

THE WHITE HOUSE
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MEMORANDUM FOR WHITE HOUSE STAFF

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RE: Support of Proposed Legislation

This memorandum is intended to alert members of the White House staff to proscriptions on lobbying activities imposed by federal law and to provide general guidelines for compliance with applicable rules. This is a preliminary memorandum that will be updated in the near future.

The so-called "Anti-Lobbying Act" (18 U.S.C. § 1913) prohibits the use of appropriated funds, directly or indirectly, to pay for "any personal service, advertisement, telegram, telephone, letter, printed or written matter or other device" intended to influence a member of Congress in acting upon legislation, before or after its introduction.

Past interpretations of the Anti-Lobbying Act make clear that an employee of the Executive Branch, acting in his or her official capacity, may communicate with a member of Congress for the purpose of providing information or soliciting that member's support, whether or not such contact is invited and whether or not specific legislation is pending. That is, the ordinary and traditional interaction between the Executive and Legislative branches is permitted.

An Executive Branch employee may also provide the public with informational and background material in support of an Administration policy effort or proposed legislation.

Problems do arise, however, where employees of the Executive Branch become involved, directly or indirectly, in efforts to encourage members of the public to lobby members of Congress. Unfortunately, the line separating proper and improper conduct is imprecise, and the propriety of particular activity

must be judged in light of the specific facts at issue. The following comments and examples are thus intended to provide general guidance only:

- 1) Executive Branch officials may speak freely in meetings with individuals or groups, at public forums, at news conferences, and during news interviews. Such appearances might be challenged, however, where they become excessive and amount to a publicity campaign, or where any statements are made to encourage members of the public to lobby members of Congress. A substantial degree of direct contact with the private sector by persons who do not ordinarily engage in such activities can also be evidence of prohibited conduct.
- 2) Appropriated funds should not be used to produce written, printed or electronic communications intended to induce members of the public to lobby members of Congress. For example, Executive Branch personnel should not initiate mailings to the public that state the Administration's position and ask recipients to contact their Senators and Representatives in support of that position. Responses to incoming communications may include explanations of the Administration's position on matters of public policy, including proposed legislation -- but should not ask the recipients to contact their elected representatives.
- 3) It is normally appropriate to distribute press releases, public officials' speeches, fact sheets or other informational materials to persons who have expressed an interest in the subject matter or who hold senior positions in organizations active in relevant areas. Unsolicited mass distribution of such public documents, however, may appear intended to encourage "grass roots" lobbying -- even where the content of such documents is informational and does not suggest expressly that recipients should contact members of Congress. Each such proposed mass distribution must be judged based on the purpose and content of the communication and the number and kind of people who will receive the information.
- 4) Officials and employees of the Executive Branch may properly have regular contact with non-governmental organizations that lobby members of Congress or attempt to influence the general public to lobby the Congress. However, in these dealings, Executive Branch officials should not -- and should not even appear to -- dominate the organization or use the organization as an arm of the Executive Branch.
 - (a) Examples of the kinds of activities in which Executive Branch officials might participate when dealing with independent outside organizations include:

- (i) exchanging non-privileged information;
- (ii) making suggestions, responding to particular inquiries, or discussing the merits of various legislative strategies and related matters (so long as the Executive Branch officials do not suggest organization of "grass roots" lobbying efforts);
- (iii) addressing meetings (non-fundraisers); and
- (iv) upon request, providing to an organization, for reproduction and distribution by the organization:
 - sample copies of documents prepared by Executive Branch officials (such as press releases, public officials' speeches or fact sheets) that are otherwise available for public distribution; or
 - letters on specific subjects written by Executive Branch officials.

(Note that the documents provided for distribution must not suggest that the recipients contact members of Congress to urge support of particular Administration positions; in addition, the decision to publish or distribute any such material must be left to the independent organization.)

- (b) The activities that Executive Branch officials should avoid include, for example:
 - (i) assuming responsibility for the ongoing operations of an outside organization;
 - (ii) requesting that an organization activate its membership at large to contact members of Congress on behalf of a legislative proposal;
 - (iii) gathering information or producing materials which cannot properly, or would not ordinarily, be gathered or produced as part an Executive Branch employee's regular work;
 - (iv) producing or providing multiple copies of materials to be distributed by an outside organization;

- (v) requesting an organization to prepare or distribute any materials that suggest directly or indirectly that the recipients should contact members of Congress;
- (vi) playing any substantial role in advising an organization with respect to the content of material the organization may wish to distribute;
- (vii) providing to such organizations lists of or correspondence from persons who favor or oppose particular policy positions; and
- (viii) involvement in an outside organization's fundraising activities.

These legal guidelines are not intended to prohibit interaction between the Executive Branch and the public. But where such interaction develops into a publicity and propaganda campaign intended to encourage citizen groups to lobby Congressional representatives, the boundaries of propriety have been crossed.

Because the Anti-Lobbying Act has not often been interpreted, it is difficult to be more specific in setting forth guidelines for Executive Branch officials and offices. The anti-lobbying law, however, is a criminal statute and should be taken seriously. Any factual situations not expressly covered in this memorandum should be brought to the attention of the Counsel's office before any action is taken.