United States Senate
WASHINGTON, DC 20510

July 14, 2022

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

Dear Secretary Vilsack:

The U.S. Department of Agriculture's (USDA's) work in implementing the Emergency Relief Program (ERP) to help farmers and ranchers who suffered disaster-related losses in 2020 and 2021 has been meaningful to producers around the country. We appreciate your efforts to streamline the process by allowing the Farm Service Agency (FSA) to use data already on record with the Risk Management Agency (RMA), which has been helpful in expediting the process. We write to bring to your attention issues that have come up with ERP implementation and to request that USDA address these issues expeditiously.

The first issue concerns many producers who, because their cause of loss was attributed to a 2019 event, have Prevented Plant indemnities that were not captured under ERP to receive the top up payments even though farmers suffering losses from the same cause of loss were made eligible because the loss was attributed to a 2020 event. Importantly, this was not an intentional misreporting on the part of loss adjusters. Rather, this was a situation where there was no uniform guidance on how to attribute losses that may have occurred over an extended period of time or have resulted from a number of events. It is important that these eligible losses be properly captured in USDA's second generation of Phase I ERP application letters.

The second issue concerns how certain producers' adjusted gross income is calculated in order to be eligible for the higher payment limitation under the program. Generally, under the law, producers who derive 75 percent or more of their adjusted gross income from farming are eligible for the higher limitation. However, we understand that there are some problems with the implementation of this rule. Farm equipment sales should be considered a part of farm adjusted gross income in order to meet the 75 percent rule, which they are not currently without also meeting a whole other set of requirements. We understand an update in the FSA handbook could clarify matters to ensure this is remedied, and we would urge you to make this update.

Additionally, producers who earn 75 percent or more of their income from farming but experienced an overall adjusted gross income loss are meant to be covered by the 75 percent test using reflective metrics, such as gross receipts, to ensure these producers receive the increased payment limitation as well.

Finally, we have heard producers who purchased supplemental crop insurance coverage, such as Supplemental Coverage Option, must wait to receive ERP assistance until the fall, while many producers who did not purchase supplemental coverage may have already received their ERP assistance. We urge you to consider expediting ERP assistance to these producers who purchased supplemental coverage in order to not disincentive their decision to purchase higher levels of coverage, which should be encouraged.

Thank you once again for all of your work in delivering ERP to our farmers and ranchers and for your consideration of our requests.

Sincerely,

John Thune
United States Senator

Amy Klobuchar
United States Senator

Steve Daines
United States Senator

Jon Tester
United States Senator

Kevin Cramer
United States Senator

Tina Smith
United States Senator

John Hoeven
United States Senator

CC: Farm Production and Conservation Under Secretary Robert Bonnie
FSA Administrator Zach Ducheneaux
RMA Administrator Marcia Bunger