WHIPping up Agricultural Disaster Spending Since 2017

September 2019

In response to active hurricane seasons in 2017 and 2018, Congress appropriated, through two acts, $5.4 billion in "emergency" funds to compensate farming and ranching businesses for economic losses. This disaster aid is in addition to federal payments made from various farm safety net programs authorized by the farm bill: commodity programs, federally subsidized crop insurance, and four separate permanently authorized agricultural disaster programs primarily for livestock and orchardists.[i]

[Via Texas Military Dept/Flickr Creative Commons]

Congress' now repeated appropriation of "emergency" unbudgeted income subsidies for agricultural businesses, after going nearly a decade without doing so, is problematic. Costly mandatory farm bill entitlement programs were supposed to displace the need for unpredictable ad hoc aid. In addition, the revival of ad hoc subsidies discourages responsible risk management by extending federal responsibility to perils and economic losses that have never been the responsibility of the federal government. The Secretary of Agriculture's implementation of the disaster spending is also at times in contradiction to the clear intent of Congress.

Moving forward, Congress should be more judicious in its implementation of the financial safety net for agricultural businesses and ensure federal disaster assistance does not undermine efforts to create a cost-effective, transparent financial safety for farming and ranching businesses.

Ad Hoc Disaster Aid – Opening the Floodgates for Federal Spending

The 2017 hurricane season was the most active and destructive season for the southeastern United States since 2005, the most active hurricane season on record.[ii] The Congressional response to Hurricanes Harvey, Irma, and Maria was for numerous lawmakers and agricultural special interests to immediately call for federal assistance.[iii] Eventually these demands culminated in $2.36 billion of agricultural income subsidies being appropriated as part of the $89 billion emergency supplemental attached to the Bipartisan Budget Act of 2018 in February 2018.[iv]

On July 18, 2018 the USDA published a rule explaining how it would distribute these funds as part of the temporary Wildfires and Hurricanes Indemnity Program (WHIP).[v,vi] Additional damages in the Carolinas from Hurricane Florence in September 2018 and Hurricane Michael striking the Florida panhandle and Georgia in October 2018 resulted in pleas for additional disaster spending.[vii] Congress first debated a disaster bill for the 2018 season in December 2018.[viii] Ultimately this debate stretched into 2019 and the focus of draft supplemental spending bills grew to include areas affected by major blizzards, tornadoes, and flooding that occurred in 2019. On June 6, 2019, the president signed a $19.1 billion disaster aid package.[ix] This package contained an additional $3.00 billion in subsidies for agricultural losses due to hurricanes and other specific disaster events in 2018 and 2019. On September 9, 2019 USDA announced it would distribute these funds through a new program entitled WHIP+, which modifies and expands the framework used to distribute the aid provided for losses in 2017. USDA published a final rule detailing WHIP+ on September 13, 2019.[x]

Government and Agriculture Joined at the (W)HIP

The Secretary of Agriculture has broad authority to implement discretionary appropriations.[xi] In structuring WHIP, however, the Secretary administered the distribution of disaster aid in ways not expressly stated by Congress. The broad strokes are reasonable. Some details contradict the clear intent of Congress.

The Secretary's implementation of 2017 disaster aid expands the pool of businesses eligible for federal subsidies and undermines Congressional intent. He does this by establishing a new income means test and individual payment limit that contradicts the existing means test and payment limits established in statute for the farm bill-authorized income subsidy programs.[xii] In addition, he narrowly interprets the statutory requirement that disaster aid recipients "shall be required to purchase crop insurance where crop insurance is available for the next two available crop years" so that Congressional intent is undermined.

While the vast majority of acreage in the areas affected by the 2017 hurricanes was in fact covered by federally subsidized crop insurance (96 percent of cotton acres in Georgia, 94 percent of peanut acres in Georgia, 91 percent of cotton acres in Florida, 82 percent of oranges in Florida), some producers chose to forgo purchasing insurance.[1] The crop insurance purchase requirement included in the supplemental appropriations bill was clearly intended to ensure these producers take responsibility for shouldering a portion of their future financial risk, by purchasing federally subsidized crop insurance, as a condition for taxpayers bailing them out.

[1] In 2017, Georgia producers insured 1,224,107 acres of cotton out of 1,280,000 acres planted, 783,416 acres of peanuts out of 835,000 acres planted, and 13,775 acres of blueberries out of 15,709 acres bearing. Florida producers insured 90,233 acres of cotton out of 99,000 acres planted, and 144,035 acres of oranges in RBUP (48 percent of total acres insured) and 158,271 acres in RCAT (52 percent of total acres insured) for a total of 302,306 acres insured. Texas producers insured 6,710,030 acres of cotton out of 7,014,000 acres planted.

TAXPAYERS for COMMON SENSE

WHIP Implementation – Undermining Congressional Intent

	BBA2018 Supplemental Appropriations	Wildfires and Hurricanes Indemnity Program (WHIP)
Income Qualification	• No mention. • Established law is farm bill subsidy eligibility requires an average Adjusted Gross Income (AGI) of less than $900,000. • This AGI is calculated as an average of the three previous consecutive tax years.	• No AGI test. An individual making more than $900,000 in AGI can receive subsidies
Individual Payment Limit	• No specific limit mentioned. • Established law is $125,000 total covering all crops (other than peanuts). • There is a separate $125,000 payment limit for peanuts.	• $125,000 for individuals or entities for whom agricultural income is less than 75% of their total average AGI (tax years 2013, 2014, 2015). • $900,000 for individuals or entities for whom agricultural income is at least 75% of their total average AGI (tax years 2013, 2014, 2015).
Loss Coverage	• Up to 85% of losses (if the business purchased crop insurance). • Up to 65% of losses (if the business did not purchase crop insurance).	• Interprets 85% and 65% of loss as applying to the aggregate total loss for all WHIP participants (not an individual's calculated loss). • Individual payment calculations set as high as 95% of their documented loss for producers that purchased high levels of crop insurance.
Crop Insurance Purchase Requirement	• That producers receiving payments under this heading, as determined by the Secretary, shall be required to purchase crop insurance where crop insurance is available for the next two available crop years. • and producers receiving payments under this heading shall be required to purchase coverage under NAP where crop insurance is not available in the next two available crop years, as determined by the Secretary:	• Only requires purchase of crop insurance or NAP for the next two available crop years if the producer grows the same crop for which they received a WHIP payment. Waives purchase requirement if they grow any other crop. • For example: if a producer received a WHIP payment for lost cotton in 2017 and they plant peanuts on that acreage in 2018 or in 2019, they would not have to buy crop insurance. If they plant cotton in 2018 or 2019, they would have to buy crop insurance.

Supplanting the Safety Net with "Supplemental" Agricultural Disaster Spending

Congress' appropriation of unbudgeted agricultural disaster aid in February 2018 unlocked a veritable flood of demand for even more agricultural income subsidies. In response to Hurricanes Florence and Michael making landfall in September and October 2018, legislators and agricultural special interest groups almost immediately began demanding additional ad hoc aid.[xiii,xiv] This in spite of the fact many of the areas affected in 2018 were the same locations affected in 2017 and, once again, the majority of affected crop acreage was covered by federally subsidized crop insurance.[2] After more than a year of pleading, months of legislative debate and nine versions, H.R. 2157, Additional Supplemental Appropriations for Disaster Relief Act, 2019, was signed into law on June 6, 2019.[xv] Congress' second act of "emergency" income subsidies for agricultural businesses has a larger price tag and covers more perils than the 2018 supplemental spending bill.

Emergency Agriculture Spending Expands in Size and Scope

	Bipartisan Budget Act of 2018, Div. B Supplemental Appropriations (Became Law, 2/8/2018)	FY2019 Supplemental (H.R. 2157 - Became Law, 6/6/2019)
Ad Hoc Income Subsidies	• $2,360,000,000	• $3,005,442,000
Covered losses	• For necessary expenses related to crops, trees, bushes, and vine losses.	• For necessary expenses related to losses of crops (including milk, on-farm stored commodities, crops prevented from planting in 2019, and harvested adulterated wine grapes), trees, bushes, and vines.
Eligible disasters	• Hurricanes Harvey, Irma, Maria, and other hurricanes and wildfires occurring in calendar year 2017.	• Hurricanes Michael and Florence, other hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires occurring in calendar years 2018 and 2019 under such terms and conditions as determined by the Secretary.
Form of Assistance	• That the Secretary may provide assistance for such losses in the form of block grants to eligible states and territories.	• That the Secretary may provide assistance for such losses in the form of block grants to eligible states and territories and such assistance may include compensation to producers, as determined by the Secretary, for forest restoration and poultry and livestock losses.
Loss Coverage	• Up to 85% of losses (if the business purchased crop insurance). • Up to 65% of losses (if the business did not purchase crop insurance).	• Up to 90% of losses (if the business purchased crop insurance). • Up to 70% of losses (if the business did not purchase crop insurance).
Crop Insurance Purchase Requirement	• That producers receiving payments under this heading, as determined by the Secretary, shall be required to purchase crop insurance where crop insurance is available for the next two available crop years. • and producers receiving payments under this heading shall be required to purchase coverage under NAP where crop insurance is not available in the next two available crop years, as determined by the Secretary.	• That producers receiving payments under this heading, as determined by the Secretary, shall be required to purchase crop insurance where crop insurance is available for the next two available crop years, excluding tree insurance policies • and producers receiving payments under this heading shall be required to purchase coverage under NAP where crop insurance is not available in the next two available crop years, as determined by the Secretary.

USDA Adds Layers of Complexity to the Farm Safety Net

On September 9, 2019 USDA announced its intention to direct the FY2019 "emergency" disaster assistance to farming and ranching businesses in a manner like 2017 WHIP.[xvi] A final rule was published September 13, 2019 establishing the Wildfire and Hurricane Indemnity Program Plus (WHIP+). While similar to the WHIP program covering 2017 losses, WHIP+ contains several significant differences.

[2] 95 percent of planted cotton acres in Georgia, 94 percent of peanuts in Georgia, 92 percent of cotton in Florida, and 76 percent of oranges in Florida were insured in 2018.

Comparison of 2017 WHIP and WHIP+

	WHIP	WHIP+
Program Structure	• **2017 WHIP Income Subsidies:** $2,000,000,000 • **Florida Citrus Block Grant**: $340,000,000 • **USDA Overhead**: $20,000,000	• **WHIP+ 2018 and 2019 losses**: $1.223 billion • **Prevented Planting Supplemental Disaster Payments**: $535 million. Payments to producers who were prevented from planting due to excess precipitation, flood, storm surge, tornado, volcanic activity, tropical depressions, hurricanes, and cyclones in the 2019 crop year. • **On-Farm Storage Loss Program**: $50 million. Payments to producers for whom harvested commodities, including hay, stored in structures on the farm were made "useless and non-merchantable" due to floods, hurricanes, wildfires and any other qualifying weather event. • **WHIP Milk Loss Program**: $5 million. Payments to producers with unmarketable milk due to events such as power outages and impassable roads. • **WHIP+ future 2019 and 2020 crop year losses**: TBD • **Block grants to eligible states**: TBD
Income Qualification	• No AGI test. An individual making more than $900,000 in AGI can receive subsidies	• Same as WHIP

Payment Limits	• **$125,000** for individuals or entities for whom agricultural income is less than 75% of their total average AGI (tax years 2013, 2014, 2015).
	• **$900,000** for individuals or entities for whom agricultural income is at least 75% of their total average AGI (tax years 2013, 2014, 2015).
		• Same **($125,000)** as WHIP for individuals or entities for whom agricultural income is less than 75% of their total average AGI (tax years 2015, 2016, 2017).
		  o Limit is a *combined total* for losses occurring in 2018, 2019, and 2020 crop years.
		• **$250,000 per crop year** for individuals or entities for whom agricultural income is at least 75% of their total average AGI (tax years 2015, 2016, 2017).
		  o Total combined limitation for crop years 2018, 2019, and 2020 is **$500,000.**
		• WHIP+ Payment limits *do not* apply to payments made under Prevented Planting Supplemental Disaster Payments

Crop Insurance purchase requirement	• Only requires purchase of crop insurance or NAP for the next two available crop years if the producer grows the same crop for which they received a WHIP payment. Waives purchase requirement if they grow any other crop.	• Purchase requirement only applied to crop losses. Recipients of WHIP+ for lost trees, bushes, or vines are not held to the purchase requirement.
Funding availability	Through December 31, 2020	• TBD

The Secretary of Agriculture's implementation of ad hoc aid through WHIP and WHIP+ leads to several problems).

- **Undermining responsible risk management and encouraging moral hazard.** Under both WHIP and WHIP+ ad hoc subsidies are sent to producers who chose to not purchase federally subsidized crop insurance, even when it was available. A main talking point of the crop insurance lobby's defense of the $8.5 billion-a-year federally subsidized crop insurance program is that doing so precludes the need for costly, unpredictable ad hoc supplementals.[xvii] In addition, while taxpayers cover on average 62 percent of premiums in the program, producers are responsible for financing a portion of their policy. Knowing that the federal government will extend subsidies to producers who made the economic decision to not buy crop insurance and not require they purchase crop insurance on whatever they subsequently grow, will discourage producers from taking financial responsibility in the future.

- **Unnecessary and costly federal overreach.** WHIP+ includes a program to compensate producers for 75 percent of the value of harvested commodities, including hay, that were stored on farm but destroyed due to natural disasters. Like any other farm property – be it machinery, buildings or inventory such as fertilizer and other inputs – harvested crops stored on farm can be, and often are, insured as part of widely available private sector insurance policies. Stored commodities are uninsured or underinsured because agricultural businesses chose not to purchase insurance. And despite the existence of private sector insurance, special interests are already calling for Congress to make coverage of on-farm stored commodities a responsibility of the federal crop insurance program.[xviii] Taxpayers should not be held financially responsible for the individual decisions of farm businesses.

- **Covering prevented plantings is a fiscally irresponsible duplication of payments.** Federally subsidized crop insurance already provides protection in the event weather conditions prevent a farmer from planting a crop. Economists expect USDA to make a record $3.5 billion in "prevent plant" payments in 2019.[xix] Yet under WHIP+, producers who filed prevented planting insurance claims will receive a "bonus" payment totaling either 10 or 15 percent of their indemnity depending on their insurance policy. Providing unbudgeted "bonus" subsidies to businesses that are already protected by taxpayer-subsidized crop insurance once again undercuts the notion of the farm safety net being about managing risk rather than maximizing subsidies.

WHIPping special interests into a frenzy

Prior to attaching $2.36 billion in "emergency" income subsidies to the BBA2018, the last major supplemental appropriation bill to include income subsidies for agricultural businesses occurred in 2007. Every subsequent disaster supplemental, including the $60 billion Sandy Supplemental in 2013, limited the emergency funding provided to USDA to programs to remove debris or repair physical facilities, and to distribute nutrition assistance.[xx][3] Yet after a decade without supplementing farm bill income safety net programs with "emergency" income subsidies, in 16 months Congress adopted two packages, covering three crop years, totaling $5.4 billion. Calls for additional "emergency" assistance continue.

The Secretary's implementation of WHIP+ is unlikely to dampen these calls for additional aid.

[3] There have been 13 disaster supplementals from May 25, 2007 to the Additional Supplemental Appropriations for Disaster Relief Act, 2019 that became law on June 6, 2019.

- Despite Congress directing the $3.0 billion to cover 2018 and 2019 losses, only producers with losses due to 2018 events are assured of receiving their payment. Those affected in 2019 will get a check for 50 percent of the calculated payment due. Come January 1, 2020, USDA will send the other half, if funds are available.
- It is unclear how the Secretary will compensate producers "for forest restoration and poultry and livestock losses." The Secretary was reported as stating the administration was working on a block grant to cover timber losses in Florida. There is no indication of the timing on this or other potential state block grants, simply that "Additionally, some of the available funding is being provided to certain States through block grants to address specific losses in those states."

Ad hoc supplementals threaten to undermine the safety net

The concept of federally subsidized crop insurance is that in exchange for the certainty and predictability of taxpayer support, farming and ranching businesses bear a portion of the economic burden of their financial safety net. Resorting to unbudgeted emergency spending to bail out producers who refused to contribute their fair share by purchasing federally subsidized crop insurance, or to displace private sector tools for managing risk, undermines decades of progress toward a cost-effective agriculture safety net taxpayer can afford, and agriculture needs.

For more information contact, Joshua Sewell, 202.546.8500 x116
josh@taxpayer.net

---

[i] Why Disaster Spending? Taxpayers Already Created a Generous Safety Net for Agriculture. March 2019. https://www.taxpayer.net/agriculture/additional-disaster-funding-for-agriculture-is-unnecessary/
[ii] Dolce, Chris. "2005's Record-Breaking Hurricane Season: By the Numbers". The Weather Channel. https://weather.com/storms/hurricane/news/2005-hurricane-season-by-the-numbers
[iii] Letter to Congress. December 13, 2017. https://www.taxpayer.net/wp-content/uploads/2019/09/Congressional-Response-to-Hurricanes-2017.pdf
[iv] Congress.gov. H.R.1892 - Bipartisan Budget Act of 2018. https://www.congress.gov/bill/115th-congress/house-bill/1892/text
[v] Federal Register. 2017 Wildfires and Hurricanes Indemnity Program. https://www.federalregister.gov/documents/2018/07/18/2018-15346/2017-wildfires-and-hurricanes-indemnity-program
[vi] USDA. Farm Service Agency. 2017 Wildfires and Hurricanes Indemnity Program (WHIP). https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/wildfires-and-hurricanes-indemnity-program/index
[vii] "Trump promises to seek additional aid as he tours hurricane-ravaged areas", Washington Post, 10/15/18, https://www.washingtonpost.com/politics/trump-first-lady-tour-parts-of-florida-georgia-devastated-by-hurricane-michael/2018/10/15/9239b9da-d094-11e8-8c22-fa2ef74bd6d6_story.html
[viii] Congress.gov. H.R.695 - Department of Defense Appropriations Act, 2018. https://www.congress.gov/bill/115th-congress/house-bill/695
[ix] Congress.gov. H.R.2157 - Additional Supplemental Appropriations for Disaster Relief Act, 2019. https://www.congress.gov/bill/116th-congress/house-bill/2157

[x] USDA, "Agricultural Disaster Indemnity Programs," 84 *Federal Register* 48518, September 13, 2019, https://www.federalregister.gov/documents/2019/09/13/2019-19932/agricultural-disaster-indemnity-programs#sectno-reference-760.1608%20

[xi] CRS Report R44582, Overview of Funding Mechanisms in the Federal Budget Process, and Selected Examples, by Jessica Tollestrup. https://crsreports.congress.gov/product/pdf/R/R44582

[xii] CRS Report IF11165, 2018 Farm Bill Primer: Program Eligibility and Payment Limits. Randy Schnepf, Megan Stubbs. https://crsreports.congress.gov/product/pdf/IF/IF11165

[xiii] "Hurricane Florence could cost Carolina farms billions in damage". NPR. 9/21/2018. https://www.pbs.org/newshour/economy/hurricane-florence-could-cost-carolina-farms-billions-in-damage

[xiv] Letter to Congress. October 30, 2018. https://www.taxpayer.net/wp-content/uploads/2019/09/Congressional-Letter.pdf

[xv] Congress.gov. H.R.2157 - Additional Supplemental Appropriations for Disaster Relief Act, 2019. https://www.congress.gov/bill/116th-congress/house-bill/2157

[xvi] "USDA Resources Available for Farmers Hurt by 2018, 2019 Disasters". USDA. 9/9/2019. https://www.usda.gov/media/press-releases/2019/09/09/usda-resources-available-farmers-hurt-2018-2019-disasters

[xvii] Crop Insurance in America. "How has farm policy evolved over the decades?". https://cropinsuranceinamerica.org/how-has-farm-policy-evolved-over-the-decades/

[xviii] Testimony of Ruth Gerdes. "How Farm Policy Helps Farmers in Adverse Conditions". House Committee on Agriculture Subcommittee on General Farm Commodities and Risk Management. June 20, 2019. https://agriculture.house.gov/uploadedfiles/hhrg-116-ag16-wstate-gerdesr-20190620.pdf

[xix] Schnitkey, G. "Historical Prevent Planting Payments: Implications for 2019." farmdoc daily (9):126, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, July 9, 2019. https://farmdocdaily.illinois.edu/2019/07/historical-prevent-planting-payments-implications-for-2019.html

[xx] CRS Report RL31095, Emergency Funding for Agriculture: A Brief History of Supplemental Appropriations, FY1989-FY2012, by Ralph M. Chite. https://crsreports.congress.gov/product/pdf/RL/RL31095.