

THE WHITE HOUSE

Washington

February 23, 2021

MEMORANDUM

FROM: DANA A. REMUS  
COUNSEL TO THE PRESIDENT

TO: THOMAS J. VILSACK, SECRETARY OF AGRICULTURE  
U.S. DEPARTMENT OF AGRICULTURE

SUBJECT: Conflict of Interest Waiver Pursuant 18 U.S.C. § 208(b)(1)

The federal conflict of interest statute (18 U.S.C. § 208(a)) generally prohibits a government employee from participating in particular matters that would have a direct and predictable effect on their financial interests, including any interest imputed to the employee. This statute, however, permits an employee to participate in particular matters upon a prior written determination that “the [financial] interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee.” 18 U.S.C. § 208(b)(1).

Pursuant to 18 U.S.C. § 208(b)(1), I am issuing you a waiver that will permit you to participate as Secretary of the Department of Agriculture (USDA) and Director and Chairman of the Commodity Credit Corporation (CCC), in particular matters of general applicability affecting your Conservation Reserve Program (CRP) benefits from USDA due to your ownership of property in Davis County, Iowa. This property is leased out for farming. You have agreed that this property will remain leased on a fixed cash lease basis and will be managed by a management company during your tenure as Secretary. This waiver is based on the disclosure of your financial interests and consideration of the nature and circumstances of the particular matters in which you may participate as Secretary of USDA and Chairman of the Board of the CCC, which funds the CRP. Your financial interests in the matters covered by this waiver are not so substantial as to be likely to affect the integrity of your services to the Government.

Except as provided in this waiver, you may not participate personally and substantially in any particular matter that will have a direct and predicable effect on your financial interests or those of anyone whose interests are imputed to you, unless you first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). The term “particular matter” includes only matters that involve deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters that do not involve formal parties and may extend to

legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons.

#### I. THE CONSERVATION RESERVE PROGRAM (CRP)

Administered by USDA, CRP is one of the largest private-lands conservation programs in the United States. In exchange for a yearly rental payment, farmland owners enrolled in the program agree to remove environmentally sensitive land from agricultural production and instead devote that land to conservation to improve environmental quality. Contracts for land enrolled in CRP are usually between 10 and 15 years in length. The goal of the program is to prevent soil erosion, improve water quality, and reduce loss of wildlife habitat.

#### II. THE COMMODITY CREDIT CORPORATION (CCC)

First established in 1933, the CCC is a Government-owned and operated corporation within the USDA with a broad mission to support and sustain U.S. agriculture. Its activities are derived from statutory authorities granted by Congress and, among other things, the CCC implements Congressional mandates in the Farm Bill. CCC programs must be approved by the Board of Directors and/or by the Secretary of Agriculture. The CCC has no employees of its own, but instead operates through USDA employees in component agencies such as the Farm Service Agency, the Foreign Agricultural Service, the Agricultural Marketing Service, and the Natural Resources Conservation Service, to implement its broad policy actions. For example, local Farm Service Agency offices across the 50 states administer the CRP program while technical support functions for CRP are provided by the local employees of the Natural Resources Conservation Service. The CCC is required to submit an annual budget statement to Congress. This is typically released to the public annually with the President's budget request to Congress.

As Secretary of USDA, you provide leadership on food, agriculture, natural resources, and related issues. As Chairman of the CCC, you supervise and direct its Board in aiding producers in the production and marketing of agricultural commodities; authorizing the sale of agricultural commodities to other government agencies and to foreign governments and the donation of food to domestic, foreign, or international relief agencies; and assisting in the development of new domestic and foreign markets and marketing facilities for agricultural commodities.

#### III. YOUR FARMLAND PROPERTY

You and your spouse own real property in Davis County, Iowa. This property is leased out for farming on a fixed cash basis to a tenant and is managed by Mid States Farm Management Co. of Ottumwa, Iowa. You and your spouse are not engaged in the farming operation associated with this property, and you have instructed your farm manager to maintain a fixed cash lease on the farm. The annual value of your CRP benefits is \$14,726, which you have informed USDA's Designated Agency Ethics Official is less than one half of one percent (0.5%) of the combined value of the financial assets listed on your financial disclosure report. Further,

the annual value of your CRP benefits is less than 7% of your annual salary as Secretary of Agriculture.

Due to your financial interest in the property, cash rent from the property, and the CRP benefits funded by the CCC, you are disqualified by 18 U.S.C. § 208(a) from participating personally and substantially in any particular matters specifically related to your own farmland. However, Section 208 also has a broader reach and will also preclude you from participating personally and substantially in any particular matters of general applicability (such as CRP policy decisions that would affect all farmland owners in a particular state). It is this broader prohibition that is the subject of this waiver. In other words, you will continue to be disqualified from participating in any particular matters involving your farmland that would affect it distinctly and separately. However, due to your senior leadership role as Secretary of Agriculture and Chairman of the CCC, you would be unable to fulfill your duties with regard to USDA's CRP program if you disqualified yourself from those particular matters of general applicability related to the CRP program. Moreover, because you are the Secretary of Agriculture and Chairman of the CCC, you are the most senior official at USDA and on the CCC and, as such, you would not be able to disqualify yourself and reassign those policy-making duties to a subordinate USDA employee.

#### IV. WAIVER DETERMINATION

Based upon the information you have provided regarding the value of your CRP benefits in relation to your financial assets and annual income, I believe that your financial interests in the particular matters of general applicability on which your advice and participation will be required will not be so substantial as to be deemed likely to affect the integrity of the services you will provide to USDA.

Therefore, I hereby grant you a waiver of the restrictions of section 208(a) with regard to your participation in particular matters of general applicability, in your capacity as Secretary of Agriculture and as chairman of the CCC, which have a direct and predictable effect on your CRP benefits.

#### V. WAIVER LIMITATIONS

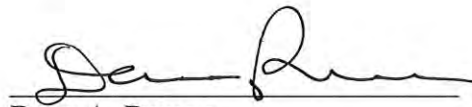
This waiver has limitations. You may not participate in particular matters involving specific parties in which your property, your tenant, or Mid States Farm Management Co. either is or represents a party. You may not participate in any particular matter that will have a special or distinct effect upon your own CRP payments. You may not participate in any particular matter that will have a special or distinct effect on the price of farmland in Davis County, Iowa or its adjoining counties beyond or distinct from the effect on the farms and farmland of the Nation as a whole.

#### VI. PRIOR CONSULTATION WITH THE U.S. OFFICE OF GOVERNMENT ETHICS

In accordance with 5 C.F.R. § 2640.303, the Office of Government Ethics has been consulted prior to granting this waiver and a signed, final copy of this waiver will be forwarded to that Office.

Pursuant to 5 C.F.R. § 2640.304, a copy of this waiver will be made available upon request to the public in accordance with the procedures described in 5 C.F.R. § 2634.603. In making this waiver publicly available, certain information may be withheld in accordance with 5 C.F.R. § 2640.304(b).

This waiver is effective upon signature.

A handwritten signature in cursive script, appearing to read "Dana A. Remus", is written over a horizontal line.

Dana A. Remus  
Counsel to the President

CC: Stuart Bender, Designated Agency Ethics Official, U.S. Department of Agriculture