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ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

February 28, 1975

B-181254

The Honorable John E. Moss
House of Representatives



Dear Mr. Moss:

Your letter of September 6, 1974, requested that we determine the number of Federal Energy Administration (FEA) employees, including those temporarily assigned from other agencies, whose main task is dealing with the press, public relations, and public information. You also requested that we ascertain whether there is any violation of title 5, United States Code, section 3107, which states: "Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose."

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FEA's Office of Communications and Public Affairs is the only office within FEA with the main task of dealing with the press, public relations, and public information. The basic mission of this office is to continually make public information concerning FEA's decisions and activities for resolving energy problems. As of February 3, 1975, the office employed 127 employees, including 12 nonpermanent employees. See appendix I for an organizational chart. Breakdowns of these employees by office, status, and GS series classification and grade are shown in appendix II, III, and IV.

Prior to November 12, 1974, the Office of Communications and Public Affairs had 133 employees assigned to 10 different offices. On November 12, 1974, the former FEA administrator imposed a staffing ceiling of 129 on this office, and it was reorganized into an Office of the Director and six separate divisions, each headed by an assistant director. The only new division created at this time was the Community Relations and Public Education Division, responsible for providing liaison between FEA and the community, schools, and public advertising. The staff for this new division was transferred from other divisions within the Office of Communications and Public Affairs.

As appendix II shows, 30 of the 127 employees were assigned to the Editorial and Publications Division. Of these 30 employees, 20 are assigned to Public Inquiries and Correspondence, which is responsible for responding to inquiries from the public, the White House, and the Congress. In February 1974, this office had 65 employees who responded to a monthly average of about 8,500 letters from February to April 1974. Their current workload averages about 2,000 responses a month with a backlog of 3,190 letters as of January 16, 1975.

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The Director of Communications and Public Affairs believes the staffing level was justified, considering the amount of overtime worked. No records of overtime worked by GS-13s and above were maintained, but the overtime worked by GS-12s and below during the months of April and May 1974 averaged about 15 hours per pay period per person. From mid-August to mid-October 1974, overtime was reduced to an average of about 7 hours per pay period per person for these individuals. According to a Communications and Public Affairs official, the Director is currently phasing out much of the overtime.

The Director planned to have all 12 nonpermanent employees converted to permanent status by the Civil Service Commission. However, at the direction of the Office of Management and Budget, the staff is to be reduced to 100 by June 30, 1975. Much of this reduction will be accomplished by sending employees back to their original agencies.

As of February 3, 1975, 21 employees, one of which was assigned to the Editorial and Publications Division, were classified as Public Information Officers. According to the Civil Service Commission classification of this position, Public Information Officers or Specialists

"perform work involved in disseminating information about Government programs to the general public and to especially affected or interested individuals by means of public information channels such as newspapers, radio and television stations, and magazines of general circulation."

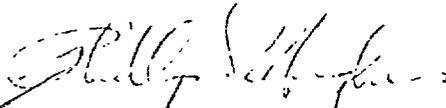
Our Office of General Counsel is currently reviewing FEA's use of public information officers and other employees to determine whether there is any potential violation of title 5, United States Code, section 3107, and will make a further response to your request.

We realize that FEA was created under emergency conditions and that there was a great need to keep the public informed of the energy situation, especially during the months of the gasoline shortage. We believe that the Office of Communications and Public Affairs did a noteworthy job of disseminating information during this time and that the staffing level was reasonable, considering the adverse conditions brought about by the energy crisis. For example, during the height of the energy crisis, the office was receiving thousands of letters weekly from government officials, businessmen, and consumers and about 2,000 phone calls daily. The numerous inquiries, along with the other public affairs functions, resulted in the staff, which has averaged about 130 employees, having to work excessive overtime.

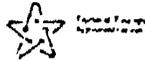
B-181254

We discussed the contents of this report informally with the Director of Communications and Public Affairs, and he indicated general agreement with our findings and conclusions.

Sincerely yours,

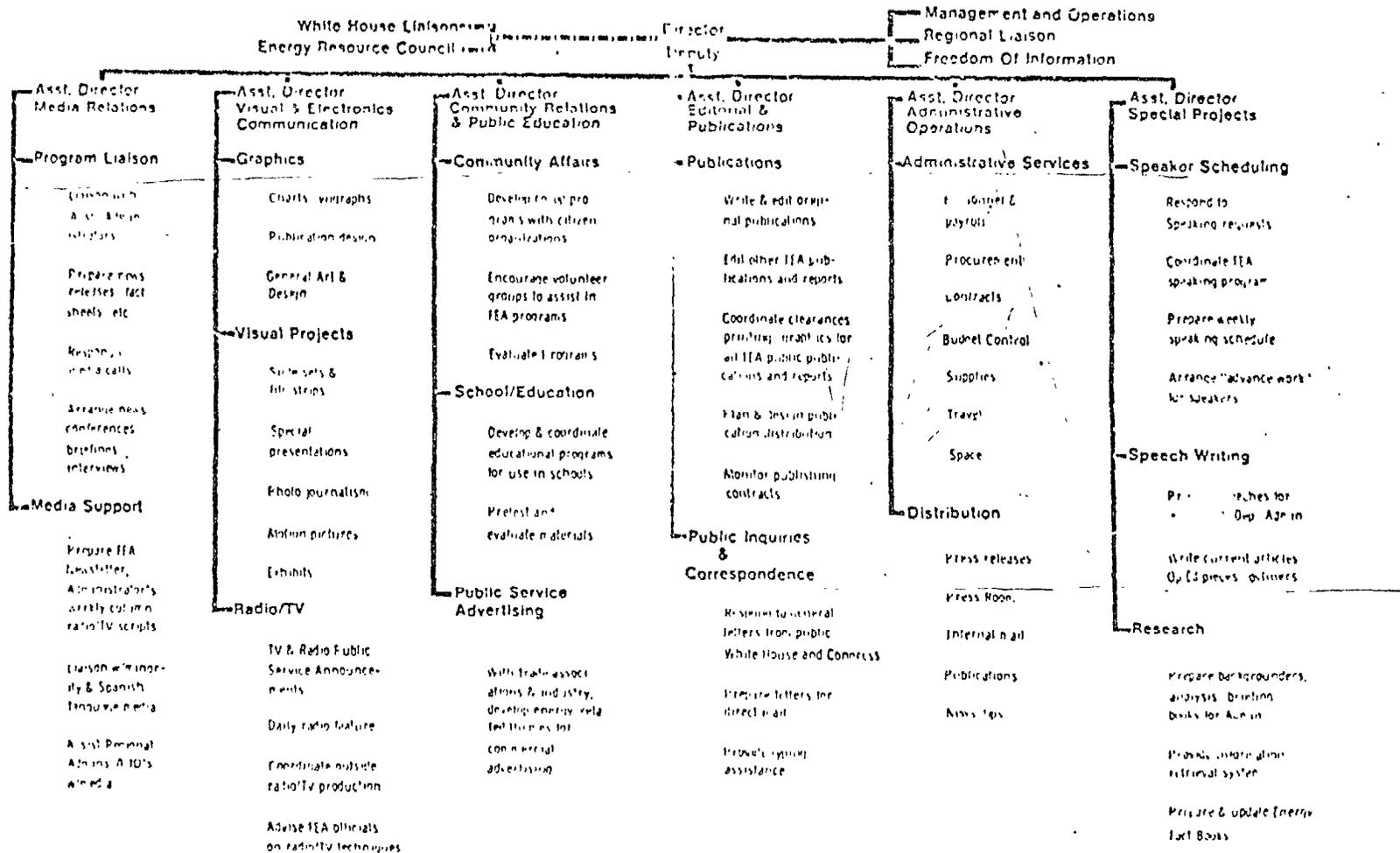

Philip S. Hughes
Assistant Comptroller General

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COMMUNICATIONS AND PUBLIC AFFAIRS FEDERAL ENERGY ADMINISTRATION

Organization & Major Functions



FY:75

CEILING: 129

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ADMINISTRATOR
JOHN G. SAWHILL

NOVEMBER 12, 1974

DATE

Appendix II

OFFICE OF COMMUNICATIONS AND PUBLIC AFFAIRS
STAFFING BY OFFICE AS OF FEBRUARY 3, 1975

<u>Office or division</u>	<u>Staffing</u>
Office of the Director	14
Media Relations	12
Visual and Electronic Communications	18
Community Relations and Public Education	19
Editorial and Publications	30
Administrative Operations	19
Special Projects	<u>15</u>
Total	<u>127</u>

OFFICE OF COMMUNICATIONS AND PUBLIC AFFAIRS
 BREAKDOWN OF EMPLOYEES BY STATUS
 AS OF FEBRUARY 3, 1975

Appendix III	Office or division	Permanent	Emergency indefinite	Temporary	Expert or consultant	Schedule A lawyer	Total
	Office of the Director	11	1	1	-	1	14
	Media Relations	10	2	-	-	-	12
	Visual and Electronic Communications	17	1	-	-	-	18
	Community Relations and Public Education	18	-	-	1	-	19
	Editorial and Publications	27	2	1	-	-	30
	Administrative Operations	18	1	-	-	-	19
	Special Projects	<u>14</u>	<u>-</u>	<u>-</u>	<u>1</u>	<u>-</u>	<u>15</u>
	Total	<u>115</u>	<u>7</u>	<u>2</u>	<u>2</u>	<u>1</u>	<u>127</u>

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OFFICE OF COMMUNICATIONS AND PUBLIC AFFAIRS
 BREAKDOWN OF EMPLOYEES BY GRADE AND GS SERIES CLASSIFICATION
 AS OF FEBRUARY 3, 1975

<u>GS series classification</u>	<u>Description</u>	<u>Grade</u>	<u>Number of employees</u>
301	General clerical and administrative	3	1
		4	1
		5	16
		7	7
		8	3
		9	2
		11	3
		12	2
		15	2
		37	
302	Messenger (motor vehicle operator)	2	3
305	Mail and file clerk	3	2
		5	1
			3
309	Writer	5	1
312	Secretary	5	1
318	Secretary	5	1
		6	3
		7	4
		8	2
			10
322	Clerk-typist	3	4
		4	3
		5	1
		6	1
			9
341	Administrative officer or assistant	9	2
		12	1
		14	1
			4

Appendix IV

<u>GS series classification</u>	<u>Description</u>	<u>Grade</u>	<u>Number of employees</u>
904	Legal aid	9	1
1001	Interior decorator, color designer	4	1
1020	Illustrator	7	1
1060	Photographer	5	1
1071	Motion picture, audio-visual, TV, radio specialist	7 9	1 <u>1</u>
			2
1081	Public information officer or specialist	5 11 12 13 14 15	5 2 7 1 5 <u>1</u>
			21
1082	Writing, editing	5 7 9 11 12 13	3 6 8 2 2 <u>1</u>
			22
1084	Visual information officer or specialist	9 11 12	1 1 <u>1</u>
			3
1087	Editorial clerk or assistant	4	1

Appendix IV

<u>GS series classification</u>	<u>Description</u>	<u>Grade</u>	<u>Number of employees</u>
Level V	Director	Level V	1
WB-5	Wheeled vehicle operator	4	1
no series	Speech writer	12	2
	Advertising consultant	13	1
	Speech writer	14	1
			<u>4</u>
	Total		<u>127</u>

Total by Grade

GS-2	3
GS-3	7
4	6
5	30
GS-6	4
GS-7	19
GS-8	5
GS-9	15
GS-11	8
GS-12	15
GS-13	3
GS-14	7
GS-15	3
WB-5-4	1
Level V	1
Total	<u>127</u>

RELEASE

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D. C. 20548

RELEASED

B-181254

February 28, 1975

The Honorable John E. Moss
House of Representatives

Dear Mr. Moss:

By letter of September 6, 1974, you requested that the General Accounting Office (GAO) make a study to determine if the Federal Energy Administration has been violating the provisions of 5 U.S.C. § 3107 (1970). That statutory provision, which had first been enacted as part of the Act of October 22, 1913, ch. 32, 38 Stat. 208, 212, provides as follows in its codified form:

"Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose."

In none of the appropriation acts applicable to fiscal years 1974 and 1975 did we find any specific appropriation for "publicity experts" for any Government agency. The extent to which a separate delineation for publicity experts is provided in the budget submissions of the respective departments and agencies has not been determined, but a sample of the information contained in "The Budget of the United States, Fiscal Year 1975, Appendix" would indicate that it is not the general practice of the agencies to do so. In light of these facts some historical perspective might be helpful.

Our prior decisions concerning 5 U.S.C. § 3107 are not extensive, the bulk of them having arisen generally in the 1930's. At that time we had difficulty applying the statutory provision and so informed Members of Congress when inquiries were addressed to us. The difficulties we then experienced included the following:

1. The prohibition is against compensating any "publicity expert" but the statute contains no definition of a "publicity expert" or criteria for determining who is a "publicity expert." Those employed for or engaged in so-called publicity work were not appointed as publicity experts but under some other designation and, for the most part, did not purport to be experts.

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2. The employees engaged in so-called publicity work were assigned to their duties by their supervisors, and consequently it would have been harsh to withhold the compensation of the employees.
3. There were agencies whose regular duties or whose effective implementation of agency responsibilities required the acquisition and dissemination of information, even though no specific provision for personnel therefor may have been contained in the pertinent appropriation law.

Remedial legislation was proposed in 1943 in the form of H.R. 656, 78th Cong., entitled "A BILL Relating to legislative and budgetary control of expenditures for publicity activities of the executive branch of the Federal Government, and for other purposes." That bill did not pass but in commenting on it, we stated that we believed that it would be more effective in controlling expenditures for publicity purposes than the Act of October 22, 1913, the Act from which 5 U.S.C. § 3107 is derived. In making that comparison we reported:

"* * * The difficulty in enforcing the present law arises from the fact that those employed for publicity purposes are not usually officially designated as such but are given other designations and when the particular department or agency is questioned with respect thereto the head thereof invariably insists that the employee is not a publicity expert. Also, it cannot be said that every employee who prepares press releases or magazine articles is a publicity expert and this office has not felt warranted in withholding the compensation of an employee merely because part or all of his official duties may consist of preparing or disseminating information when neither his appointment nor the pay rolls describe him as a publicity expert." (Emphasis added.)

The purpose of the Congress in enacting 5 U.S.C. § 3107 was apparently to prohibit improper publicity activity within the agencies, that is, publicity work not specifically authorized by law. It may be that in some agencies of the Government employees may at times be assigned the duty of preparing or disseminating information for the purpose of reflecting credit upon an activity, or upon the officials charged with its administration, rather than for the purpose of furthering the work which the law has imposed upon it. In recent years, without apparent concern for 5 U.S.C. § 3107, Congress has included provisions in certain

appropriation acts addressed specifically to publicity. Provisions specifically referring to publicity which are contained in various appropriation acts for fiscal years 1974 and 1975 are set forth in an enclosure herewith.

With particular reference to the Federal Energy Administration (FEA), subsection 14(a) of the Federal Energy Administration Act of 1974, Pub. L. No. 93-275, 88 Stat. 96, 108, places specific responsibilities on the agency to disseminate information to the public. It provides:

"The Administrator shall make public, on a continuing basis, any statistical and economic analyses, data, information, and whatever reports and summaries are necessary to keep the public fully and currently informed as to the nature, extent, and projected duration of shortages of energy supplies, the impact of such shortages, and the steps being taken to minimize such impacts."

Section 6 of the FEA Act of 1974, supra, transferred from the Department of the Interior to FEA the Office of Petroleum Allocation, the Office of Energy Conservation, the Office of Energy Data and Analysis and the Office of Oil and Gas and section 9 authorizes and directs the Director of the Office of Management and Budget to dispose of the "unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with functions which are transferred by * * * this Act, as the Director deems necessary and appropriate to accomplish the intent and purpose of this Act" (emphasis added). Thus, the moneys appropriated under the headings of "Fuel Allocation, Oil and Gas Programs" and "Energy Conservation and Analysis" in the Special Energy Research and Development Appropriation Act, 1975, Pub. L. No. 93-322, 88 Stat. 276, 278, are available for obligation and expenditure by the FEA. See S. Rep. No. 93-903, 2d Sess. 19, 20 (1974). Neither of these appropriation provisions nor any other provision in the Special Energy Research and Development Appropriation Act, 1975, contains a specific appropriation for publicity experts. We note, however, that H. Rep. No. 93-1010, 2d Sess. 20 (1974), states, in part:

"The purpose of the Office of Energy Conservation is to reduce energy demand growth as rapidly as possible under conditions of acceptable socio-economic impacts. Major functions include * * * developing motivational education programs on energy conservation for the American public and carrying out an aggressive [sic] multi-media public information and consumer awareness program; * * *."

Moreover, although there is no specific breakdown of number of personnel engaged in publicity functions therein, the budget justification presented to the House and Senate Appropriations Committees on behalf of the Office of Energy Conservation stated, in part, as follows:

"Organization

"The OEC is organized in three line divisions -- Voluntary and Mandatory Programs; Policy Evaluation and Implementation; and Research, Development and Demonstration.

* * * * *

"Fiscal Year 1974 Program Objectives

* * * * *

"The Division of Voluntary Programs has two branches: Public Education and Information, and State and Local Government Programs.

* * * * *

"Public Education and Information Branch - National advertising program (contract with the Advertising Council, Inc., Cunningham & Walsh advertising agency). All media campaign with emphasis on television and radio. Outstanding success during first few months of program (NFL championship games, Super Bowl, prime-time evening television).

"Preparation and mass mailings of materials on energy conservation, including Congressional, elected official and private sector correspondence requiring nonroutine action (fact sheets, booklets, backgrounders, speeches, Presidential messages, and FEO action papers).

"Special Projects: as per instructions (Executive Order, FEO Administrator) to work closely with Federal agencies to institute broad constituency EC programs. Examples include a Civil Service Commission Federal employee and agency EC awards program, including cash awards; HEW school and teacher programs; GSA driver awareness program; White House EC press conference, special briefings and seminars.

* * * * *

"Fiscal Year 1975 Program Objectives - Division of Voluntary Programs"

* * * * *

"Public Education and Information Branch - This Branch has as its principal focus the daily, intensive dissemination of information on energy and energy conservation to the private sector. Included in the education and information programs are advertising, printed and published materials, visuals, films, television and radio scripts and telops, fact sheets and special presentations for conferences, seminars, and the like.

"The nation's mass media will receive heavy attention in disseminating the program. Included will be an extensive speakers' placement program which will seek opportunities for OEC and FEC representatives to highlight the Administration's energy conservation and demand management programs.

"The Branch will conduct public opinion research on a continuing basis to assist in providing FEO with guidelines in making decisions regarding the impact of programs and proposed actions on the private sector.

"The fiscal year 1974 outreach program will be expanded, including the introduction of materials specifically requested by the Congress for mass distribution through mailings and distribution centers.

"The Branch will develop and offer new energy conservation communications to selected groups (the Congress, opinion leaders, elected officials, academia, Federal executives).

"The activity will seek vigorously to induce Federal agencies to develop constituency and contractor programs designed to further energy conservation progress in the nation. Examples (in fiscal year 1974) include the Civil Service Commission's Federal Awards Program, DOC's business and industry program and HEW's teacher and student EC kit program.

"The Branch will seek out new opportunities including joint venturing with other Federal agencies. (\$1 million in contract funds for the project)."

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Special Energy Research and Development Appropriation Bill for 1975, Hearings Before Subcommittee of the House Committee on Appropriations, Pt. 1, 93d Cong., 2d Sess. 274-277 (1974); Special Energy Research and Development Appropriations for Fiscal Year 1975, Hearings on H.R. 14434 Before the Senate Committee on Appropriations, 93d Cong., 2d Sess. 521-524 (1974).

It is our view that 5 U.S.C. § 3107 (1970), is vague in that it fails to define "publicity expert" and hence is difficult to apply. However, we do not believe that it is intended to interfere with the dissemination of information which an agency is required by statute to disseminate. It is apparent from the above that a large part of the statutory duties of the FEA is the dissemination of specified information to the general public and/or designated segments thereof. On the present record we have no basis for believing that 5 U.S.C. § 3107 has been violated.

We trust that the foregoing will serve the purpose of your inquiry.

Sincerely yours,

DEPUTY


Comptroller General
of the United States

Enclosure

ENCLOSURE

1. Section 701 of the Department of Defense Appropriation Act, 1974, Pub. L. No. 93-238, 87 Stat. 1026, 1037, and section 801 of the Department of Defense Appropriation Act, 1975, Pub. L. No. 93-437, 88 Stat. 1212, 1224, provide:

"No part of any appropriation contained in this Act shall be used for publicity or propoganda purposes not authorized by the Congress."

2. Section 410 of the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1974, Pub. L. No. 93-192, 87 Stat. 746, 765, and section 409 of the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1975, Pub. L. No. 93-517, 88 Stat. 1634, 1651, provide:

"No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propoganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself."

3. Section 701 of the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1974, Pub. L. No. 93-162, 87 Stat. 636, 659, and section 701 of the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1975, Pub. L. No. 93-433, 88 Stat. 1187, 1208, provide:

"No part of any appropriation contained in this Act shall be used for publicity or propoganda purposes not authorized by the Congress."

4. Section 601 of the Foreign Assistance and Related Programs Appropriation Act, 1974, Pub. L. No. 93-240, 87 Stat. 1049, 1056, provides:

"No part of any appropriation contained in this Act shall be used for publicity or propoganda purposes within the United States not heretofore authorized by the Congress."

5. Subsection 607(a) of the Treasury, Postal Service, and General Government Appropriation Act, 1974, Pub. L. No. 93-143, 87 Stat. 510, 526, and subsection 607(a) of the Treasury, Postal Service, and General Government Appropriation Act, 1975, Pub. L. No. 93-381, 88 Stat. 613, 632, provide:

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"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."