CCC Charter Act: A Case Study in Congressional Abdication

Many lawmakers and agricultural special interests preparing for the 117th Congress are proposing dramatic changes in how beneficiaries of farm subsidies are determined. These elements want to increase the power of the Secretary of Agriculture to bypass Congress and distribute subsidies via the authorities vested in the USDA's Commodity Credit Corporation (CCC). While these proposals may be well-intentioned efforts to assist sectors of agriculture overlooked by existing farm bill safety net programs or are viewed as vital links in the agricultural supply chain, they are also efforts to abandon Congress's power of the purse.

Vesting increased power in the hands of the Secretary of Agriculture will likely permanently increase farm safety net spending to aggregate levels and extend farm subsidies to new beneficiaries far from the farm gate. In addition, by undercutting the legislative farm bill process, it undermines bipartisan efforts to create a more cost-effective farm safety net focused on managing risk instead of maximizing government payments for the politically favored.

Origins and Operations of the Commodity Credit Corporation

The Commodity Credit Corporation (CCC) is a wholly owned corporation of the United States government. Created during the Great Depression and reconfigured during the Truman Administration, the CCC is mostly an accounting vehicle to cut and track checks for mandatory farm bill programs, including income subsidy, conservation, and foreign aid programs. It has permanent indefinite authority to borrow up to $30 billion from the Treasury to finance these Congressionally-authorized programs. Every year, as part of the appropriations process, Congress reimburses the CCC for its "borrowing" (reimbursement of net realized losses), effectively making the $30 billion a cap on spending for programs under the CCC's jurisdiction.

The Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714), however, also makes the CCC a source of nearly unrestrained power. The Charter Act articulates a number of specific authorities granted to the CCC. Exercise of these authorities is at the discretion of the Secretary of Agriculture. The authorities include the ability to create programs aimed at increasing domestic consumption, removing "surplus" commodities, assisting in production and marketing, aiding in exports, purchasing crops for federal programs and supporting prices through loans, purchases, payments, and other operations. Exercise of CCC Charter Act authority requires no additional authorization or appropriation from Congress. The only potential limits are 1) the $30 billion cap on total borrowing authority and 2) limitations and restrictions articulated in appropriations bills.

Commodity Credit Corporation in Action

For much of the 21st century the CCC primarily functioned as the financing entity for farm bill authorized programs. Successive omnibus farm bills (passed every four to five years) continuously expanded mandatory safety net programs to new crops, the rise of federally subsidized crop insurance, and the use of emergency appropriations after largescale disasters, such as Hurricane Katrina, negated the need for Secretaries of Agriculture to exercise their discretionary authority.

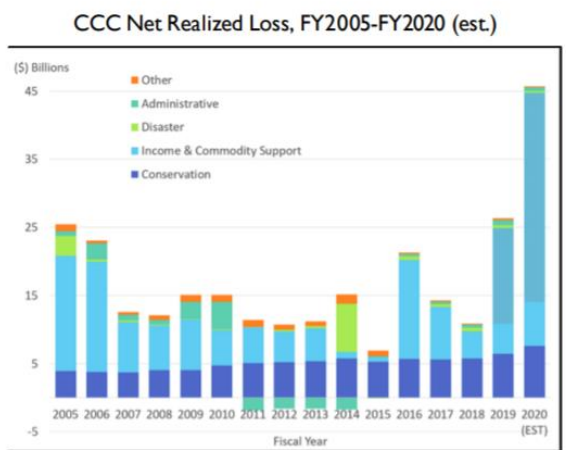
The deliberate shift of the farm safety net away from reliance on direct government subsidies and toward risk management (subsidized crop insurance) has made the $30 billion annual limit, set by law since 1987, effectively moot. Spending on farm bill-authorized programs comes nowhere near breaching the borrowing limit. Over the last three farm bills (2008, 2014, 2018) the only year total borrowing approached the limit was in 2019, due almost entirely to unbudgeted ad hoc payments made under the Trump Administration's programs to mitigate the damage from its trade war. Total borrowing for 2020 is expected to be nearly $45 billion. This additional spending room was made possible by an early reimbursement of $14 billion in net realized losses in the CARES Act (Sec. 11002 P.L. 116-136) passed in March 2020, effectively Increasing the CCC borrowing authority for one year.

Previous Abuses of CCC Charter Act Authority

The broad authority is dangerous and undemocratic as the CCC has a history of politicization.

- In 2010 the Obama Administration directed half a billion dollars to farmers in Arkansas, in a bid to secure the reelection of Senate Agriculture Committee Chair Blanche Lincoln (D-AR).
- In 2018 it was tapped for $218 million to assuage cotton farmers upset that high prices and bountiful harvests negated the need for government subsidies under the STAX program.
- USDA Secretary Vilsack in 2015 used the CCC to spend $100 million to pay for new gas station pumps that the 2014 Farm Bill prohibited (Secretary Perdue tapped the CCC to do this as well.)
- The greatest example is the $28 billion the Trump Administration deployed to compensate farmers and ranchers economically harmed by the administration's trade war with China.

Proposed Expansions of Executive Power via the CCC



Special interests and lawmakers are proposing to increase the power of the Secretary of Agriculture and the CCC. Proposals include permanently increasing the borrowing limit, expanding Charter Act authorities, and advocating the Secretary to use existing authorities to create new programs. Potential increases are to an annual $50 billion – Sen. Hoeven (R-ND), or $68 billion – Scott (R-GA). Charter Act expansions were included in numerous pieces of legislation in response to COVID-19, most notably the House-passed Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act and 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. These pieces of legislation sought to permanently expand Section 5 authority to include the ability to: 1) subsidize the disposal of excess livestock and poultry caused by supply chain disruption, and 2) subsidize agricultural processing plants to ensure supply chain continuity (primarily biofuels processors and textile manufacturers). In addition, numerous interest groups are proposing the Biden Administration use the CCC to create a "carbon bank" to make payments to farmers for sequestering carbon.

If Congress finds that $30 billion is insufficient to meet the needs of farmers and farming and ranching businesses affected by COVID-19 or other disasters, they have a powerful tool to deploy: emergency appropriations. In addition to temporarily raising the borrowing authority to $44 billion for 2020, the

CARES Act, adopted on March 27, provided $9.5 billion in emergency discretionary appropriations for agricultural operations experiencing economic losses. Congress further supplemented these funds with $13 billion as part of the FY2021 Omnibus and COVID Relief and Response Act (P.L. 116-260). As "emergency" appropriations, none of these funds counts against the CCC's borrowing limit.

Permanently increasing the CCC borrowing authority by 67 or 125 percent while expanding the Secretary's discretionary authority is an attempt to increase the size and scope of the farm safety net without having to justify that spending to taxpayers and pay for it in the farm bill process. Any debate about expanding the farm safety net should be done through the farm bill because there are likely to be more voices at the table. As was shown through the USDA-created Market Facilitation Program (MFP) and the Coronavirus Food Assistance Program (CFAP), executive action is heavily biased toward special interests and large operations at the expense of taxpayers and small operations.

Legislation is also more enduring. Executive actions do not provide stability and predictability for farmers and ranchers. They lead to increased efforts to secure government protection instead of a safety net that removes barriers for farmers and ranchers to thrive and increase their resilience. Executive actions also create disillusion with the ag safety net to the detriment of agriculture and climate change mitigation.

Conclusion

Expanding the Secretary's authority to dole out funding without consulting Congress is an especially egregious attempt to undermine Congressional intent while permanently increasing Washington's role in the balance sheet for farming and ranching businesses. Lawmakers should be more deliberate in their attempts to mitigate the economic effects of COVID-19 and other public policy goals. If existing farm safety net programs fail to provide an adequate safety net for agricultural businesses, Congress can supplement the safety net with temporary emergency appropriations. Distributing subsidies through the CCC, both this year and in perpetuity, undercuts Congress' constitutional power of the purse. Congress must ensure a federal farm safety net focused on helping farmers and ranchers manage the risks of today and tomorrow, not expand executive power to maximize government payments indefinitely for a select few.

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