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

February 14, 2014

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

Dear Secretary Vilsack:

On January 14, 2013, the Committee on Natural Resources (“Committee”) held an oversight hearing on the Obama Administration’s decision to retroactively apply the FY 2013 sequester to FY 2012 payments made to states under the Secure Rural Schools (“SRS”) program and the subsequent decision to demand repayment of a portion of those funds. At that hearing, the Department of Agriculture’s (“USDA”) witness, Robert Bonnie, testified that the USDA was still legally obligated to recover the sequestered FY 2012 SRS payments and was considering as one option withholding the sequestered amounts from the FY 2013 SRS payments to make up for the shortfall.

The proposal, as described by Mr. Bonnie, is greatly troubling, of questionable legal authority, and another example of the Administration’s desire to make the sequester as painful as possible. SRS funds support vital education, emergency services, and infrastructure needs in rural communities in 41 states and Puerto Rico. To be clear, the USDA should disburse the full amounts and not seek to withhold any portion of the FY 2013 payments.

The Forest Service made the full FY 2012 payments in January 2013 with full knowledge that the sequester was possible. Documents released in response to the Committee’s subpoenas indicate that the Office of Management and Budget overruled the USDA’s Office of General Counsel’s advice that sequestration would not apply to those FY 2012 SRS funds that had already been disbursed and instead ordered the USDA to sequester \$17.78 million in SRS payments.

Although the USDA appears to have had discretion in how the cuts would be administered, it chose to maximize the pain and apply the retroactive cuts to all states that had received SRS money. USDA held all payments states were expecting to receive under Title II of the SRS program, totaling \$17.2 million, and for those states that were not due to receive Title II money or that did not have enough Title II money to cover the sequestered amounts, the USDA

ordered those states to repay the remaining \$580,000. Those states that are being required to repay the SRS funds must now divert the demanded amounts from other budgetary accounts. Only New Hampshire has agreed to repay the sequestered SRS money, and six states have filed administrative appeals challenging the decision.

At the January 14 hearing, Mr. Bonnie verified that the FY 2013 SRS payments would not be subject to new sequester cuts. However, according to Mr. Bonnie, the USDA is still obligated to recover the sequestered FY2012 SRS funds that remain outstanding, and the Administration has indicated that it may add insult to injury by reducing the upcoming FY 2013 payments by the outstanding sequestered amount. The questionable application of sequestration to SRS funds has shortchanged rural communities and this recent threat to withhold more money only serves as further punishment for these communities.

Therefore, it is requested that the USDA respond and provide the following information by close of business on February 25, 2014:

- 1) What is the legal authority that would authorize USDA to withhold a portion of the FY 2013 SRS payments to make up any shortfall due to the application of the sequester to the FY 2012 payments made in January 2013?
- 2) Would any such withholdings be applied across the board to all recipients of SRS money or only to those jurisdictions that have not repaid the sequestered amount?
- 3) Please describe the process and legal standard for evaluating administrative appeals by states. Please provide an update on that process and when decisions will be made.
- 4) Please provide an explanation as to whether 31 U.S.C. § 3711, which provides the head of an executive agency the authority to end collection on claims of not more than \$100,000, would authorize USDA to end efforts to collect outstanding SRS funds and whether USDA intends to use such authority here.

As was explained to Mr. Bonnie at the January 14 hearing, states and rural communities deserve certainty – and better treatment from the Obama Administration. I look forward to your response.

Sincerely,



Doc Hastings
Chairman