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RESOURCES FOR HAWAII'S AGRICULTURE INDUSTRY

RECENTLY ENACTED FEDERAL LEGISLATION PROVIDES RESOURCES AND INITIATIVES TO ASSIST BUSINESSES IMPACTED BY THE COVID-19 PANDEMIC.

THIS GUIDE PROVIDES SUMMARY INFORMATION ABOUT MAJOR PROVISIONS THAT COULD OFFER CRITICAL SUPPORT TO HAWAII'S AGRICULTURE INDUSTRY AND WILL BE UPDATED PERIODICALLY (CURRENT AS OF APRIL 27, 2020).



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• A VOICE FOR HAWAII IN THE U.S. SENATE •

U.S. DEPARTMENT OF AGRICULTURE CORONAVIRUS FOOD ASSISTANCE PROGRAM

Summary of Assistance: USDA has developed this \$19 billion program (<https://www.usda.gov/coronavirus>) that is made up of two components. One provides \$16 billion in direct payments to farmers and producers that have suffered losses due to COVID-19. The other component provides \$3 billion to regional and local distributors for purchase and distribution of fresh produce, meat, and dairy to people in need.

Responsible Federal Agency: U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) and Farm Service Agency (FSA).

Type of Assistance: One component of the program will provide direct payments to farmers and producers who experienced losses from January through April as a result of COVID-19 and will be capped at **\$125,000 per commodity** or **\$250,000 per producer**. While USDA has not published final payment rates, preliminary information provided by USDA indicates that producers will receive a single payment determined using two calculations. For price losses that occurred January 1-April 15, 2020 producers will be compensated for 85% of price loss during that period. For expected losses from April 15 through the next two quarters, producers will be compensated for 30% of expected losses. The other component of the program will provide contract awards for purchase, assembly, and delivery of commodity boxes containing fresh produce, meat, and dairy to those in need.

Eligibility Requirements: USDA has confirmed that producer participation in the Small Business Administration (SBA) relief programs does not impact eligibility for USDA CFAP.

Direct Payment to Farmers

- Producers of the following commodities (Details of eligible commodities have not been finalized by USDA):
 - **Specialty Crop Producers** (*National Total \$2.1 billion*)
This includes domestically-produced floriculture (cut flowers) and likely nursery
 - **Livestock Producers** (*National Total \$9.6 billion*)
 - Cattle (*National Total \$5.1 billion*)
 - Dairy (*National Total \$2.9 billion*)
 - Hogs (*National Total \$1.6 billion*)
 - **Row Crop Producers** (*National Total \$3.9 billion*)
 - **Other Crop Producers** (*National Total \$500 million*)
- Producers who have an **Adjusted Gross Income (AGI) under \$900,000** or have an AGI over \$900,000 and derive **at least 75 percent** of their income from farming.
- Producers who supply retail markets, farmers markets, restaurants, food services, or terminal markets.

Purchase of Commodities for Distribution

- Regional and local food distributors who have gone idle due to the closure of restaurant, hotel, and food service industries resulting from the COVID-19 pandemic. USDA will utilize distributors' existing infrastructure and workforce to carry out this component of the program.

U.S. DEPARTMENT OF AGRICULTURE CORONAVIRUS FOOD ASSISTANCE PROGRAM

How to Apply: USDA is currently undergoing rulemaking for direct payments to farmers. It is expected that sign up will begin in early May with payments being disbursed in late May or early June. However, the precise timeline for sign up and payments are subject to the USDA finalizing its rules and regulations for the program. For food purchasing and distribution local and regional distributors and food hubs interested in participating in this program should visit <https://www.ams.usda.gov/selling-food-to-usda/farmers-to-families-food-box?emci=0d2f2a30-3186-ea11-a94c-00155d03b1e8&emdi=0f6882af-4486-ea11-a94c-00155d03b1e8&ceid=2020123>.

Required Paperwork: USDA intends to make the sign up process for direct payments to producers simple and straightforward. Sales records and photos will not be required and self-certification will be allowed with the caveat that USDA will conduct retrospective auditing. USDA will also attempt to capture information on commodities sitting in storage.

U.S. SMALL BUSINESS ADMINISTRATION PAYCHECK PROTECTION PROGRAM (PPP)

Summary of Assistance: Congress created the PPP to provide loans for businesses and nonprofits that need assistance with payroll costs and related expenses due to COVID-19. These loans will be forgiven if all employees are kept on the payroll for eight weeks and funds may be used for payroll, rent, mortgage interest, utilities, and certain other expenses. Due to high demand for these loans, Congress has had to act to replenish the funding. Congress also directed funding specifically to additional financial institutions (community banks, credit unions, and Community Development Financial Institutions (CDFIs)) to ensure that loans are as broadly available as possible. **Given that this program is in high demand, and funding is first-come, first-served, it is important that interested entities contact their financial institution as soon as possible.**

Responsible Federal Agency: U.S. Small Business Administration (SBA) and U.S. Treasury Department—(Note: Actual financial assistance provided through private sector banks and other financial institutions).

Type of Assistance: Loans that may be forgiven if certain requirements are met.

Eligibility Requirements:

- A business must have no more than 500 employees.
- Sole proprietorships, independent contractors, the self-employed, non-profits, and 501(c)(19) veterans organizations may also qualify.
- The business or entity must have been in operation on February 15, 2020.
- Treasury and SBA have determined that agricultural producers, farmers, and ranchers are eligible for PPP if they have 500 or fewer employees or meet the SBA's revenue-based size standard (average annual receipts of \$1 million). Agricultural cooperatives are also eligible for PPP provided other program requirements are met. To learn more about eligibility visit USDA's website at: <https://www.usda.gov/coronavirus>.

How to Apply: Given the high demand for this program, businesses, nonprofits, independent contractors, and self-employed individuals who are interested in applying for these loans should contact approved lenders as soon as possible as funding is available on a first-come, first-served basis.

- Current law dictates that the PPP will be available through June 30, 2020, though due to high demand Congress has had to replenish funding, **so interested entities should contact their lenders as soon as possible.**
- More information is now available on the SBA's website: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>, and the Treasury Department's website: <https://home.treasury.gov/policy-issues/cares>.

Local Resources: Local businesses with additional questions about these SBA programs and others should reach out to Hawaii SBA: <https://www.sba.gov/offices/district/hi/honolulu> or Hawaii SBDC: <https://www.hisbdc.org/> for more information.

U.S. SBA ECONOMIC INJURY DISASTER LOANS (EIDL) AND ECONOMIC EMERGENCY INJURY GRANTS (EEIG)

Summary of Assistance: Hawaii businesses, including farms and agricultural enterprises, are eligible for Economic Injury Disaster Loans (EIDL), and Emergency Economic Injury (EEI) Grants. These programs provide immediate assistance for businesses affected by COVID-19 and are available directly through the U.S. Small Business Administration.

Responsible Federal Agency: U.S. Small Business Administration (SBA)

Type of Assistance: Loans (Up to \$2 Million) and Grants (Up to \$10,000)

Eligibility Requirements: Congress recently expanded eligibility to farms and agricultural enterprises that have no more than 500 employees. SBA defines agricultural enterprises as “businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries.” This is in addition to small agricultural cooperatives, aquaculture enterprises, and nurseries that were eligible earlier in the program. Businesses with more than 500 employees may still qualify, but must meet the SBA's industry specific small size standards, or is an individual who operates a sole proprietorship or as an independent contractor. Certain other entities may also be eligible.

How to Apply: Given the high demand for this program, businesses, nonprofits, independent contractors, and self-employed individuals who are interested in applying for these loans should contact the SBA as soon as possible. More information about how to apply for EIDL loans and EEI grants can be found at: <https://www.sba.gov/page/disaster-loan-applications>. You can also read more online by visiting: <https://www.hirono.senate.gov/news/pressreleases/sba-approves-disaster-assistance-for-hawaii-small-businesses>.

Local Resources: Local businesses with additional questions about these SBA programs and others should reach out to Hawaii SBA: <https://www.sba.gov/offices/district/hi/honolulu> or Hawaii SBDC: <https://www.hisbdc.org/> for more information.

RESIDENTIAL MORTGAGE PROVISIONS

Summary of Assistance: The Coronavirus Aid, Relief, and Economic Security (CARES) Act prohibits foreclosures on all federally-backed mortgage loans for a 60-day period beginning on March 18, 2020. It also provides up to 180 days of forbearance for single family owners with federally-backed mortgages who have experienced a financial hardship related to COVID-19. **You must contact your mortgage servicer to request this forbearance.** Mortgages under these provisions include those purchased by Fannie Mae and Freddie Mac, U.S. Department of Agriculture (USDA) Direct Loans, and those ensured by Housing and Urban Development (HUD) Federal Housing Administration (FHA), U.S. Department of Veterans Affairs (VA), or USDA.

The law provides up to 90 days of forbearance for owners of multi-family properties experiencing financial hardship. Borrowers who utilize this forbearance are prohibited from evicting tenants or charging late fees to tenants for the duration of the forbearance period. **You must contact your mortgage servicer to request this forbearance.** Mortgages included under these provisions include loans to real property designed for five or more units that are purchased, insured, or assisted by Fannie Mae, Freddie Mac, or HUD.

USDA Rural Development:

Type of Assistance:

- **Rural Home Loans (Direct Program):**
https://www.rd.usda.gov/sites/default/files/508_RD_FS_RHS_SF502Direct.pdf
- **Single Family Home Loan Guarantees:**
https://www.rd.usda.gov/sites/default/files/508_RD_FS_RHS_SFHGLP.pdf
- **Multi-Family Housing Direct Loans:**
https://www.rd.usda.gov/sites/default/files/508_RD_FS_RHS_MFHDirectLoans.pdf
- Additional information on Rural Development's response to COVID-19 or to access Spanish-language versions of these documents: <https://www.rd.usda.gov/coronavirus>

Local Resources: USDA Rural Development, Hawaii Local Office Voice: (808) 933-8305 Fax: (855) 878-2460
www.rd.usda.gov/hi

HUD:

Type of Assistance:

- **Homeowner:** <https://www.hud.gov/coronavirus/homeowners>
- **Multi-Family Property Owner:** https://www.hud.gov/coronavirus/property_owners
- **Immediate Assistance with Fair Housing Issues:** Contact HUD at 1-800-699-9777.
- **Immediate Assistance with FHA Single Family Issues:** Email answers@hud.gov or call 1-800-Call-FHA.

Local Resources: For mortgage assistance, contact a local HUD-approved Housing Counseling Agency, found here: <https://www.hud.gov/states/hawaii/homeownership/buyingprgms>. For additional resources for homeowners and renters, see this guide from the Legal Aid Society of Hawaii: <https://www.legalaidhawaii.org/housing-covid-19.html>.

FEDERAL TAX PROVISIONS

The federal Internal Revenue Service (IRS) will be issuing guidance and other information on both individual and business specific provisions included in the CARES Act online at: <https://www.irs.gov/coronavirus>

NOTE: For all tax provisions, interested businesses should consult their tax professionals.

- **Federal and State Tax Filing Deadline Delay:** The federal government has delayed the deadline for filing and payment of 2019 taxes for individuals and businesses until July 15, 2020, and the State of Hawaii has delayed its filing and payment deadline until July 20, 2020.
- **Employee Retention Credit:** This provision would provide a refundable payroll tax credit for 50 percent of wages paid by eligible employers to certain employees during the COVID-19 crisis. The credit is available to employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings. The credit is also provided to employers who have experienced a greater than 50 percent reduction in quarterly receipts, measured on a year-over-year basis.

Wages of employees who are furloughed or face reduced hours as a result of their employers' closure or economic hardship are eligible for the credit. For employers with 100 or fewer full-time employees, all employee wages are eligible, regardless of whether an employee is furloughed. The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in wages and compensation paid by the employer to an eligible employee. This credit is available through December 31, 2020.

- **Payroll Tax Payment Extensions:** This provision would allow taxpayers to defer paying the 6.2 percent employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022. Deferral is not provided to employers that avail themselves of loans through the SBA's Paycheck Protection Program. Payroll taxes that can be deferred include the employer portion of Federal Insurance Contributions Act (FICA) taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax ("self-employment tax") liability.
- **Immediate Expensing for Improving Qualified Improvement Property:** Currently, these costs are required to be depreciated over the 39-year life of the building. The CARES Act amends the 2017 Tax Law to allow the interior improvements of buildings to be:
 - a. Immediately expensed in the case of restaurant, retail, and most other property (classified as 15-year property), or;
 - b. Depreciated over 20 years in the case of a real property trade or business.

FEDERAL TAX PROVISIONS

The CARES Act makes this change retroactive to the 2017 Tax Law, which means that companies could amend prior years' returns.

- **Tax Credits for Employers for Coronavirus-Related Paid Leave:** This provision would authorize the U.S. Treasury to provide advance payment of tax credits that are available to private sector employers required to provide up to 12 weeks of coronavirus-related paid leave to those employees.
- **Single Employer Pension Plans:** This provision would delay the required quarterly contributions for 2020 for single employer pension plans to the end of the year. The provision would also allow plans to use 2019 funded status for purposes of determining funding-based limits on plan benefits for plan years that include 2020.
- **Modification of Net Operating Losses (NOLs):** NOLs rules allow taxpayers that experience losses to deduct those losses from past taxes paid (a "carryback") thereby receiving a refund of those taxes, or to deduct from income earned in a future year (a "carry forward"). The CARES Act modifies current law primarily by:
 - a. Allowing taxpayers a five year carryback period for tax years beginning after December 31, 2017 and ending January 1, 2021 (calendar years 2018, 2019, and 2020), and;
 - b. Allowing taxpayers to use NOLs to fully offset taxable income (current law limits this to 80 percent) for tax years beginning after December 31, 2017 and ending January 1, 2021 (calendar years 2018, 2019, and 2020).
- **Modification of Limitation on Business Interest:** Current law allows businesses to deduct business interest up to the sum of the taxpayer's business interest income for the tax year, 30 percent of the taxpayer's adjusted taxable income (ATI) for the tax year, and the taxpayer's floor plan financing for the tax year. The CARES Act allows businesses to elect to deduct up to 50 percent of business interest for 2019 and 2020 rather than 30 percent and allows a taxpayer to elect to use their ATI from either their last tax year (beginning in 2019) or their ATI in the 2020 tax year.

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