



Decision

Matter of: United States Department of Agriculture, Commodity Credit Corporation—Obligations for the Conservation Reserve Program and the Emergency Forestry Conservation Reserve Program

File: B-330628

Date: December 9, 2024

DIGEST

The Commodity Credit Corporation (CCC) initially recorded obligations for the Conservation Reserve Program (CRP) and the Emergency Forestry Conservation Reserve Program (EFCRP) based on annual rental payments due each year—rather than recording the total liability it incurred when it executed program contracts with 10- to 15-year terms. CCC later changed its obligational practices for CRP and EFCRP in 2017 and 2018, respectively, and recorded the total liability it had incurred under program contracts. The Office of Management and Budget (OMB) apportioned funds for CRP and EFCRP in accordance with CCC's initial obligational practices.

An obligation arises at the time the debt is incurred. The Antideficiency Act prohibits an officer or employee of the United States government from obligating funds in excess of the amount made available under apportionment. Additionally, the recording statute provides that the full amount of a contractual obligation must be promptly recorded when a contract is executed. CCC violated the Antideficiency Act when it incurred obligations that exceeded its apportionments from OMB for CRP and EFCRP. CCC also violated the recording statute when it recorded less than the total liability it incurred when it executed CRP and EFCRP contracts.

DECISION

The U.S. Department of Agriculture's (USDA) Office of the Inspector General (OIG) requested a legal decision regarding whether the Commodity Credit Corporation (CCC) violated the Antideficiency Act when it obligated funds in excess of its apportionment for the Conservation Reserve Program (CRP) in 2017 and the

Emergency Forestry Conservation Reserve Program (EFCRP) in 2018.¹ When rendering decisions, our practice is to obtain facts and the agency's legal position on the matter.² USDA's Office of the General Counsel responded on behalf of CCC and provided facts and its legal views.³ Additionally, we corresponded via email and telephone with USDA attorneys regarding this matter.⁴ The Office of Management and Budget (OMB) also responded to our request for its views, given its role in apportioning funds for CRP and EFCRP.⁵

As explained below, we conclude that CCC violated the Antideficiency Act when it executed CRP and EFCRP contracts because it incurred obligations that exceeded its apportionments for CRP and EFCRP. CCC also violated the recording statute when it recorded an amount less than the total liability it had incurred under a program contract.

BACKGROUND

The Secretary of USDA is mandated to carry out CRP and EFCRP using the funds, services, authorities, and facilities of CCC.⁶ CCC is a wholly owned government corporation and an agency and instrumentality of the United States within USDA.⁷

¹ Letter from Counsel to the Inspector General, USDA, to General Counsel, GAO (Dec. 20, 2018) (OIG CRP Request); Letter from Counsel to the Inspector General, USDA, to General Counsel, GAO (May 28, 2019) (OIG EFCRP Request).

² GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at <https://www.gao.gov/products/GAO-06-1064SP>.

³ Letter from General Counsel, USDA, to Assistant General Counsel for Appropriations Law, GAO (Dec. 21, 2020) (USDA Response Letter).

⁴ Telephone Conversation with an Associate General Counsel and Senior Attorney, USDA (Apr. 19, 2022); Email from Assistant General Counsel, USDA, to Senior Staff Attorney, GAO, *RE: Letter from GAO re Farm Service Agency* (Apr. 24, 2024) (USDA Email Response 2024).

⁵ Letter from Assistant General Counsel, OMB, to Assistant General Counsel for Appropriations Law, GAO, *RE: GAO Development Letter Regarding an Ongoing Appropriations Law Decision* (Oct. 10, 2024) (OMB Response Letter).

⁶ 16 U.S.C. § 3841(a); see 16 U.S.C. 3831a(c)(7) (2012).

⁷ 31 U.S.C. § 9101(3)(A); see 15 U.S.C. § 714 (establishing the CCC). Although CCC receives funds for its operations, it has no employees and carries out its programs through other agencies' employees and facilities. See

(continued)

The Secretary has delegated authority to the Farm Service Agency (FSA) to carry out CRP and EFCRP.⁸

CRP is a program under which CCC pays agricultural producers to devote environmentally sensitive agricultural land to conservation efforts instead of farming and ranching.⁹ EFCRP was a component of CRP until it was repealed.¹⁰ EFCRP was a program under which CCC helped landowners and operators restore and enhance forestland damaged by hurricanes Dennis, Katrina, Ophelia, Rita, and Wilma.¹¹

As specified by law, CRP and EFCRP contracts must have a duration of 10 to 15 years.¹² Program participants (Producers) are to receive annual “rental” payments for the duration of the contract.¹³ Producers may submit offers for CRP contracts

15 U.S.C. §§ 714h–714i (providing authority to appoint staff and to utilize staff from other agencies).

⁸ 7 C.F.R. § 2.16(a)(1)(xviii).

⁹ USDA, Farm Service Agency, *Fact Sheet: Conservation Reserve Program*, at 1 (Feb. 2022) (*CRP Fact Sheet*), available at, https://www.fsa.usda.gov/sites/default/files/documents/FSA_CRP-main-factsheet.pdf (last visited Oct. 22, 2024). CRP was established by the Food Security Act of 1985, Pub. L. No. 99-198, §§ 1231–1245, 99 Stat. 1354, 1509–1516 (Dec. 23, 1985) (1985 Farm Bill).

¹⁰ USDA Response Letter, at 2; Agricultural Act of 2014, Pub. L. No. 113-79, § 2702, 128 Stat. 649, 766 (Feb. 7, 2014). According to USDA the last EFCRP payments were issued in 2021. USDA Email Response 2024. EFCRP was established by the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, Pub. L. No. 109-148, § 107, 119 Stat. at 2750–2752 (Dec. 30, 2005), 16 U.S.C. 3831a (2014) (repealed 2014).

¹¹ USDA, FSA, *Fact Sheet: Emergency Forestry Conservation Reserve Program 2005 Hurricane Assistance (July 2007) (EFCRP Fact Sheet)* available at, https://www.fsa.usda.gov/Internet/FSA_File/efcrp07.pdf (last visited Oct. 24, 2024).

¹² See 16 U.S.C. § 3831(e); OIG CRP Request, at 1; Pub. L. No. 109-148, § 107(a), 119 Stat. 2680, 2750 (Dec. 30, 2005); OIG EFCRP Request, at 1; USDA Response Letter, at 2.

¹³ 16 U.S.C. § 3833(a)(2) (CRP); 16 U.S.C. § 3831a(c)(5)(A) (2014) (EFCRP). Under EFCRP program participants could opt for a lump sum payment or annual rental payments. 16 U.S.C. § 3831a(c)(5)(A) (2012) (repealed 2014). This decision
(continued)

during annual general enrollment signup periods as designated by FSA.¹⁴ Offers constitute the per-acre rental payment requested by an offeror or a request to participate in the CRP.¹⁵ Offers must meet certain eligibility requirements and indicate the acreage and the conservation practice under which the Producer would like to enroll.¹⁶ Offers that meet eligibility requirements are then ranked nationally among all other applicants that signed up during the same period.¹⁷ After the signup period ends CCC accepts the highest ranked offers and sends the Producers a prefilled contract noting, in relevant part, the contract period and the amount of the annual rental payment.¹⁸ The EFCRP offer and sign up process was similar to CRP except ranked offers not selected during a given ranking period would be rolled over for consideration during the next ranking period.¹⁹

The law also directs the Secretary to allow for the submission of applications on a continuous basis, which CCC refers to as continuous signup.²⁰ Continuous signup is limited to offers of environmentally sensitive land devoted to certain conservation practices.²¹ Under continuous signup, Producers may submit an offer at any time.²² These offers are not competed against others.²³ Offers may be accepted if they

does not concern the obligational practices for EFCRP contracts under which a lump sum payment was provided.

¹⁴ 16 U.S.C. § 3831(d)(5); 7 C.F.R. § 1410.30(a); *CRP Fact Sheet*, at 1; see USDA Email Response 2024.

¹⁵ See 7 C.F.R. § 1410.2.

¹⁶ See 16 U.S.C. § 3831(b); 7 C.F.R. §§ 1410.2, 1410.5, 1410.6; USDA Email Response 2024; USDA, *FSA Handbook: Agricultural Resource Conservation Program*, Revision 6, at 7-2 and 10-2 (Jan. 22, 2021), available at, https://www.fsa.usda.gov/Internet/FSA_File/2-crp_r06_a06.pdf (last visited Oct. 22, 2024) (*FSA Handbook*).

¹⁷ 7 C.F.R. §§ 1410.30(c), 1410.31.

¹⁸ See *FSA Handbook* at 10-3 to 10-4 (Jan. 22, 2021).

¹⁹ See *EFCRP Fact Sheet*.

²⁰ 16 U.S.C. § 3831(d)(6); 7 C.F.R. § 1410.30(b).

²¹ 7 C.F.R. § 1410.30(b); *CRP Fact Sheet*, at 1; see 16 U.S.C. § 3831(d)(6).

²² *CRP Fact Sheet*, at 1; 16 U.S.C. § 3831(d)(6); 7 C.F.R. § 1410.30(b).

²³ 7 C.F.R. § 1410.31(d); *CRP Fact Sheet*, at 1; USDA Email Response 2024.

meet certain eligibility criteria.²⁴ However, even if a Producer's offer meets eligibility requirements necessary for acceptance, CCC may determine that the offer is not needed, suitable, or feasible and reject the offer.²⁵ In some cases, after a Producer submits an offer, CCC may also allow them to make certain changes to make the offer suitable, needed, and feasible.²⁶

Under both continuous and annual signup, CCC issues a contract to Producers who may choose to accept or reject the contract.²⁷ Applicants may withdraw offers at any time before the contract is executed.²⁸ The difference between continuous sign up and annual sign up lies in the offer process. While CCC may accept offers under continuous signup once certain requirements are met, eligible offers under annual signup are ranked against others and CCC accepts the highest ranked offers.²⁹

CCC used to record its obligations based on the annual payments that CCC made each year rather than obligating the total liability it had incurred when it executed program contracts.³⁰ Historically, the Office of Management and Budget (OMB) apportioned funds in accordance with CCC's obligational practices.³¹

In 2017, CCC changed its obligational practices for CRP "to more accurately and clearly capture the total financial status of CCC."³² In consultation with OMB, CCC determined that it would record the outstanding balance of its remaining liability.³³ On August 21, 2017, CCC recorded nearly \$10 billion in outstanding liability under

²⁴ 7 C.F.R. § 1410.31(d); *CRP Fact Sheet*, at 2; USDA Email Response 2024.

²⁵ USDA Email Response 2024; *FSA Handbook*, at 7-2 to 7-4.

²⁶ *FSA Handbook*, at 7-4.

²⁷ USDA Email Response 2024; see *FSA Handbook*, at 7-93 to 7-94; 10-95.

²⁸ USDA Email Response 2024.

²⁹ See USDA Email Response 2024.

³⁰ OIG CRP Request, at 1–2; OIG EFCRP Request, at 1–2; see USDA Response Letter, at 4.

³¹ OIG CRP Request, at 1; OIG CRP Request, at 1–2.

³² USDA Response Letter, at 4.

³³ OIG CRP Request, at 2.

CRP contracts.³⁴ But its 2017 apportionment for CRP was a little over \$2 billion.³⁵ OMB subsequently reapportioned an amount sufficient to cover what CCC recorded.³⁶ Similarly, in May 2018, CCC changed its obligational practices for EFCRP and recorded the outstanding balance, which exceeded its 2018 apportionment.³⁷ OMB subsequently reapportioned an amount sufficient to cover what CCC recorded.³⁸

DISCUSSION

At issue is whether CCC violated the Antideficiency Act when it incurred obligations in excess of its apportionment for CRP and EFCRP. We also address whether CCC violated the recording statute when it recorded an amount less than the total liability it incurred when it executed CRP and EFCRP contracts.

The Antideficiency Act

The Antideficiency Act prohibits an officer or employee of the United States government from obligating funds in excess of the amount made available under an appropriation, apportionment, or any other subdivision of funds as specified in an agency's regulations.³⁹ Even though an agency may have sufficient appropriations, the agency violates the Antideficiency Act if it overobligates its apportionment.⁴⁰

For example, in B-310108, Feb. 6, 2008, OMB issued a \$100 million apportionment to USDA Forest Service for fire suppression aviation resources. Although the Forest Service had sufficient appropriations, it exceeded its apportionment for the program in July 2006.⁴¹ The Forest Service subsequently requested a reapportionment

³⁴ OIG CRP Request, at 2; see USDA Response Letter, at 4–5.

³⁵ OIG CRP Request, at 2.

³⁶ OIG CRP Request, at 2.

³⁷ OIG EFCRP Request, at 2, note 4; USDA Response Letter, at 5.

³⁸ OIG EFCRP Request, at 2 note 3.

³⁹ 31 U.S.C. §§ 1341(a)(1), 1517(a); e.g., B-305484, June 2, 2006.

⁴⁰ 31 U.S.C. § 1517(a)(1); B-316372, Oct. 21, 2008 (no violation of the Antideficiency Act where apportionment was sufficient to cover obligations).

⁴¹ B-310108, Feb. 6, 2008; cf. B-316372, Oct. 21, 2008 (The Denali Commission obligated against an apportionment that was insufficient to cover its obligations; but for the fact that the Commission had another available apportionment that was

(continued)

sufficient to cover the obligations it incurred.⁴² In August 2006, OMB approved the reapportionment; however, we found that an Antideficiency Act violation, under 31 U.S.C. § 1517(a), had already occurred.⁴³ A reapportionment to cover an overobligation of funds does not extinguish the initial violation.⁴⁴

Here, CCC executed program contracts that required it to pay annual rental payments to program participants over a term of 10 to 15 years.⁴⁵ An “obligation arises at the time the debt is incurred”⁴⁶ and “the amount of the government’s obligation is ascertained from an analysis of the terms and conditions agreed to by the government and the party with whom it has contracted.”⁴⁷ It follows then, that CCC incurred an obligation to pay 10- to 15-years’ worth of annual rental payments at the time it entered the respective contracts.⁴⁸ As discussed more fully below, CCC believed it had authority to obligate portions of the total liability it had incurred

sufficient to cover its obligations the Commission would have violated the Antideficiency Act when it incurred the obligation.).

⁴² B-310108, Feb. 6, 2008.

⁴³ *Id.*

⁴⁴ B-310108, Feb. 6, 2008; B-253164, Aug. 23, 1993.

⁴⁵ OIG CRP Request, at 1; OIG EFCRP Request, at 1; see USDA Response Letter, at 2.

⁴⁶ B-195260, July 11, 1979, at 3. An obligation, in general terms, is a definite commitment that creates a legal liability on the part of the United States, or a legal duty that could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States. *E.g.*, B-300480, Apr. 9, 2003; see *McDonnell Douglas Corp. v. United States*, 37 Fed. Cl. 295, 301 (1997); see also GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 70.

⁴⁷ B-322147, July 6, 2011, at 2; B-308969, May 31, 2007; B-300480.2, June 6, 2003; see also GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 63.

⁴⁸ Although continuous signup offers meeting relevant eligibility requirements may be accepted, CCC still maintains discretion to ultimately reject these offers where it determines they are not needed, suitable, or feasible. The point of obligation for continuous signup applications is, thus, still the point at which CCC enters into the contract with the Producer, rather than the point at which an offer meeting relevant criteria is submitted.

based on annual rental payments due each year.⁴⁹ And, consistent with CCC's apportionment request at the time, OMB issued an apportionment equal to the amount CCC planned to obligate.⁵⁰ Consequently, the apportionment was insufficient to cover the total obligation CCC actually incurred when it executed program contracts.⁵¹ USDA's 2017 and 2018 Financial Reports note that CCC's obligational practice prior to 2017 was erroneous and possibly resulted in an Antideficiency Act violation.⁵² We agree. We have long held that CCC appropriations are subject to the Antideficiency Act,⁵³ and exemptions from the Act must be explicit.⁵⁴

Although CCC may have had sufficient budget authority when it executed program contracts, it nonetheless violated the Antideficiency Act when it entered into CRP and EFCRP contracts without a sufficient apportionment to cover the total liability it had incurred under program contracts.⁵⁵

⁴⁹ USDA Response Letter, at 4–5; see OIG CRP Request, at 2; see OIG EFCRP Request, at 2.

⁵⁰ USDA Response Letter, at 5; OIG CRP Request, at 2; OIG EFCRP Request, at 2.

⁵¹ See USDA Response Letter, at 4–5.

⁵² See USDA, *2017 Agency Financial Report*, Sec. II, Audit Report 50401-0013-11 (Nov. 14, 2017) at 35, 61, *available at* https://www.usda.gov/sites/default/files/documents/FY_2017_Agency_Financial_Report.pdf (last visited Oct. 24, 2023) (*USDA 2017 Financial Report*); see USDA, *2018 Agency Financial Report*, Sec. I, Sec. II, Audit Report 50401-0016-11 (Nov. 14, 2018) at 36, 67, *available at* https://www.usda.gov/sites/default/files/documents/FY_2018_Agency_Financial_Report.pdf (last visited Oct. 24, 2023) (*USDA 2018 Financial Report*).

⁵³ *E.g.*, B-334146.1, at 8, n. 36, Sept. 20, 2023 (“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.”); B-223857, Feb. 27, 1987 (CCC’s borrowing authority constitutes appropriated funds, which “are subject to the statutory controls and restrictions applicable to appropriated funds” including Antideficiency Act.); see *also* USDA Response Letter, at 5 (CCC budget authority is subject to the apportionment requirement.).

⁵⁴ B-322160, Oct. 3, 2011.

⁵⁵ In its response to us, OMB stated that USDA was correct in changing its obligational practice to fully obligate its liability under CRP contracts at the time of award rather than on annual basis, as it had done previously. OMB noted that it did
(continued)

We assess compliance with the Antideficiency Act at the point of obligation.⁵⁶ CCC incurred obligations at the time it executed program contracts. As explained above, CCC violated the Antideficiency Act when it executed program contracts without a sufficient apportionment to cover the total liability it had incurred under program contracts. As USDA indicated, CCC's actions in 2017 and 2018 amounted to an account adjustment to reflect the outstanding liability it had already incurred.

The Recording Statute

Under the recording statute, 31 U.S.C. § 1501(a), the full amount of a contractual obligation must be promptly recorded when a contract is executed.⁵⁷ Exemptions from the recording statute must be explicit.⁵⁸

For example, the Securities and Exchange Commission (SEC) executed a 10-year lease agreement with a private party.⁵⁹ Instead of recording an obligation for the full amount due under the 10-year agreement, SEC decided to obligate and record an amount equal to the payments due to the lessor in the several months following execution of the lease.⁶⁰ We stated that SEC violated the recording statute when it failed to record the total obligation it incurred after it executed the lease agreement and that SEC had no authority to obligate and record an obligation for an amount less than the total liability it incurred.⁶¹

Among several arguments, SEC stated that "Congress authorized SEC to obligate funds for its leases annually . . . because its annual Salaries and Expenses

not have the relevant documentation from USDA to confirm whether the obligations at issue were recorded in a manner consistent with 31 U.S.C. § 1501(a) and therefore did not have a position on that specific issue.

⁵⁶ *E.g.*, B-325526, July 16, 2014.

⁵⁷ *E.g.*, B-332205, Aug. 9, 2023; B-327242, Feb. 4, 2016; B-322160, Oct. 3, 2011.

⁵⁸ *Id.*

⁵⁹ B-322160, Oct. 3, 2011.

⁶⁰ *Id.*

⁶¹ *Id.*; *see also*, B-327242, Feb. 4, 2016 (The Commodity Futures Trading Commission was required to record an obligation equal to the government's total liability over the term of each lease at the time it entered the multiyear leases because it lacked specific authority to record less than the government's total liability.).

appropriation is available ‘for rental of space (to include multiple year leases)’.”⁶² We rejected that argument explaining that the fact that “Congress, without more, authorized SEC to enter into multiple-year leases does not, by itself, exempt SEC from the recording statute or otherwise authorize SEC to deviate from the obligating standards established therein.”⁶³

By contrast, section 585 of title 40, United States Code, is an example of a statute that gives the General Services Administration the specific authority to obligate less than the total contractual liability incurred under multiyear leases. Namely the statute provides that, “the obligation of amounts [] under this subsection is limited to the current fiscal year for which payments are due . . .”⁶⁴

Here, CRP and EFCRP contracts were for terms of 10 to 15 years.⁶⁵ As explained above, CCC incurred an obligation for 10- to 15-years’ worth of annual rental payments when it executed a program contract. The recording statute required CCC to record its total obligation when it executed program contracts as opposed to recording a partial amount. CCC lacked explicit authority to record an amount less than the total liability it incurred under CRP and EFCRP contracts. Thus, CCC violated the recording statute when it failed to record the total liability it incurred when it executed program contracts.⁶⁶

USDA asserts that CCC had authority as provided under section 4(j) of CCC’s charter⁶⁷—known as a “character and necessity clause”—to obligate and record a portion of the total contractual liability it incurred when it executed CRP and EFCRP contracts.⁶⁸ As explained below we disagree with USDA’s assertion that its character and necessity clause gives it such authority.

⁶² B-322160, Oct. 3, 2011, at 5.

⁶³ *Id.*

⁶⁴ 40 U.S.C. § 585(a)(2).

⁶⁵ OIG CRP Request, at 1; OIG EFCRP Request, at 1; see USDA Response Letter, at 2.

⁶⁶ OMB stated that it “does not have the relevant documentation from USDA to confirm whether the obligations at issue were recorded in a manner consistent with 31 U.S.C. 1501(a) and therefore does not have a position on that specific issue.” OMB Response.

⁶⁷ Commodity Credit Corporation Charter Act, ch. 704, 62 Stat. 1070, 1071 (June 29, 1948), 15 U.S.C. § 714b(j).

⁶⁸ See USDA Response Letter, at 3–4.

CCC's Response

USDA explained that, “[b]efore fiscal year 2017, CCC did not seek and OMB did not apportion funds sufficient to cover contract obligations for the full 10- to 15-year CRP and EFCRP contracts because . . . CCC recorded contract obligations annually.”⁶⁹ USDA contends that CCC has authority under section 4(j) of CCC’s charter⁷⁰—known as a “character and necessity clause”—to decide how it would obligate and record CRP and EFCRP contractual liabilities.⁷¹ The character and necessity clause provides that CCC shall determine the character of and the necessity for its obligations and expenditures and how they shall be incurred, allowed, and paid.⁷² We disagree with the assertion that the character and necessity clause provides authority to obligate and record less than the total liability incurred under program contracts.

Congress gives government corporations “a high degree of autonomy and flexibility in the carrying on of programs involving activities of a business nature . . . [and the] . . . ‘character and necessity’ provision is a hallmark of broad corporate discretion.”⁷³ For example, in B-193573, Dec. 19, 1979, we stated that the Saint Lawrence Seaway Development Corporation under its character and necessity clause had discretion to use its appropriated funds for objects not otherwise permissible for other federal agencies such as food and lodging for nongovernment employees and the employment of publicity experts. We interpreted the language in the Corporation’s character and necessity clause, which stated the Corporation “shall determine the character of and necessity for its obligations . . . subject to provisions of law specifically applicable to government corporations,” to leave it subject only to appropriations restrictions directly implied from its enabling legislation, those included in applicable appropriations acts, or those made specifically applicable to government corporations.⁷⁴

We recognize that several provisions of CCC’s charter, including its character and necessity clause, “grants the CCC broad powers to act independently of the laws regulating the expenditures of federal agencies generally”, we noted in another case

⁶⁹ USDA Response Letter, at 5.

⁷⁰ 15 U.S.C. § 714b(j).

⁷¹ USDA Response Letter, at 3–5.

⁷² 15 U.S.C. § 714b(j).

⁷³ B-334146.1, Sept. 20, 2023, at 8–9.

⁷⁴ *E.g.*, B-217578, Oct. 16, 1986.

that CCC had the discretion to purchase insurance for its stored commodities despite the government's practice to the contrary.⁷⁵

Importantly however, these cases concern the autonomy and flexibility afforded to government corporations when determining how they will expend appropriated funds and carry out their purposes and mandates as opposed to determining the applicability of appropriations laws governing the incurring and recording of obligations.⁷⁶ While the character and necessity clause gives a corporation autonomy and flexibility in how it transacts its business affairs, it does not render all otherwise applicable laws inoperable. Thus, the flexibility afforded to corporations must be exercised within the limits of the laws that are made applicable to them.⁷⁷

In this case, funds borrowed by CCC to finance its operations are appropriated funds.⁷⁸ Appropriated funds are subject to the statutory controls and restrictions of the Antideficiency Act and recording statute.⁷⁹ Any exception from the Antideficiency Act and recording statute must be explicit.⁸⁰ CCC's character and necessity clause

⁷⁵ B-200103, Mar. 5, 1981.

⁷⁶ S. Rep. No. 79-694, at 12 (1945); *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 decision and operations"); *accord* H.R. Rep. No. 79-856, at 4 (1945).

⁷⁷ 15 U.S.C. § 714c (authorizing 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); B-223857, Feb. 27, 1987 (finding that funds borrowed by CCC are appropriated funds, "subject to the statutory controls and restrictions applicable to appropriated funds." 63 Comp. Gen. 285, 287 (1984)); B-129650, May 11, 1977, at 6 (noting that the broad discretion of CCC must be exercised in accordance with enabling legislation).

⁷⁸ B-223857, Feb. 27, 1987; 63 Comp. Gen. 285, 287 (1984).

⁷⁹ *See* 31 U.S.C. §§ 1501, 1517; B-223857, Feb. 27, 1987; 63 Comp. Gen. 285, 287 (1984).

⁸⁰ B-327242, Feb. 4, 2016 (recording statute); B-322160, Oct. 3, 2011 (SEC argued that a "notwithstanding any other provision of law" proviso in the statute that granted SEC the specific authority to enter into leases allowed it to do so without regard for the provisions of the Antideficiency Act. Thus, according to SEC, it was permitted to enter into multiple-year leases without obligating the government's total obligation. Consequently, SEC could record an amount less than the total obligation incurred. We rejected SEC's argument, explaining that exceptions to the Antideficiency Act must be explicit, and a general "notwithstanding" clause like that here does not explicitly waive the Antideficiency Act.)

does not provide an explicit exemption from these statutes.

Accordingly, we have previously concluded that CCC violated the Antideficiency Act despite having broad autonomy and flexibility to determine the character and necessity of its obligations and expenditures. For example, in B-223857, Feb. 27, 1987, USDA asserted that CCC could enter into contracts with meat suppliers even when CCC's budget authority was depleted. We disagreed, stating that CCC is subject to the restrictions of the Antideficiency Act and has no authority to incur contractual liabilities when it lacks sufficient budget authority to cover those liabilities.⁸¹

Here, through use of appropriated funds, CCC executed 10- to 15-year contracts with program participants thereby incurring the total liability for payments due under these multiyear contracts. Consequently, CCC was required to promptly obligate and record the total liability it incurred. CCC's character and necessity clause does not explicitly exempt CCC from the restrictions on the use of appropriated funds mandated by the Antideficiency Act and recording statute.

CONCLUSION

CCC violated the Antideficiency Act when it executed CRP and EFCRP contracts and incurred obligations in excess of its apportionment at the time these contracts were executed. CCC did not have authority to obligate less than the full amount of the total liability it incurred. CCC also violated the recording statute when it failed to record the total obligation it incurred. CCC did not have authority to record an amount less than the total liability it incurred. USDA must report its Antideficiency Act violation as required by the Act.



Edda Emmanuelli Perez
General Counsel

⁸¹ See B-223857, Feb. 27, 1987.