



February 2, 2023

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

Dear Mr. Secretary:

Thank you for your continued work on behalf of U.S. farmers and ranchers who serve such a critical role in our nation's economy and security.

We are writing to urge you to use the Phase I methodology in carrying out Phase II of the Emergency Relief Program (ERP) and to also use the Phase I approach going forward for 2022 calendar year losses.

As you know, producers were initially concerned with the time it took the Department to implement Phase I but were largely won over when they saw the fast, effective manner in which they ultimately received assistance. The Phase I approach that you developed not only worked well for producers, it also worked well for the Farm Service Agency, including county offices that are often stretched thin. We appreciate your hard work and effort in this regard. We believe Phase I is an approach worth maintaining and building upon when Congress opts to enact ad hoc disaster legislation.

However, we are deeply concerned with the approach taken under Phase II.

Farm families had a reasonable expectation that Phase II would follow the Phase I approach, and made financial decisions based on this understanding. Producers might not have been surprised by some alterations between Phase I and Phase II but they did not expect such a fundamental change in the nature of ad hoc disaster assistance, a change which has no precedent.

We know from feedback from producers that the change is going to be very impactful, with many producers who had anticipated further relief to cover actual losses expecting to receive no help at all under the new approach. The original Notice of Funds Availability implied and in briefings farmers were assured Phase II would address "crop quality losses, losses for which the producer did not have an applicable crop insurance policy or NAP coverage for the crop and unit, and losses for which the producer had an applicable crop insurance policy or NAP coverage but the loss was not significant enough to result in a crop insurance indemnity or NAP payment." Switching horses midstream makes the impact especially hard on producers.

Our other major concern is simply that comparing schedule F or taxable income from benchmark periods and disaster years does not reflect crop losses meant to be covered by Congress. Families are also concerned about providing tax information to local county offices. Producers have great respect for county committees and employees but sharing tax information is an extremely sensitive matter for a host of reasons. County office personnel are also likely to prefer the customary and more accurate crop-by-crop and farm-by-farm measures as opposed to prying into tax information on a producer-by-producer basis.

When Congress approved the Consolidated Appropriations Act of 2023, most if not all lawmakers believed that the ad hoc disaster provisions they were enacting would be implemented in much the same way as Phase I. Few if any would have expected the income tax-based approach taken under Phase II and certainly do not anticipate this approach for 2022 losses which are to be covered under the new law.

Instead, lawmakers expected a program that continues to build off and complement the underlying Federal Crop Insurance coverage of the producer in addressing crop losses caused by qualifying disasters in a covered year, taking into account affected yields as well as quality and price losses. Yet, the Phase II approach is entirely divorced from this and, consequently, it yields inequitable results that are too many to number or specifically list. However, a couple of examples help illustrate the concerns.

A producer who harvests his crop in one year but markets the crop in a subsequent year covered by disaster assistance could find that these crop sales offset significant crop losses that the producer sustained in the disaster year, losses that would have been covered under the Phase I approach but not under Phase II. Conversely, a producer who was already helped under Phase I could show a sufficient loss in taxable revenue if he pre-purchased inputs or machinery such that he would receive even greater assistance. These are just two of a vast number of examples we have gleaned from producer feedback from across the country. Moral hazards also present themselves under the Phase II approach and producers who try to hedge their risks through a diverse farming operation find themselves penalized under the new program.

We also fear that county offices would be overwhelmed in trying to answer the many questions associated with implementing this entirely new approach to disaster aid. Regrettably, Phase II is not a practicable approach and throws out the significant advances the Department has made in streamlining disaster assistance delivery under Phase I which was one of the priorities of the law which granted the disaster aid authority.

The primary relief to county offices will likely be the sheer number of producers who are turned away from any assistance due to the new approach taken under Phase II, including the 30 percent loss threshold, or who otherwise simply choose to walk away because the assistance granted under the program will not be worth the effort due in part to the program's design and to the prescribed maximum payments.

As such, we respectfully urge you to reconsider Phase II regulations under ERP for 2020 and 2021 and to instead use the effective Phase I approach that you developed. We also urge you to use the Phase I approach in carrying out disaster relief for 2022 and any future ad hoc disaster assistance program.

Thank you for your consideration of our request.

Sincerely,



Jim Sugarek
President SWCA



Nathan Berseth
President MWCA