U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

September 19, 2013

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

Dear Mr. Secretary:

On September 4, 2013, a subpoena was issued to you as Secretary of the U.S. Department of Agriculture ("USDA") for certain documents related to the Obama Administration's decision to retroactively sequester money paid to states under the Secure Rural Schools ("SRS") program. The subpoena required that the requested documents be provided to the Committee on Natural Resources ("Committee") no later than 12 noon on September 18, 2013.

The deadline has now passed, and the USDA has failed to provide any of the documents that were the subject of the subpoena and has not indicated when compliance may be expected. The USDA's failure to timely comply with this duly authorized and issued subpoena frustrates the Committee's constitutional obligation to conduct oversight of the Executive Branch. I strongly urge you to comply fully and expeditiously with this subpoena; otherwise, the Committee may take action as necessary to enforce the subpoena.

Committee's Oversight Authority is Clear and Well Established

On March 19, 2013 the Obama Administration announced, pursuant to the Budget Control Act of 2011, as amended, that it was requesting the return of $17.9 million in payments that had already been disbursed to states under the Secure Rural Schools program. The SRS payments have provided a vital funding source for rural communities whose economies have suffered due to the mismanagement of the nation's timber resources. The SRS money helps local governments pay for schools, fire departments, and other necessary services.

Pursuant to House Rule X(1)(m), the Committee has broad oversight jurisdiction over matters affecting public lands generally and forest reserves created from the public domain, including the programs and activities operated pursuant to the Secure Rural Schools and Community Self-Determination Act of 2000, as amended. Under House Rule X(2)(a)-(b), the

Committee is responsible for conducting oversight to evaluate the application, administration, execution, and effectiveness of Federal laws under its jurisdiction and for considering enactment of changes in Federal law, the organization and operations of Federal agencies, and conditions or circumstances that may indicate the necessity of new or additional Federal legislation.

The Committee has been conducting oversight to determine how and why the Administration determined to subject SRS payments that were made in January 2013, based on fiscal year 2012 revenues, to the March 2013 sequester, including seeking information about the policy options considered, legal analysis about the decision, and discussions about potential penalties for states that failed to comply with the Administration's demand.

Months of Inaction Necessitated Subpoena

A letter was sent to the Forest Service on May 20, 2013, requesting that information and documents be provided by June 3, 2013. The Committee was informed the USDA would be responding on behalf of the Forest Service. After no response for almost two months, a follow-up letter was sent to the USDA on July 18, 2013, requesting that the documents and information be provided without further delay. That letter also went unanswered.

A third letter was sent July 31, 2013, informing the USDA that the Committee was prepared to compel production of the requested documents and providing a final opportunity to comply voluntarily with the Committee's May 20 oversight request.

The USDA's General Counsel sent a letter on August 2, 2013, providing narrative information about the SRS sequestration decision. The letter did not provide any of the requested documents. Also on August 2, 2013, the Forest Service provided additional narrative information, as well as a spreadsheet of conferences Forest Service employees had attended in FY2013, despite the sequestration. The Forest Service explained that it had not requested any grant recipients to return any grant money received, and that none of the Forest Service employee details or fellowships had been cancelled, due to budget constraints from the sequester. The narrative responses have been inadequate to resolve the Committee's oversight need for the underlying documents. None of the requested documents, including internal emails, briefing papers, legal analysis, or talking points were included in the USDA's and Forest Service's responses.

On an August 28, 2013, conference call, USDA refused to tell the Committee oversight staff what steps, if any, the USDA or Forest Service had taken in the months since receiving the Committee's May 20 request to preserve, collect, or process potentially responsive documents. Instead, the USDA offered a briefing with unidentified officials to address any outstanding need the Committee may have for information about the SRS program. Committee oversight staff informed the USDA that a briefing alone, without the opportunity to review the underlying documents that had been requested since May, would be insufficient to satisfy the Committee's oversight needs.

USDA's Lack of Response is in Violation of Congressional Subpoena

Pursuant to Committee Rule 4(d), a subpoena was served on the USDA on September 4, 2013 seeking five categories of documents covered by the May 20 request letter. The USDA sent a letter dated September 9 reiterating its offer to conduct a briefing as "the best forum to answer any questions remaining from you and your staff" and that "USDA remains committed to working with the Committee to reach an accommodation."

In a letter received more than six hours after the subpoena deadline, the USDA informed the Committee that it was "in the process of collecting, identifying, and reviewing potentially responsive documents." However, none of the requested documents covered by the subpoena were included as part of the USDA's late response, and the USDA has not indicated when such documents may be provided to the Committee. In the September 18 letter, the USDA again reiterated its offer to conduct a briefing with unknown officials and offered to provide technical assistance on future legislative efforts.

As has been explained to USDA staff, a briefing alone – without review of the requested documents – is insufficient to satisfy the Committee's oversight interest. Review of documents is a superior and more accurate means to obtaining the details of the SRS decision than can be provided off-the-record in a briefing. At the appropriate time, the Committee may request interviews with relevant USDA staff to answer additional questions and to obtain context or nuance that may be lacking in the documents themselves.

In recent weeks, USDA staff have stated on conference calls with Committee oversight staff that the requested documents have not been previously collected, let alone provided to Congress, out of concern they likely would contain deliberative process or attorney-client information that ordinarily would not be disclosed to the public.

To date, however, the USDA has not identified in writing any specific documents that are being withheld or the legal basis that would justify their withholding in response to a Congressional oversight request.

The instructions attached to the subpoena describe the process to be used in identifying any documents being withheld for any basis. Claims of privileges are considered under Committee Rule 4(h) and, similar to all common-law privileges, are applicable only at the discretion of the Chairman.

In fact, the USDA's September 9 and September 18 letters fail to assert any Constitutionally based privilege to excuse its noncompliance and does not request the subpoena be held in abeyance pending an assertion of Executive Privilege by the President. To be clear, a generalized claim of an Executive Branch confidentiality interest, common-law privileges, and Freedom of Information Act exemptions, or large volume of potentially responsive documents are not a legal basis for withholding information from Congress or refusing to comply with a duly authorized and issued Congressional subpoena.

Due to the failure to provide a timely and complete response, this letter informs you that you are in violation of the September 4 subpoena. It is expected that the USDA will fully and promptly comply with this duly authorized and issued subpoena without delay. In the absence of full compliance, the Committee may take such steps as necessary to enforce the subpoena.

Thank you for your prompt attention to this matter.

Sincerely,

Doc Hastings
Chairman