

Fighting for the U.S. Cattle Producer!



R-CALF United Stockgrowers of America
P.O. Box 30715
Billings, MT 59107
Fax: 406-252-3176
Phone: 406-252-2516
Website: www.r-calfusa.com
E-mail: r-calfusa@r-calfusa.com

October 16, 2014

The Honorable Tom Vilsack
United States Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

Via E-mail and U.S. Mail

**Re: Complaint Regarding Improper Lobbying Activity and Deception
Perpetrated by the National Cattlemen's Beef Association (NCBA) and 45 of
Its State Affiliates in Their Joint Letter Dated October 14, 2014**

Dear Secretary Vilsack:

The National Cattlemen's Beef Association (NCBA) and 45 of its state affiliates sent a [letter to you dated October 14, 2014](#). The obvious purpose of the letter is to influence governmental action and policy. Specifically, the letter urges you to "enhance" the 1985 Beef Promotion and Research Act (1985 Act) and to "not issue an Order under the 1996 Act [Commodity Promotion, Research and Information Act of 1996]."

Many, if not most or all, of the signatories on the referenced letter are recipients of checkoff funds, either directly or indirectly. According to the Office of Inspector General (OIG), the NCBA receives approximately 82 percent of its annual revenues from checkoff funds. The NCBA's CEO, who likely helped draft the referenced letter, receives a sizable portion of his salary from checkoff funds. Further, many of the NCBA's state affiliates that joined the letter are considered "two-hat" states because the state beef councils that collect checkoff funds in those states are essentially indistinguishable from the NCBA affiliated organizations with which they share the same physical office address and executive employee.

For example, according to the websites for the national Beef Checkoff Program and the NCBA, the Alabama Cattlemen's Association, a signatory to the letter and an NCBA affiliate, is the state's qualified beef council that directly receives beef checkoff funds. Also, the executive officer for the Ohio Beef Council is the executive officer of the Ohio Cattlemen's Association, and both organizations share the same physical address. So too does the Kansas Livestock Association, also a signatory to the letter, share the same physical address as beef checkoff fund recipient Kansas Beef Council. And, the Louisiana Cattlemen's Association, another signatory to the letter, and the Louisiana Beef Industry Council share the same physical address and chief executive. Anecdotal information indicates that the state beef councils pay exorbitant fees to

their state's NCBA affiliate masked as rents, advertising, salaries and other administrative costs as a means of subsidizing the policy activities of those NCBA affiliates. These are but a few examples demonstrating that checkoff funds flow indistinguishably between state beef councils and all or many of the NCBA affiliates that signed the referenced letter.

Mr. Secretary, the OIG's audit report completed January 2014 states the OIG "could not determine that all [beef checkoff] funds were collected, distributed, and expended in accordance with the Act and the Order. Given this official OIG conclusion, and the above-mentioned manifest comingling of funds that occur between checkoff-recipient state beef councils and NCBA affiliates, how are producers assured that their checkoff dollars are not being used by the NCBA and its listed affiliates to unlawfully lobby you to forego your publicly announced policy initiative to create a new beef checkoff program under the 1996 Act? We are particularly concerned about this referenced, self-serving letter because the 1985 Beef Promotion and Research Act and Order (1985 Act and Order) expressly prohibit checkoff funds from being used "in any manner" to influence governmental action or policy.

The referenced, self-serving letter also contains blatantly false information that is intended to mislead and deceive you, the public and members of Congress. The letter claims that "[t]he Office of Inspector General has audited the program and says contractors are in compliance with the 1985 Act and Order." That claim is blatantly false. The OIG's final audit report of the national Beef Checkoff Program contains no such conclusion. Instead, the OIG merely states that it found no cause to question the *current* relationship between the parties as it pertains to compliance with the Act and Order. The significance of this qualified statement is revealed in the [OIG's letter to R-CALF USA](#) dated Jan. 31, 2014, in which the OIG explains that it found it necessary to retract its previous, unfounded claim that the contractors were in compliance with the Act and Order:

Our data quality review determined that changes to the original [OIG audit] report were necessary. . . . [W]e modified the language in our original report, in which we stated that the relationships between the beef board and other industry-related organizations, complied with legislation. The revised report states that, based upon OIG's review of relevant provisions in the Act and Order, and our review of the contractual associations between the beef board and the NCBA, as well as the other industry-related organizations, we found no cause to question the current relationship between the parties, as it pertains to compliance with the Act and Order. Additionally, we reaffirmed our originally reported finding that AMS should strengthen its oversight controls to ensure the expenditure of funds complies with the Act and Order. However, because the audit team did not perform all necessary procedures related to the statistical sampling plan for reviewing beef checkoff funds in the original report, we could not determine that all funds were collected, distributed, and expended in accordance with the Act and Order and changed the language in the revised report accordingly. Overall, we concluded that AMS' oversight as an internal control function needs improvement. In our view, this resulted in agency officials having reduced

assurance that beef checkoff funds were collected, distributed, and expended in accordance with the Act and Order.

Given the OIG's findings that it could neither determine if contractors are in compliance with the Act and Order nor if beef checkoff funds are being expended in accordance with the Act and Order, it is imperative that USDA ignore the self-serving request by NCBA and its affiliates for less government control over the current national Beef Checkoff Program. This is necessary given the U.S. Supreme Court's determination that the national Beef Checkoff Program is a program that disseminates government speech paid for by mandatory assessments (*i.e.*, taxes) imposed on cattle producers and cattle and beef importers. Producers deserve to know that the assessments they are required to pay under this government program are being used effectively and in accordance with the Act and Order. The OIG report reveals that producers have no such assurance.

In addition to the foregoing discussion regarding the NCBA's and its affiliates' self-serving letter that is both inappropriate (if not unlawful), and deceptive, several other erroneous claims need to be addressed:

- NCBA et al.'s claim that a Cornell University study shows that the current beef checkoff returns \$11.20 for every dollar invested actually demonstrates that the current beef checkoff is much less effective and much less efficient than other commodity checkoff programs. For example, a 2012 Cornell University study, conducted by the same author who completed the beef checkoff study, found that the national Pork Checkoff Program had a much higher return on investment for pork producers. The study concludes that pork producers receive \$17.40 for every additional dollar they invest in their national Pork Checkoff Program, which is a full \$6.20 more per dollar invested than the beef checkoff study concludes is returned to cattle producers.
- The NCBA et al.'s claim of grassroots involvement is misplaced. Only in Nebraska are producers elected by their fellow producers to serve as directors on their state beef council – making it a genuine grass-roots program. In all other states, producers must first be nominated by an organization in order to have an opportunity to serve, which effectively requires producers to belong to an organization in order to be nominated to their state beef council and to have their voices heard regarding checkoff matters.
- The NCBA et al.'s claim that the 1985 Act's 5 percent cap on administrative fees results in less bureaucracy than the 1996 Act's 15 percent cap is misplaced. This is because the 1985 Act's 5 percent cap applies only to the one-half of the beef checkoff funds that the state beef councils actually send to the Cattlemen's Beef Board. The one-half of the beef checkoff funds that the states retain are not subject to the cap and anecdotal evidence indicates that some state beef councils spend upwards of 50 percent of their retained checkoff funds on administrative costs. Because the 1985 Act's 5 percent cap applies to only one-half of the actual checkoff assessments, the national Beef Checkoff Program may be spending well over 15 percent in administrative fees. A full audit should be conducted to determine the actual amount being expended for administrative fees.

The Honorable Tom Vilsack

October 16, 2014

Page 4

- The NCBA et al.'s self-serving letter points out the incongruity of the current national Beef Checkoff Program. The U.S. Supreme Court ruled the national Beef Checkoff Program imposes an assessment on all cattle producers (*i.e.*, a tax) to exclusively fund government speech. Yet, one-half of those assessed taxes are withheld from the Cattlemen's Beef Board and retained by the state beef councils, without restrictions regarding the amount the state beef councils can spend on administrative costs (which include costs paid to NCBA affiliates that are parties to the referenced letter, effectively subsidizing their lobbying activities). Then, using their control over those retained assessments, the state beef councils gain considerable control over how the Cattlemen's Beef Board allocates the other half of the checkoff funds. This considerable control arises from the beef council's purchase of seats on the NCBA-controlled Federation of State Beef Councils and their subsequent appointment to the Cattlemen's Beef Board Operating Committee. Thus, the current national Beef Checkoff Program constitutes an impenetrable, quasi-governmental bureaucracy controlled by the NCBA. This has occurred because the 1985 Act and Order funds the NCBA by funding the state beef councils that ensure the NCBA continually receives the lion's share of checkoff contracts and that, in turn, pay administrative costs to the NCBA's state affiliates, which helps them to lobby on behalf of the policy interests of the NCBA – just as they are now doing in their self-serving letter.

Mr. Secretary, without the reforms previously recommended by R-CALF USA and the 35 other organizations that wrote you on September 11, 2014, the current national Beef Checkoff Program will continue to finance the growth of NCBA's sprawling empire that is being built on the backs of hard-working, independent U.S. cattle producers. It is the government-mandated assessments that have not, as the OIG confirms, been subjected to adequate control or oversight that first created this deplorable circumstance and is now sustaining it.

We respectfully request that you conduct an investigation into our concerns that the NCBA and its affiliates have violated both the spirit and intent of the 1985 Act and Order and that the NCBA and its affiliates have attempted to mislead and deceive you, the public and members of Congress by distributing their deceptive letter to the media for widespread distribution. If you are able to validate our concerns, we ask that you take the decisive action we and others recommended to you on September 11.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard". The signature is stylized and cursive.

Bill Bullard, CEO

Cc: Select Members of Congress
Media