To prohibit certain practices relating to certain commodity promotion programs, to require greater transparency by those programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Lee (for himself, Mr. Booker, Mr. Paul, and Ms. Warren) introduced the following bill; which was read twice and referred to the Committee on ________

A BILL

To prohibit certain practices relating to certain commodity promotion programs, to require greater transparency by those programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Opportunities for Fairness in Farming Act of 2019”.

SEC. 2. FINDINGS.

Congress finds that—

(1) the generic programs to promote and provide research and information for an agricultural
commodity (commonly known as “checkoff programs”) are intended to increase demand for all of that agricultural commodity and benefit all assessed producers of that agricultural commodity;

(2) although the laws establishing checkoff programs broadly prohibit the use of funds in any manner for the purpose of influencing legislation or government action, checkoff programs have repeatedly been shown to use funds to influence policy directly or by partnering with organizations that lobby;

(3) the unlawful use of checkoff programs funds benefits some agricultural producers while harming many others;

(4) to more effectively prevent Boards from using funds for unlawful purposes, strict separation of engagement between the Boards and policy entities is necessary;

(5) conflicts of interest in the checkoff programs allow special interests to use checkoff program funds for the benefit of some assessed agricultural producers at the expense of many others;

(6) prohibiting conflicts of interest in checkoff programs is necessary to ensure the proper and lawful operation of the checkoff programs;
(7) checkoff programs are designed to promote agricultural commodities, not to damage other types of agricultural commodities through anticompetitive conduct or otherwise;

(8) prohibiting anticompetitive and similar conduct is necessary to ensure proper and lawful operation of checkoff programs;

(9) lack of transparency in checkoff programs enables abuses to occur and conceals abuses from being discovered; and

(10) requiring transparency in the expenditure of checkoff program funds is necessary to prevent and uncover abuses in checkoff programs.

SEC. 3. DEFINITIONS.

In this Act:

(1) BOARD.—The term “Board” means a board, committee, or similar entity established to carry out a checkoff program or an order issued by the Secretary under a checkoff program.

(2) CHECKOFF PROGRAM.—The term “checkoff program” means a program to promote and provide research and information for a particular agricultural commodity without reference to specific producers or brands, including a program carried out under any of the following:
(A) The Cotton Research and Promotion Act (7 U.S.C. 2101 et seq.).

(B) The Potato Research and Promotion Act (7 U.S.C. 2611 et seq.).

(C) The Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.).

(D) The Beef Research and Information Act (7 U.S.C. 2901 et seq.).


(F) The Floral Research and Consumer Information Act (7 U.S.C. 4301 et seq.).


(H) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601 et seq.).

(I) The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801 et seq.).

(J) The Watermelon Research and Promotion Act (7 U.S.C. 4901 et seq.).
(K) The Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001 et seq.).

(L) The Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101 et seq.).

(M) The Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201 et seq.).

(N) The Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301 et seq.).

(O) The Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401 et seq.).

(P) The Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 (7 U.S.C. 6801 et seq.).

(Q) The Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7101 et seq.).

(R) Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401).

(S) The Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411 et seq.).
(T) The Canola and Rapeseed Research, Promotion, and Consumer Information Act (7 U.S.C. 7441 et seq.).

(U) The National Kiwifruit Research, Promotion, and Consumer Information Act (7 U.S.C. 7461 et seq.).

(V) The Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7481 et seq.).


(3) CONFLICT OF INTEREST.—The term “conflict of interest” means a direct or indirect financial interest in a person or entity that performs a service for, or enters into a contract or agreement with, a Board for anything of economic value.

(4) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

SEC. 4. REQUIREMENTS OF CHECKOFF PROGRAMS.

(a) Prohibitions.—

(1) IN GENERAL.—Except as provided in paragraph (4), a Board shall not enter into any contract or agreement to carry out checkoff program activities with a party that engages in activities for the
purpose of influencing any government policy or action that relates to agriculture.

(2) Conflict of interest.—A Board shall not engage in, and shall prohibit the employees and agents of the Board, acting in their official capacity, from engaging in, any act that may involve a conflict of interest.

(3) Other prohibitions.—A Board shall not engage in, and shall prohibit the employees and agents of the Board, acting in their official capacity, from engaging in—

(A) any anticompetitive activity;

(B) any unfair or deceptive act or practice;

or

(C) any act that may be disparaging to, or in any way negatively portray, another agricultural commodity or product.

(4) Exception for certain contracts with institutions of higher education.—Paragraph (1) shall not apply to a contract or agreement entered into between a Board and an institution of higher education for the purpose of research, extension, and education.

(b) Authority to enter into contracts.—Notwithstanding any other provision of law, on approval of
the Secretary, a Board may enter directly into contracts and agreements to carry out generic promotion, research, or other activities authorized by law.

(c) PRODUCTION OF RECORDS.—

(1) IN GENERAL.—Each contract or agreement of a checkoff program shall provide that the entity that enters into the contract or agreement shall produce to the Board accurate records that account for all funds received under the contract or agreement, including any goods or services provided or costs incurred in connection with the contract or agreement.

(2) MAINTENANCE OF RECORDS.—A Board shall maintain any records received under paragraph (1).

(d) PUBLICATION OF BUDGETS AND DISBURSEMENTS.—

(1) IN GENERAL.—The Board shall publish and make available for public inspection all budgets and disbursements of funds entrusted to the Board that are approved by the Secretary, immediately on approval by the Secretary.

(2) REQUIRED DISCLOSURES.—In carrying out paragraph (1), the Board shall disclose—

(A) the amount of the disbursement;
(B) the purpose of the disbursement, including the activities to be funded by the disbursement;

(C) the identity of the recipient of the disbursement; and

(D) the identity of any other parties that may receive the disbursed funds, including any contracts or subcontractors of the recipient of the disbursement.

(e) Audits.—

(1) Periodic audits by inspector general of USDA.—

(A) In general.—Not later than 2 years after the date of enactment of this Act, and not less frequently than every 5 years thereafter, the Inspector General of the Department of Agriculture shall conduct an audit to determine the compliance of each checkoff program with this section during the period of time covered by the audit.

(B) Review of records.—An audit conducted under subparagraph (A) shall include a review of any records produced to the Board under subsection (c)(1).
(C) Submission of reports.—On completion of each audit under subparagraph (A), the Inspector General of the Department of Agriculture shall—

(i) prepare a report describing the audit; and

(ii) submit the report described in clause (i) to—

(I) the appropriate committees of Congress, including the Subcommittee on Antitrust, Competition Policy and Consumer Rights of the Committee on the Judiciary of the Senate; and

(II) the Comptroller General of the United States.

(2) Audit by Comptroller General.—

(A) In general.—Not earlier than 3 years, and not later than 5 years, after the date of enactment of this Act, the Comptroller General of the United States shall—

(i) conduct an audit to assess—

(I) the status of actions taken for each checkoff program to ensure compliance with this section; and
(II) the extent to which actions described in subclause (I) have improved the integrity of a checkoff program; and

(ii) prepare a report describing the audit conducted under clause (i), including any recommendations for—

(I) strengthening the effect of actions described in clause (i)(I); and

(II) improving Federal legislation relating to checkoff programs.

(B) CONSIDERATION OF INSPECTOR GENERAL REPORTS.—The Comptroller General of the United States shall consider reports described in paragraph (1)(C) in preparing any recommendations in the report under subparagraph (A)(ii).

SEC. 5. SEVERABILITY.

If any provision of this Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act, and the application of the provision to any other person or circumstance, shall not be affected.