Commodity Checkoff Programs

1. Overview

Commodity checkoff programs, also called “research and promotion programs,” are designed to improve the market position of particular agricultural commodities (such as beef, dairy, or soybeans) by funding advertising and research. Checkoff programs work by pooling fees assessed on producers for the sale of each unit of a commodity. For example, for every head of cattle sold by a producer, the beef checkoff program collects $1. Some checkoff programs also assess fees on processors and retailers.

Federal checkoff programs are authorized by statute and are overseen by USDA. Each commodity checkoff program has a board of elected representatives. This board recommends the rate of fee assessment on the commodity, which must then be approved by USDA. Rates of assessment are typically set at around 1% of the commodity’s value. The board also administers the checkoff, including vetting and approving all spending from the checkoff’s general fund. With a few exceptions (such as state focused programs), advertising funded by checkoff programs promotes the generic commodity (e.g. “pork”) rather than any brand (e.g. “Hormel”), producer, subtype (e.g. “grass fed” or “US”), or other product differentiator. Well-known checkoff-funded campaigns include “Got Milk?”, “Beef: It’s What’s for Dinner”, and “Pork: The Other White Meat.” In addition to advertising, checkoff programs typically spend a portion of their funds on research and development initiatives.

There are currently 22 federal checkoff programs. Each year, these programs collect about $500 million in fees from producers, processors, and/or retailers. Because U.S. consumers are relatively price insensitive as compared to first producers, the cost of the checkoffs is generally passed on to consumers in the form of higher prices.

2. Implications of Commodity Checkoff Programs

For those seeking a better quality of life for America’s farm animals, there are at least two potential reasons one might oppose checkoff programs as they are currently administered. First, if animal product checkoff programs are in fact successful, then they increase the consumption of those products, and more animals are produced and slaughtered to meet that elevated demand. Second, there is some evidence that checkoff programs disproportionately

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1 For a high-level overview of current research and promotion programs, see Research and Promotion Programs, USDA Agricultural Marketing Service, https://www.ams.usda.gov/rules-regulations/research-promotion (last visited Nov. 9, 2017).
2 For an overview of how checkoff programs are developed and implemented, see Harry Kaiser, Effects of Generic Advertising on Food Demand, in The Oxford Handbook Of The Economics Of Food Consumption And Policy 695-715 (Jayson Lusk & Jutta Roosen, eds. 2011) [hereinafter Kaiser, Effects of Generic Advertising on Food Demand].
benefit larger commercial farming operations and yield comparatively little benefit for smaller, independent producers. Given that most high welfare animal agriculture takes place on smaller, independent farms, promoting the interests of large scale commercial farmers and processors could create additional obstacles to shifting U.S. meat production in a more humane direction.

As to the first point, numerous studies have found that checkoff programs do, in fact, increase consumption of the products they promote. The table below, taken from Professor Harry Kaiser’s brief on commodity checkoffs, outlines the results of a handful of studies evaluating the benefit-to-cost ratios (BCRs) of various generic checkoff programs in the U.S.\(^5\)

<table>
<thead>
<tr>
<th>Study Authors (Year)</th>
<th>Commodity</th>
<th>Benefit to Cost Ratio (BCR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ward (1996)</td>
<td>Beef</td>
<td>5.7</td>
</tr>
<tr>
<td>Davis et al. (2000)</td>
<td>Pork</td>
<td>16.0</td>
</tr>
<tr>
<td>Kaiser and Schmit (1998)</td>
<td>Eggs</td>
<td>3.5</td>
</tr>
<tr>
<td>Williams (1999)</td>
<td>Soybeans</td>
<td>4.8</td>
</tr>
<tr>
<td>Murray et al. (2001)</td>
<td>Cotton</td>
<td>4.6</td>
</tr>
<tr>
<td>Van Sickle and Evans</td>
<td>Tomatoes</td>
<td>29.1</td>
</tr>
<tr>
<td>Alston et al.</td>
<td>California Table Grapes</td>
<td>44.9</td>
</tr>
<tr>
<td>Erickson et al.</td>
<td>Pears</td>
<td>10.4</td>
</tr>
<tr>
<td>Ward and Forker</td>
<td>Washington Apples</td>
<td>7.0</td>
</tr>
<tr>
<td>Carmen and Craft</td>
<td>California Avocados</td>
<td>2.2</td>
</tr>
</tbody>
</table>

Of fourteen studies evaluating the BCR for various fruit and vegetable checkoff programs, the average BCR was 16.0 (i.e. the benefit, or increase in demand, was 10 times larger than the associated costs). The vast majority of studies evaluating the BCR for other commodities (including animal products, such as beef and pork, and commodity crops, such as soybeans and cotton) have found BCRs well in excess of 1.0, though the BCRs for these checkoff programs appear to be lower on average than those for fruits and vegetables.

While these high BCRs might initially suggest that checkoff programs play a critical role in generating consumer demand, in reality, the BCRs are large primarily because the costs are so low relative to industry revenue.\(^6\) Indeed, a 2009 report summarizing the results of 21 studies that estimated “promotion elasticities” for various state and national generic checkoff programs suggests that the typical impact of these programs on commodity demand is quite

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\(^5\) See id.

\(^6\) See id.; see also Kaiser, Effects of Generic Advertising on Food Demand, supra note 2 at 706-07.
small. “Promotion elasticity” measures the percentage change in consumer demand given a 1% change in promotion expenditures. While each of the 21 studies found positive, statistically significant promotion elasticities, the average promotion elasticity was 0.096, meaning that a 1% increase in generic promotion expenditures resulted in a 0.096% increase in demand for the commodity when holding all other demand determinants constant. Coupled with the relatively low absolute expenditure of these programs, this elasticity indicates that checkoff programs have a relatively small, though positive, impact on consumer demand.

Given the high BCRs of these programs, it is conceivable that if checkoff programs increased their rates of assessment and therefore raised more money to spend on advertising, the result might be a more significant increase in consumer demand. However, as noted above, the costs of checkoffs are generally passed on to consumers in the form of higher prices. If these costs grow more significant, their impact on prices might negatively impact consumer demand and/or producers might have to swallow these additional costs such that the increased demand would not actually benefit them economically.

It is also worth emphasizing that, on average, checkoff programs for non-animal products have a significantly higher BCR than checkoff programs for animal products or commodity crops (many of which comprise animal feed). Any efforts to eliminate or reform checkoff programs that are motivated by a desire to minimize the consumption of animal products should carefully consider whether checkoffs as a whole might actually decrease animal product consumption by increasing consumer demand for other products. This analysis of course depends on the overall consumption numbers rather than the relative percentage increases in consumption of animal vs. non-animal products, but it is an evaluation worth undertaking before proposing any wholesale elimination or reform of checkoffs.

In the context of evaluating checkoffs’ implications for animal welfare, a second question worth investigating is whether checkoff programs for animal products disproportionately benefit CAFOs/factory farms. If smaller, more humane operations are not benefitting significantly from checkoff programs but large industrial agricultural operations are, elimination or reform of checkoff programs could help to level the market playing field for farmers who are raising their animals more humanely.

There is at least some evidence that industrial animal agricultural operations benefit more from checkoff programs than do smaller and higher-welfare farms. A portion of most checkoff programs’ funds is spent on research, and a number of sources contend that much of this research predominantly addresses the needs of industrial agriculture. For example, Patty Lovera, Assistant Director of Food and Water Watch, has written:

Checkoff research is often devoted to goals of big agribusiness interests, not projects that would help address the real needs of farmers or consumers. Rather than support research that could help reorient agriculture production to minimize the health and environmental impacts of food production, most commodity checkoff funding has gone towards marketing efforts to try to diminish critics of

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7 Kaiser, Effects of Generic Advertising on Food Demand, supra note 2 at 704-05.
8 Id.
big agriculture (including organic and sustainable production and the local food movement)[...]

A review of research grants from the pork checkoff reveal (sic) many grants given for odor control on factory farms, improved use of the controversial technology of irradiation in pork processing, and best ways to administer drugs to animals without leaving residues. The Pork Board has given more than 100 grants to study environmental odors, while dedicating relatively little attention to studying antibiotic resistance, a major public health problem and long-term issue that producers will face on their operations.9

Technically, checkoff funds cannot be used for lobbying. In practice, however, there is very little transparency into checkoff programs’ expenditures, and several checkoff programs have used funds impermissibly in recent years in attempts to influence legislation. For example, FOIA records have revealed that the United Egg Producers used checkoff funds to lobby the FDA to force the company previously known as Hampton Creek to change the name of its vegan mayonnaise substitute, Just Mayo.10 The National Pork Producers Council has also been accused of misusing checkoff funds for lobbying.11

These lobbying efforts often benefit large industrial agriculture at the expense of small producers. The National Cattleman’s Beef Association (NCBA), a lobbying organization comprised largely of the four largest meatpacking companies, chooses half of the members of the beef checkoff board and recently successfully lobbied for the repeal of Country of Origin Labeling (COOL) for beef and pork products. This repeal greatly benefits the processors that NCBA represents because it allows them to process cheaper, imported meat without having to label it as such, and, unsurprisingly, American producers, particularly smaller-scale producers whose products cost more, are suffering as a consequence. While NCBA claims it has set up a


In contrast, a 2000 study suggests that the portion of checkoff funds spent on advertising may benefit smaller farms more than larger farms due to the smaller farms’ less elastic supply response, but also suggests that the disparity is marginal. See Chanjin Chung & Harry M. Kaiser, Do Farmers Get an Equal Bang for Their Buck from Generic Advertising Programs? A Theoretical and Empirical Analysis, 25 Journal Of Agricultural And Resource Economics 147, 147-158 (2000).


“firewall” between its lobbying and checkoff arms, many independent producers are skeptical that NCBA is properly self-policing.\textsuperscript{12} In short, independent producers are concerned that meatpackers are using checkoff programs to further enhance their already significant economic and political power at the expense of producers’ interests.\textsuperscript{13} As Organization for Competitive Markets (OCM) Founder Fred Stokes stated in March 2017:

“The original intent of these checkoff programs was to help U.S. farmers and ranchers, but they have been hijacked by corporate interests and, oftentimes, foreign corporate interests. The half-billion dollars that these programs generate each year are being used to pick winners and losers in the market. They even engage in anti-market access campaigns within the same market sector or commodity. These funds have become the cash cow for organizations that work against fair competition for family farmers.”\textsuperscript{14}

In April 2017, Sens. Mike Lee (R-Utah) and Cory Booker (D-N.J.) introduced the Opportunities for Fairness in Farming (OFF) Act, designed to bring more transparency and accountability to federal checkoff programs. A companion bill was introduced in the House by Reps. Dave Brat (R-Va.) and Dina Titus (D-Nev.). This legislation was motivated in part by a recent FOIA request which revealed that the President of the American Egg Board coordinated with industry heads to organize a public relations campaign against Hampton Creek’s Just Mayo. Senator Lee called the American Egg Board’s actions a “classic case of big government and big businesses working together to squeeze out smaller rivals and squelch innovation.”\textsuperscript{15} According to its sponsors, the OFF Act would:

• Clarify and fortify the prohibition on checkoff programs from contracting with organizations that lobby on agricultural policy;
• Establish program standards that prohibit anticompetitive behavior and engaging in activities that may involve a conflict of interest; and
• Require transparency through publication of checkoff program budgets and expenditures, and means for audits of compliance.\textsuperscript{16}

The 2014 Farm Bill allows for the creation of a checkoff program that extends beyond a single commodity, opening up the possibility for checkoffs for products that share common differentiating characteristics, such as organic products or grassfed or pasture-raised animal products. The Organic Trade Association, for example, has been working to implement a checkoff program that would apply to all organic products, including animal products, fruits, and vegetables.\textsuperscript{17}

\begin{itemize}
\item \textsuperscript{12} Fassler, supra note 10.
\item \textsuperscript{13} Id.
\item \textsuperscript{15} Huehnergarth, supra note 10.
\end{itemize}
vegetables, and grains, wine, and more.\textsuperscript{17} The program is called the the Generic Research and Promotion Order for Organic, or “GRO Organic”. Whether to implement this program is a divisive issue among organic producers. Some argue that the checkoff will help differentiate organic products and grow the market, while others contend that this checkoff, like others, will disproportionately benefit large agriculture and penalize smaller farmers and that organic faces not a demand problem, but rather a supply problem.\textsuperscript{18} There is also concern that it will be difficult to direct research and advertising efforts in a way that equally benefits the diversity of organic products that would be subject to the GRO Organic checkoff--products which range from animal products to vegetables to grains to imported wine.\textsuperscript{19}

The emergence of the organic checkoff raises the question of whether producers who engage in higher welfare practices, such as grassfeeding or pasture-raising their animals, might benefit from developing a checkoff that highlights the unique advantages of those products. Such a program may not be especially effective, however, in light of the statutory requirement that checkoff programs overseen by the USDA refrain from disparaging other products.\textsuperscript{20} This is an issue that has been raised by opponents of the organic checkoff program; some critics question the efficacy of a program designed to promote organic foods that cannot favorable compare organic foods to conventional counterparts.\textsuperscript{21}

Checkoff programs are allowed to make objectively verifiable claims about their products, but the question of what constitutes an objective, factual comparison is far from clear.\textsuperscript{22} \textit{The New Food Economy} argues, for example, that because “the verdict is still out on the health and environmental benefits of organic...[an organic checkoff] probably wouldn’t permit claims like one Environmental Working Group made when it recently declared its support for the checkoff: ‘Organic food is better for our health, and organic farming is better for our environment.’”\textsuperscript{23} Similar disputes about the health and environmental advantages of non-confinement animal products might hamstring the advertising efforts of checkoffs focused on higher welfare practices. Advocates considering pursuing new checkoff programs for more humane and/or sustainable animal products should make efforts to fully understand the contours of the statutory non-disparagement requirements and evaluate whether those requirements will prevent checkoff-funded advertising from adequately differentiating these products.

3. \textit{Opportunities for Reform}

\textit{Adopt the OFF Act}


\textsuperscript{18} Fassler, supra note 10.

\textsuperscript{19} Id.


\textsuperscript{22} Fassler, supra note 10.

\textsuperscript{23} Id.
As discussed above, many farmers and farming interest groups share the belief that checkoff-funded research primarily addresses the needs of industrial agriculture, but the lack of transparency around the use of checkoff funds makes it difficult to accurately assess these claims. The transparency required by the OFF Act could help to put pressure on checkoff boards to funnel funds to research and development initiatives that benefit small-scale and more sustainable growers and may therefore have a positive impact on the promotion of higher-welfare products.

In addition, the transparency required by the OFF Act will help to strengthen the prohibition on using checkoff funds for lobbying, which frequently benefits meatpackers and other industrial agricultural interests at the expense of independent producers.

Require checkoff programs to devote a certain percentage of their research budgets or board membership to products/practices that meet minimum sustainability and/or welfare requirements.

Another option for reform is to impose additional requirements on checkoff programs for animal products. For example, these programs could be required to devote a minimum percentage of their research budgets to issues impacting farmers and ranchers who emphasize animal welfare and/or sustainability. Alternatively, these programs could be required to devote a certain number of seats on their operating boards to higher-welfare and/or small scale farmers, ranchers, or processors, who could then advocate for research and promotional activities that benefit independent and higher-welfare producers.

The proposed GRO Organic checkoff takes this approach. In an effort to address the concerns of producers, who feel their interests will be secondary to the interests of processors and distributors, the proposed GRO checkoff would reserve a minimum of half the seats on its operating board for farmers and would also designate some seats for smaller operations.24

Make participation in checkoff programs optional for certain producers.

Another option is to return to the old checkoff model, under which producers’ participation was optional rather than mandatory. The proposed GRO checkoff, for example, would allow farmers who make less than $250,000 in annual revenue and processors that make less than $1.6 million to opt out of the program. The rationale is that many of these producers interface directly with consumers and are unlikely to benefit from the promotional advertising the checkoff program funds.

Advocates considering this approach should evaluate the extent to which allowing small producers to opt out will push checkoff promotion further in the direction of industrial agricultural interests, and how that compares to the potential financial gain that small-scale and high-welfare producers could realize from retaining funds they would otherwise have to put toward checkoff programs.

24 Id.