



# CHIEF NATIONAL GUARD BUREAU INSTRUCTION

NGB-JA  
DISTRIBUTION: A

CNGBI 9550.01  
30 April 2015

## RESTRICTIONS ON THE USE OF FEDERAL FUNDS FOR LOBBYING OR PROPAGANDA

References: See Enclosure C.

1. Purpose. This instruction establishes policy and assigns responsibilities to facilitate compliance with Federal laws and regulations restricting expenditure of Federal funds for certain communications by National Guard (NG) personnel with Members of Congress and the public, in accordance with (IAW) reference a. This instruction summarizes administrative interpretations of complex laws and regulations applicable to NG members in Title 10 or Title 32 duty status.
2. Cancellation. This instruction supersedes All States Memorandum P99-0022, 08 June 1995, "Use of Federal Funds for Lobbying or Propaganda."
3. Applicability. This instruction applies to the NG.
4. Policy. It is NG policy to prohibit the use of Federal funds for lobbying or propaganda activities IAW statutory and regulatory provisions (see Enclosure A). NG personnel acting in an official capacity are restricted from using Federal funds to lobby Members of Congress or the public except as provided in Enclosures A and B.
5. Definitions. See Glossary.
6. Responsibilities.
  - a. Chief of the National Guard Bureau (CNGB). CNGB will:
    - (1) Interact with Members of Congress to communicate NG equities.
    - (2) Interact with senior leaders in the Office of the Secretary of Defense (OSD) and Joint Chiefs of Staff (JCS) so that NG interests are properly understood and articulated to Congress by these officials.

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b. Vice Chief of the National Guard Bureau (VCNGB). VCNGB will:

(1) Interact with Members of Congress to communicate NG equities.

(2) Interact with senior leaders in OSD and JCS so that NG interests are properly understood and articulated to Congress by these officials.

c. Directors of the Army National Guard (ARNG) and Air National Guard (ANG).

(1) Interact with Members of Congress to communicate ARNG and ANG equities.

(2) Interact with Army and Air Force senior leaders so that NG interests are properly understood and articulated to Congress by these officials.

(3) Coordinate, through the Office of Legislative Liaison, all interactions with Members of Congress, Congressional committees, and Congressional staff by their respective directorates.

d. Office of the National Guard Bureau Chief Counsel (NGB-JA). NGB-JA will provide legal interpretations regarding the lobbying and propaganda prohibitions described in this instruction.

7. Summary of Changes. This is the initial publication of CNGB Instruction 9550.01.

8. Releasability. This instruction is approved for public release; distribution is unlimited. Copies are available through <<http://www.ngbpdc.ngb.army.mil>>.

9. Effective Date. This instruction is effective upon publication and must be reissued, cancelled, or certified as current within five years of its publication.



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Enclosures:

- A -- Statutory and Regulatory Provisions
- B -- Prohibited and Permitted Activities

C -- References  
GL -- Glossary

ENCLOSURE A

STATUTORY AND REGULATORY PROVISIONS

1. The following statutes, regulations and related guidance address the use of Federal funds for lobbying or propaganda by NG personnel in official capacity.
2. The Anti-Lobbying Act (18 U.S.C. § 1913).

- a. Reference b prohibits the direct or indirect expenditure of Federal appropriations intended to influence a Member of Congress in support, or opposition, of any legislation, policy, or appropriation. This is principally to prevent a Federal agency from organizing pressure on Congress from the public and constituencies of an agency's programs. The Act permits communications to Members of Congress conducted at the request of Congress and through official channels.

- b. This statute applies to NG military personnel in Title 10 duty status, National Guard Bureau (NGB) civilian employees, United States Property and Fiscal Officers, and NG technicians.

- c. NG personnel in Title 32 duty status or reimbursed State Active Duty are not subject to this statute.

3. Restrictions on Employment of Publicity Experts (5 U.S.C. § 3107).

- a. Reference c prohibits the use of appropriated funds to pay a publicity expert unless specifically appropriated for that purpose. This funding limitation is intended to prohibit publicity activities that do not further the agency's valid programmatic objectives, to include activities undertaken to reflect credit upon an agency or agency officials.

- b. This statute applies to all NG appropriations. NG personnel may be subject to criminal and civil penalties when improper expenditures constitute a violation of reference d.

4. Department of Defense (DoD) Annual Appropriations Restrictions.

- a. Reference e includes an example of a recurring provision in DoD annual appropriations legislation which provides that no appropriations "may be used for publicity or propaganda purposes not authorized by Congress." Section 8013 of reference e further prohibits funding from being used to "influence Congressional action on any matters pending before the Congress."

- b. The funding limitations of reference e apply to all NG appropriations. In light of the fact that personnel may not lobby Congress while paid from Federal

funds, this prohibition extends to NG personnel in Title 10 and Title 32 duty status or reimbursed State Active Duty; NG technicians; and state employees whose wages are federally reimbursed under cooperative agreements. NG personnel may be subject to criminal and civil penalties when improper expenditures constitute a violation of reference d.

5. Principles of Federal Appropriations Law.

a. Reference f identifies three lobbying activities that the Government Accountability Office expressly prohibits.

- (1) Self-aggrandizement.
- (2) Covert propaganda.
- (3) Purely partisan materials.

b. NG personnel may be subject to criminal and civil penalties when improper expenditures constitute a violation of reference d.

6. Limitations on the Influence of Certain Federal Contracting and Financial Transactions (31 U.S.C. § 1352).

a. Reference g proscribes the expenditure of Federal funds by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with certain Federal actions, to include:

- (1) Awarding of any Federal contract.
- (2) Making of any Federal grant.
- (3) Making of any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

b. Recipients of Federal funds may be subject to a civil penalty ranging from \$10,000 to \$100,000 for each improper expenditure.

ENCLOSURE B

PROHIBITED AND PERMITTED ACTIVITIES

1. Prohibited Activities. Violations must be reported to ethics officials.

a. “Grass Roots” Lobbying. NG personnel may not use appropriated funds to aid any outside organization in conducting large-scale “grass roots” lobbying activities with respect to legislation or appropriations, such as the distribution of written materials to the public on a large scale that encourages members of the public to contact or communicate with Congress concerning legislation or appropriations. Therefore, NG personnel may not:

(1) Create materials for outside organizations to distribute in connection with grass roots lobbying activities.

(2) Allow federally funded employees to spend time collecting materials that would not otherwise have been collected in connection with grass roots lobbying activities.

(3) Solicit outside organizations to conduct large-scale grass roots lobbying activities.

(4) Control outside organizations in the conduct of large-scale grass roots lobbying activities.

(5) Use outside organizations as an extension of NGB or DoD to facilitate prohibited grass roots lobbying activities.

b. Using Official Channels.

(1) NG personnel during work or duty hours may not contact Members of Congress or Congressional staff outside the proper official channels to urge action concerning legislation or appropriations.

(2) NG personnel during non-work or non-duty hours may not use Federal resources to contact Members of Congress or Congressional staff for lobbying purposes, or urge other persons to do so.

c. Lobbyist Employment. NG personnel may not use Federal funds to hire lobbyists, unless funds are specifically appropriated for that purpose.

d. Material for Influencing Congress. NG personnel may not develop or prepare material to be used for the purpose of influencing Congress, except when prepared for use by NGB or DoD to present positions through official channels.

e. Requests for State-level Lobbying. NG personnel may not request, urge, or suggest that The Adjutants General or other State NG members contact a Member of Congress to lobby for particular legislation or appropriations. The NG as a state organization should not be a part of the official promotion of DoD or NGB legislative and appropriations objectives.

f. Public Relations Activities. NG personnel may not use appropriated funds to facilitate a public relations campaign with the sole purpose of self-aggrandizement emphasizing the importance of the NG and its activities. This includes covert public relations activities designed to get information to the public through the media, or otherwise, generated at least in part by the NG but made to appear as if solely from a source outside government. Examples include:

(1) Preparing letters to editor, op-ed pieces, or other publications to be published solely as opinions of individuals outside the government.

(2) Collaborating in the preparation of material for public publication or distribution that claims to be solely written by, and present the opinions of, individuals outside the government.

(3) Arranging for meetings of individuals outside the government with the media as part of a public relations campaign, but making it appear as if the government had no involvement.

g. Lobbying State Legislatures. NG personnel may not use Federal funds for the purposes of lobbying state legislatures.

## 2. Permitted Activities.

a. Freedom of Information Act Requests. NG personnel may provide pre-existing materials or information to outside organizations, at an organization's request, for organizations to reproduce and distribute in connection with any lobbying activity.

### b. Using Official Channels.

(1) NG personnel may communicate directly with a Member of Congress for the purpose of providing information or soliciting that Member's support for the Administration's position on a current or pending legislative matter, including legislation or appropriations, whether or not such contact is invited. Unsolicited communications with Members of Congress must be coordinated and approved through official channels.

(2) Official channels include DoD, Department of the Army, Department of the Air Force, and NGB channels of communication used by authorized legislative liaison personnel.

c. Responses to Requests for Information. NG personnel may respond to requests for information from Members of Congress or Congressional staff. When made in a federally funded duty status, these responses are factual in nature and cannot include views or positions on legislation or appropriations, unless specifically requested. Responses are cleared through official channels.

d. Material for Influencing the Public.

(1) NG personnel may distribute written materials to the public advocating the Administration's position on legislative matters, including legislation or appropriations, when such materials do not encourage members of the public to contact or communicate with Congress.

(2) NG personnel may make statements in writing, such as op-ed pieces in newspapers or magazines, advocating the Administration's position when such statements do not encourage members of the public to contact or communicate with Congress.

(3) NG personnel may make public speeches promoting the Administration's position on legislative matters, including legislation or appropriations, with encouragement that members of the public support the Administration's legislative position, when the NG does not distribute copies of such speeches on a large scale.

e. Public Relations Activities. NG personnel may perform legitimate informational activities, such as reporting about and explaining NG activities and programs, justifying NG policies to the public, or rebutting attacks on NG policies.

f. Contact in a Personal Capacity. NG personnel, in their personal capacity during non-work or non-duty hours or when not performing federally funded duty, may contact Members of Congress or their staff so long as federally appropriated funds or resources are not used in the process.

g. Contact in a State Capacity. Subject to the provisions of state law, NG personnel may contact a Member of Congress or Congressional staff for the purpose of supporting or opposing legislation, provided they are not paid with Federal funds, no Federal resources are used, and the contact is clearly and explicitly made in a state capacity.

ENCLOSURE C

REFERENCES

PART I. REQUIRED

- a. 5 U.S.C. § 552, “Public information; agency rules, opinions, orders, records, and proceedings”
- b. 18 U.S.C. § 1913, “Lobbying with appropriated moneys”
- c. 5 U.S.C. § 3107, “Employment of publicity experts; restrictions”
- d. 31 U.S.C. §§ 1341, 1342, 1349-1351, and 1511-1519, Antideficiency Act
- e. P.L. 113-76, Consolidated Appropriations Act
- f. GAO-14-163SP, 13 March 2014, “Principles of Federal Appropriations Law: Annual Update of the Third Edition”
- g. 31 U.S.C. § 1352, “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions”

PART II. RELATED

- h. CNGB Instruction 0500.01, 08 November 2012, “National Guard Bureau Relations with Congress”
- i. 32 CFR Part 28, “New Restrictions on Lobbying”
- j. 10 U.S.C. § 10502, “Chief of the National Guard Bureau: appointment; advisor on National Guard matters; grade; succession”
- k. 10 U.S.C. § 10503, “Functions of National Guard Bureau: charter”
- l. DoD Directive 5105.77, 21 May 2008, “National Guard Bureau”
- m. 18 U.S.C. § 1341, “Frauds and swindles”
- n. AR 360-1, 25 May 2011, “The Army Public Affairs Program”
- o. AF Policy Directive 35-1, 28 September 2012, “Public Affairs Management”
- p. OMB Circular A-11, 25 July 2013, “Preparation, Submission, and Executive of the Budget”

q. OMB Circular A-19, 20 September 1979, "Legislative Coordination and Clearance"

## GLOSSARY

### PART I. ABBREVIATIONS AND ACRONYMS

ANG	Air National Guard
ARNG	Army National Guard
CNGB	Chief of the National Guard Bureau
DoD	Department of Defense
IAW	in accordance with
JCS	Joint Chiefs of Staff
NG	National Guard
NGB	National Guard Bureau
NGB-JA	Office of the National Guard Bureau Chief Counsel
OSD	Office of the Secretary of Defense
VCNGB	Vice Chief of the National Guard Bureau

### PART II. DEFINITIONS

Lobbying -- Communication intended to influence a member of Congress 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.