



## Decision

**Matter of:** U.S. Department of Agriculture—Use of Commodity Credit Corporation Funds for Various Programs

**File:** B-334146.1

**Date:** September 20, 2023

---

### DIGEST

The U.S. Department of Agriculture (USDA) transferred Commodity Credit Corporation (CCC) funds to USDA agencies to carry out new financial assistance programs that were not specifically identified in USDA's fiscal year (FY) 2021 budget submission. While section 5 of the Commodity Credit Corporation Charter Act (CCC Charter Act), 15 U.S.C. § 714c, authorizes CCC, a USDA wholly owned government corporation, to use its funds to carry out a budget submitted to and approved by Congress pursuant to the Government Corporation Control Act (GCCA), GCCA does not require corporations to delineate specific programs in their budget submissions prior to carrying them out. Therefore, USDA was not required to include these programs in its FY 2021 budget submission and did not violate section 5 of the CCC Charter Act or the Antideficiency Act when it transferred funds for the programs where such programs otherwise carried out the purposes of CCC's funds.

Additionally, USDA announced the Partnerships for Climate-Smart Commodities (PCSC), which is a grant-based program that supports the marketing and production of "climate-smart agricultural commodities." The Food Security Act authorizes USDA to carry out various activities under the Environmental Quality Incentives Program (EQIP), including a grant program to carry out certain projects for pollution reduction and practices for the storage of carbon in soil. Because the principal purpose of PCSC is to expand the market for climate-smart agricultural commodities, PCSC is not a part of the grant program authorized by EQIP and, accordingly, not subject to EQIP's restrictions. Rather, PCSC is authorized under section 5(e) of the CCC Charter Act, which authorizes USDA to use CCC funds to expand domestic markets for agricultural commodities.

---

## DECISION

This responds to a request for a decision regarding whether the Commodity Credit Corporation (CCC) was authorized to use its funds for certain financial assistance programs prior to including them in a budget program submitted to and approved by Congress in accordance with the Commodity Credit Corporation Charter Act (CCC Charter Act), 15 U.S.C. §§ 714–714p, and whether this use of funds violated the Antideficiency Act.<sup>1</sup> The request also separately asks whether the Partnerships for Climate-Smart Commodities (PCSC) is a grant program authorized by the Environmental Quality Incentives Program (EQIP) and therefore subject to funding restrictions applicable to that program.<sup>2</sup> We conclude that the U.S. Department of Agriculture (USDA) did not violate the CCC Charter Act or the Antideficiency Act when it used CCC funds for programs that were not specifically included in its budget submission to Congress. In addition, we conclude that PCSC is not part of the grant program authorized under EQIP and not subject to that program's restrictions. Rather, PCSC is authorized under section 5(e) of the CCC Charter Act, which authorizes USDA to use CCC funds to expand domestic markets for agricultural commodities.

In accordance with our regular practice, we contacted USDA to seek factual information and its legal views on this matter.<sup>3</sup> USDA responded with its explanation of the pertinent facts and legal analysis.<sup>4</sup>

---

<sup>1</sup> Letter from Senator Roger Marshall, M.D., Ranking Member, Subcommittee on Conservation, Climate, Forestry, and Natural Resources, Committee on Agriculture, Nutrition, and Forestry, to the Comptroller General (Mar. 22, 2022) (Request Letter).

<sup>2</sup> *Id.* at 3-5.

<sup>3</sup> GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* [www.gao.gov/products/GAO-06-1064SP](http://www.gao.gov/products/GAO-06-1064SP); Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, USDA (May 23, 2022); Email from Assistant General Counsel for Appropriations Law, GAO, to Assistant General Counsel, International Affairs, Food Assistance, and Farm and Rural Programs Division, USDA (Sept. 22, 2022); Email from Acting Assistant General Counsel for Appropriations Law, GAO, to Assistant General Counsel, International Affairs, Food Assistance, and Farm and Rural Programs Division, USDA (Mar. 2, 2023); Emails from Assistant General Counsel for Appropriations Law, GAO, to Acting Assistant General Counsel, International Affairs, Food Assistance, and Farm and Rural Programs Division, USDA (June 23, 2023; June 27, 2023); Emails from Assistant General Counsel for Appropriations Law, GAO, to Deputy Assistant General Counsel, International Affairs, Food Assistance, and Farm and Rural Programs Division, USDA (Aug. 3, 2023; Aug. 7, 2023).

<sup>4</sup> Letter from Assistant General Counsel, International Affairs, Food Assistance, and Farm and Rural Programs Division, USDA, to Assistant General Counsel for  
(continued...)

## BACKGROUND

### Overview of the Commodity Credit Corporation

CCC is a wholly owned government corporation within USDA that was established by the CCC Charter Act.<sup>5</sup> It is managed by a board of directors under “the general supervision and direction” of the Secretary of Agriculture.<sup>6</sup> Under section 5 of the CCC Charter Act, CCC “is authorized to use its general powers only to” carry out activities that fall within seven enumerated areas or “such other operations as the Congress may specifically authorize or provide for.”<sup>7</sup>

CCC operations are funded by capital stock of \$100 million,<sup>8</sup> borrowing authority,<sup>9</sup> and appropriations.<sup>10</sup> USDA explains that certain programs, such as CCC’s disaster, foreign assistance, and credit reform programs, are financed by

---

Appropriations Law, GAO (Aug. 29, 2022) (with attachment) (USDA First Response); Letter from Assistant General Counsel, International Affairs, Food Assistance, and Farm and Rural Programs Division, USDA, to Assistant General Counsel for Appropriations Law, GAO (Oct. 27, 2022) (with attachment) (USDA Second Response); Letter from Associate General Counsel, International Affairs, Food Assistance, and Farm and Rural Programs Division, USDA, to Acting Assistant General Counsel for Appropriations Law, GAO (Mar. 21, 2023) (with attachments) (USDA Third Response); Letter from Deputy Assistant General Counsel, International Affairs, Food Assistance, and Farm and Rural Programs Division, USDA, to Assistant General Counsel for Appropriations Law, GAO (July 21, 2023) (with attachment) (USDA Fourth Response); Emails from Acting Assistant General Counsel, International Affairs, Food Assistance, and Farm and Rural Programs Division, USDA, to Assistant General Counsel for Appropriations Law, GAO (Aug. 7, 2023; Aug. 8, 2023) (USDA Fifth Response).

<sup>5</sup> 31 U.S.C. § 9101(3)(A); 15 U.S.C. § 714.

<sup>6</sup> 15 U.S.C. § 714g(a).

<sup>7</sup> *Id.* § 714c. CCC’s general powers are specified in section 4 of the CCC Charter Act, 15 U.S.C. § 714b.

<sup>8</sup> 15 U.S.C. § 714e.

<sup>9</sup> CCC has two permanent, indefinite borrowing authorities: non-credit reform (15 U.S.C. § 714b(i)) and credit reform (2 U.S.C. §§ 661–661f). Under the CCC Charter Act, CCC’s non-credit reform borrowing authority is a general power. 15 U.S.C. § 714b(i). This decision concerns only the non-credit reform borrowing authority.

<sup>10</sup> *E.g.*, Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. A, tit. II, 136 Stat. 4459, 4476–77 (Dec. 29, 2022).

appropriations;<sup>11</sup> most programs, though, are financed through CCC's borrowing authority, which is capped at \$30 billion.<sup>12</sup>

To ensure CCC has sufficient funds to operate, Congress provides CCC in annual appropriations acts with an indefinite appropriation to reimburse CCC's net realized losses, as specified in CCC's annual audited financial statement.<sup>13</sup> Occasionally, CCC has needed to fund activities that would "strain" the \$30 billion borrowing cap prior to the annual appropriation;<sup>14</sup> in those situations, Congress has provided CCC an appropriation to reimburse CCC's net realized losses prior to the enactment of its annual appropriation.<sup>15</sup>

---

<sup>11</sup> CCC, *Annual Management Report Fiscal Year 2021*, at 5 (*Annual Management Report Fiscal Year 2021*), in USDA, Office of Inspector General (OIG), *Commodity Credit Corporation's Financial Statements for Fiscal Years 2021 and 2020*, Audit Report No. 06403-0004-11 (Nov. 15, 2021), available at <https://www.oversight.gov/sites/default/files/oig-reports/USDAOIG/06403-0004-11FR508.pdf> (last visited Aug. 16, 2023); see, e.g., Pub. L. No. 117-328, div. A, tit. V, 136 Stat. at 4491 (authorizing CCC "to provide the services, facilities, and authorities for the purpose of implementing [the McGovern-Dole International Food for Education and Child Nutrition Program Grants], subject to reimbursement from" an appropriation made to USDA's Foreign Agricultural Service).

<sup>12</sup> *Annual Management Report Fiscal Year 2021*, at 5. While indefinite, the non-credit reform borrowing authority is limited by the amount of debt CCC may have; CCC's aggregate borrowings may not at any time exceed \$30 billion. 15 U.S.C. § 714b(i).

<sup>13</sup> See 15 U.S.C. § 713a-11 ("There is authorized to be appropriated annually for each fiscal year by means of a current, indefinite appropriation . . . an amount sufficient to reimburse Commodity Credit Corporation for its net realized loss incurred during such fiscal year, as reflected in its accounts and shown in its report of its financial condition as of the close of such fiscal year."). The term "net realized loss" is not defined in law. USDA explains that it determines the net realized loss by "calculating the net costs of revenues, expenses and transfers" to the borrowing authority account. USDA First Response, at 2. Revenues may include "loan repayments, inventory sales, interest income, [and] fees." *Annual Management Report Fiscal Year 2021*, at 5.

<sup>14</sup> USDA First Response, at 2.

<sup>15</sup> *Id.*; see, e.g., Continuing Appropriations Act, 2021 and Other Extensions Act, Pub. L. No. 116-159, § 173, 134 Stat 709, 725 (Oct. 1, 2020) (anomaly in continuing resolution providing reimbursement prior to the completion of CCC's financial statement and audit); CARES Act, Pub. L. No. 116-136, § 11002, 134 Stat. 281, 509 (Mar. 27, 2020) (appropriating sums to reimburse CCC's net realized losses).

Although CCC receives funds for its operations, it has no employees and carries out its programs through other agencies' employees and facilities.<sup>16</sup> CCC does not directly use its funds; it instead exercises its borrowing authority and transfers the borrowed funds to other USDA offices and agencies that carry out its programs.<sup>17</sup> CCC recognizes a net realized loss in the FY during which funds were borrowed and transferred regardless of when the performing agency may actually spend the funds.<sup>18</sup>

#### Specific USDA programs at issue

##### \$3 billion investment programs

USDA announced a series of programs in Press Release No. 0209.21 on September 29, 2021, that were to be funded by CCC's borrowing authority.<sup>19</sup> Labeling the programs a "[c]omprehensive [i]nvestment [p]ackage," USDA publicized "\$3 billion in investments that will support drought resilience and response, animal disease prevention, market disruption relief, and purchase of food for school nutrition programs."<sup>20</sup> USDA transferred funds for the programs on September 27, 2021, and September 29, 2021, to "USDA offices and agencies in anticipation of carrying out programs in accordance with the purposes announced in Press Release No. 0209.21."<sup>21</sup> According to USDA, the agencies began funding these programs in FY

---

<sup>16</sup> 15 U.S.C. § 714i ("The Corporation may, with the consent of the agency concerned, accept and utilize, on a compensated or uncompensated basis, the officers, employees, services, facilities, and information of any agency of the Federal Government, including any bureau, office, administration, or other agency of the Department of Agriculture, and of any State, the District of Columbia, any Territory or possession, or any political subdivision thereof.").

<sup>17</sup> USDA Fifth Response.

<sup>18</sup> *Id.* An agency that receives funds transferred from CCC retains those funds until expended. It will not transfer the funds back to CCC if the program for which the transfer was made will no longer be carried out; the agency will use the funds to fulfill other programs authorized under section 5 of the CCC Charter Act or return the funds to the Treasury. *Id.*

<sup>19</sup> USDA, Press Release No. 0209.21, *USDA Announces \$3 Billion Investment in Agriculture, Animal Health, and Nutrition; Unveils New Climate Partnership Initiative, Requests Public Input* (Sept. 29, 2021), available at <https://www.fns.usda.gov/news-room/usda-0209.21> (last visited Aug. 16, 2023) (Press Release No. 0209.21).

<sup>20</sup> *Id.*

<sup>21</sup> USDA First Response, at 1, 5–6.

2022.<sup>22</sup>

### Partnerships for Climate-Smart Commodities program

USDA also used Press Release No. 0209.21 to publicize a request for information on PCSC.<sup>23</sup> USDA described PCSC as a grant-based program that supports the marketing and production of “climate-smart commodities”<sup>24</sup> through a set of pilot projects that provide financial assistance to producers and landowners.<sup>25</sup> On February 7, 2022, USDA announced that it would begin using CCC funds to finance projects through PCSC.<sup>26</sup>

### DISCUSSION

At issue here is whether USDA was required by section 5 of the CCC Charter Act to include the \$3 billion investment programs in its budget submission to Congress in advance of transferring CCC funds to other agencies to conduct those activities. Additionally at issue is whether PCSC is part of a grant program authorized by EQIP and therefore subject to that program’s restrictions.

---

<sup>22</sup> *Id.* at 7–8.

<sup>23</sup> Press Release No. 0209.21. USDA transferred the funds for PCSC on February 4, 2022, and September 29, 2022, and provided advance notification to Congress of the transfers. USDA Third Response.

<sup>24</sup> According to USDA, a climate-smart commodity is “an agricultural commodity that is produced using agricultural (farming, ranching or forestry) practices that reduce greenhouse gas emissions or sequester carbon.” USDA, Press Release No. 0038.22, *USDA to Invest \$1 Billion in Climate Smart Commodities, Expanding Markets, Strengthening Rural America* (Feb. 7, 2022), available at <https://www.usda.gov/media/press-releases/2022/02/07/usda-invest-1-billion-climate-smart-commodities-expanding-markets> (last visited Aug. 16, 2023) (Press Release No. 0038.22); see USDA, *Partnerships for Climate-Smart Commodities – Building Markets and Investing in America’s Climate-Smart Farmers, Ranchers & Forest Owners to Strengthen U.S. Rural and Agricultural Communities*, No. USDA-NRCS-COMM-22-NOFO0001139, at 6 (Feb. 7, 2022) (Partnerships NOFO). Although the original Partnerships NOFO is no longer available on Grants.gov, the March 11, 2022, version, which includes extended application due dates and additional clarifying edits, is available at <https://www.grants.gov/web/grants/view-opportunity.html?oppld=337878> (last visited Aug. 16, 2023).

<sup>25</sup> Press Release No. 0038.22; see Partnerships NOFO, at 2.

<sup>26</sup> Press Release No. 0038.22; Partnerships NOFO.

## Budget submission requirements of section 5 of the CCC Charter Act

Section 5 of the CCC Charter Act authorizes CCC to use its general powers, including its available funds, “[i]n the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to chapter 91 of title 31.”<sup>27</sup> The phrase “chapter 91 of title 31” refers to the Government Corporation Control Act (GCCA), provisions of which govern wholly owned government corporations’ annual budget submissions.<sup>28</sup>

While GCCA requires Congress to “consider” wholly owned government corporations’ annual budget programs and make “necessary appropriations,” it permits wholly owned government corporations to carry out activities authorized by another law.<sup>29</sup> Further, GCCA authorizes the President to “submit changes in a budget program of a corporation at any time.”<sup>30</sup>

GCCA requires corporations to annually prepare a “business-type budget” for the budget program, to be submitted to the President for transmittal to Congress as part of the President’s Budget.<sup>31</sup> This budget must contain specified information, including estimates of the financial condition and operations of the current and following FYs; information to make known the financial condition and operations of the corporation, including estimates of operations by major activities; and provisions for emergencies and contingencies.<sup>32</sup> Notably, GCCA does not require the annual budget program to delineate every specific program and activity a corporation intends to carry out in the upcoming FY.<sup>33</sup>

---

<sup>27</sup> 15 U.S.C. § 714c.

<sup>28</sup> 31 U.S.C. §§ 9101–9110.

<sup>29</sup> *Id.* § 9104(a), (b)(1).

<sup>30</sup> *Id.* § 9103(c).

<sup>31</sup> *Id.* § 9103(a), (c). A business-type budget was intended to be a “plan of operations” that would provide flexibility to account for the “extremely difficult” forecasting of economic conditions that would affect corporations’ operations. S. Rep. No. 79-694, at 6; H.R. Rep. No. 79-856, at 5–6.

<sup>32</sup> 31 U.S.C. § 9103(b).

<sup>33</sup> Congress considered and rejected language in initial versions of the bills that became GCCA that would have prohibited corporations from conducting activities that were not specifically authorized by Congress each fiscal year. S. 469, 79th Cong. § 104 (1945); H.R. 2051, 79th Cong. § 104 (1945); H.R. 2177, 79th Cong. § 104 (1945). One revision would have required corporations to lay out “all operations” in their budget programs. *To Provide for Financial Control of Government Corporations: Hearings Before the House Committee on Expenditures in the Executive Departments*, 79th Cong. 102 (1945), at 192 (statement of C.G. Garman).

For FY 2021—the year in which CCC transferred funds to carry out the \$3 billion investment programs—USDA submitted a budget program for CCC to the President, which was transmitted to Congress in the FY 2021 President’s Budget Appendix.<sup>34</sup> Although the budget did not specifically refer to the \$3 billion investment programs, USDA’s FY 2021 budget submission for CCC contained the information required by GCCA. Because USDA’s budget submission complied with GCCA, USDA also complied with section 5 of the CCC Charter Act when it transferred CCC funds to other USDA agencies for the \$3 billion investment programs where such programs otherwise carried out the purposes of CCC’s appropriations.<sup>35</sup> Additionally, CCC did not violate the Antideficiency Act.<sup>36</sup>

Our conclusion that section 5 of the CCC Charter Act does not require USDA to delineate the specific programs that CCC plans to fund is consistent with the broad discretion Congress has afforded government corporations generally and CCC specifically.<sup>37</sup> For example, Congress gives government corporations “a high degree of autonomy and flexibility in the carrying on of programs involving activities of a business nature.”<sup>38</sup>

CCC’s autonomy and flexibility are evidenced by its authority to “determine the character of and the necessity for its obligations and expenditures and the manner in

---

<sup>34</sup> *2021 Budget Appendix*, at 101–11.

<sup>35</sup> It is axiomatic that CCC may only use its funds for the purposes for which they were appropriated. 31 U.S.C. § 1301; see B-223857, Feb. 27, 1987 (holding that funds borrowed by CCC are appropriated funds). USDA acknowledges that it may use CCC’s borrowing authority only “in the fulfillment of its purposes” as provided in section 5 of the CCC Charter Act. USDA First Response. USDA explains that the \$3 billion investment programs were authorized under the provisions of section 5. *Id.*

<sup>36</sup> The Antideficiency Act prohibits an officer or employee of the U.S. Government, including a wholly owned corporation such as CCC, from obligating or expending appropriated funds in excess or advance of an available appropriation, unless authorized by law. 31 U.S.C. § 1341. The funds that CCC borrows from the Treasury are subject to the Antideficiency Act. See B-223857, Feb. 27, 1987. Here, there is no indication that USDA exceeded the \$30 billion aggregate borrowing limitation.

<sup>37</sup> See B-193573, Dec. 19, 1979, at 2 (recognizing “the flexibility which the corporate form is intended to permit” in accordance with the corporation’s charter, which GCCA neither expands nor diminishes); B-58306(2)-O.M., Nov. 14, 1950, at 1 (recognizing CCC’s “broad authority”).

<sup>38</sup> S. Rep. No. 79-694, at 12; see *id.* at 7 (stating that “the corporate form loses much of its peculiar value without reasonable autonomy and flexibility in its day-to-day decisions and operations”); H.R. Rep. No. 79-856, at 4.



which they shall be incurred, allowed, and paid.”<sup>39</sup> This “character and necessity” provision is a hallmark of broad corporate discretion.<sup>40</sup> In addition, CCC has “such powers as may be necessary or appropriate for the exercise of the powers specifically vested in the Corporation, and all such incidental powers as are customary in corporations generally.”<sup>41</sup>

While CCC has broad corporate discretion, there are at least three processes through which Congress oversees CCC’s activities: the appropriations process, CCC reports and audits, and legislative authorization. It is through the appropriations process that the requirement in section 5 of the CCC Charter Act that CCC’s budget be approved by Congress is met. For example, Congress exercises its approval of CCC’s annual budget when it enacts the annual appropriation for CCC’s net realized losses.<sup>42</sup> Congress can also enact restrictions or conditions on CCC’s funds in the annual appropriations act.<sup>43</sup>

CCC is also subject to regular reporting requirements and audits. For example, CCC is required to submit an annual management report on its financial condition and operations to Congress, with copies to the President, OMB, and the Comptroller General.<sup>44</sup> Additionally, CCC is required to send Congress quarterly itemized reports of “all expenditures over \$10,000” made under two provisions of the CCC Charter Act, including section 5.<sup>45</sup> And GCCA requires the USDA OIG to audit

---

<sup>39</sup> 15 U.S.C. § 714b(j).

<sup>40</sup> B-193573.

<sup>41</sup> 15 U.S.C. § 714b(m).

<sup>42</sup> *E.g.*, Pub. L. No. 117-328, div. A, title II, 136 Stat. at 4476 (“The following corporations and agencies are hereby authorized to make expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act as may be necessary in carrying out the programs set forth in the budget for the current fiscal year for such corporation or agency, except as hereinafter provided.”).

<sup>43</sup> For example, Congress enacted in the FY 2023 appropriations act a new proviso that requires USDA to notify the congressional appropriations committees “in writing 15 days prior to the obligation or commitment of any emergency funds from” CCC. Pub. L. No. 117-328, div. A, title II, 136 Stat. at 4477.

<sup>44</sup> 31 U.S.C. § 9106. The CCC Charter Act requires CCC to annually submit a report of its “business” with the Secretary of Agriculture, with a copy sent to the President, who sends it to Congress. 15 U.S.C. § 714k.

<sup>45</sup> 15 U.S.C. § 714k.

CCC's financial statements and requires the audit report to be submitted to Congress.<sup>46</sup>

Further, as USDA recognizes, "CCC funds are used to implement specific programs established by Congress as well as to carry out activities under the broad authorities of the CCC Charter Act."<sup>47</sup> Congress's legislative powers allow it to direct CCC's spending, including by responding to corporate action that Congress determines exceeds a corporation's powers, disregards the will of the Congress, or is simply unnecessary.<sup>48</sup>

Our conclusion here is generally consistent with USDA's legal views and historical practice.<sup>49</sup> USDA interprets section 5 of the CCC Charter Act as "describ[ing] two types of actions under the Charter Act for which Congress has limited CCC's use of its general powers: when the CCC is fulfilling its purposes, and when it is carrying out a budget program."<sup>50</sup> In either instance, USDA acknowledges that CCC's programs must fall within one of the specific purposes listed in section 5.<sup>51</sup> USDA's interpretation of section 5 comports with "the decades-long practices of Congress and the CCC in fulfilling CCC's purposes."<sup>52</sup> Accordingly, USDA does not always amend its budgets to include CCC programs that are authorized by congressional mandate<sup>53</sup> or section 5.<sup>54</sup>

---

<sup>46</sup> 31 U.S.C. § 9105(a)(1).

<sup>47</sup> USDA, *Commodity Credit Corporation*, available at <https://www.usda.gov/ccc> (last visited Aug. 21, 2023).

<sup>48</sup> See H.R. Rep. No. 79-856, at 6; see, e.g., Agricultural Improvement Act of 2018, Pub. L. No. 115-334, § 3201, 132 Stat. 4490, 4609, 4615 (Dec. 20, 2018) (amending the Agricultural Trade Act of 1978, 7 U.S.C. § 5623(b), (f), to require CCC to "establish and carry out" a "Market Access Program" and spend not less than \$200 million in each of FYs 2019 through 2023).

<sup>49</sup> USDA First Response, at 3-5.

<sup>50</sup> *Id.* at 3.

<sup>51</sup> *Id.* at 3, 4. USDA notes that its view of section 5 preserves CCC's flexibility to address "unexpected and urgent agricultural issues within the scope of CCC's purposes under the CCC Charter Act that arise throughout the year." *Id.* at 3.

<sup>52</sup> *Id.* at 3.

<sup>53</sup> See 15 U.S.C. § 714c(h) (authorizing CCC to "[c]arry out such other operations as the Congress may specifically authorize or provide for"); USDA First Response, at 3 (stating that subsection (h) "represent[s] the bulk of CCC spending").

<sup>54</sup> USDA First Response, at 3; see 31 U.S.C. § 9103(c). USDA also informed us that it has "historically" used GCCA's budget amendment process to notify Congress of "new activities" and programs undertaken pursuant to section 5 "not because it is statutorily required, but because it has proven a useful means for Administrations

(continued...)

## Partnerships for Climate-Smart Commodities program

We next consider the legal authority for PCSC. Specifically, we consider whether PCSC is authorized by the Food Security Act and, thus, subject to the restrictions applicable to EQIP.<sup>55</sup>

The Food Security Act authorizes various activities under EQIP.<sup>56</sup> The general purposes of EQIP include promoting agricultural production, forest management, and environmental quality as compatible goals and optimizing environmental benefits.<sup>57</sup> EQIP's conservation innovation grant program authorizes grants, in part, for projects that ensure effective transfer of innovative technologies, such as market systems for pollution reduction.<sup>58</sup>

PCSC and EQIP have overlapping, yet distinct, objectives. Through PCSC, USDA financially assists producers in implementing practices that reduce greenhouse gas emissions or sequester carbon to create a market for commodities produced using greenhouse gas reduction or carbon sequestration technologies.<sup>59</sup> EQIP assists producers in developing techniques that promote environmental enhancement and protection, as well as agricultural production and forest resource management.<sup>60</sup> Although both programs provide grants to producers using measures to improve environmental quality, EQIP's statutory charge does not prioritize the creation and expansion of markets for specified "climate-smart" commodities.<sup>61</sup> EQIP may even be used to more appropriately utilize forest resources or to promote agricultural production for commodities that are not produced using climate-smart

---

and the Congress to coordinate and monitor their respective activities relating to the CCC." *Id.* at 4. Our conclusion that USDA was not required to delineate the \$3 billion investment programs in the budget does not limit USDA's ability to continue to use GCCA's budget amendment process in this manner.

<sup>55</sup> 16 U.S.C. § 3839aa-8(a)(2)(C). EQIP includes various funding limitations depending on the type of grant. For example, \$25 million is available for each of FYs 2019 through 2031 for grants involving on-farm conservation innovation trials. *Id.* § 3839aa-8(c)(2).

<sup>56</sup> *Id.* §§ 3839aa-3839aa-8.

<sup>57</sup> *Id.* § 3839aa.

<sup>58</sup> *Id.* § 3839aa-8.

<sup>59</sup> USDA First Response, at 8; Press Release No. 0038.22.

<sup>60</sup> 16 U.S.C. §§ 3839aa-3839aa-8.

<sup>61</sup> USDA Second Response, at 1; see 16 U.S.C. §§ 3839aa-3839aa-8.

technologies.<sup>62</sup> Therefore, PCSC could not be authorized as part of the Food Security Act's EQIP and is not subject to the restrictions applicable to EQIP.

When we review whether an appropriation is available for a particular expenditure, we ask whether the expenditure falls within the agency's legitimate range of discretion.<sup>63</sup> Here, we similarly consider whether carrying out PCSC pursuant to section 5 of the CCC Charter Act falls within USDA's legitimate range of discretion. USDA explains that PCSC is authorized by section 5(e), which authorizes USDA to use CCC funds to "[i]ncrease the domestic consumption of agricultural commodities."<sup>64</sup> USDA explains that PCSC is authorized by this section because it is an agricultural commodity production program that incentivizes producers to implement large-scale pilot projects with the goal of creating market opportunities for commodities produced using climate-smart practices.<sup>65</sup> Congress vested in USDA the authority to administer CCC's authorities and to determine whether a particular program helps "increase the domestic consumption of agricultural commodities." Because the principal focus of PCSC is on the expansion of markets for climate-smart commodities, we agree that it is authorized by section 5(e) of the CCC Charter Act.

## CONCLUSION

USDA did not violate the CCC Charter Act or the Antideficiency Act when it did not include several new financial assistance programs in its budget submission prior to transferring funds for those programs, where those programs otherwise carried out the purposes of CCC's appropriation. In addition, PCSC is authorized under section 5(e) of the CCC Charter Act and not the Food Security Act.



Edda Emmanuelli Perez  
General Counsel

---

<sup>62</sup> See 16 U.S.C. §§ 3839aa, 3839aa-2. According to USDA, it could not implement a grant program such as PCSC under EQIP specifically because EQIP has "requirements and restrictions that would not be compatible" with aspects of PCSC. USDA Second Response, at 1.

<sup>63</sup> See, e.g., B-333826, Apr. 27, 2022, at 4 (citing B-223608, Dec. 19, 1988).

<sup>64</sup> 15 U.S.C. § 714c(e); see USDA Second Response, at 1.

<sup>65</sup> See USDA Second Response, at 1.