**Free Speech and Prohibited Messaging**

**The Limits to Promotional Activities for Federal Check-off Money**

The suggestion that organic check-off funds will be used to promote organics is one of the biggest arguments the Organic Trade Association (OTA) is using in their attempt to convince the organic community that their check-off proposal is a good idea.

However, as experience with other commodity check-off programs has demonstrated, there are severe restrictions and requirements attached to any promotional messages. These include prohibitions on:

* Promotions that **disparage** another agricultural commodity.
* Any action that would be a conflict of interest.
* Promotions which are **not** generic.
* Using funds to influence governmental action or policy – NOSB or NOP.

So what does this mean? For one thing, the ***USDA’s Secretary of Agriculture has final approval authority over* every word *in every promotional campaign.***

And why is this? Says former USDA official Richard Mathews, “The Supreme Court has ruled that check-offs fund the Government’s own speech because the message is effectively controlled by the Federal Government.  Thus, all messaging will be held to the standard, ‘Would the Secretary of Agriculture say this?’” Mathews spent more than eleven years providing oversight to similar check-off programs for other food commodities.

Adds Mathews: “Keep in mind that the Secretary will say nothing that favors one sector or commodity over another.”

Check-off programs are **restricted** in others ways on how money can be spent. Their budget has to be **approved** by USDA's Agricultural Marketing Service (AMS). The Board that would govern the organic check-off is appointed by the Secretary of Agriculture. The USDA's AMS employees are present and take an active part in all funding decisions.

Check-off funds can only be used to promote a commodity, not to show one (e.g., organically certified product) is better than another. This means that:

* Check-off funds **cannot** be used to differentiate the claims of “natural” from “organically certified” as that **disparages** other forms of production.
* Check-off funds **cannot** be used to say organically certified products are free of herbicides, pesticides, and GMO’s because it **disparages** other form of production and USDA maintains that organic certification is not a claim about content – only about a production method
* Check-off funds **cannot** be used to say that organic products are healthier for you, have superior animal welfare practices, and better for the environment because this contrast **disparages** other forms of production as being bad for you and the environment

**In essence, the USDA simply sees the organic seal as just another marketing label for production practices and will not allow messages about whether or not those production practices are superior or the food produced by those practices is better.**

This means that check-off funds will not be able run ads saying: “If a family wants to wisely spend their dollars on meaningful labels, they should buy certified organic,” says Urvashi Rangan, Senior Scientist & Policy Analyst at Consumers Union.

The OTA and organic food and agriculture supporters are now able to say that **“*Organic is the Gold Standard.”***But even this simple and accurate message will not be allowed when using organic check-off funds, as the other commodity producers will object.

A recent remark from a key official in the American Soybean Association makes their concerns clear: *“For retailers to talk about one production system over another as being the gold standard disparages the production system I use, and I don’t think that’s conducive to having a conversation about coexistence,”* said Ron Moore, who grows soybeans, corn and alfalfa near Roseville, Ill., and serves as secretary of the American Soybean Association*.* [Anti-GMO, Biotech Factions Clash at Food Summit, *The Wall Street Journal*, 3/12/15]