

July 28, 2020

The Honorable Pat Roberts
Chairman
U.S. Senate Committee
on Agriculture, Nutrition & Forestry
Washington, D.C. 20510

The Honorable Debbie Stabenow
Ranking Member
U.S. Senate Committee
on Agriculture, Nutrition & Forestry
Washington, D.C. 20510

Dear Chairman Roberts and Ranking Member Stabenow:

On behalf of the American Bankers Association (ABA) and the Independent Community Bankers of America (ICBA), representing over 52,000 bank locations across the United States, we write to express our concern over possible inclusion of the so-called “Livestock Trust” legislation in the COVID-19 relief package being considered by the Senate. We believe this legislation could be very disruptive to the financing of livestock in many states and will cause great confusion and uncertainty to producers and their lenders. We believe careful consideration should be given to the issues raised in this letter to ensure the most workable and effective solutions are available to livestock producers.

A dealer trust only targets sales to undefined “dealers” and would be a complicated, expensive solution that could disrupt the entire livestock industry, including its financing, and cause many producers to receive lower prices for their livestock. One analysis of Packers & Stockyards (P&S) records indicates that over a recent 18 year period **99.9% of livestock purchased** by registered dealers and order buyers resulted in **no losses**.

There are existing alternatives in place that provide better protection. Existing private sector insurance products (Livestock Market Payment Insurance) already provides several billion dollars of prompt protection against potential losses from livestock sales, covering 80 percent of risk. By comparison, the current Packer Trust, upon which this legislation is modeled, has provided only a 45 percent payment in the Sam Kane Beef Processors case, even after 3 years of lawsuits and nearly \$1 million spent by livestock sellers in legal fees. Additionally, current protections offered producers via the P&S prompt payment rules and bond requirements already cover producers who require dealers who purchase their cattle to follow current laws and pay them within 24 hours. The proposed livestock trust appears intended to cover livestock auctions/marketers who do not pay or require payments within 24 hours but rather intend to offer credit for a multi-day or multi-week period, contrary to P&S rules. They are seeking the protection of a “cash sale” under P&S when in fact they are extending credit. Producers and auction barns can also obtain a bank-to-bank wire transfer before releasing cattle for shipment. Payments are certain because banks only wire money if the sender has the funds available. The money is typically available the same day.

Livestock producers will be harmed. Producers will receive lower prices for cattle from fewer buyers and auction barn bidders. By using a statutory trust to supersede or negate the legitimate first liens of lenders on cattle utilized as collateral, fewer cattle buyers will qualify for financing as they will lack the collateral and capital needed to verify their ability to repay loans. Small to

midsized cattle buyers will exit the business leaving fewer, larger cattle buyers. The reduced number of cattle buyers will mean less competitive bidding on livestock and thus lower prices.

Federal bank examiners will object to lenders financing cattle buyers. Bank examiners will recognize banks can no longer obtain a first lien on cattle used by undefined “dealers” to purchase livestock. Lenders won’t be able to identify or monitor when a trust claim may exist and supersede their liens until after lawsuits and clawback actions are taken against them. Mitigation of lenders’ risk at the time of the loan will be impossible. Examiners will require banks to obtain additional sources of collateral from buyers to ensure loans can be repaid and that no trust assets have been used to make loan payments. Many buyers will be unable to do so and examiners will classify such loans forcing banks to discontinue these loans. The only target for a dealer trust at that point will be other livestock producers.

A livestock trust will be confusing and disruptive at a time of industry distress.

Implementing a livestock trust will introduce tremendous confusion and dramatic changes to the financing and marketing of livestock at a time of immense economic duress. It will be unclear to lenders when a customer will act as a “dealer” and also a seller and some customers will function in both capacities. Since the definition of a dealer is not limited to “registered livestock dealers” and will be subject to broad interpretation by the courts for the actions of any person or entity who buys and then sells livestock, the number of persons, entities and transactions involved will be huge and nearly impossible to track. Many lawsuits will be filed due to this lack of clarity.

An enormous regulatory burden would be placed upon the USDA’s P&S division.

USDA’s P&S division doesn’t have the resources to effectively regulate, investigate, track down transactions, monitor and provide oversight in a timely manner for this increase in the number of transactions and entities subject to a new dealer trust regulation. What will be the cost, the effectiveness, and the impact of these new powers of enforcement given to P&S to act promptly and efficiently when a dealer trust claim is filed? What will be the industry’s hard costs for compliance, competition, prices and the unintended consequences to all market participants?

We are quite concerned about major disruptions in the financing and marketing of cattle caused by a livestock trust. The livestock trust appears designed allow the financing of livestock inconsistent with the P&S’s prompt payment rules. Sellers requiring prompt payment at the time of the transaction has proven very effective as shown by the P&S’s historical data. Private sector insurance products and electronic funds transfers provide additional protections.

We strongly urge you not to include the livestock trust legislation in the next COVID-19 relief package. As this discussion continues, it is important to focus on protecting producer prices, ensuring all voices are heard and safeguarding existing private sector insurance products. Congress should want credit to flow more freely within the livestock industry during these difficult times. Thank you for your consideration of our views.

Sincerely,

American Bankers Association

Independent Community Bankers of America