

United States Senate

WASHINGTON, DC 20510-0609

February 7, 2022

The Honorable Tom Vilsack
Secretary of Agriculture
United States Department of Agriculture (USDA)
Washington, DC 20250

RE: CLIMATE-SMART AGRICULTURE AND FORESTRY PARTNERSHIP INITIATIVE

Dear Secretary Vilsack,

While I am a staunch supporter of conservation and believe farmers are the original conservationists, I write today with concerns that the USDA is using the Commodity Credit Corp. (CCC) account in an attempt to circumvent the Farm Bill process where programs are established by and with congressional consent. Today you announced plans to initiate a new program called "Climate-Smart Agriculture and Forestry Partnership Initiative" using \$1 billion from the CCC account. Apparently, this program will fund demonstration projects which are aimed at creating carbon markets. Furthermore, prior to the close of the Fiscal Year 2021 you established numerous programs that in aggregate would result in expenditures of \$3 billion, again funded from the CCC.

Since 1985, congress has worked in a bipartisan manner to prioritize farm, conservation, and nutrition programs. These carefully packaged bills ensure that everyone has a seat at the table and has largely produced successful results. Now it seems USDA is crafting its own farm bill by using the CCC to create its own programs and priorities that haven't been established by congress and to fund projects only USDA deems worthy. With only one partisan person seated at the table, we are unable to work together and build long lasting and successful programs. Unilateral actions threaten the ability for congress to build a bipartisan Farm Bill.

I've been vocal in my concern with utilizing the CCC for programs without the consent of congress nor contemplated by the Charter Act. The CCC is authorized to use its general powers only after programs have been submitted to and approved by congress. 15 USCS § 714c. I am certainly concerned with what appears to be the USDA intentionally avoiding the process and procedures establish by law not only in the CCC Charter Act, but also under the Congressional Review Act and the Administrative Procedures Act.

Finally, with the enactment of Title XII of the Farm Bill, congress has placed specific annual limitations on the amount of CCC funds that can be used to carry out a large number of conservation activities. These limits cannot be exceeded by using the general authorities in section 5 of the CCC Charter Act. With this in mind I respectfully request an answer to the following questions:

1. How has CCC complied with the Congressional notification and approval provisions of section 5 of the CCC Charter Act:
2. When will CCC be issuing a final rule for submission to Congress under the Congressional Review Act?
3. Did the transfer last September of CCC funds to other agencies of the Department of Agriculture prior to the necessary Congressional notification and approval process violate any Federal statutes such as the Anti-Deficiency Act?
4. Has the Department of Justice approved the manner in which CCC has avoided the Congressional notification and approval process set forth in section 5 of the CCC Charter Act?
5. Title XII of the Food Security Act of 1985 (Title XII) sets forth a large number of conservation programs that are funded by CCC and under provisions that limit the use of CCC funds to specified levels. What procedures are in place to ensure that the general authority under the CCC Charter Act are not used to carry out the same practices otherwise authorized under the more specific provisions of Title XII?
6. Regulations are in place for the Title XII programs. If the same practices can be carried out under the proposed CCC Charter Act program as can be carried out under Title XII why are there no regulations needed for the CCC Charter Act activities?
7. Can you provide me copies of all informal memorandums written by USDA attorneys and formal legal opinions that were issued in the development of these proposed activities and for all other programs that are within the September 29, 2021 press announcing CCC initiatives and Climate-Smart Agriculture and Forestry Partnership Initiative?
8. Will you also provide me with the transcript and meeting notes of the most recent CCC Board meeting approving funding for this program?

Thank you for considering the above questions and please provide a response by Friday, February 11, 2022.

Sincerely,



Roger Marshall, M.D.
U.S. Senator