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Congress Should Reject Efforts to Give Away Its Spending Power to Create a Massive USDA Slush Fund

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KEY TAKEAWAYS

Current legislative proposals would use the coronavirus pandemic as a pretext to make permanent and sweeping changes to agricultural policy.

The proposals would inappropriately delegate congressional spending power to the Agriculture Secretary, including creating a massive USDA slush fund.

Congress should address the pandemic through temporary measures, not through new laws that would simply give away its constitutional spending power.

Current legislation in Congress reflects the unfortunate mantra that no crisis should go to waste. Specifically, two proposals would use COVID-19 as a pretext to give the U.S. Secretary of Agriculture even more spending discretion—permanently—under the Commodity Credit Corporation Charter Act (Charter Act),[1] allowing the U.S. Department of Agriculture (USDA) to spend tens of billions *more* dollars each year using this discretionary authority.

These two proposals would be yet another example of Congress delegating its lawmaking power (in this case, spending power) to a federal agency. The Agriculture Secretary would have more power to spend taxpayer dollars while Congress fails to take accountability for the billions of dollars that would be handed over to agricultural special interests.

This *Issue Brief* is not focused on whether Congress should spend additional money to help farmers or how much Congress should spend. Instead, it focuses on the unaccountable process that would be implemented to spend this money, and the inappropriately permanent scope of the proposed changes.

Background on Discretionary Spending Authority under the Commodity Credit Corporation Charter Act

Since 1933, the Commodity Credit Corporation (CCC) has served as a funding mechanism for agricultural programs. Congress and the Agriculture Secretary use it to finance most agricultural programs, from price-support programs to disaster assistance.[2] Except for federal crop insurance, the CCC is generally the means by which agriculture-related farm bill programs are funded.[3]

Under Section 5 of the Charter Act, the Agriculture Secretary has a broad range of powers through the CCC.[4] However, despite this broad range of powers, most of the CCC-related money is restricted in its use and not available for the Secretary to spend as he deems fit. In general, Congress specifically authorizes how money should be spent, usually through omnibus farm bill legislation.[5] From 2012 to 2017, Congress even explicitly limited the Secretary's ability to use his discretionary authority to spend any unrestricted money.[6]

This CCC discretionary authority has generally not been used to spend major amounts of taxpayer dollars to help agricultural special interests, and its use has been narrow in scope.[7] However, this changed when this CCC authority was employed as the means to provide $28 billion of so-called trade aid to farmers in 2018 and 2019.[8]

Even with the trade aid, the Charter Act itself was not amended to make any permanent changes to how the law operates. However, two current legislative proposals would make permanent changes to the CCC. This would likely turn an infrequently and modestly used discretionary power into a new tool to funnel tens of billions of dollars a year to agricultural special interests, beyond the existing billions of dollars already going to them through the overgenerous and deeply flawed farm subsidy system.

Two Harmful Legislative Proposals

There are two major proposed legislative changes to the Charter Act. First, the House-passed Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, a more than $3 trillion spending bill to address health and economic fallouts of COVID-19,[9] would permanently change Section 5 of the Charter Act by increasing the discretionary power of the Agriculture Secretary.[10] These Charter Act expansions are also included in the Responding to Epidemic Losses and Investing in the Economic Future (RELIEF) for Producers Act of 2020, introduced in the Senate on July 2, 2020.[11]

Specifically, even after the pandemic, both bills would authorize the Agriculture Secretary to use taxpayer dollars to "remove and dispose of or aid in the removal or disposition of surplus livestock and poultry due to significant supply chain interruption during an emergency period" and "aid agricultural processing plants to ensure supply chain continuity during an emergency period."

Second, there is proposed legislation in the House (H.R. 6728)[12] that would permanently increase the CCC's annual borrowing limit from $30 billion a year to $68 billion.[13] Each year, the CCC borrows money from the U.S. Treasury to fund agricultural programs. Congress replenishes the money spent by the CCC through annual appropriations, thereby ensuring the CCC's ability to annually borrow up to the $30 billion limit. Quite simply, the CCC has $30 billion a year to fund USDA programs.

Based on data from fiscal year (FY) 2005 to FY 2019 compiled by the Congressional Research Service, the CCC has not come close to breaching the annual borrowing limit.[14] Even in the current fiscal year, it is unlikely that such a situation will occur. The Coronavirus Aid, Relief and Economic Stability (CARES) Act[15] included a $14 billion reimbursement for CCC that would allow up to $44 billion in CCC spending in FY 2020.[16]

Unless Congress intends to specifically authorize more spending through the CCC, this proposal appears to be an effort to give the Agriculture Secretary more than $30 billion in unrestricted discretionary spending authority; in other words, to hand the Agriculture Secretary an annual slush fund.

Problems with the Two Legislative Proposals

These proposed changes would drastically and negatively affect agricultural policy. Specifically, the legislative proposals would:

- **Create inappropriate and unnecessary permanent changes.** The legislative proposals would allegedly address COVID-19 issues, but do so through permanent changes. Instead of making targeted and temporary changes to address any concerns, these bills would unnecessarily use the pandemic as a pretext for permanent change to agricultural policy. If there are any concerns regarding the impact of COVID-19 on agriculture, they should be addressed through temporary measures.

- **Delegate, improperly, congressional spending power to the Agriculture Secretary.** These bills would delegate congressional spending power to the Agriculture Secretary. By doing so, Congress would be failing to exercise its constitutional obligations, and abdicating accountability for how tens of billions of dollars are spent. Such a move would allow Congress to avoid making important choices, such as which agricultural commodities would be eligible for payments, which geographic regions would be covered, whether there should be payment limits, and about almost every detail of any future handout program. Giving so much power to the Agriculture Secretary would also allow for the creation of arbitrary policies and, at best, further politicize agricultural policy; at worst, such power leads to corruption, cronyism, and other unethical practices. Further, when Congress fails to exercise its constitutional responsibilities and delegates its spending power to a federal agency, it is undermining the U.S. Constitution, specifically the separation of powers and the nation's republican form of government.[17] Legislators are supposed to work on behalf of the American people, whom they represent in Congress. When legislators pass off so much power to an agency such as the USDA, they are not representing the people but instead passing the buck to a federal agency—which specifically does *not* have such spending authority.

- **Potentially expand CCC discretionary authority beyond assisting farmers.** The language in the HEROES Act and RELIEF for Producers Act is so broad in scope that it might allow the Agriculture Secretary to provide money to special interests that have nothing to do with farming. For example, authorizing the Secretary to "aid agricultural processing plants to ensure supply chain continuity during an emergency period" could arguably cover giving money to any party throughout the supply chain. This might mean giving money to food manufacturers, ethanol plants, or even clothing companies, as they are consumers of agricultural products.

Responding to the Adjustment for Inflation Argument

Proponents of increasing the $30 billion borrowing authority assert that this authority should be adjusted for inflation because the current $30 billion limit was set in 1987.[18] Besides ignoring the delegation problem and inappropriately using the pandemic as a pretext for permanent change, this argument is a red herring that in no way solves an actual problem.

The CCC and its $30 billion borrowing limit is a funding mechanism for the USDA to fund CCC programs, almost all of which are specifically authorized by Congress. There is no basis for going beyond this level since the specifically authorized programs are not exceeding this spending level. In fact, there is usually plenty of room for unrestricted discretionary spending, a type of spending that Congress has traditionally frowned upon and has been used in a very limited manner.

This effort to increase the borrowing limit would not address a concern about meeting the costs of specifically authorized programs, but instead would create a new way for agricultural special interests to receive billions of dollars a year for almost any reason imaginable. This would turn the CCC from a funding mechanism for congressionally authorized programs into a massive slush fund controlled by the Agriculture Secretary.

Whatever the agricultural special interests could not achieve through specific congressionally authorized farm bill programs would now be achievable through this new catch-all way for providing billions of dollars in extra money.

Recommendations for Congress

Some Members of Congress and agricultural special interests appear to view the pandemic as an opportunity to drastically increase agricultural spending and make it possible to get Congress out of the way permanently by funneling billions of dollars to these interests.

For any legislator who is even remotely concerned with Congress already delegating too much of its power to federal agencies, the proposed expansion of CCC discretionary spending power should be a non-starter. It would arguably be one of the worst abrogations of congressional spending power in recent memory. In response to these proposed changes to the Charter Act, Congress should:

- **Reject any permanent expansion of the Charter Act.** The current pandemic should not be an excuse to make permanent changes to agricultural policy. If Congress wants to address COVID-19-related concerns, it should do so through temporary measures related directly to COVID-19. Further, Congress should pass any measures through specific legislation in which Congress itself details how the money will be spent.

- **Reject broadening the scope of the Charter Act.** Congress should not increase the discretionary power of the Agriculture Secretary and delegate even more of its spending power to the USDA. It certainly should not increase CCC borrowing authority, which would create an agricultural subsidy "slush fund" subject only to the whims of the Agriculture Secretary.

Conclusion

There may or may not be a need to spend more money to assist American farmers during the current pandemic. However, some legislators are using that question as an excuse to promote an answer that will radically change agricultural policy well beyond the pandemic. If these legislators want to push such misguided changes, they should do so in an open manner that is not misleadingly packaged as a COVID-19 measure. Most legislators should recognize that Americans and their constitutional system of government deserve better than Congress abrogating its constitutional lawmaking powers.

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Endnotes

1. Commodity Credit Corporation Charter Act of 1948, Public Law No. 80–806.
2. This *Issue Brief* is not intended to be a detailed analysis of the CCC. To learn more about the CCC and how it operates, see Megan Stubbs, "The Commodity Credit Corporation: In Brief," Congressional Research Service, September 4, 2019, https://crsreports.congress.gov/product/pdf/R/R44606 (accessed July 14, 2020), and U.S. Department of Agriculture, "Commodity Credit Corporation," https://www.usda.gov/ccc (accessed July 14, 2020).
3. The Federal Crop Insurance Corporation (FCIC), a wholly federally owned corporation managed by the USDA's Risk Management Agency, is the financing vehicle for federal subsidies in the federal crop insurance program. To learn more about the FCIC, see Randy Schnepf, "Federal Crop Insurance: Background," Congressional Research Service, August 13, 2015, https://crsreports.congress.gov/product/pdf/R/R40532 (accessed July 14, 2020), and U.S. Department of Agriculture, "Federal Crop Insurance Corporation," Risk Management Agency, https://www.rma.usda.gov/Federal-Crop-Insurance-Corporation (accessed July 14, 2020).
4. See the Charter Act, Sec. 5.
5. A 2019 Congressional Research Service report explains: "The majority of CCC operations are directed by statutory authorities that specifically direct USDA on how to administer CCC activities and in what amounts to fund them. The broad CCC authorities, however, also allow USDA a level of discretion to carry out effectively any operation that supports U.S. agriculture. This discretion has been used throughout CCC's history for a number of different purposes, including responses to natural disasters, economic conditions, and administrative priorities. The scope and scale of this discretion has traditionally been targeted to specific events, crops, or domestic needs. In the decade before FY2018, administrative discretion was partially restricted. USDA's use of the unrestricted portion of CCC's authority during this period totaled in the hundreds of millions of dollars." See Stubbs, "The Commodity Credit Corporation: In Brief."
6. In 2010, the Obama Administration tapped various USDA discretionary authorities to spend $348 million on emergency assistance to agricultural producers. According to the Congressional Research Service, in response to the 2010 spending, Congress included a restriction in appropriations bills from fiscal years 2012 to 2017. The appropriations rider prevented the Secretary of Agriculture from sending income subsidies directly to farmers and ranchers by restricting the ability "to carry out clause (3) of section 32, or for any surplus removal activities or price support activities under section 5 of the Commodity Credit Corporation Charter Act." See, for example, the Consolidated Appropriations Act of 2017, Public Law No. 115–31, Division A, Sec. 215, https://www.congress.gov/115/plaws/publ31/PLAW-115publ31.pdf (accessed July 14, 2020). There were reported allegations that this money was intended to help then-Senator Blanche Lincoln (D–AR) in her 2010 re-election campaign. See, for example, Alexander Bolton, "Emanuel Throws $1.5B Life Preserver to Farmers, Aiding Lincoln," *The Hill*, July 29, 2010, https://thehill.com/homenews/administration/111675-rahm-emanuel-throws-15-billion-life-preserver-to-farmers-helping-embattled-sen-lincoln (accessed July 14, 2020), and Dan Morgan, "Bogus Promise on Deficit Undercuts Lincoln," *The Fiscal Times*, October 29, 2010, http://www.thefiscaltimes.com/Articles/2010/10/29/Senator-Lincoln-Farm-Aid-Boosts-Deficit (accessed July 14, 2020).
7. In recent years, Secretaries of Agriculture have cited CCC discretionary authority when creating a number of programs. Charter Act authority was cited in establishing the $100 million Biofuels Infrastructure Partnership in May 2015. In 2018, CCC authority was used to establish the $218 million Cotton Ginning Cost Share program for cotton producers. It is also the stated justification for $6.5 billion in marketing assistance created as part of the USDA's Coronavirus Food Assistance Program. See U.S. Department of Agriculture, "Cotton Ginning Cost Share: Fact Sheet," Cotton Ginning Cost Share Program, March 2018, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/cotton-ginning-cost-share/cgcs_program_fact_sheet_march_2018.pdf (accessed July 14, 2020); Taxpayers for Common Sense, "Blinders for Blender Pumps," July 21, 2015, https://www.taxpayer.net/agriculture/golden-fleece-blinders-for-blender-pumps/ (accessed July 14, 2020); and U.S. Department of Agriculture, "Coronavirus Food Assistance Program FAQ," Farmers.gov, July 1, 2020, https://www.farmers.gov/cfap/faq (accessed July 14, 2020).
8. Daren Bakst and David Ditch, "USDA Is Funneling 'Trade Aid' to the Agriculture Sector. It's Old-Fashioned Corporate Welfare," Heritage Foundation *Commentary*, July 10, 2019, https://www.heritage.org/trade/commentary/usda-funneling-trade-aid-the-agriculture-sector-its-old-fashioned-corporate.
9. Congressional Budget Office, "H.R. 6800, Heroes Act: Cost Estimate," June 1, 2020, https://www.cbo.gov/publication/56383 (accessed July 14, 2020).
10. Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act of 2020, H.R. 6800, 116th Congress, https://www.congress.gov/bill/116th-congress/house-bill/6800 (accessed July 14, 2020).
11. Responding to Epidemic Losses and Investing in the Economic Future for Producers Act of 2020, S. 4156, 116th Congress, https://www.congress.gov/bill/116th-congress/senate-bill/4156/text?q=%7B%22search%22%3A%5B%22grassley%22%5D%7D&r=4&s=8 (accessed July 14, 2020). Also see news release, "Grassley, Colleagues Introduce Bill to Support Livestock and Poultry Producers Affected by COVID-19," Senator Chuck Grassley, July 2, 2020, https://www.grassley.senate.gov/news/news-releases/grassley-colleagues-introduce-bill-support-livestock-and-poultry-producers (accessed July 14, 2020).
12. "To amend the Commodity Credit Corporation Charter Act to raise the borrowing limit of the Commodity Credit Corporation," 116th Congress (2019–2020), https://www.congress.gov/bill/116th-congress/house-bill/6728?q=%7B%22search%22%3A%5B%22hr+6728%22%5D%7D&s=1&r=1 (accessed July 15, 2020).
13. News release, "Rep. Austin Scott Introduces Legislation to Raise CCC's Borrowing Authority," Congressman Austin Scott, May 5, 2020, https://austinscott.house.gov/media-center/press-releases/rep-austin-scott-introduces-legislation-raise-ccc-s-borrowing-authority (accessed July 14, 2020).

14. Stubbs, "The Commodity Credit Corporation: In Brief."
15. Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Public Law No. 116–136.
16. CARES Act, Sec. 11002. The USDA's implementation of the CARES Act draws on $9.5 billion of emergency appropriations included in the CARES Act and $6.5 billion in remaining CCC borrowing authority. A $14 billion reimbursement of net losses for the CCC was also included in the CARES Act. Net losses are funds the CCC never expects to recover, such as payments in income support or conservation programs, as opposed to loan amounts that will likely be repaid in the future. Congress typically reimburses the CCC for its net realized losses as part of the annual appropriations process. By providing $14 billion in the CARES Act, Congress provided breathing room for more Charter Act spending in the current fiscal year, which runs through September 30, 2020. U.S. Department of Agriculture, "Coronavirus Food Assistance Program," *Federal Register*, Vol. 85, No. 99 (May 21, 2020), pp. 30825–30835, https://www.federalregister.gov/documents/2020/05/21/2020-11025/coronavirus-food-assistance-program (accessed July 14, 2020).
17. Charles R. Kesler, "What Separation of Powers Means for Constitutional Government," Heritage Foundation *First Principles Series* No. 17, December 17, 2007, https://www.heritage.org/political-process/report/what-separation-powers-means-constitutional-government.
18. News release, "Rep. Austin Scott Introduces Legislation to Raise CCC's Borrowing Authority," Congressman Austin Scott, May 5, 2020, https://austinscott.house.gov/media-center/press-releases/rep-austin-scott-introduces-legislation-raise-ccc-s-borrowing-authority (accessed July 14, 2020).