT (P-EBT) COMMUNICATIONS TOOLKIT (2020), https://frac.org/wp-content/uploads/PEBT-Comm-Toolkit.pdf.

[81] *Memorandum: Pandemic EBT (P-EBT) Questions and Answers*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP-COVID-PEBTQA.pdf (last visited Jul. 27, 2020).

[82] Families First Coronavirus Response Act, Pub. L. No. 116-127, § 1101(a), 134 Stat. 179 (2020).

[83] *State Guidance on Coronavirus Pandemic EBT (P-EBT)*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., https://www.fns.usda.gov/snap/state-guidance-coronavirus-pandemic-ebt-pebt (last visited Jul.27, 2020); *USDA Approves*

stipulates that emergency benefits are available during the time school would typically be open.[84] Without access to P-EBT in the summer, families must resort to other summer meal assistance programs. Federally funded programs, such as the Summer Food Service Program,[85], and privately funded programs, like Backpack Programs and the School Pantry Program,[86] are still serving students in the summer of 2020, though their reach is limited.

C. Flexibility in SNAP Administrative Requirements

FFCRA also includes a series of administrative concessions to help USDA manage the influx of SNAP applications and the expansion of SNAP programs.[87] For example, pursuant to these new flexibilities, USDA now allows states to apply to extend the recertification period and extend periodic reporting deadlines to give SNAP intake staff more time to process first time applications.[88] States can also apply to waive the in-person application requirement as well as the interview requirement.[89] Both administrative adjustments help staff and SNAP recipients adhere to social distancing orders and expedite application approvals.[90] While temporary, these administrative adjustments help ensure that SNAP-eligible households can begin or continue to receive crucial benefits without administrative delays.

D. Using SNAP for Online Purchasing

Congress authorized the SNAP Online Purchasing Pilot program in the 2014 Farm Bill, allowing SNAP recipients in select states to use their benefits for online purchases.[91] However, the program only started rolling out in 2019, when New York became the first state to test the pilot.[92] In the next year, USDA approved four other states to participate in the program.[93] By May 2020, COVID-19 had swept the United States and many Americans avoided leaving their homes in adherence to stay-at-home orders and fearing risks of infection. In response to the pandemic and government recommendations to social distance, USDA expedited the program's roll-out.[94] As of August 2020, 40 states are participating in the SNAP online purchasing pilot, including the District of Columbia, and seven other states have been approved for the program but are still in the planning stages.[95] Although USDA has indicated it is working to expand

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Program to Feed Kids in Idaho, U.S. DEP'T OF AGRIC. (Aug. 19, 2020), https://www.usda.gov/media/press-releases/2020/08/19/usda-approves-program-feed-kids-idaho.

[84] Families First Coronavirus Response Act, Pub. L. No. 116-127, § 1101(a), 134 Stat. 179 (2020).

[85] *Summer Food Service Program*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., https://www.fns.usda.gov/sfsp/summer-food-service-program (last visited Jul. 28, 2020).

[86] *Summer Food Service Programs*, FEEDING AMERICA, https://www.feedingamerica.org/our-work/hunger-relief-programs/summer-food-service-program (last visited Jul. 28, 2020).

[87] Families First Coronavirus Response Act, Pub. L. No. 116-127, § 1101(f), 134 Stat. 180 (2020).

[88] *SNAP Application Processing Waivers*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., https://www.fns.usda.gov/disaster/pandemic/covid-19/snap-application-waivers (last visited Jul. 7, 2020).

[89]*SNAP Adjusting Interview Requirements Due to Novel Coronavirus (COVID-19) – Blanket Approval*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., https://www.fns.usda.gov/snap/adjusting-interview-requirements-covid-19-blanket-waiver (last visited Jul. 7, 2020).

[90] *Id.*

[91]Agricultural Act of 2014, Pub. L. No. 113-79 § 4011(b) (codified at 7 U.S.C. 2016(k)).

[92] *USDA Launches SNAP Online Purchasing Pilot*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., (Apr.18, 2019), https://www.fns.usda.gov/pressrelease/2019/fns-000319.

[93] *Id.*

[94] *SNAP Online Purchasing to Cover 90% of Households*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., (May. 20, 2020), https://www.fns.usda.gov/news-item/usda-026820.

[95] *FNS Launches the Online Purchasing Pilot*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., https://www.fns.usda.gov/snap/online-purchasing-pilot (last visited Jun. 26, 2020).

retailers beyond those initially approved for the pilot, no additional retailers have been announced as of August 2020.[96] Amazon and Walmart are the only approved retailers in most states.[97]

E. Waiver of Three Month ABAWD Work Rule

COVID-19 has put millions of Americans out of work and created increased demand for food assistance. Consequently, FFCRA temporarily suspends certain SNAP eligibility requirements that hinge on employment status.[98] USDA guidelines require able-bodied adults without dependents (ABAWD) to secure employment within a three-month period or risk losing their SNAP benefits.[99] However, states can apply to waive the time limit, allowing ABAWDs to keep their benefits while searching for a job.[100] In December 2019, the Trump administration released a final rule limiting waiver approvals to states with unemployment rates at 10 percent or higher and restricting carryover of discretionary exemptions.[101] The rule was scheduled to go into effect on April 1, 2020. The new rule received intense scrutiny, and on March 13, 2020, a federal district court issued a nationwide injunction delaying implementation of the rule until the court could confirm the legality of such a restriction of state power.[102]

On March 18, Congress passed FFCRA and included a clause effectively revoking the disputed waiver restriction.[103] In fact, FFCRA goes a step further and suspends the three-month rule altogether, eliminating the need for states to apply for waivers during the pandemic.[104] This allows unemployed ABAWDs to collect full SNAP benefits without the pressure to search for a job when many businesses are closing or downsizing. The bill does stipulate that ABAWDs are still subject to the time-limit if they reject opportunities to participate in a workforce program or employment training program.[105] Under FFCRA, the suspension of the work rule is effective until the end of the month *after* the month the declaration of a national public health emergency is lifted.[106]

IV. CONCLUSION

When COVID-19 hit the food system, agricultural producers faced tremendous economic pressure. With each relief bill enacted, Congress has mitigated some of the negative financial effects through a myriad of existing Farm Bill programs, including TEFAP, DLT grants, and B&I Loan Guarantees, while also

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[96] *SNAP Online Purchasing to Cover 90% of Households*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., (May. 20, 2020), https://www.fns.usda.gov/news-item/usda-026820.
[97] *FNS Launches the Online Purchasing Pilot*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., https://www.fns.usda.gov/snap/online-purchasing-pilot (last visited Jun. 26, 2020).
[98] *Supplemental Nutrition Assistance Program (SNAP) – Families First Coronavirus Response Act and Impact on Time Limit for Able-Bodied Adults without Dependents (ABAWDs)*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., https://www.fns.usda.gov/snap/ffcra-impact-time-limit-abawds.
[99] 7 C.F.R. § 273.24.
[100] LIZBETH SILBERMANN, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., SNAP - BEST PRACTICES AND RESOURCES FOR INFORMING HOUSEHOLDS OF ABAWD RULES (2018), https://fns-prod.azureedge.net/sites/default/files/snap/BestPracticesforInformingABAWDS.pdf.
[101] *SNAP Guide to Supporting Requests to Waive the Time Limit for ABAWDS*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., https://www.fns.usda.gov/snap/ABAWD/guide-to-support-time-limit-waive-requests (last visited Jul.28, 2020).
[102] *See Bread For the City, et al. v. U.S. Dep't of Agric., et al.*, No. 20-119 (D.D.C. 2020) (order granting preliminary injunction), https://oag.dc.gov/sites/default/files/2020-03/Order-Granting-Motion-PI-SNAP-ABAWD-Rule.pdf.
[103] Families First Coronavirus Response Act, Pub. L. No. 116-127, § 2301(a), 134 Stat. 187 (2020).
[104] Families First Coronavirus Response Act, Pub. L. No. 116-127, § 2301(a), 134 Stat. 187 (2020).
[105] Families First Coronavirus Response Act, Pub. L. No. 116-127, § 2301(a), 134 Stat. 187 (2020); *SNAP – Families First Coronavirus Response Act and Impact on Time Limit for Able-Bodied Adults Without Dependents (ABAWDs)*, *supra* note 98.
[106] Families First Coronavirus Response Act, Pub. L. No. 116-127, § 2301(a), 134 Stat. 187 (2020).

provided funding streams that allowed USDA to CFAP to specifically address pandemic-produced challenges.

Unfortunately, the disruptions that agricultural producers faced at the beginning of the supply chain rippled through to consumers waiting at the end in need of affordable, accessible, and nutritious food. Increasing unemployment made more Americans reliant on the Supplemental Nutrition Assistance Program (SNAP) and further intensified that need for those already enrolled in SNAP. In light of these factors, Congress has continued to provide supplemental funding for nutrition assistance in each relief bill. In addition to increased SNAP funding, Congress has increased funding for TEFAP, provided support to families and children through the P-EBT, relaxed SNAP administrative requirements, and temporarily suspended SNAP eligibility requirements tied to employment status. Other existing authorizations, such as the SNAP Online Purchasing Pilot, gave USDA additional flexibility to adapt to the changing landscape.

Despite these efforts, significant challenges remain as the United States grapples with COVID-19 heading into the fall and winter. Advocates have turned their sights to the next piece of legislation for additional support for agricultural and nutrition programs. However, as of August 2020, a bipartisan deal still eluded lawmakers.