CHECKOFF REFORM
Support the Opportunities for Fairness in Farming (OFF) Act (H.R. 1753/S. 741) and the Voluntary Checkoff Program Participation Act (H.R. 1752/S. 740)

The Opportunities for Fairness in Farming (OFF) Act and the Voluntary Checkoff Program Participation Act are commonsense measures that would bring much-needed transparency and accountability to USDA checkoff programs. Checkoffs are funded by compulsory fees levied against farmers and are intended to be used for advertising campaigns and nutrition education and research. However, FOIA requests have revealed that checkoff funds have been used to engage in anti-competitive tactics that may be illegal. The OFF Act – introduced by Senators Lee (R-UT) and Booker (D-NJ) and Representatives Brat (R-VA) and Titus (D-NV) – would explicitly prohibit anti-competitive behavior, clarify and strengthen lobbying prohibitions, and require that checkoff budgets and expenditures be made public. H.R. 1752/S. 740 would make participation in these programs voluntary in order to benefit small farmers.

CHECKOFF PROGRAMS: THE BASICS
Federal checkoff programs fall under the Commodity Promotion, Research, and Information Act of 1996. Although the funding for checkoff organizations comes from producers, often in the form of mandatory per-unit assessment taxes, the board members who run checkoff organizations are appointed and supervised by the Secretary of Agriculture.

There are currently 22 major checkoff organizations in the U.S. These programs are meant to promote a particular commodity in general (for example, through broad marketing slogans like “Got Milk” or “Beef: It’s What’s for Dinner”), rather than certain producers or companies. However, many producers see no real benefit despite being required to pay into these government-managed campaigns. A campaign promoting beef, for instance, does nothing to encourage consumers to purchase beef from sustainably-raised cattle, which might be marginally more costly. Instead, checkoff funds typically benefit the largest and most powerful producers in a given industry.

Reform is needed in large part because checkoff dollars have repeatedly been siphoned off to fund lobbying activities and anti-competitive efforts. In addition, farmers are left without a voice in checkoff expenditures.

1 7 U.S.C. §§ 7401 et seq
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FUNNELING FUNDS TO LOBBYING EFFORTS
- The National Cattlemen’s Beef Association (NCBA) – arguably the most powerful lobbying entity in the country for the beef industry – receives most of its funding from the beef checkoff program, which is meant to be policy-neutral. In 2010, an outside audit analyzing the relationship between the Cattlemen’s Beef Board and the NCBA underscored how checkoff funds had been used inappropriately to support lobbying efforts. The auditors concluded that “NCBA breached the financial firewall” between marketing and lobbying. As a USDA Office of Inspector General investigation noted, NCBA was required to return over $200,000 to the beef checkoff program.
- The National Pork Board (NPB) developed and promoted the popular “Pork: The Other White Meat” campaign using checkoff dollars, but gave away trademark rights to the campaign to the National Pork Producers Council (NPPC). Later, when the trademark had lost all its value, NPB bought it back for $60 million. This sham deal funneled funds to the NPPC to lobby, in what is certainly a violation of the spirit of the law, if not the letter.
- The American Egg Board used checkoff funds in violation of law, surreptitiously plotting against a specific company and attempting to keep their products from store shelves. Clearly, taxpayer dollars should not be used to stifle free enterprise, yet USDA continues to hand over funding and political influence to largely unchecked checkoff funds.

TAXATION WITHOUT REPRESENTATION
Improper use of funds is not the only problem plaguing the checkoff program. Independent producers have no way to challenge objectionable checkoff-funded advertisements that undercut their ability to sell their products. Instead, courts have allowed checkoff programs to compel farmers to subsidize advertisements, even when they are produced by private entities (partially funded by checkoff dollars), on the theory that the ads are government speech exempt from taxpayer oversight. Ultimately, producers are put in the untenable position of paying for advertisements they cannot challenge in court and for activities that may confer no benefit on them.

PROPOSED LEGISLATION
The OFF Act and the Voluntary Checkoff Program Participation Act would provide much-needed reform to checkoff programs.

- The former would ensure that money from independent producers is spent wisely by cutting off the funnel between government spending and private lobbyists. Its provisions will advance transparency and fair competition in the U.S. market while fostering greater accountability among checkoff organizations to the producers that fund their activities.
- The latter would grant producers the freedom to opt in to checkoff programs, rather than be levied with mandatory assessment taxes. Voluntary participation will give smaller producers a voice in the expenditure of their checkoff dollars. Farmers will be able to devote their hard-earned dollars to marketing that affirmatively benefits them and more of their resources to the often staggering operating costs that come with running a farm – particularly important in view of the tight margins farmers already face.

Please cosponsor the Opportunities for Fairness in Farming (OFF) Act (H.R. 1753/S. 741) and the Voluntary Checkoff Program Participation Act (H.R. 1752/S. 740).

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POLSFS-CHECKOFF-2018-01