Failings in the Beef Checkoff Program

OCM Beef Checkoff Reform Taskforce

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In the early 80's, after several years of losing market share to other meats, especially chicken, U.S. beef cattle producers initiated a Beef Checkoff Program (Checkoff Program) to promote beef. The program came into being on the third referendum and was included in the Farm Bill in 1985 as the Beef Promotion and Research Act of 1985.

In 1996, the National Cattlemen's Beef Association (NCBA) became the prime contractor of the Checkoff Program, receiving the majority of the approximately $80 million raised annually by the one-dollar per head Checkoff. However, many Checkoff-paying cattlemen soon became dissatisfied with the program because of the generic promotion of beef and the suspect manner in which NCBA handled the funds under its control.

After a challenge in the courts on constitutional grounds, alleging the compulsory Checkoff to be a violation of the First Amendment, the Supreme Court ruled the program to be "Government Speech." This was a "game changer," which made the funds collected under the program, government funds rather than beef cattle producer funds. This change in designation would seem to have significant new implications regarding the administration and accounting of these funds.

This past summer, it was reported that a performance review of the Checkoff Program's prime contractor by an auditing firm revealed a disturbing level of mishandled funds. It is our understanding that the examination of only one percent of the transactions during a twenty-nine month period disclosed blatant improprieties and resulted in a recent settlement between the Cattlemen's Beef Promotion and Research Board (CBB), the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS), and NCBA that required NCBA to return more than $216,000 in misappropriated Checkoff Program funds to the CBB. Put another way, the $216,000 in misused funds represents only about one-week of time relative to Checkoff Program transactions during the twenty-nine month period examined.

This would suggest that these NCBA abuses are but the tip of the proverbial iceberg. No penalties were imposed as a result of this failure in fiduciary responsibility and breach of trust, nor was there the suspension of NCBA's contract that would normally be expected in such circumstances. This is most disturbing!

It is of no comfort to Checkoff paying cattle producers that the initial examination targeted what auditors believed to be the most likely transactions to disclose improprieties. NCBA likely knew which transactions would receive the most attention and may well have taken measures to make other transactions appear less suspect. A more thorough and probing investigation is called for.

In light of the above, the Organization for Competitive Markets brought together a significant number of Checkoff-paying cattlemen from a number of organizations to form the "Beef Checkoff Reform Taskforce." This taskforce is committed to restoring the integrity of the Checkoff Program and the trust of those cattlemen mandated to pay the some $80 million annually. The group has convened several times via telephone conference and is resolved to achieve its purpose.

We understand that a USDA Office of Inspector General (OIG) audit is being conducted in connection with the Checkoff Program, although the scope of the audit is unclear at this point. In conversations with a representative of OIG, we have been told that a delegation from this group could meet with the audit team and share information that might be useful in the conduct of the audit. We look forward to this meeting.

Of major concern is that NCBA is an organization supported by only one cattleman in thirty-three and yet reportedly derives seventy percent of its overhead expenses from the Checkoff Program. NCBA aggressively pursues an agenda that we believe to be diametrically opposed to the interests and views of the vast majority of Checkoff-paying cattle producers. There is good reason to believe that they have used Checkoff funds to promote their agenda, to the detriment of most producers and the beef-promotion effort.

Last year, the U.S. Secretary of Agriculture was reported to have expressed his concerns regarding the potential conflict of interest when a policy advocate such as NCBA becomes a Checkoff Program contractor. The CBB Executive Committee, by unanimous vote, also expressed its preference for a structure in which no policy organization had influence on programming, budget or governance decisions. We concur. We believe there is an inherent conflict of interest when a policy organization becomes a contractor for Checkoff funds.

The current structure and administration of the Checkoff Program fosters severe conflicts of interest. NCBA uses the millions in Checkoff dollars to promote the interests of packers and retailers and their views concerning industry structure, rather than promoting beef. This NCBA vision, patterned after the poultry industry, is in stark conflict with that of the vast majority of independent, Checkoff-paying cattle producers.

NCBA enjoys an impenetrable lock with which to control critical aspects of the Checkoff Program. This impenetrable lock exists because the representational structure of the Checkoff Program, when distilled down to actual voting representatives, guarantees that NCBA's super-minority in the industry (only four percent or fewer of the nation's 750,000 beef cattle producers are members of NCBA) translates into a super-majority in Checkoff Program governance.

Though there are approximately 660 directors representing the 45 State Beef Councils that exist to represent the nation's 750,000 beef cattle producers, only 85 directors from 40 of those state beef councils are eligible to vote on Checkoff Program matters through NCBA's Federation of State Beef Councils (Federation). This is a function of the price that State Beef Councils must pay for the privilege of representing their respective cattle producers on the Federation.

We understand that the first three voting seats on the Federation cost a state $32,000 per seat; the fourth and fifth seat each cost $250,000; and each seat beyond the fifth seat costs $500,000 per seat. Thus, State Beef Councils that can afford to, and do, pay the most to play, are rewarded with a disproportionate number of voting seats on the Federation. Not surprisingly, of the 85 voting directors on the Federation, approximately 82 are reported to be NCBA members.

This pay-to-play structure disproportionately gives unfair representation to the most affluent of State Beef Councils, financed mostly by the largest of cattle feeders that generally are closely aligned with the largest packers, while minimizing, if not excluding, any representation for less affluent State Beef Councils in the cow-calf areas of the country. In addition, this structure explains how the NCBA, which has attracted only 4 percent of the nation's cattle producers to its membership, has a super-majority of its members controlling the policies of the Checkoff Program through the Federation.

Other contributing factors include what are known as the two-hat states – the 16 State Beef Councils in which the executive officer of NCBA's affiliated state organization also is the executive officer for the State Beef Council. We believe this practice violates the basic federal conflict of interest tenants that prohibit employees from being paid by a private sector employer to perform the same or related work the employee is performing for the government. We believe the U.S. Supreme Court ruling that designated the Checkoff Program as government speech imposes a heightened duty on the government to guard against the very conflicts of interest pervasive within the Checkoff Program's governance, administration and operation.

NCBA's improper influence on the Checkoff Program imposes severe operational inequality. This is because NCBA's super-majority on the Federation gives it extraordinary control over the Federation's selection of members who serve on the Beef Promotion Operating Committee (Operating Committee) – the committee that actually awards Checkoff Program contracts.

Not only does NCBA have disproportionate influence over who is to be awarded Checkoff contracts, but also, it has tremendous influence over the success or failure of entities that are awarded contracts. Anecdotal evidence strongly suggests that NCBA and its affiliated state organizations exerted undue influence to cause non-NCBA contractors to fail. For example, the National Livestock Producers Association previously was awarded the contract to implement the Checkoff's Beef Mobile program, a program that necessitated the cooperation of State Beef Councils for its success. However, based on our best available information, the State Beef Councils controlled by NCBA refused to cooperate with this non-NCBA affiliated organization, thus ensuring the failure of the program and exclusion of the National Livestock Producers Association from the Beef Mobile program contract.

USDA is given broad authority under the Act and Order to ensure the Checkoff Program is properly administered. We believe there is compelling evidence that the program has not been properly administered for more than a decade.

One clear example: Contrary to the Checkoff Program's clear and unambiguous prohibition against using *any* Checkoff funds in any manner for the purpose of influencing governmental action or policy, with the single exception of recommending amendments to the Order, NCBA routinely charges one-half of its officers travel expenses to the Checkoff. NCBA officers are the leaders and spokespersons for NCBA and they have a fiduciary responsibility to carry out the policy objectives of their organization's members. NCBA officers *are* the organization's principal instruments for influencing governmental actions and policies and have been at the forefront fighting against the policy interests of most cattle producers for decades.

NCBA officers fought against cattle producers that supported country-of-origin labeling; against producers seeking mandatory price reporting; against cattle producers that opposed the National Animal Identification System (NAIS); against cattle producers that supported captive supply reform in a major class-action lawsuit; against cattle producers that tried to prevent the premature reintroduction of imported cattle from a disease-affected country; against cattle producers that attempted to ban packer ownership of livestock in both the 2002 and 2008 Farm Bills; and, against cattle producers that support the pending Grain Inspection, Packers and Stockyards Administration (GIPSA) rules that clarifies and defines how GIPSA will administer and enforce the Packers and Stockyards Act.

This ongoing practice of subsidizing NCBA officer travel should be stopped and penalties imposed for NCBA's previous use of the Checkoff Program to subsidize such travel. It is very clear that each of the government policy issues discussed above have been unduly influenced by NCBA, financed by the Checkoff; in direct violation of the law and in direct conflict with the views of the overwhelming majority of Checkoff paying producers.

Based on the widespread abuses of the Checkoff Program, we strongly urge the Secretary of Agriculture to take prompt and decisive action to preserve for U.S. cattle producers, the integrity of this most important program. We firmly believe the evidence warrants NCBA's immediate suspension as contractor, pending the completion of a thorough audit.

After suspending NCBA as prime contractor, we encourage the initiation of an appropriate rulemaking to correct what we believe to be a serious misinterpretation of the Act. The Act requires the Beef Promotion Operating Committee to enter into contracts or agreements with *established nonprofit industry-governed organizations* to implement and carry out Checkoff Program activities. However, the Order unduly narrowed the term *established nonprofit industry-governed organizations* by assigning the meaning of nonprofit industry-governed organizations as those that "[w]ere active and ongoing before enactment of the Act." The customary meaning of *established* is far more expansive and means, e.g., thriving, legally recognized, and having gained recognition in a sphere of activity.

The effect of the Order's current delimiting language is to solidify NCBA's stranglehold on the Checkoff Program. It seems most unlikely that the intent of Congress was to permanently bar future-established, nonprofit organizations that have Checkoff paying members from participating in the implementation and execution of Checkoff activities.

In conclusion, we believe that to continue the Checkoff Program as it is presently structured and administered will do little to promote beef or the interests of those producers who are required to fund the Checkoff Program. Rather, these considerable resources will continue to be increasingly used to promote the agenda of NCBA and the meatpacking industry, to the detriment of independent beef cattle producers and feeders.