



June 22, 2020

William Beam
Deputy Administrator – Farm Programs
Farm Service Agency
U.S. Department of Agriculture
1400 Independence Avenue SW, Stop 0522
Washington, DC 20250–0522

**Re: Notice of Funding Availability, Coronavirus Food Assistance Program (CFAP),
Additional Commodities Request for Information; FSA–2020–0004**

Dear Deputy Administrator,

The National Sustainable Agriculture Coalition (NSAC) is pleased to provide comments on the Coronavirus Food Assistance Program (CFAP), as requested in the Federal Register (Vol. 85, No. 100, May 22, 2020, page 31062), Docket FSA–2020–0004.

We submit the following recommendations and comments on behalf of NSAC’s represented member organizations, a significant number of which work directly with farmers impacted by the ongoing coronavirus pandemic, including those producers serving local and regional markets as well as small-scale, diversified, organic, beginning, veteran and socially disadvantaged producers.

We offer these recommendations to assist the Department in implementing this historic relief program in a way that best ensures that *every farmer who has suffered a financial loss* in response to the COVID-19 crisis has the opportunity to receive assistance. It is also our hope that these recommendations will ensure that the Department is able to meet its Congressional mandate to ‘(provide) support for agricultural producers impacted by coronavirus, including ... *producers that supply local food systems, including farmers markets, restaurants, and schools.*’

It is important to note that these comments pertain only to the direct payment component of the program. These comments seek to address both fundamental elements of the structure of CFAP as well as identify and seek clarification on sometimes conflicting, and often confusing, provisions that are likely the result of the necessarily rapid development of the CFAP rules and supporting documentation. For the convenience of the reviewers at the United States

Department of Agriculture (USDA), our recommendations are organized into the following sections:

- I. Clarifications of eligibility
- II. Enhanced access to program resources
- III. Prices and payments for eligible commodities
- IV. Program data and oversight

These comments address, and incorporate elements of, all official published material regarding CFAP available on the date of submission including the Coronavirus Aid, Relief, and Economic Security (CARES) Act ([PL 116-136](#)), [the CFAP final rule published in the Federal Register \(85 Fed. Reg 30825\) on May 21, 2020](#), [the corrected CFAP rule published in the Federal Register \(85 Fed. Reg. 35799\) on June 12, 2020](#), [the USDA Farm Service Agency \(FSA\) Handbook \(Notice CFAP-4\)](#), [the Notice of Funding Availability: Coronavirus Food Assistance Program \(Docket ID: FSA-2020-0004\)](#), [the corrected Notice of Funding Availability: Coronavirus Food Assistance Program \(Docket ID: FSA-202-0004\)](#), [the CFAP Cost-Benefit Analysis](#), [the USDA CFAP website](#), various USDA press releases, and statements made by USDA personnel during stakeholder engagement and information sharing calls and webinars.

We are indebted to our colleagues at the Farmers' Legal Action Group (FLAG), Farm Aid, the Intertribal Agriculture Council (IAC), and the Indigenous Food and Agriculture Initiative (IFAI) for their collaboration, insight, and supporting materials that informed our recommendations.

Thank you for your serious consideration of our recommendations. We would be happy to provide any additional material required or discuss any of these items in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Deeble". The signature is fluid and cursive, with a large initial "E" and "D".

Eric Deeble
Policy Director

NSAC Represented Member Organizations

Agriculture and Land Based Training Association - Salinas, CA
CCOF (California Certified Organic Farmers) - Santa Cruz, CA
California FarmLink – Santa Cruz, CA
C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture) – Hereford, TX
Catholic Rural Life – St. Paul, MN
Center for Rural Affairs – Lyons, NE
Clagett Farm/Chesapeake Bay Foundation – Upper Marlboro, MD
Community Alliance with Family Farmers – Davis, CA
CISA: Communities Involved in Sustaining Agriculture – South Deerfield, MA
Dakota Rural Action – Brookings, SD
Delta Land and Community, Inc. – Almyra, AR
Ecological Farming Association – Soquel, CA
Farmer-Veteran Coalition – Davis, CA
Florida Organic Growers – Gainesville, FL
FoodCorps – Portland, OR
Grassworks – New Holstein, WI
Hmong National Development, Inc. – St. Paul, MN
Illinois Stewardship Alliance – Springfield, IL
Institute for Agriculture and Trade Policy – Minneapolis, MN
Interfaith Sustainable Food Collaborative – Sebastopol, CA
Iowa Natural Heritage Foundation – Des Moines, IA
Izaak Walton League of America – Gaithersburg, MD
Kansas Rural Center – Topeka, KS
The Kerr Center for Sustainable Agriculture – Poteau, OK
Land Stewardship Project – Minneapolis, MN
LiveWell Colorado – Denver, CO
MAFO – St. Cloud, MN
Michael Fields Agricultural Institute – East Troy, WI
Michigan Integrated Food & Farming Systems – MIFFS – East Lansing, MI
Michigan Organic Food and Farm Alliance – Lansing, MI
Midwest Organic and Sustainable Education Service – Spring Valley, WI
Missouri Coalition for the Environment – St. Louis, MO
Montana Organic Association – Eureka, MT
The National Center for Appropriate Technology – Butte, MT
National Center for Frontier Communities – Silver City, NM
National Hmong American Farmers – Fresno, CA
Nebraska Sustainable Agriculture Society - Ceresco, NE
Northeast Organic Dairy Producers Alliance – Deerfield, MA
Northern Plains Sustainable Agriculture Society – LaMoure, ND
Northwest Center for Alternatives to Pesticides – Eugene, OR
Ohio Ecological Food and Farm Association – Columbus, OH
Oregon Tilth – Corvallis, OR

Organic Farming Research Foundation – Santa Cruz, CA

Organic Seed Alliance – Port Townsend, WA

Rural Advancement Foundation International – USA – Pittsboro, NC

Union of Concerned Scientists Food and Environment Program – Washington, DC

Virginia Association for Biological Farming – Lexington, VA

Wild Farm Alliance – Watsonville, CA

Women, Food, and Agriculture Network – Ames, IA

I. CLARIFICATIONS OF ELIGIBILITY

Recommendation: Apply Adjusted Gross Income limitations consistently for all eligible individuals and entities.

Congress has long maintained that providing financial assistance to the country's wealthiest farmers is misuse of taxpayer dollars. As with many other USDA programs, an individual or legal entity's eligibility for the CFAP program is subject to an Adjusted Gross Income (AGI) limitation of \$900,000. While the CFAP program AGI limit generally aligns with other USDA programs, it varies in two distinct and troubling ways that we urge you to address.

First, unlike any other federal farm payment program, the AGI restriction *does not* apply to individuals who earn more than 75 percent of their income from farming, ranching, or forestry activities. This opens up an egregious loophole that allows individuals to (re)classify their earnings in such a manner that would make them eligible for CFAP payments regardless of their income, and thus permitting very wealthy individuals to remain eligible for CFAP assistance. In essence, this loophole eliminates any income limitations for the largest farmers and should be closed.

Second, for farming operations structured as joint ventures and general partnerships, the AGI limitation applies to each member of the business rather than to the entity as a whole. This is also inconsistent with most other federal farm programs and creates a distinct advantage for agricultural enterprises with sophisticated organizational structures and further incentivizes the creation of large farm operations over traditional models of sole proprietorship and family farm ownership.

We strongly oppose using taxpayer dollars to support multi-millionaire farmers and ranchers and urge USDA to eliminate these exemptions and require a uniform \$900,000 AGI limit on CFAP as is consistent with all other USDA programs. Given that demand for CFAP direct payment support is expected to greatly outstrip available funding, it is inappropriate for USDA to provide assistance to the wealthiest farmers who have the support and resources to apply to the program before the possibility that funding will be exhausted.

Recommendation: Apply the Department's existing 'Actively Engaged' standards on active personal labor when determining eligibility for all individuals, including foreign persons.

A foreign person may be an eligible producer under CFAP rules if they meet three criteria: they must provide capital, land, and labor for the farm operation. This is generally an appropriate standard but the issue of what constitutes "labor" is unclear. In the preamble comments to the regulation, USDA states that a foreign person must provide at least 400 hours of active personal labor or management in a calendar year to be eligible. However, this novel 400 hour standard is

not included in the actual regulations, which instead rely on the existing regulatory standard.¹ This standard states the active personal labor requirement can be met by working the lesser of either 1,000 hours in a calendar year or 50 percent of the total hours needed to conduct a farming operation that is comparable in size to the person's share in the farming operation.

We therefore strongly urge USDA to clarify that the existing standards for active personal labor apply when determining the eligibility of all individuals, including foreign persons, for the CFAP rather than the 400 hour standard mentioned in the preamble comments. This would ensure consistency across all USDA programs, prevent further erosion of the 'actively engaged' standard, and provide equivalent opportunity to foreign persons and farmers who are U.S. citizens.

II. ENHANCED ACCESS TO PROGRAM RESOURCES

***Recommendation:* Extend the deadline to apply for CFAP assistance and submit supporting documents by 90 days for small, diversified, beginning, limited resource, historically underserved, or other farmers with limited experience with USDA.**

CFAP sign-up began May 26, 2020 and is scheduled to close August 28, 2020. While it is appropriate for USDA to approach the application process with urgency, the 90 day application window poses a significant challenge for many small, diversified, beginning, limited resource, or historically underserved farmers who have limited experience with USDA.

These farmers are less likely to have existing paperwork on file with Farm Service Agency (FSA) offices, and are likely to need more guidance from Agency staff throughout the application process. Many farmers with diversified operations will also have more complex applications because they may produce several eligible commodities with different end uses. Further, farmers with few resources and limited hired farm labor are already struggling to schedule appointments, gather production records, apply for the program, and submit documents during the height of the growing season. Unfortunately, most of these farmers who lack the capacity to apply for CFAP aid at this time are some of the most impacted by the loss of markets as a result to the COVID-19 pandemic.

To compound these problems further, we have heard from farmers in different parts of the country that some FSA offices have very few appointment times available before the program deadline due to limited staffing and the need to provide all services with appropriate social distancing guidelines due to the coronavirus pandemic. It is important that FSA work to meet the unique needs of these farmers and that farmers not be penalized or excluded from the program because they are unable to secure an appointment with FSA staff sufficiently in advance of the program deadline to submit a successful application.

¹ 7 CFR § 1400.3

We therefore recommend FSA staff provide priority appointment scheduling for small, diversified, beginning, limited resource, historically underserved, or other farmers with limited FSA experience and that USDA extend the deadline for these farmers to apply for CFAP assistance and submit required forms and documentation by at least 90 days.

Recommendation: USDA should provide accommodations for farmers who are deaf, hard of hearing, have speech disabilities, or with limited English proficiency through the National Hotline, at FSA Service Centers, and through the online application portal to ensure they are not excluded from participation in CFAP.

The safety of FSA Service Center staff and farmers is paramount during the coronavirus pandemic and this has necessitated a transition to virtual appointments and meetings for all CFAP related business. This poses a challenge to farmers with limited English proficiency or other communication barriers.

FSA office staff often rely on a printed 'I Speak' resource document to identify the language in which a farmer may need to communicate but this tool has not been adapted to the new, virtual meeting environment. Without the ability to identify a farmer's primary language, it will be difficult for FSA staff in county offices or operating the national hotline to obtain adequate translation services. This also effects the ability of a farmer to complete a CFAP application without FSA staff assistance. While some application and supporting forms are available online in Spanish, many are not, and none are available in other languages spoken by many farmers (e.g. Hmong).

We recommend USDA make available all forms necessary to apply for CFAP online in Spanish and other languages commonly spoken by farmers across the country. USDA should develop new tools to assist FSA staff seeking to identify which translation services are necessary to provide support to a farmer during a call or virtual meeting. USDA should also make use of its cooperative agreement authority and partnerships with community based organizations that serve communities in which there are many limited English proficiency farmers to ensure there are no unfair and unnecessary barriers to participation in the CFAP program. Finally, USDA should provide support for farmers applying for CFAP through the Federal Relay Service or USDA's TARGET Center as they do with other USDA programs.

III. PRICES AND PAYMENTS FOR ELIGIBLE COMMODITIES

Recommendation: Eliminate the consideration of the end use of a commodity when determining eligibility.

Farmers may receive a CFAP payment if they produced an eligible commodity that experienced a decrease in price of 5 percent or more during a specific period. While it is not mentioned in the

final rule, subsequent regulations, or application materials, there appears to be an additional criterion necessary for a commodity to be deemed eligible.

The CFAP Handbook states that only specialty and non-specialty crops with certain end uses are eligible commodities. This creates unnecessary confusion for farmers applying for assistance as it requires them to certify that the product they sold, shipped but were not paid for, or did not harvest would be used in a manner that was not in their control. Market disruptions caused by the coronavirus pandemic increase the likelihood that a commodity might be used for a purpose other than that for which it was grown.

We recommend that USDA exclude the end use criterion when determining whether a commodity is eligible for payment under CFAP and issue clarification to FSA staff through an update to the Handbook.

Recommendation: Expand the type and sources of data that can be used to demonstrate the price decline of a commodity and consider price multipliers for commodities with higher market values to better reflect actual coronavirus related losses incurred by farmers.

Prior to the publication of the CFAP rule, USDA maintained that the program would be constructed to compensate farmers for their actual losses, in keeping with Congressional intent. Instead, the payment structure compensates farmers by a formula based on the decline in the national average wholesale price of an individual commodity during a specific period. While the simple construction of the program facilitates its administration, it deprives farmers of the opportunity to demonstrate their actual losses, which vary considerably based on scale, production practices, region, and market channels.

For example, farmers who sell directly to their customers, supply local and regional markets where prices may be higher, produce a differentiated product that warrants a premium price (e.g. organic), or produce a value-added product can only receive a payment based on the wholesale commodity price for their products. For diversified operations, the limited list of specialty crops and other products eligible for payment further limits their opportunity for fair compensation. The focus on commodity price decline also limits the ability of a farmer to demonstrate and be compensated for any increased costs they may have incurred as they adapted to new market conditions in the wake of the coronavirus pandemic.

These fundamental shortcomings in design cannot be altered because the program is currently operating, with nearly \$4 billion in payments already issued to producers (as of June 22, 2020)². However, USDA should expand the list of eligible commodities and use more robust pricing data that account for price premiums for organic, local, value-added, etc, resulting in program payments that are more fair, equitable, and accurate.

² <https://www.farmers.gov/sites/default/files/documents/CFAP-PaymentReportData-06222020.pdf>

We strongly urge USDA to consider farmer reported price data available from Whole Farm Revenue Program (WFRP) records as an alternative data source when calculating the price declines of eligible commodities and when considering the addition of commodities to the eligible commodity list through the NOFA process. This data could make USDA payment rates more reflective of actual farmer losses at the regional level and could demonstrate the premium value of certain commodities sold through local and regional market channels that experienced considerable declines due to pandemic related market closures.

We also strongly urge USDA to increase the payment rates for eligible commodities for which some farmers may receive a premium price either because they are produced using a specific set of practices (e.g. organic, grass fed, etc.) or marketed directly to consumers. If there is insufficient farm gate price information for these products to justify an increased payment, USDA should rely on abundant retail price data to establish payment multipliers that reflect the proportionally greater value of these products.

A multiplier for organic products could be based on retail price data captured in the Agricultural Marketing Service [National Retail Report - Local and Organic](#) published by the USDA Market News Service, the [Specialty Crops Terminal Market Standard Report](#), and the [2016 Certified Organic Survey](#). Similarly, a multiplier for products marketed directly to consumers, retail, or institutions could be based on retail price data captured in the [2015 Local Food Marketing Practices Survey](#) or reported by farmers as part of the Noninsured Crop Disaster Assistance (NAP) Program. Farmers should have the option to self-certify the percentage of their products that command a premium price and USDA should use the appropriate multiplier to increase the CFAP payment.

Farms that predominately grow specialty crops represent roughly 12 percent of all farms but applications for specialty crop CFAP payments is a dismal 0.6 percent of total applications as reported in the USDA [CFAP Payment Report](#). Such a low application rate does not comport with the estimated losses of specialty crop producers or reports on the impact of the coronavirus received from those farmers. In fact, there are nearly as many individual comments submitted on the CFAP NOFA as there have been applications for payments from the program by specialty crop producers. Clearly the current payment rates contained within the CFAP are inadequate and do not approximate the losses incurred by specialty crop growers and should be amended.

IV. PROGRAM DATA AND OVERSIGHT

***Recommendation:* More detailed and disaggregated program data should be made publicly available to ensure partners and stakeholders are able to monitor program participation and address any unforeseen barriers to participation.**

In the absence of a dedicated funding mechanism to provide targeted aid to local and regional producers, it is imperative that USDA closely monitor and be able to document the types of

farming operations that receive assistance through CFAP. This is needed both to ensure no producer unintentionally faces barriers to relief, and to also demonstrate the program is fulfilling its statutory purpose.

To this end, we urge the Department to collect and report the following information from all CFAP applicants and to make this information publicly available:

- Percentage of sales made directly to consumers or directly to institutions (including schools, universities, institutions, or restaurants)
- Beginning farmer or rancher status
- Socially disadvantaged farmer or rancher status
- Organic certification status
- Scale of operation (both total acres and gross sales)

USDA should closely monitor program participation for historically underserved farmers, including beginning and socially disadvantaged producers, and establish state targets for program participation based on the percentage that these producers comprise of the state's total farm population. Target participation rates or funding set-asides are well-established policy mechanisms that have been in place across many USDA farm programs – including within FSA and NRCS.

Additionally, further disaggregated data is needed on the total number of applications approved / processed on a weekly basis (to be incorporated into USDA's weekly *CFAP Payment Reports*) as well as the number of unique applications per state.