Fact Sheet: Reform Commodity Checkoff Bills

- **S. 741 & H.R. 1753, the "Opportunities for Fairness in Farming (OFF) Act," introduced in the U.S. Senate by Sens. Mike Lee (R-UT) and Cory Booker (D-NJ) and in the House by Reps. Dave Brat (R-VA) and Dina Titus (D-NV), would prohibit certain practices relating to commodity promotion (checkoff) programs and require greater transparency in those programs.**
- **S. 740 & H.R. 1752, the "Voluntary Checkoff Act," introduced in the U.S. Senate by Sen. Mike Lee (R-UT) and in the House by Reps. Dave Brat (R-VA), Matt Gaetz (R-FL), and Barbara Lee (D-CA), would prohibit mandatory or compulsory checkoff programs.**

Background

Commodity checkoff programs ("checkoff programs") were established to serve as mechanisms by which agricultural industries pool money for common commodity specific promotional and research purposes. Fees are mandatory, from the smallest local farmer to the largest factory operation. Checkoff dollars go to federal, industry-specific boards, which are required by law to use these funds for mutually beneficial advertising campaigns and research.

Despite this limited purpose, checkoff programs have repeatedly acted beyond the scope of their statutory mandate. Lax oversight by the USDA has resulted in collusive and illegal relationships between checkoff boards and lobbying organizations, both of which have repeatedly used checkoff funds to influence legislation and government action despite a broad statutory prohibition against these activities. Such advocacy efforts have an anticompetitive effect, benefiting certain producers to the detriment of others, and forcing traditional family farmers to pay into a system that actively works against them. **If Congress is going to allow taxpayers' dollars to engage consumer choices, it should only do so for the very limited purpose the checkoff programs were intended; anything more is government intrusion which prevents the market from operating fairly and openly.**

Industry-Specific Issues

The below examples illustrate the conflicts of interest, episodes of unlawful policy coordination and anti-competitive market activities that have become all too commonplace in checkoff programs.

Beef Checkoff

- The private policy and trade group, National Cattleman's Beef Association (NCBA), is the primary contractor for beef checkoff advertising efforts, and has become inappropriately intertwined with the beef checkoff program. NCBA receives as much as 97% of the approximately $80 million collected annually in national beef checkoff fees, making up 82% of NCBA's total budget. As much as 72% of the NCBA president's nearly half a million dollar salary comes from checkoff fees.
- Despite NCBA's claims of propriety, a 2010 partial audit of NCBA expenditures of beef checkoff dollars, examining the equivalent of a nine-day period, uncovered gross misuse of funds, resulting in an agreement by NCBA to return $216,000.00. The Organization for Competitive Markets has an ongoing FOIA complaint seeking USDA records of NCBA expenditures and USDA/OIG audit documents.
- The NCBA has repeatedly engaged in anticompetitive market activities. It has led the fight against family farmers' ability to distinguish their products in the marketplace and has supported the continuation of retaliatory actions by large multi-national corporations. The national beef checkoff administrator,

Cattleman's Beef Board, has developed a "Masters of Beef Advocacy" program designed to train its advocates to go after family farm supporters who promote non-corporate forms of farming and ranching.
- NCBA's lock on the near $80 million in beef checkoff funds ensures it controls the perceived voice of America's cattle producers, despite the fact that its membership is less than 4% of that constituency.

Egg Checkoff

- In 2013, the Egg Board attempted to get government regulators and retailers to act to halt sales of egg-free "Just Mayo" brand products, prompting U.S. Senator Mike Lee (R) Utah to call for reform.

Pork Checkoff

- A 1999 OIG audit noted that the Pork Board (the government checkoff administrator) and the National Pork Producer's Council (an advocacy group) operate so closely together that producers have difficulty telling them apart.
- In 2000, the majority of producers passed a referendum to the end pork checkoff, only to have the new administration determine the vote was not binding.
- The Pork Board funneled $60 million to the NPPC to fuel prohibited lobbying activity under the guise of paying for a trademark that is no longer in use. A federal court recently rejected an attempt by the NPPC to stop a USDA re-appraisal of the trademark's value.
- The Pork Board developed environmental audit software with producer funds, then "gave" that software to NPPC, which used it to create a very profitable subsidiary, Validus.
- The Pork Board and the NPPC jointly operate the "We Care" industry PR program. This is NPPC's primary public messaging venue. The Pork Board and NPPC hold joint annual meetings, which demonstrate and symbolize the Pork Board's support of NPPC's policy agenda. NPPC recently called the Pork Board its "sister organization," despite the fact that NPPC is a lobbying organization and the Pork Board is supposed to be policy-neutral.

Lack of Transparency

Checkoff programs have repeatedly attempted to hinder efforts to shine a light on their misconduct. From 2012-2016, USDA failed to submit to Congress federally mandated annual reports accounting for dairy checkoff spending, activities, and effectiveness. The Egg Board's attacks on "Just Mayo" were only revealed through FOIA action. Meanwhile, the Pork Board has repeatedly refused to process FOIA requests, and the NCBA is the subject of a motion for equitable relief by the Organization for Competitive Markets, which fought for 18 months to obtain public audit records.

Fixing the Problem Through Legislation

S. 741 & H.R. 1753 would amend the authorizing checkoff bills to reaffirm that these programs may not contract with organizations that engage in policy advocacy, conflicts of interest, or anticompetitive activities that harm other commodities. It would also require that they publish all budgets and disbursements of funds for the purposes of public inspection, and submit to periodic audits by the USDA Inspector General.

S. 740 & H.R. 1752 would amend the authorizing checkoff bills to make all fees and assessments entirely voluntary, ensuring that producers who are not benefited by checkoff programs are not forced to pay for them, or contribute to illegal lobbying activities.

No producer should be required to pay into a program that harms their market segment. Even if producers opt-in to a checkoff program, they should be secure in the knowledge that their payments are not being used for illegal advocacy or other prohibited purposes. And, government must ensure the government's infusion of tax dollars into the marketplace is limited and clearly does not pick winners and losers within the same market sector or commodity group.

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