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

November 5, 2013

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

Dear Secretary Vilsack:

A subpoena was issued to you as Secretary of the U.S. Department of Agriculture (“USDA”) on September 4, 2013, for documents related to the Obama Administration’s decision to 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.

On September 30, 2013, USDA produced approximately 808 pages of email communications and other documents, about 600 pages of which are copies of form letters concerning the sequester decision. No additional documents have been provided in response to the Committee’s subpoena.

This letter is being sent to inform you the Committee expects to invite you to a hearing, tentatively being planned for November 20, 2013, to consider the USDA’s compliance with the September 4 subpoena and to better understand the Obama Administration’s application of the sequester to the SRS program. A formal invitation will follow this letter.

The documents produced to date by USDA and the U.S. Forest Service, as well as the White House Office of Management and Budget (“OMB”), raise significant questions about the rationale and legal authority behind the Obama Administration’s decision to sequester the SRS money paid to states in January 2013.

For example, in a February 14, 2013 email, a Forest Service official informed OMB that, based on advice from attorneys in the Office of General Counsel, only unobligated money available in the SRS accounts at the time sequestration became effective on March 1, 2013, would be subject to sequester; money already paid to states would not be subject to sequester:<sup>1</sup>

3) How does the FS intend to comply with sequestration for SRS? *By multiplying the uniform percentage by the unobligated balance that is in the SRS account as of the sequestration date.* Can funding made available in Title II of SRS be used to cover the savings requirements for SRS as a whole under sequestration? What is the justification for using Title II to cover savings requirements? Please work with the FS legal counsel in responding to these question. [sic] *The FS will not be using Title II of SRS to cover reductions for Titles I and III, because the funds for Titles I and III have already been disbursed. Because those funds will not be in the SRS account on March 1<sup>st</sup>, they will not be subject to sequestration and need not be covered by Title II allocations (of any other budgetary resources that might remain in the SRS account [italics in original email from Forest Service staff].*

Six minutes later, the same Forest Service official sent a second email informing OMB that it should “hold” before acting on the Forest Service’s earlier response which was sent “before seeing additional developments this afternoon.”<sup>2</sup> A second email, sent 13 minutes later from the same Forest Service official, informed OMB that, “We will need to get final Dept. review and final [Office of General Counsel] clearance.”<sup>3</sup>

After almost two weeks had passed and with only days until the sequester would become effective, OMB contacted the Forest Service to get an update on how it planned to apply the sequester to the SRS program.<sup>4</sup> A USDA budget official responded 10 minutes later to say, “A number of [Secretary’s Office] meetings on this subject took place this afternoon. We should know the result tomorrow morning.”<sup>5</sup> The following day, the same USDA budget official informed OMB, “More meetings are ongoing this afternoon – stay tuned[.]”<sup>6</sup>

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<sup>1</sup> February 14, 2013 at 2:28 pm email from Barbara Cooper, U.S. Forest Service to Kathleen Cahill, OMB; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service, Barbara Cooper, U.S. Forest Service, Kathleen Graham, USDA; re: RE: Impact of Sequestration on Secure Rural Schools.

<sup>2</sup> February 14, 2013 at 2:34 pm email from Barbara Cooper, U.S. Forest Service to Kathleen Cahill, OMB; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service, Barbara Cooper, U.S. Forest Service, Kathleen Graham, USDA; re: RE: Impact of Sequestration on Secure Rural Schools.

<sup>3</sup> February 14, 2013 at 2:47 pm email from Barbara Cooper, U.S. Forest Service to Kathleen Cahill, OMB; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service, Barbara Cooper, U.S. Forest Service, Kathleen Graham, USDA; re: RE: Impact of Sequestration on Secure Rural Schools.

<sup>4</sup> February 27, 2013 at 5:32 pm email from Kathleen Cahill, OMB, to Barbara Cooper, U.S. Forest Service; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service, Kathleen Graham, USDA; re: RE: Impact of Sequestration on Secure Rural Schools.

<sup>5</sup> February 27, 2013 at 5:42 pm email from Kathleen Graham, USDA, to Kathleen Cahill, OMB, Barbara Cooper, U.S. Forest Service; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service; re: RE: Impact of Sequestration on Secure Rural Schools.

<sup>6</sup> February 28, 2013 at 1:18 pm email from Kathleen Graham, USDA, to Kathleen Cahill, OMB, Barbara Cooper, U.S. Forest Service; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service; re: RE: Impact of Sequestration on Secure Rural Schools.

The USDA and Forest Service rejected the legal advice from its Office of General Counsel attorneys and, on March 19, 2013, letters were sent to states informing them that money already received in FY 2013 would in fact be subject to sequester and that sequestered amounts would need to be returned.

In a May 28, 2013 letter to me, Director of the Forest Service, Thomas Tidwell, stated, “consistent with the application of sequestration across programs of the U.S. Department of Agriculture (USDA), and across the government as a whole, the amount of the sequestration is based upon the full budgetary authority ... for the entire fiscal year, not the amount remaining available as of March 1, 2013, the date of the sequestration order.”

The upcoming hearing will allow for a full examination of the decision to apply the sequester to the SRS program, including the role played by the Secretary’s Office and the White House in that decision, as well as the USDA’s response to the September 4 subpoena.

To be clear, the Committee has not yet received from USDA copies of any internal legal analysis or policy alternatives considered in connection to the SRS sequestration decision; all communications related to the decision, including those with OMB; drafts or edits of talking points or communications documents; records concerning penalties for states that failed to repay the sequestered money; and records concerning the timing of the decision to disburse money to states in January 2013 covered by the subpoena.

It is expected that the USDA will fully and promptly comply with the September 4 subpoena without delay and will provide all remaining responsive documents well in advance of the hearing. Please also promptly advise the Committee about any scheduling conflicts that would affect your attendance at a hearing on November 20.

Thank you for your prompt attention to this matter.

Sincerely,



Doc Hastings  
Chairman