



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250



JUL 23 2010

The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510-6200

Dear Senator Grassley:

This letter is in final response to the January 8, 2009, letter you sent to our office transmitting a petition from the American Soybean Association (ASA). ASA sent similar petitions on December 10, 2008, to former Agriculture Secretary Ed Schafer and our office. In the petitions, ASA made a number of allegations against the United Soybean Board (USB), the United States Soybean Export Council (USSEC), and the law firm representing both USB and USSEC. ASA alleged misconduct on the part of the former USSEC Chief Executive Officer (CEO), mismanagement and misuse of funds by USB and USSEC, and conflict of interest on the part of the law firm representing USB and USSEC. We wish to apprise you of the findings of our review.

I. Background

The Soybean Promotion and Research Order¹ (the Order) is authorized by the Soybean Promotion, Research, and Consumer Information Act² (the Act). The Act was passed as part of the 1990 Farm Bill and authorized the establishment of a national soybean promotion, research, and consumer information program (Soybean Checkoff). The Soybean Checkoff program became effective in July 1991, when the Order was published, and is administered by the USB, which has 69 members representing 29 States. The initial USB was appointed by the Secretary of Agriculture from soybean producers, nominated by eligible organizations, for 1- to 3-year terms. During each subsequent year, the Secretary of Agriculture appoints approximately one-third of all USB members for 3-year terms.

The Soybean Checkoff was designed to strengthen the position of the soybean industry in the marketplace and to maintain and expand domestic and foreign markets. The Soybean Checkoff is fully funded by soybean farmers with individual contributions of 0.5 percent of the market price per bushel sold each season. The Secretary delegated to the Agricultural Marketing Service (AMS) and Foreign Agricultural Service (FAS) various oversight activities. Subsequently, AMS and FAS entered into a memorandum of understanding (MOU) to clarify their oversight responsibilities. Under the MOU, FAS's responsibilities include:

- Review and approve, as appropriate, all international activities.

¹ 7 C.F.R. § 1220 et seq.

² 7 U.S.C. §§ 6301 et seq.

- Conduct periodic financial and compliance reviews of research and promotion (R&P) boards and/or their contractors to determine, to the extent practicable, if the R&P boards'/contractors' use of Soybean Checkoff funds for international marketing activities complies with all applicable laws, regulations, and policies.
- Participate in meetings in which USB-funded international activities and strategies are likely to be discussed.
- Establish requirements and procedures deemed necessary to ensure adequate oversight of USB-funded international activities.

AMS's responsibilities under the MOU include:

- Review all activities, including budgets, plans, projects, or contracts to ensure consistency with USDA policy, enabling legislation, and regulations, as well as all other applicable laws and regulations.
- Ensure that annual R&P operating budgets include adequate resources to reimburse FAS for costs incurred pursuant to its oversight and review of USB activities.
- Approve annual audits and financial statements to ensure proper accountability of funds.
- Attend all USB board meetings and other meetings, as appropriate.

Pursuant to the Act and the Order, USB and ASA entered into a series of agreements, including international marketing agreements under which ASA managed USB's international marketing efforts. In accordance with the Act and the Order, the agreements were effective upon approval of the Secretary. Additionally, USB had the ability to question any fees and expenses that ASA incurred. In the case of a dispute over expenses between USB and ASA, ASA may appeal an adverse determination by USB to the Secretary.

In 2005, USB and ASA entered into an MOU creating USSEC, a national nonprofit producer-governed organization. According to the MOU, USSEC was formed for international market promotion responsibilities. Although USSEC effectively assumed ASA's international marketing responsibilities, ASA remains the cooperator organization with FAS in representing the interests of soybean producers internationally. USB and ASA entered into agreements in which ASA agreed to transfer its international marketing assets, employees, and operation to USSEC. Additionally, pursuant to USB's authority,³ USB and USSEC entered into a series of international marketing agreements similar to those that USB had previously entered into with ASA. As with the ASA agreements, these agreements specifically state that they only become effective upon approval by the Secretary.

Although USB and USSEC have entered into these international marketing agreements, Soybean Checkoff funds are expended for domestic promotion and research as well as international marketing. Funds for international marketing are provided to USSEC by ASA and USB pursuant to an MOU. As an FAS cooperator, ASA receives Commodity Credit Cooperation funds through the Market Access Program (MAP)⁴ and the Foreign Market Development Cooperator (FMD) Program⁵ for soybean international marketing. Every year, USSEC submits

³ 7 C.F.R. § 1220.212

⁴ 7 U.S.C. § 5623

⁵ 7 U.S.C. § 5721, et seq.

proposed projects in the form of the Unified Export Strategy (UES) to FAS. FAS reviewed the UES to ensure that it was consistent U.S. national security and trade policies. Once the UES is approved, FAS grants money to ASA through programs such as MAP and FMD. ASA, in turn, gives the money to USSEC to fund its projects.

II. Office of Inspector General Review

Based on interviews, it appears the dispute between ASA and USB began when Congress passed the legislation creating the Soybean Checkoff program. ASA served as the driving force behind Congress' passage of the legislation because it wanted to ensure all States contributed equally to the soybean program. ASA did not expect Congress to establish USB to oversee the Soybean Checkoff fund when the legislation was finally passed. In July 2005, just months after the creation of USSEC, ASA submitted a complaint to the Office of Inspector General (OIG) Hotline. It alleged that a former AMS Administrator conducted a limited review of the Soybean Checkoff program based on a complaint ASA lodged. In the Hotline complaint, ASA included a copy of the allegations it submitted previously to the former AMS Administrator, which alleged USB misused Soybean Checkoff funds. OIG referred the matter to AMS, which conducted a review that did not substantiate the allegations.

In comparing the 2005 complaint with the December 10, 2008, petition, we found that the two complaints contained similar allegations. Upon receiving the requests from former Secretary Schafer and your office, OIG initiated a review into the allegations listed in the ASA petition. During our review, we determined that while some of the allegations concerned programs subject to USDA's oversight, few pertained to USDA appropriated funds and none involved misconduct committed by USDA employees. We also determined that a number of the allegations were outside of OIG's jurisdiction. For example, the allegations of misconduct and harassment relating to the former USSEC CEO were beyond OIG's jurisdiction; however, we determined the allegations were assessed by the appropriate entities and action taken when warranted. Additionally, ASA alleged a conflict of interest because the law firm utilized by USB also represented USSEC. ASA referred the matter to the District of Columbia Bar's Office of Bar Counsel, which did not find "clear and convincing evidence" to suggest that ASA's claim should be upheld and dismissed the complaint.

With regard to the many allegations involving USB's misuse of funds, we reviewed documents provided by ASA, USB, USSEC, AMS, and FAS and interviewed officials from these agencies and organizations. Based on our review of the documents and interviews, we found insufficient evidence to support ASA's allegations. During interviews, some ASA members told us they did not have any documentary evidence that USB was engaged in inappropriate activities.

III. Office of Inspector General Findings

The following summarizes the primary allegations involving the Soybean Checkoff program for which USDA had programmatic oversight that we deemed of concern and wish to directly address.

A. ASA alleged USSEC awarded a \$200,000 “no competitive bid” contract.

During our review, we learned that during an 18-month period, USSEC paid approximately \$320,000 in Soybean Checkoff funds to companies for physical security services (e.g., security for farmers’ overseas trips, including trips to United States allies, a trip to Hawaii, and personal protection for the former USSEC CEO) and a USSEC Crisis Management Plan, which was sole-sourced by USSEC. USSEC failed to follow the request for proposal process as required by the USB Internal Operating Policy Guide (Operating Policy), which USSEC had previously adopted and followed. The request for proposal process required that contracts over \$2,500 require a minimum of three competitive written bids.

A member of USB senior management, a member of USB’s Executive Board, and a senior USB contract employee, who are authorized to review USB expenditures, stated they did not question the security contract for the personal protection of the former USSEC CEO and/or the physical security for the farmers’ overseas trips. They advised they did not question the contracts because they assumed the USSEC Executive Board and the USB International Marketing Committee, respectively, adhered to the proper procedures prior to voting in favor of the security contracts. AMS and FAS have the responsibility for ensuring USB and USSEC activities are consistent with U.S. national security and trade policies, the Act, and the Order. Under the MOU between AMS and FAS, AMS authorizes funds, while FAS approves project proposals for international programs; however, neither agency is responsible for overseeing the USB internal Operating Policy. When we discussed the security contracts issue with AMS officials, they stated they were aware of some but not all of the specifics regarding USSEC’s security contract awards. In most instances, AMS allows USB and USSEC the flexibility to run their programs. However, FAS objected to personal security services (e.g., residence and personal protection during trips) for the former USSEC CEO and as a result, refused to approve any USB funds for those contracts. During our review, we determined that in November 2008, USSEC utilized approximately \$79,809 in Soybean Checkoff funds to pay for personal security for the former USSEC CEO, but in June 2009, repaid the money to the Soybean Checkoff fund. Therefore, based upon our review, we recommended USB take steps to ensure proper internal controls are established for USSEC and effective oversight is afforded to future USSEC proposals.

B. ASA alleged that contracts made by the USSEC European office for feeding trials were improper and wasteful (i.e., nearly \$1.7 million was spent over three years to carry out repetitive trials).

At OIG’s request, the FAS Compliance, Security, and Emergency Planning Division conducted a review of the European feeding trials. The FAS review focused on whether FAS funds for the trials were properly documented and spent in accordance with FAS rules and regulations. The FAS review revealed that there was no misuse of funds and the trials were properly documented. FAS is currently drafting their report. OIG reviewed the supporting documentation and had no related followup issues.

- C. ASA alleged that USB deliberately evaded the 1 percent administrative salary cap by placing USB office staff members on the “books” with contractors even though they worked in the USB office on a daily basis. ASA further alleged that USB evaded the 1 percent administrative salary cap by using USB-created entities (i.e., Qualisoy, Soy Nutrition Institute (SNI)) to pay a portion of USB employees’ salaries.**

The Act and the Order provide that USB may establish an administrative staff or facilities of its own or contract for the use of the staff and facilities of national, nonprofit, producer-governed organizations that represent producers of soybeans.⁶ The Act also provides that if USB establishes an administrative staff of its own, they are authorized to spend on administrative staff salaries and benefits, an amount not to exceed 1 percent of the projected level of assessments, net of projected refunds, of the Board for that fiscal year.⁷ Our review revealed that the USB CEO and the USB Executive Director were the only two employees of USB and that their salaries did not violate the 1 percent administrative cap rule. The other individuals working in the USB office were contract employees paid directly by their parent company with Soybean Checkoff funds received from USB, which was an allowable expense pursuant to the Act and the Order. Additionally, we found that USB and its contractors provided administrative support to Qualisoy and SNI on an “in kind” basis (without cost). Therefore, we determined that USB did not violate the 1 percent administrative cap rule.

- D. ASA alleged that USB evaded the 5 percent administrative cap by misclassifying Soybean Checkoff expenses.**

Pursuant to the 5 percent cap rule, the administrative expenses of USB, including the cost of administrative staff, shall not exceed 5 percent of the projected level of assessments, net of projected refunds, of USB for that fiscal year. AMS officials stated they approved USB’s accounting of their expenditures. Based on information we reviewed and interviews we conducted, we determined that USB adhered to the 5 percent administrative cap rule.

- E. ASA alleged that USB violated the Act and the Order by utilizing USB-created entities (i.e., Qualisoy, USSEC, SNI, etc.) and spent millions of dollars in Soybean Checkoff funds to influence legislation, Government action, or policy. Additionally, various USB contractors traveled to Washington, D.C., to influence Government officials.**

We did not obtain any evidence to indicate that Qualisoy and SNI used Soybean Checkoff funds to influence legislation, Government action, or policy or that USB utilized Soybean Checkoff funds for contractors to do the same in Washington, D.C. AMS officials confirmed the use of Soybean Checkoff funds was permissible to prepare and present speeches given by USB members, as long as the speeches were not used for influencing legislation, Government action, or policy. OIG concluded that the use of Soybean Checkoff funds to prepare and present speeches was permissible as per the Order.⁸

⁶ 7 U.S.C. § 6304 (i) and 7 C.F.R. § 1220.222

⁷ *Id.*

⁸ 7 C.F.R. §1220.121

F. ASA alleged that USB spent excessively on communication activities to farmer audiences. ASA alleged that the amount of funds spent on self-promotion was high and disproportionate in relation to what was actually spent on demand-building activities or production research.

We found that the Act, the Order, and agency regulations, directives, and guidelines, do not limit the amount of Soybean Checkoff funds that could be used for self-promotion of an organization. In addition, based on information reviewed, we found that USB's expenses in this area were similar to those spent by other comparably sized checkoff programs.

G. ASA alleged that USB spent an estimated \$4-6 million to create USSEC as the new international marketing entity.

One AMS official stated that USSEC's start-up costs were significantly less than \$4-6 million. We confirmed the amount of these costs through our review of USB's itemized financial summary.⁹ The document delineates between the direct start-up costs for USSEC which were significantly less than \$4-6 million and other costs totaling approximately \$6 million. These other costs include ASA employee benefit and pension programs, severance packages for the international marketing employees, and licensing and user fees, which were allowable based on an agreement between USB and ASA and approved by the Secretary of Agriculture.¹⁰

H. ASA alleged that USB, USSEC, Qualisoy, SNI, and other entities spent over \$1 million annually for legal services, which was excessive.

We reviewed a detailed remittance statement, which covered the law firm's expenses for fiscal years 2004 through 2008, showing they charged USB less than the \$1 million annually alleged by ASA. AMS officials stated they reviewed and approved the budget for USB's legal services. Additionally, as per the Act and the Order, AMS obtained approval from the USDA Office of the General Counsel for use of the law firm by USB. Therefore, OIG concluded that no additional follow-up action is required.

Finally, although it was not one of ASA's allegations in its December 2008 petition, during the course of our review, we discovered that the former USSEC CEO paid approximately \$302,000 in bonuses to the St. Louis-based USSEC staff in fiscal year 2008. Some employees received a significant increase in their bonuses from previous years, in some instances four or five times more. The bonuses were reimbursed by USB with Soybean Checkoff funds. USB officials stated when the request for funds was submitted, it did not specify that the money would be used to pay USSEC employee bonuses. Only after the bonuses were paid, and another request for funds was submitted by USSEC, did USB realize that the initial request was spent on bonuses. Although payment of bonuses is an allowable expense, AMS officials stated that had

⁹ USSEC Start-up and Transition Costs

¹⁰ The "Checkoff Shutdown Payment Agreement" (Agreement) exhibited the USSEC/ASA License and Use Agreement transitioning the ASA-International Marketing to USSEC. Under the Agreement, the Secretary of Agriculture approved the use of Soybean Checkoff funds for these program expenditures.

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they known, they would not have approved the bonuses. Therefore, we recommend USB provide closer oversight of USSEC and other subcontractor funding requests.

IV. Conclusion

Again, it is our conclusion that we found insufficient evidence to support ASA's allegations; although we do recommend closer oversight by USB of USSEC, in the future. This concludes our review of the matter. It is our understanding that additional internal agency reviews and an OIG audit will be conducted on various aspects of the USDA marketing boards. However, those reviews will be reported separately. It is anticipated that the OIG audit report concerning AMS' oversight of marketing and research board's activity will be issued in October 2010.

Should you desire, we would be pleased to answer any questions you may have and to brief your staff concerning our review. Please feel free to contact me on (202) 720-8001, or have a member of your staff contact Ms. Karen L. Ellis, Assistant Inspector General for Investigations, on (202) 720-3306.

Sincerely,



Phyllis K. Fong
Inspector General

cc:

The Honorable Thomas J. Vilsack
Secretary
U.S. Department of Agriculture