

MEMORANDUM FOR Deputy Chief Counsel

SUBJECT: Anti-Lobbying Provisions

I. Introduction

1. Generally, there is both penal and non-penal legislation that restricts lobbying Congress with appropriated monies. The first is codified at 18 U.S.C. § 1913 (2003), "Lobbying with Appropriated Moneys" (hereinafter referred to as the "Anti-Lobbying Act") and makes any violation of that statute a criminal violation. The second is usually found in every annual Department of Defense (DoD) Appropriations Act or other Agency Appropriation Act (hereinafter referred to as "Appropriations Act Rider"). *See for example*, Fiscal Year (FY) 2003 DoD Appropriations Act, Pub. L. 107-248, § 8012 (January 22, 2002).

II. Penal Anti-Lobbying Statute, 18 U.S.C. § 1913 (2003)

The Penal Anti-Lobbying Statute set forth in the US Code provides:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31. 18 U.S.C. § 1913 (2003).

It is important to note that the Anti-Lobbying statute permits communication, upon a Congressman or official's request, of "requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business" and that it is applicable to appropriated funds. 18 U.S.C. § 1913 (2003).

2. The United States Department of Justice (DOJ) has the responsibility for enforcing this statute due to its criminal nature. The Honorable Jeremiah Denton, Chairman, Subcommittee on Security and Terrorism, Committee on the Judiciary, United States Senate, B-129874, 63 CPD ¶ 642 (1984) (holding that since 18 U.S.C. § 1913 “contains fine and imprisonment provisions, its enforcement is the responsibility of the Department of Justice”). It has been noted that there has never been a criminal prosecution since the Act was enacted in 1919. Principles of Federal Appropriations Law, (hereinafter the “Red Book,”) General Accounting Office (GAO) Vol. 1, p. 4-160. The GAO’s role in an 18 U.S.C. § 1913 action is limited to determining whether appropriated funds were used and referring cases to the DOJ if appropriate. Red Book, Vol. 1, p. 4-158. It should be noted that the Red Book only cites two instances of possible violations in which the GAO referred matters to the DOJ and several instances where it chose not to refer the matter. Red Book, Vol. 1, p. 4-160.

3. The Office of Legal Counsel (OLC) within the DOJ has issued several opinions, as well as guidelines, concerning the Anti-Lobbying Act. In examining whether an action is a violation of the Anti-Lobbying Act, the OLC has distinguished between whether an action involves “direct lobbying” or “indirect” “grass roots lobbying.” *See generally*, Red Book for a discussion of the two types of Lobbying. Red Book, Vol. 1, p. 4-156 (stating that “ ‘[d]irect lobbying,’ as the term implies, means direct contact with legislators, either in person or by various means of written or oral communication. ‘Indirect’ or ‘grass roots’ lobbying is different. There the lobbyist contacts third parties, either members of special interest groups or the general public, and urges them to contact their legislators to support or oppose something.”). The DOJ has consistently construed the Anti-Lobbying Act to apply principally to “grass roots” lobbying based upon the legislative history of the Act. Red Book, Vol. 1, p. 4-158; *see also* Opinion of the Office of Legal Counsel, “Anti-Lobbying Restrictions Applicable to Community Services Administration Grantees,” 5 Op. O.L.C. 180 (1981) (stating that the “the anti-lobbying statute...has been construed to prohibit federal officers and employees from using federal funds to mount ‘grass roots campaigns.’”). Specifically, DOJ has opined:

This Department has long taken the position that the purpose of [18 U.S.C. § 1913](#), as revealed in its legislative history, is to restrict the use of appropriated funds for a campaign of telephone calls, telegrams, letters, or other disseminations particularly directed at members of the public urging the recipients to contact Members of Congress about pending legislative matters. Section 1913 has not been construed by this Department to sweep more broadly than this evident legislative purpose so as to preclude the President or executive branch agencies from informing the public about programs and policies of the administration, including those that touch on legislative matters. Opinion of the Office of Legal Counsel, “73-39 Anti-Lobbying Laws (18 USC § 1913, Public Law 95-465, 92 STAT. 1291) – Department of the Interior.” 2 OP. O.L.C. 160 (1978)

The DOJ often notes in its opinions that this legislation is the result of “a single, particularly egregious instance of official abuse – the use of Federal funds to pay for telegrams urging selected citizens to contact their congressional representatives in support of legislation of interest to the instigating agency...The provision was intended to bar the use of official funds to underwrite agency public relations campaigns urging the public to pressure Congress in support

of agency views.” Opinion of the Office of Legal Counsel, “78-7 Applicability of Anti-lobbying Statute (18 USC § 1913 - Federal Judges)”, 2 Op. O.L.C. 30 (1978) *citing* 58 Cong. Rec. 403 (1919).

4. The DOJ has emphasized that in its opinion, the savings provision of the Act, allows officers or employees, through proper channels, to communicate requests for legislation necessary for the efficient conduct of public business. Specifically, the DOJ has stated that:

The clause provides assurance that, in keeping with well-established traditions of ongoing communication between the executive and the legislative branches (*see* N. Small, *Some Presidential Interpretations of the Presidency*, 164-166 (1970)), and the constitutional principle of separation of powers, direct communications by “officers or employees of the United States” to Congress will not be disturbed. The qualification “to Members of Congress on the request of any Member or to Congress” seems designed more to stress the individual Member’s prerogative of addressing communications to non-legislative branch officials than, by virtue of the apparent dichotomy between “Members of Congress” and “Congress,” to limit communications from such officials to situations in which they address Congress as a whole, or in which replies to individual Members of Congress have been authorized by a Representative’s request.

The clause does indicate that such communication is to take place “through the proper official channels.” Statements made in the course of the congressional debate on a proposed, but unsuccessful, amendment to the provision suggest that this limitation was meant to assure that communications to Congress from nonlegislative officials be cleared through “their superiors, or whoever it might be,” 58 Cong. Rec. 425 (1919). In effect, this would screen out communications that did not represent the views of the agency. At the same time, the right of officers and employees to petition Congress in their individual capacities, codified in the Act of August 24, 1912, ch. 389, § 6 (37 Stat. 555; [5 U.S.C. § 7102](#)) was preserved.

The thrust of this language is to recognize the danger of *ultra vires* expressions of individual views in the guise of official statements. Congress did not define the scope of the term “official channels”; rather, it recognized the need for monitoring the opinions expressed under color of office in order to insure a consistent agency position. This difficulty is not removed by a direct solicitation of an individual official's views by a Member of Congress. 2 Op. O.L.C. 30.

In fact, the DOJ has stated that to apply the Act’s terms literally may result in it being found unconstitutional. Office of Legal Counsel, “DOJ Guidelines on 18 U.S.C. § 1913” (hereinafter “DOJ Guidelines”) (1995). Moreover, the DOJ will focus its analysis on whether an alleged

“grass roots” violation is “substantial” or large scale, in its determination of whether a violation occurred. Opinion of OLC, “Constraints Imposed by 18 USC 1913 on Lobbying Efforts,” 1989 OLC Lexis 102 (1989) (stating that “[w]e conclude that section 1913 prohibits large-scale publicity campaigns to generate citizen contacts with Congress on behalf of an Administration position with respect to legislation or appropriations.”)

5. Accordingly, based on its interpretation of the legislative history, the DOJ will first examine whether the alleged violation constituted egregious grass roots lobbying or a direct communication. If the issue is one of direct communication, it will focus on whether the direct communication was through proper channels. The DOJ has opined that the following were not violations of the Act:

a. The Interior Department’s press releases, which disclosed information concerning the Department’s Congressional testimony, public speeches and explanations of legislative proposals, as well as the Department’s Secretary’s statements and explanations of the Department’s legislative positions in Newspaper columns, were not violations of the Act, provided they did not advocate readers to contact Congress. 2 Op. O.L.C. 160.

b. The extent that Federal Judges can not contact Congress concerning legislation was viewed to be best resolved internally within the judicial branch, as it was unclear whether a Federal Judge, who would lack direct superiors, would be communicating through proper channels. 2 OP O.L.C. 30.

c. “Grass Roots” lobbying restrictions do not apply to the activities of those officials of the Executive Branch whose positions “typically and historically entail an active effort to secure public support for the legislative proposals of their administration” and accordingly, this restriction would not apply to “the President, his aides and assistants within the Executive Office of the President, and the Cabinet members within their areas of responsibility.” Opinion of the OLC, “Legal Constraints on Lobbying Efforts in Support of Contra Aid and Ratification of the INF Treaty,” 12 OP O.L.C. 36 (February 1988).

6. The DOJ has attempted to summarize its analysis of the statute and its permitted activities as follows:

Permitted activities:

1. The Act does not apply to direct communications between Department of Justice officials and Members of Congress and their staffs. Consequently, there is no restriction on Department officials directly lobbying Members of Congress and their staffs in support of Administration or Department positions.

2. The Act does not apply to public speeches, appearances and writings. Consequently, Department officials are free to publicly advance Administration and Department positions, even to the extent of calling on the public to encourage Members of Congress to support Administration positions.
3. The Act does not apply to private communications designed to inform the public of Administration positions or to promote those positions. Thus, there is no restriction on private communications with members of the public as long as there is not a significant expenditure of appropriated funds to solicit pressure on Congress.
4. The Act does not circumscribe the traditional activities of Department components whose duties historically have included responsibility for communicating the Department's views to Members of Congress, the media, or the public.
5. By its terms, the Act is inapplicable to communications or activities unrelated to legislation or appropriations. Consequently, there is no restriction on Department officials lobbying Congress or the public to support Administration nominees.

Prohibited activities:

The Act may prohibit substantial "grass roots" lobbying campaigns of telegrams, letters and other private forms of communication designed to encourage members of the public to pressure Members of Congress to support Administration or Department legislative or appropriations proposals. 1989 OLC Lexis 102.

Additionally, in 1995, DOJ published guidelines for employees and Agencies on the Act. "DOJ Guidelines." Those guidelines noted that a "substantial" grass roots campaign is not defined, but that the 1919 legislative history cited an amount of \$7,500 and equated it to an amount of \$50,000 in 1989 monies. *Id.* Accordingly, this amount may be used as a baseline to determine whether a "grass roots" lobbying campaign is substantial.

III. Non-Penal Appropriations Act Restrictions

7. Generally, non-Penal lobbying restrictions are contained in various Agency's Appropriations' Riders, appearing in varying forms and are generally known as restrictions on publicity and propaganda. *See generally*, Red Book, Vol 1., p.4-161-4-178. Two of those types of restrictions are found in the Fiscal Year (FY) 2003 DoD Appropriations Act and are often in the annual Appropriations Act. Specifically, the FY 2003 DoD Appropriations Act simply states "[n]one of the funds appropriated by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress." DoD Appropriations Act, Pub. L. 107-248, § 8012. The other rider in the applicable

Appropriations Act section is as follows: “ No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by Congress.” DoD Appropriations Act, Pub. L. 107-248, § 8001.

8. As these Acts involve the use of appropriated funds, they are under the provenance of the GAO, which has rendered several opinions on several permutations of these restrictions that are applicable throughout the Government. The GAO has stated that “[i]n construing and applying a ‘publicity or propaganda’ provision, it is necessary to achieve a delicate balance between competing interests. On the one hand, every agency has a legitimate interest in communicating with the public and with the Congress regarding its functions, policies, and activities.... Yet on the other hand, the statue has to mean something.” Red Book, Vol. I, p. 4-162-4-163. GAO has stated that in determining whether there has been a violation, the “GAO will rely heavily on the agency’s administrative justification. In other words, the agency gets the benefit of any legitimate doubt. GAO will override the agency’s determination only where it is clear that the action falls into one of a very few specific categories.” Red Book, Vol. I, p. 4-162-4-163. The two threshold questions that the GAO will examine are: 1) whether the Agency is subject to a “publicity or propaganda” restriction and the specifics of that restriction and 2) were appropriated funds used, because if not, then “there is no violation no matter how blatant the conduct may be.” Red Book, Vol. I, p. 4-164. Additionally, it is important to note that as with DOJ’s interpretation of the Anti-Lobbying Act, GAO will often view Appropriations Act restrictions as only applying to “grass roots” lobbying. Legality of the Secretary of Agriculture’s Statements Concerning the Wheat Poll, B-226449, 1987 U.S. Comp. Gen. 1320 (1987).

A. Publicity and Propaganda Cases Where No Violation Was Found

9. One of the most common restrictions is an Appropriations Act Rider, which refers to “pending legislation” such as Pub. L. 107-248, § 8012. B-226449. Such a restriction was included on appropriations for the Department of Agriculture during a time in which the Secretary of Agriculture was mandated to conduct a poll on wheat. B-226449. During that time, the Secretary made several public comments that set forth his position on the poll, which were then reported by various newspapers and news organizations. B-226449. The GAO decided that the Secretary had not participated in “grass roots” lobbying as it was not an appeal to members to contact their representatives regarding pending legislation, but instead was his and the Administration’s position on the wheat poll. B-226449. The GAO stated “public officials may with propriety report on the activities of their agencies, may expound to the public the policies of those agencies, and of the administration of which they are members, and may likewise offer rebuttal to attacks on those policies.” B-226449 *citing* B-118638, August 2, 1974.

10. A Position Paper sent to Congress by the Census Bureau, which detailed the Bureau’s opposition to an amendment, was not found to be a violation. Decision of the Comptroller General, B-200250 L/M, 1980 U.S. Comp. Gen. LEXIS 2215 (1980). The GAO stated “we have consistently recognized that any agency or department has a legitimate interest in communicating with the public and with legislators regarding its policies. If the policy of an agency is affected by pending legislation, discussion by officials of that policy will necessarily, either explicitly or

by implication, refer to such legislation and will presumably be either in support or in opposition to it.” B-200250 L/M. The GAO stated that since the Assistant Secretary of Commerce communicated directly to Congress, as opposed to urging the public to contact members of Congress, the communication was proper. B-200250 L/M.

11. Similarly, the Department of Transportation (DOT) set up public displays on the U.S. Capitol Grounds, featuring automobile equipment with advanced restraint systems and DOT employees manned these displays to explain them, as well as distributed brochures on the display. Decision of the Comptroller General, B-139052 L/M, 1980 U.S. Comp. Gen. LEXIS 3217 (1980). Once again, the GAO viewed this matter as whether the Agency expended appropriated funds “to appeal to members of the public to urge their elected representatives to defeat the amendment on passive restraints.” B-139052 L/M. The GAO found that the displays were not used to urge the public to contact representatives and accordingly, that there was no violation.

12. In another matter, an information package prepared by the Small Business Administration (SBA) did not violate publicity or propaganda restrictions. The Honorable Lowell Weicker, Jr., Chairman, Committee on Small Business, United States Senate, B-223098, B233098.2, 1986 U.S. Comp. Gen. LEXIS 375 (1986). In this case, the GAO examined whether the materials constituted “puffery” or “self-aggrandizement” and concluded that as these materials were meant to inform small businesses of the impact of proposed legislation, there was no violation. B-223098, B233098.2.

13. In a case involving the National Endowment for the Arts (NEA), the GAO examined the NEA’s attendance at a private organization’s meeting, a NEA Regional Representative’s speech, and the use of a media consultant by the NEA. Decision of Socolar, B-239856, 1991 U.S. Comp. Gen. LEXIS 1601 (1991). With respect to the first allegation, the GAO found that “the anti-lobbying laws do not bar an agency from exchanging information and viewpoints with outside groups” and accordingly, it was proper for the NEA to attend a meeting held by a private organization. B-239856. As for the allegation regarding a Regional Representative’s speech suggesting that artists contact their legislators as part of a “civics lesson”, the GAO concluded that the Representative’s remarks were “incidental to her presentation and was not part of any plan to generate action on the part of the audience....[the] statement constituted a good faith response to a question from a member of the public, a type of communication which we have held does not constitute prohibited lobbying.” B-239856.

14. Finally, the GAO found that the use of a public relations consultant did not constitute a violation of the publicity and propaganda regulations. B-239856. Specially, the media consultant assisted in arranging speaking engagements, preparing speeches, and advising on “general matters of communications strategy.” B-239856. The GAO stated:

[i]t appears that his input with respect to NEA's communications with the public has consisted principally of oral advice to the Chairman on his speeches, and we know of no allegations of improper lobbying with respect to those speeches. Furthermore, there is nothing inherently improper about the NEA's employment of a media consultant. The NEA has authority to hire consultants under a provision

of its enabling legislation, [20 U.S.C. § 959\(a\)\(3\)](#), and all the available evidence indicates that Mr. Witeck [the media consultant] was hired by NEA for the legitimate purpose of assisting the agency in informing the public about its programs and activities. See generally [31 Comp. Gen. 311 \(1952\)](#); B-139965, Apr. 16, 1979. B-239856.

15. In another decision, GAO examined the activities of five agencies in connection with lobbying. In Re: The Honorable William F. Clinger, Chairman on Government Reform and Oversight, B-270875, 1996 U.S. Comp. Gen. LEXIS 489 (1996). However, only the Department of Labor (DOL) had Appropriations Act restrictions in that matter; the other Agencies' actions were reviewed in connection with the Anti-Lobbying Act. Therefore, only the DOL's actions will be discussed in this section. The DOL created a series of faxes, sent to congressional members, staff and private sector organizations, supporting a particular piece of legislation. The GAO concluded that since none of the faxes suggested that the public should contact their congressional representatives in connection with the proposed legislation, there was no violation. B-270875.

16. In a matter involving the Energy Research and Development Administration (ERDA), a Manager involved with a Federal Program urged readers of a newsletter to contact Congressmen in support of the program. To The Honorable Lawrence Coughlin, House of Representatives, B-164105, 56 Comp. Gen. 889 (1977). However, despite this clearly being a prohibited form of "grass roots" lobbying, the GAO concluded it was not a violation because no appropriated funds (the Newsletter and the personnel involved were not paid out of appropriated funds) were used for the lobbying and, therefore, the Appropriations Act Rider was inapplicable. B-164105.

B. Publicity and Propaganda Cases Where Violation Was Found

17. The cases wherein the GAO has found violations of Appropriations Act Riders usually involved egregious cases of "grass roots" lobbying or covert, misleading propaganda. An analysis of some of those cases follows.

18. The first decision involved a Forest Service "campaign" to urge members of the public to contact Congress in support of road funding initiatives and to change the ways in which payments to states' Forest Services revenues were calculated. In Re: Forest Service Violations of Section 303 of the 1998 Interior Department Appropriations, B-281637, 1999 U.S. Comp. Gen. LEXIS 157 (1999). The GAO found the Forest Services' campaign to be a violation of the Interior Department Appropriation Rider that stated "No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete." B-281637. As part of this campaign, the Forest Service Chief sent a letter to all employees urging them to discuss the Forest Service's Natural Resource Agenda with colleagues, friends and neighbors and also sent a letter to regional management officials asking them to pitch the Agenda "to as wide an audience as possible inside and outside

the agency” and stating that he would be forwarding them a “communications plan.” B-281637. Additionally, a conference call conducted between the Forest Service Chief and his Regional Managers provided instructions stating that Regional Managers had to be proactive, and that this included “working aggressively with employees, interest groups and congressionals [*sic*] to move the full agenda forward.” B-281637. Some Regional Members followed his advice and conducted meetings with the public, which included private interest groups. B-281637. Additionally, an extensive Communication Plan, including a briefing packet, was set forth for the Forest Service Payments to States issue, which resulted in “[l]iterally hundreds of contacts... Among the individuals contacted were county commissioners and other county officials, mayors and other city officials, governors, state legislators and other state officials, judges, Chambers of Commerce, education associations, the National Association of Counties and Western Governors Association.” B-281637.

19. Ultimately, the GAO “concluded that the expenditure of funds by the Forest Service for certain activities undertaken to implement the Communication Plan for the Forest Service Natural Resource Agenda violated Section 303 of the 1998 Interior Department Appropriations Act. Specifically, these activities included (1) urging members of the public during a meeting to contact Congress in support of road funding initiatives in legislation and in the budget, and (2) a campaign to promote public support for a budget proposal seeking to change the way certain payments to states from Forest Service revenues are calculated.” B-281637. As a result, the GAO recommended a set of draft guidelines so future violations would not occur.

20. Similarly, the Legal Services Corporation (LSC) “developed a detailed plan designed to urge members of the public interested in its legal assistance programs to contact Members of Congress and communicate their support for LSC reauthorization legislation and LSC appropriations measures being considered by Congress.” To The Honorable F. James Sensenbrenner, Jr., House of Representatives, B-202116, 1981 U.S. Comp. Gen. LEXIS 144 (1981). This included forming a Project Advisory Group to conduct a lobbying campaign for this matter, which included the addition of temporary personnel in Washington, D.C. to facilitate the lobbying effort, as well as a series of packets to help coordinate the effort nationally and locally. B-202116. The LSC attempted to argue that the Appropriations Act Rider was inapplicable because it was passed after the LSC was created. B-202116. However, the GAO rejected this argument and concluded that this type of activity was a clear example of “grass roots” lobbying and was clearly prohibited. B-202116.

21. In another case with the NEA, the GAO examined an information package developed by the NEA, concerning the Livable Cities Program. To The Honorable Edward P. Boland, House of Representatives, B-196559, 59 CPD ¶ 115 (1979). The specific wording of the Appropriations Act Rider was “No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete, in accordance with the Act of June 25, 1948 (18 U.S.C. 1913).” B-196559. While the information package did not directly urge readers to contact Congressmen, the GAO concluded the timing of the package right before the House’s consideration of the matter and the

focus of the information package “on reconsideration of Program funding in the House of Representatives at least by implication, advocates support of that funding. Moreover, it is improbable that all of the hundreds of inquiries had in fact requested a later ‘update.’” B-196559. Accordingly, the GAO concluded the mass mailing of the information package was a violation.

22. In another matter, the Community Services Administration (CSA) sent out a mass mailing to the public in Minnesota, urging the recipients to write Congress and support the CSA. Decision of the Comptroller General, B-202787(1), 1981 U.S. Comp. Gen. LEXIS 1406 (1981). The GAO concluded “if federal funds were used in the preparation or carrying out of the mass mailing, it constituted an illegal expenditure for what amounts to ‘grass roots’ lobbying by the recipient. We define ‘grass roots’ lobbying as an indirect attempt to influence pending legislation by urging members of the public to contact legislators to express support of, or opposition to the legislation or to request them to vote in a particular manner.” B-202787(1)

23. One of the most egregious examples of lobbying which violated an Appropriations Act Rider was the “extensive and cooperative effort . . . made by officials of the Air Force, the Office of the Secretary of Defense (OSD), the Lockheed Corporation, and several other Defense contractors and subcontractors during the period May 14, 1982, through July 22, 1982, to influence members of the House of Representatives, and later the House and Senate conferees, on the proposed \$10 billion procurement of the C-5B aircraft.” Subject: Improper Lobbying Activities by the Department of Defense on the Proposed Procurement of the C-5B Aircraft (GAO/AFMD-82-123), B-209049, 1982 U.S. Comp. Gen. LEXIS 1640 (1982). The GAO stated that the effort was directed by the DoD, which utilized “material, but undeterminable amounts of appropriated funds and Government resources...for the purpose of influencing this procurement appropriation authorization measure which was pending before Congress.” B-209049.

24. In fact, the GAO “found that the computerized recordkeeping system used to manage and coordinate these lobbying efforts was developed and operated by Lockheed personnel. The computer equipment and software used were owned or leased by Lockheed. The primary computer equipment was located in a Government-owned facility operated by Lockheed in Marietta, Georgia.” B-209049. Moreover, Lockheed’s own lobbying costs in connection with this effort were “substantial,” amounting to \$496,000, not including the \$265,190 in advertising costs. B-209049. Lockheed attempted to get reimbursed for these costs under its contract, but the GAO concluded that those costs were unallowable. B-209049.

25. The Government, via the Director of the Air Force Office of Legislative Liaison, the Assistant Secretary of Defense for Legislative Affairs and the Deputy Secretary of the Air Force, invited Lockheed and its subcontractor’s official to attend daily meetings on the subject. B-209049. The GAO said “[t]he stated rationale for inviting the contractors to these ‘airlift strategy’ meetings was to use the contractors’ lobbyists and subcontractor network to get the ‘right’ information about the President’s program to the Congress quickly and to get feedback on Congressional views.” B-209049. Accordingly, the GAO concluded “[i]n other words, the purpose was to do things the Air Force was restricted from doing by antilobbying and legislative

liaison appropriation restrictions, by bringing pressure to bear on members of the Congress.” B-209049. The GAO further stated: “[t]he Air Force should not be permitted to use a contractor to engage in lobbying activities. Since the Air Force is prohibited by appropriations restrictions from directly mounting a grass roots lobbying campaign by requesting private citizen supporters throughout the country to contact their congressional delegations on behalf of the C-5B procurement, it follows that it may not engage a network of Defense contractors to accomplish the same thing.” B-209049. Accordingly, the GAO concluded that this was a clear violation of the Appropriations Act Rider.

26. Finally, one area where the GAO may find a violation of an Appropriations Act publicity or propaganda rider is where any information disseminated by an Agency could be viewed as “Covert Propaganda.” *See generally, Red Book*, Vol I., p. 4-166. In the case of the SBA, when it distributed “suggested editorials” to be published in newspapers, these were deemed to go beyond “the range of acceptable agency public information activities.” B-223098, B233098.2. The GAO stated that these editorials, posing ostensibly as the position of the newspapers themselves, would be “misleading as to their origin and reasonably constitute ‘propaganda’ within the common understanding of that term.” B-223098, B233098.2. The GAO noted that in a previous case, “this Office criticized a similar plan to distribute ‘canned editorial materials’ to the media. We distinguished such materials from legitimate agency public information activities and noted that they had “been traditionally associated with high-powered lobbying campaigns in which public support for a particular point of view is made to appear greater than it actually is.” B-223098, B233098.2.

27. Similarly, the GAO concluded that the Department of State’s Office of Public Diplomacy for Latin America and the Caribbean engaged in covert propaganda in connection with the then present administration’s Latin American policy. *In Re: To The Honorable Jack Brooks*, B-229069, 1987 U.S. Comp. Gen. LEXIS 397 (1987). Specifically, the office utilized its own staff and had numerous contracts “with outside writers, for articles, editorials and op-ed pieces in support of the Administration’s position.” B-229069. In addition, the organization “also arranged for the publication of articles which purportedly had been prepared by, and reflected the views of, persons not associated with the government but which, in fact, had been prepared at the request of government officials and partially or wholly paid for with government funds.” B-229069. The GAO concluded that these activities were inappropriate and were a violation. Specifically, the GAO found “that the described activities are beyond the range of acceptable agency public information activities because the articles prepared in whole or part by S/LPD staff as the ostensible position of persons not associated with the government and the media visits arranged by S/LPD were misleading as to their origin and reasonably, constituted ‘propaganda’ within the common understanding of that term.” B-229069.

C. DOJ Guidelines For Appropriations Act Riders

28. As demonstrated above, there are several cases involving violations of Appropriations Act Riders. Even though the Appropriations Act Riders are not DOJ’s area of responsibility, it has attempted to summarize useful guidelines, based on GAO decisions, for Government employees. Specifically, it states that the “Comptroller General has suggested that, under such riders, government employees also MAY NOT (1) provide administrative support for the lobbying

activities of private organizations, (2) prepare editorials or other communications that will be disseminated without an accurate disclosure of the government's role in their origin, and (3) appeal to members of the public to contact their elected representatives in support of or in opposition to the proposals before Congress." DOJ Guidelines.

29. Enclosure 1 sets forth "Anti-Lobbying Do's and Don'ts" for Government Employees. The Point of Contact for this memorandum is the undersigned, AMSEL-LG-B, Ext. 23188.

Lea E. Duerinck
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“Anti-Lobbying Do’s and Don’ts”

There are generally two legislative sources of restrictions on lobbying by Government employees:

- 18 U.S.C. § 1913; and
- Annual Department of Defense (DoD) Appropriations Act Riders

Government Employees may:

- In accordance with their chain of command and proper channels, communicate directly with Members of Congress and their staffs in connection with their official duties and in support of the Agency. Such communications include, but are not limited to:
 - A request for legislation necessary for the efficient conduct of public business,
 - Articulating an Agency’s position via speeches and public appearances so long as there is NO suggestion or request for audience members to contact Congress; and
 - Providing newsletters, fact sheets and other informational materials, so long as there is NO suggestion or request for the public to contact Congress.
- AMCLL 1-20e, “Congressional Relations and Contacts – AMC Headquarters and Major Subordinate Commands,” sets forth AMC’s policy for Congressional contact. That policy requires among other things:
 - Subordinate activities keep “AMC leadership and chains-of-command informed of Congressional interaction.” For instance, all Congressional visits are to be reported to Headquarters AMC, Congressional Liaison Office, within 24 hours of notification of a visit.
 - “Any Congressional initiatives must be coordinated through AMCLL prior to discussions with Members of Congress or staffs and committees.”
 - “AMC contractors will not contact Congressional offices on behalf of AMC, or be the primary briefer of AMC programs to Congressional offices.”

- “Any significant conversations or contact with members of Congress, Personal/Professional Staffs or Defense Committees should be reported to AMCLL within 24 hours of occurrence.”

Government Employees may not:

- Organize, conduct or engage in substantial “grass roots” lobbying campaigns. “Grass roots” lobbying is a form of indirect lobbying, where “the lobbyist contacts third parties, either members of special interest groups or the general public, and urges them to contact their legislators to support or oppose something.” Principles of Federal Appropriations Law, General Accounting Office (GAO) Vol I . . . Campaigns where Government officials urge members of the public, via any means of communication (telegrams, newsletters, meetings, etc), to contact members of Congress in connection with a particular issue, are prohibited.
- Provide administrative support or funding for a private organization’s lobbying activities.
- Assist in the “covert” preparation of editorials without disclosing their origin. For example, a Government employee can not provide “suggested editorials.”