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White paper

Farmers get aid under the CARES Act

What to expect and what we still don't know

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Who is covered under the CARES Act for farmers

On March 27th, 2020 President Trump signed the Coronavirus Aid, Relief and Economic Security (the "CARES Act") Act into law. With the signing of the Act over $2 trillion dollars become available for the public in areas such as public health, support for small businesses, individual citizen aid and targeted efforts for hard-hit industries. This paper will cover what the CARES Act provides for farmers with the caveat that rules are still coming on some provisions.

Many farmers will qualify for support under the CARES Act, assuming they qualify as a small business. Under the CARES Act two provisions provide a substantial amount of relief to qualifying small business owners, including farmers. One of the largest support efforts is the new Paycheck Protection Program (PPP).[1] PPP is tasked with preventing job loss and small business failure due to the COVID-19 pandemic. PPP was allotted $349 billion to make available to eligible small businesses, including non-profits, sole proprietors, tribal business concerns and Veterans organizations.[2] PPP also offers forgivable loans to cover the cost of payroll and other essential business costs.[3] Secondly, the CARES Act provides $10 billion in funds to the already existing Economic Injury Disaster Loan Program (EIDL) in addition to expanding the program overall under the Small Business Administration (SBA).[4] Currently, both PPP and EIDL are out of funding under the Act. Legislators are currently proposing additional funding of these programs and therefore should be discussed if funding becomes available again.

Farmers also receive targeted relief in addition to PPP and EIDL in two specifically designated provisions. First, the United States Department of Agriculture ("USDA") is receiving $14 billion to assist the Commodity Credit Corporation ("CCC") fund. Second, the USDA, lead by United States Secretary of Agriculture Sonny Perdue, will receive $9.5 billion for targeted relief.[5] Below, we will discuss the details of these two large allocations under the Act.

Agricultural Specific Provisions

Farmers are well aware that on December 20, 2018 President Trump signed the Agriculture Improvement Act of 2018, commonly known as the Farm Bill.[6] The projected spending for the Farm Bill is roughly $428 billion over the course of roughly five years.[7] The allocation under the Farm Bill distributed via twelve titles. Of these titles, 76.5% of the Farm Bill spending will go to nutrition, roughly $326 billion.[8] The next largest allocation goes to three areas; crop insurance, commodity program and conservation programs. These programs are administered through the Farm Services Agency ("FSA") under the USDA. The FSA is responsible for programs like Agriculture Risk Coverage ("ARC"), Price Loss Coverage ("PLC"), and Dairy Margin Coverage ("DMC"). Roughly $99 billion, or 23% of the spending will go to these programs.[9] Given those statistics, the $23.5 billion under the CARES Act for agricultural specific allocations is a substantial amount compared to the Farm Bill allocations.

The CARES Act provides $9.5 billion to the disaster relief fund within the USDA to support producers that

have been impacted by the coronavirus. This fund was allocated to the USDA and gives the USDA broad discretion to disburse the funds to various groups (specialty crop producers, dairy, livestock, and food systems such as restaurants, schools, grocery stores and more). While no specific distributions have been identified currently, Sonny Perdue has stated that he is in discussions with various stakeholders on how distributions should take place.

Many farmers are familiar with the CCC, as the Farm Bill already gave authority to this program to borrow $30 billion to support the USDA's FSA. The agricultural programs that can be funded by the CCC under the FSA include such programs as PLC, ARC, and DMC, among others. Under the CARES Act, the USDA may develop new aid opportunities that would benefit a broad group of agricultural producers and agribusiness entities that have seen commodity prices fall due to the impacts of the coronavirus. This places the CCC in a unique position. Should the USDA use the COVID-19 funds to replenish the depleted CCC funds currently or should the USDA utilize the funds to directly push money to those impacted by COVID-19? For dairy farmers that benefited under the Market Facilitation Program, established to combat the impact of the past years' tariff wars, this could mean a lesser than anticipated benefit as there is no indication that funds will be targeted to greater impacted sectors of agriculture. While we still wait to see how the funds will be disbursed through these groups, the CCC has announced that interest rates will be decreasing on loans. The FSA has followed suit and has also indicated that they will be relaxing their terms and interest rates on their direct and guaranteed loans during the pandemic.

Under the CARES Act, the USDA may develop new aid opportunities that would benefit a broad group of agricultural producers and agribusiness entities that have seen commodity prices fall.

Additional planning items to consider

When considering lending options, agribusinesses should also examine other provisions of the CARES Act to determine what will result in the best outcome for the farming operation. Importantly, agribusiness owners should review Employee Retention Credits[10] and Payroll Tax Deferral[11] as part of their overall planning efforts. But note, agribusiness owners who participate in PPP are not eligible to participate in either of these two programs. Therefore, careful consideration must be given to determine what provisions of the CARES Act will best support their needs.

Employers may be eligible for a refundable tax credit for their share (6.2%) of Social Security tax. This potential credit is available for 50% of the first $10,000 in qualified wages, including health plan expenses, paid to each employee starting on March 13th, 2020.[12] To be eligible to receive the credit an employer must (1) have had their operations either fully or partially suspended as part of the government's shutdown orders related to COVID-19 or (2) their gross receipts must have declined by more than 50% in a calendar quarter when compared to the same quarter for 2019.[13] Employers will remain eligible until the earlier of (i) the time their gross receipts exceed 80% relative to the same quarter of 2019, or (ii) December 31, 2020.[14] If an employer had more than 100 employees (based on 2019 employment levels), qualifying wages are limited to wages paid to employees who were not providing services due to COVID-19. The Employee Retention credit is not available to employers who receive loans from the SBA under PPP as described above.[15]

In addition to the above tax credit for Social Security taxes, the CARES Act also allows employers to defer the payment on the employer's share of the 6.2% Social Security tax on wages paid beginning March 27th, 2020 through December 31st, 2020. Deferral is only permitted for the employer's portion of Social Security taxes and is not permitted on the employee's portion of Social Security taxes. Deferral is also permitted for the equivalent portion of self-employment taxes. Amounts deferred under this provision are payable in two installments, 50% being due on December 31st, 2021, and the remainder being due December 31st, 2022.[16] The Payroll Tax Deferral credit is not available to employers who receive loans from the SBA under PPP as described above.

Given these provisions, it is critical to discuss with your tax professional which election makes the most sense based on your individual needs and foreseeable future state of revenue.

Example

Given the options listed above, agribusiness owners may be questioning which option will provide them the largest benefit. Based on the various provisions, each individual situation will need to be assessed independent of industry trends, what farmers in the community are doing or even what family may be doing. For example, if a farm has total annual payroll cost less than $100,000, PPP loans or deferral of payroll taxes will provide little benefit. If a farm has an annual $90,000 payroll cost, the maximum amount of loan eligibility would be 2.5 times one month's average payroll costs, or $18,500 ($7,500 X2.5=$18,500). If it is anticipated that the farm will spend this amount by no later than June 30, 2020 then the loan may be forgiven and be a non-taxable event. However, if the agribusiness owner decides to take the payroll tax credit, they could still see a benefit of $3,750 per month (assuming a pay of $7,500 per month). PPP is currently out of funding at the time of this publication. However, payroll tax provisions may still provide a benefit to those who cannot get PPP loans.

Farmers may also want to consider a loan from CCC to assist with cash flows during this time. Given the favorable rates offered by the CCC currently, a farmer can hold off on selling grain until commodity prices increase or at least until June 30, 2020.

Similarly, a farmer could use an old favorite, deferred payment contracts, to plan for income when they desire to receive it. Typically, deferred payment contracts help farmers adjust their income on a year to year basis. However, these contracts can also be used to plan for income on a shorter term as well such as calling for a payment after June 30, 2020. Risk of the contracted party should be considered when entering into a deferred payment contract. If the party that is going to pay the farmer at a later date has financial issues, the farmer may experience challenges in receiving payment for goods sold on this contract.

Summary

Under the various provisions of the CARES Act mentioned above, agribusiness owners are offered very favorable terms and options to support them in the challenging time. Business owners economically affected by the COVID-19 pandemic should discuss with their SBA-approved banker and tax professional how these programs can help secure the future of their businesses.

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[1] Act section 1102
[2] Act section 1102 (a)(2)(D)(i)
[3] Act section 1106
[4] Act section 1107(6)
[5] Act Division B, Title I
[6] Pub. L. No. 115-334
[7] Congressional Budget Office April 2018 Baseline, 2018 Farm Bill, Farm Bureau Analysis
[8] *Id.*
[9] *Id.*
[10] Act section 2301
[11] Act section 2302
[12] Act section 2301(a) & Act section 2301 (b)
[13] Act section 2301(c)(2)(A)(ii)
[14] Act section 2301(c)(2)(B)
[15] Act section 2301(j)
[16] Act section 2302(d)(1)(3)

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