

117TH CONGRESS  
1ST SESSION

# S. 2861

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

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2021

Mr. LEE (for himself, Mr. PAUL, Mr. BOOKER, Ms. WARREN, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Opportunities for Fair-  
5 ness in Farming Act of 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the generic programs to promote and pro-  
9 vide research and information for an agricultural

1 commodity (commonly known as “checkoff pro-  
2 grams”) are intended to increase demand for all of  
3 that agricultural commodity and benefit all assessed  
4 producers of that agricultural commodity;

5 (2) although the laws establishing checkoff pro-  
6 grams broadly prohibit the use of funds in any man-  
7 ner for the purpose of influencing legislation or gov-  
8 ernment action, checkoff programs have repeatedly  
9 been shown to use funds to influence policy directly  
10 or by partnering with organizations that lobby;

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

14 (4) to more effectively prevent Boards from  
15 using funds for unlawful purposes, strict separation  
16 of engagement between the Boards and policy enti-  
17 ties is necessary;

18 (5) conflicts of interest in the checkoff pro-  
19 grams allow special interests to use checkoff pro-  
20 gram funds for the benefit of some assessed agricul-  
21 tural producers at the expense of many others;

22 (6) prohibiting conflicts of interest in checkoff  
23 programs is necessary to ensure the proper and law-  
24 ful operation of the checkoff programs;

1           (7) checkoff programs are designed to promote  
2           agricultural commodities, not to damage other types  
3           of agricultural commodities through anticompetitive  
4           conduct or otherwise;

5           (8) prohibiting anticompetitive and similar con-  
6           duct is necessary to ensure proper and lawful oper-  
7           ation of checkoff programs;

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

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

14 **SEC. 3. DEFINITIONS.**

15          In this Act:

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

20           (2) CHECKOFF PROGRAM.—The term “checkoff  
21           program” means a program to promote and provide  
22           research and information for a particular agricul-  
23           tural commodity without reference to specific pro-  
24           ducers or brands, including a program carried out  
25           under any of the following:

1           (A) The Cotton Research and Promotion  
2 Act (7 U.S.C. 2101 et seq.).

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

5           (C) The Egg Research and Consumer In-  
6 formation Act (7 U.S.C. 2701 et seq.).

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

9           (E) The Wheat and Wheat Foods Re-  
10 search and Nutrition Education Act (7 U.S.C.  
11 3401 et seq.).

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

14           (G) Subtitle B of the Dairy Production  
15 Stabilization Act of 1983 (7 U.S.C. 4501 et  
16 seq.).

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

20           (I) The Pork Promotion, Research, and  
21 Consumer Information Act of 1985 (7 U.S.C.  
22 4801 et seq.).

23           (J) The Watermelon Research and Pro-  
24 motion Act (7 U.S.C. 4901 et seq.).

1           (K) The Pecan Promotion and Research  
2 Act of 1990 (7 U.S.C. 6001 et seq.).

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

6           (M) The Lime Research, Promotion, and  
7 Consumer Information Act of 1990 (7 U.S.C.  
8 6201 et seq.).

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

12           (O) The Fluid Milk Promotion Act of 1990  
13 (7 U.S.C. 6401 et seq.).

14           (P) The Fresh Cut Flowers and Fresh Cut  
15 Greens Promotion and Information Act of 1993  
16 (7 U.S.C. 6801 et seq.).

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

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

23           (S) The Commodity Promotion, Research,  
24 and Information Act of 1996 (7 U.S.C. 7411 et  
25 seq.).

1 (T) The Canola and Rapeseed Research,  
2 Promotion, and Consumer Information Act (7  
3 U.S.C. 7441 et seq.).

4 (U) The National Kiwifruit Research, Pro-  
5 motion, and Consumer Information Act (7  
6 U.S.C. 7461 et seq.).

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

10 (W) The Hass Avocado Promotion, Re-  
11 search, and Information Act of 2000 (7 U.S.C.  
12 7801 et seq.).

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

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

20 **SEC. 4. REQUIREMENTS OF CHECKOFF PROGRAMS.**

21 (a) PROHIBITIONS.—

22 (1) IN GENERAL.—Except as provided in para-  
23 graph (4), a Board shall not enter into any contract  
24 or agreement to carry out checkoff program activi-  
25 ties with a party that engages in activities for the

1 purpose of influencing any government policy or ac-  
2 tion that relates to agriculture.

3 (2) CONFLICT OF INTEREST.—A Board shall  
4 not engage in, and shall prohibit the employees and  
5 agents of the Board, acting in their official capacity,  
6 from engaging in, any act that may involve a conflict  
7 of interest.

8 (3) OTHER PROHIBITIONS.—A Board shall not  
9 engage in, and shall prohibit the employees and  
10 agents of the Board, acting in their official capacity,  
11 from engaging in—

12 (A) any anticompetitive activity;

13 (B) any unfair or deceptive act or practice;

14 or

15 (C) any act that may be disparaging to, or  
16 in any way negatively portray, another agricul-  
17 tural commodity or product.

18 (4) EXCEPTION FOR CERTAIN CONTRACTS WITH  
19 INSTITUTIONS OF HIGHER EDUCATION.—Paragraph  
20 (1) shall not apply to a contract or agreement en-  
21 tered into between a Board and an institution of  
22 higher education for the purpose of research, exten-  
23 sion, and education.

24 (b) AUTHORITY TO ENTER INTO CONTRACTS.—Not-  
25 withstanding any other provision of law, on approval of

1 the Secretary, a Board may enter directly into contracts  
2 and agreements to carry out generic promotion, research,  
3 or other activities authorized by law.

4 (c) PRODUCTION OF RECORDS.—

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

13 (2) MAINTENANCE OF RECORDS.—A Board  
14 shall maintain any records received under paragraph  
15 (1).

16 (d) PUBLICATION OF BUDGETS AND DISBURSE-  
17 MENTS.—

18 (1) IN GENERAL.—The Board shall publish and  
19 make available for public inspection all budgets and  
20 disbursements of funds entrusted to the Board that  
21 are approved by the Secretary, immediately on ap-  
22 proval by the Secretary.

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

25 (A) the amount of the disbursement;



1 (B) the purpose of the disbursement, in-  
2 cluding the activities to be funded by the dis-  
3 bursement;

4 (C) the identity of the recipient of the dis-  
5 bursement; and

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

10 (e) AUDITS.—

11 (1) PERIODIC AUDITS BY INSPECTOR GENERAL  
12 OF USDA.—

13 (A) IN GENERAL.—Not later than 2 years  
14 after the date of enactment of this Act, and not  
15 less frequently than every 5 years thereafter,  
16 the Inspector General of the Department of Ag-  
17 riculture shall conduct an audit to determine  
18 the compliance of each checkoff program with  
19 this section during the period of time covered  
20 by the audit.

21 (B) REVIEW OF RECORDS.—An audit con-  
22 ducted under subparagraph (A) shall include a  
23 review of any records produced to the Board  
24 under subsection (c)(1).

1 (C) SUBMISSION OF REPORTS.—On com-  
2 pletion of each audit under subparagraph (A),  
3 the Inspector General of the Department of Ag-  
4 riculture shall—

5 (i) prepare a report describing the  
6 audit; and

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

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

14 (II) the Comptroller General of  
15 the United States.

16 (2) AUDIT BY COMPTROLLER GENERAL.—

17 (A) IN GENERAL.—Not earlier than 3  
18 years, and not later than 5 years, after the date  
19 of enactment of this Act, the Comptroller Gen-  
20 eral of the United States shall—

21 (i) conduct an audit to assess—

22 (I) the status of actions taken for  
23 each checkoff program to ensure com-  
24 pliance with this section; and

1 (II) the extent to which actions  
 2 described in subclause (I) have im-  
 3 proved the integrity of a checkoff pro-  
 4 gram; and

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

8 (I) strengthening the effect of ac-  
 9 tions described in clause (i)(I); and

10 (II) improving Federal legislation  
 11 relating to checkoff programs.

12 (B) CONSIDERATION OF INSPECTOR GEN-  
 13 ERAL REPORTS.—The Comptroller General of  
 14 the United States shall consider reports de-  
 15 scribed in paragraph (1)(C) in preparing any  
 16 recommendations in the report under subpara-  
 17 graph (A)(ii).

18 **SEC. 5. SEVERABILITY.**

19 If any provision of this Act or the application of such  
 20 provision to any person or circumstance is held to be un-  
 21 constitutional, the remainder of this Act, and the applica-  
 22 tion of the provision to any other person or circumstance,  
 23 shall not be affected.

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