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United States Government Accountability Office  
Washington, DC 20548

B-304228

September 30, 2005

The Honorable Frank R. Lautenberg  
United States Senate

The Honorable Edward M. Kennedy  
United States Senate

Subject: *Department of Education—No Child Left Behind Act Video News Release and Media Analysis*

In a letter dated October 14, 2004, you requested our opinion on the Department of Education's (Department) use of appropriated funds to hire Ketchum, Inc. (Ketchum), to conduct a media analysis and to produce and distribute a video news release (VNR) regarding programs available under the No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (Jan. 8, 2002)(NCLB Act). You asked whether these activities violated the governmentwide prohibition against using appropriated funds for publicity or propaganda not authorized by Congress. *See Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, div. F, title VI, § 624, 118 Stat. 3, 356 (Jan. 23, 2004); Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, div. J, title VI, § 626, 117 Stat. 470 (Feb. 20, 2003).*

We have applied the publicity or propaganda prohibition to forbid the use of appropriations for (1) covert propaganda, (2) purely partisan activities, or (3) self-aggrandizing activities. B-302504, Mar. 10, 2004. The VNR on supplemental education services under the NCLB Act at issue here contains a prepackaged news story that fails to identify the Department as the source of the news story. *See id.* Because the Department's role in the production and distribution of the prepackaged news story is not revealed to the target audience, the prepackaged news story constitutes covert propaganda. We disagree with the Department's contention that the prepackaged news stories are not covert propaganda because they contain only factual information. To constitute a legitimate information dissemination activity that does not violate the publicity or propaganda prohibition, the Department must inform the viewing public that the government is the source of the information disseminated.<sup>1</sup>

With respect to the media analysis, the Department directed Ketchum to assess whether its messages were reaching target audiences and were being mentioned in a positive

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<sup>1</sup> *See also* Pub. L. No. 109-13, title VI, § 6076, 119 Stat. 231, 301 (May 11, 2005).

way. While we question the usefulness of the Department's methodology in achieving its stated objective, we recognize that a media analysis similar to the one conducted by the Department is within its authority. As part of this media analysis, however, Ketchum evaluated the media perception that the "Bush Administration/the GOP is committed to education." Appropriated funds are not available to evaluate the Republican Party's (or any other political party's) commitment to education, and the Department should take appropriate steps to ensure that no such use of its appropriations occurs in the future.

## BACKGROUND

On January 8, 2002, President Bush signed into law the NCLB Act, with the stated purpose "to close the achievement gap with accountability, flexibility, and choice, so that no child is left behind." Pub. L. No. 107-110, 115 Stat. 1425 (Jan. 8, 2002). In addition to reauthorizing funding for education programs, the Act establishes new testing and accountability requirements for public schools designed to ensure that public school students achieve a level of proficiency in reading and mathematics. *See* Pub. L. No. 107-110, title I, § 1001, 115 Stat. at 1439-40. The Act authorizes, among other things, federal funding for supplemental educational services directed at assisting economically disadvantaged schools and their students. *See* Pub. L. No. 107-110, title I, pt. A, § 1116, 115 Stat. 1478 (*codified in* 20 U.S.C. § 6316). These supplemental services are available to eligible students of schools identified by local agencies as failing to make adequate yearly progress as identified by each state's plan for three consecutive years. 20 U.S.C. § 6316(e)(1). In addition to establishing requirements for identification by local education agencies, 20 U.S.C. § 6316(b)(1), the Act requires that school districts provide parents with appropriate notice of the availability of supplemental educational services, among other information, 20 U.S.C. § 6316(b)(6).

On May 14, 2003, the Department entered into a contract with Ketchum to "develop a comprehensive long-range communications strategy for the Department to communicate to the public information on the No Child Left Behind" Act. Contract at 5. The contract specified that the intended work products include "audio products, videos and some print materials that present clear, coherent, targeted messages regarding ED's programs and that relate to the Department's legislative initiatives . . ." *Id.* at 6. The contract specified that Ketchum was to produce audio and video programs focusing on the Department initiatives, including but not limited to the NCLB Act. *Id.* at 9.

The contract also required "[a]ssessment of the [NCLB Act] knowledge level of diverse audiences and development of targeted communications strategies to reach those who most need the information." Under the contract, Ketchum was required to "[e]valuate effectiveness of the strategies and provide analyses" and "[c]onduct media analysis, focus groups, and other market research." *Id.* at 7.

The Department issued 21 work requests as part of its contract with Ketchum. Pursuant to these work requests, Ketchum delivered various written, audio, and video products, including but not limited to focus group reports, radio public service announcements, brochures, posters, and public polling results. Work Requests 2-21. In September 2003, the Department issued a work order for a VNR regarding supplemental educational

services. Work Request 6 at 2. The statement of work specified that Ketchum was to “create a localized video news feed that features a spokesperson with a localized ‘message’ for each of the 30-target markets.” Statement of Work 6 at 2.<sup>2</sup> The Department paid \$38,421.06 for the production and distribution of the Supplemental Educational Services VNR. Talbert Letter, at 2.

The Department also issued two work requests for media analyses of a random selection of news stories published from April 2003 through January 2004. The Department requested that this “benchmark” analysis contain quantitative and qualitative components to determine the current effectiveness of the “messages” reaching the public about the Act. Work Requests 2, 8; Statements of Work 2, 8. The purpose of these analyses was to provide the Department with information to determine “if the public is gaining an understanding of the law . . .” and to understand “the most appropriate media strategy and help in shaping and designing media activities.” Statement of Work 2, Benchmarking. The Department paid \$96,850.99 for the benchmark media analyses. Talbert Letter, at 2.

#### THE SUPPLEMENTAL EDUCATIONAL SERVICES VNR

The VNR at issue here begins with a slate<sup>3</sup> announcing the topic of the VNR: “Tutoring and Remedial Classes Available to Thousands of Students.” This title slate is followed by a series of slates with statements and “key facts” regarding the NCLB Act, contact information directing viewers to a Web site and toll-free number operated by the Department, and contents of the remaining VNR segments. B-roll film follows the slates and contains statements from Roderick R. Paige, Secretary, U.S. Department of Education; Valerie Garland, a parent of a student receiving supplemental educational services; and Alberta Paul, Program Coordinator for Supplemental Services.

A prepackaged news story, referred to as a story package, appears after the b-roll. It begins with a suggested anchor lead-in script, indicating that Karen Ryan has a report on how some students may be eligible for after-school free tutoring services. As the prepackaged news story begins, a female narrator reports on a predicament facing Valerie Garland and her son, who will be repeating the 11<sup>th</sup> grade due to poor grades. The

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<sup>2</sup> In addition to the VNR at issue here, the Department issued four other work requests for VNRs. The Department issued two work requests after May 2004, when we issued B-304710, May 19, 2004, finding that a prepackaged news story violated the publicity or propaganda prohibition. In the two work requests subsequent to that decision, the Department specified that Ketchum was to create a VNR with only a b-roll package and that would not contain a prepackaged news story. The topics of the VNRs were financial aid, Education Science Summit, back-to-school programs and school improvement issues. While this opinion addresses only the VNR on supplemental educational services, the standards that we apply in this opinion should also be used to evaluate whether any of the other four VNRs violate the prohibition.

<sup>3</sup> A slate is a visual feed containing title cards and other information explaining key facts and other information contained on a VNR. *See* B-302710, May 19, 2004.

narrator tells us that Ms. Garland knows that her son could do better if he had some extra help. At this point, the story package includes a statement from Ms. Garland describing her struggle to find help for her son through the school system. The narrator explains that under the NCLB Act, children who attend schools that do not meet federal standards can enroll in the tutoring programs. The story continues with statements from Secretary Paige and Alberta Paul, indicating that the tutoring is available at no cost and these services are having a positive impact on its participants. The narrator completes the prepackaged story as follows: “For Valerie and many other parents of children with poor grades, this is a program that gets an A Plus. In Washington, I’m Karen Ryan reporting.” The prepackaged news story does not inform the audience that the Department produced and distributed the news story.<sup>4</sup>

The VNR continues with additional b-roll film, including video with Valerie and her children at home, children at school, Secretary Paige visiting a school, Alberta Paul in her office, and the exterior of the Department’s building in Washington, D.C. The VNR concludes with b-roll film of statements from Secretary Paige and Nina Rees, Deputy Under Secretary of Education, Innovation and Improvement, regarding specific geographic areas and the deadlines for enrolling for supplemental educational services.

In B-302710, May 19, 2004, we examined VNRs produced and distributed by the Department of Health and Human Services (HHS) containing similar prepackaged news stories that failed to identify HHS as the source of the news story. At no point in the news story did HHS identify itself as the source of the story. We concluded that these prepackaged news stories violated the publicity or propaganda prohibition because they constituted covert propaganda. *Id.* The obvious, “critical element” of covert propaganda is concealment of the agency’s role in preparing the material from the target audience.<sup>5</sup> B-229257, June 10, 1988. *See also* B-303495, Jan. 4, 2005; B-302710, May 19, 2004. In January 2005, we examined VNRs containing unattributed prepackaged news stories,

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<sup>4</sup> The Department’s regulations require that contractors who are publicizing the work of the Department contain the following disclosure:

“This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number \_\_\_\_\_. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.”

48 C.F.R. § 3452.227-70. The contract with Ketchum did not include this disclosure language requirement.

<sup>5</sup> In addition to covert propaganda, our decisions have recognized two other types of information activities that violate the publicity or propaganda prohibition, including self-aggrandizement and materials characterized as purely partisan materials. *See* B-302504, Mar. 10, 2004.

similar to the HHS VNRs, that the Office of National Drug Control Policy (ONDCP) produced and distributed. B-303495, Jan. 4, 2005. Applying the same standard set forth in B-302710, we concluded that the prepackaged news stories of the ONDCP VNRs also violated the publicity or propaganda prohibition.

The VNR at issue here is not materially different from the HHS and ONDCP VNRs. It contains a prepackaged news story that fails to identify the Department to the targeted audience as the source of the prepackaged news story. Consistent with our HHS and ONDCP opinions, the Department's prepackaged news story constitutes covert propaganda and violates the publicity or propaganda prohibition. The Department contends that its prepackaged news story is not covert propaganda because it contains only "factual information," Talbert Letter, at 8, and it is not required to disclose the source of only factual information. In support of this view, the Department cites a July 30, 2004, opinion of the Office of Legal Counsel (OLC) of the Department of Justice. The OLC opinion disagreed with our May 2004 conclusion that HHS's prepackaged news stories violated the publicity or propaganda prohibition. OLC believes that if the content of the news stories is factual, the government need not disclose itself as the source of the news story; disclosure is only necessary if the news story or other communication advocates a point of view. *See* July 30, 2004, OLC Opinion at 7, 13.

We disagree. The failure of an agency to identify itself as the source of a prepackaged news story misleads the viewing public by encouraging the viewing audience to believe that the broadcasting news organization developed the information. The prepackaged news stories are purposefully designed to be indistinguishable from news segments broadcast to the public. When the television viewing public does not know that the stories they watched on television news programs *about the government* were in fact prepared *by the government*, the stories are, in this sense, no longer purely factual—the essential fact of attribution is missing.

Source identification is essential in assessing the credibility and utility of any communication. *See* Garth S. Jowett and Victoria O'Donnell, *Propaganda and Persuasion*, 215, 221-28 (1992) (noting the importance of source identification in analyzing information). OLC failed to recognize that withholding the source of information by the agency removes the prepackaged news story from the realm of "purely factual," since it severely inhibits the capability of the reader or listener to assess the credibility of the information proffered and its utility to the reader or listener.<sup>6</sup>

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<sup>6</sup> OLC provides several dictionary definitions of propaganda in its opinion. *See, e.g.*, July 30, 2004, OLC Opinion at 9 (defining propaganda as "to advocate, disseminate, and encourage a particular view, doctrine, or cause"). Accepting, for the purposes of discussion, these definitional measures of propaganda, both the HHS and the Department prepackaged news stories "advocate, disseminate, and encourage a particular point of view." The Department's prepackaged news story at issue "encourage[s] a particular view" when Ms. Ryan, the putative news reporter, states at the end of the story, "[T]his is a program that gets an A-Plus." The HHS prepackaged news story also "advocate[ed] and encouraged a particular point of view" through the selection of fact and perspectives highlighted or omitted. Only the most innocent, or naïve, would

For nearly 20 years, the Comptroller General has found source identification to be an essential element of government communications and has found agencies in violation of the prohibition when they failed to identify the government as the source. *See, e.g.*, B-223098, B-223098.2, Oct. 10, 1986 (Small Business Administration violated the prohibition when it prepared suggested editorials for placement in newspapers around the country, and did not disclose to the readers that the government was the source of the editorials); *see also* 66 Comp. Gen. 707, 708-9 (1987) (State Department violated prohibition by paying others to write op-ed pieces for publication in newspapers without revealing that the writer was paid by the State Department).<sup>7</sup> Over this same time period, Congress continued to re-enact the prohibition with little change and without criticism.

This year, Congress enacted section 6076 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, 110 Stat. 231, 301 (May 11, 2005), which affirmatively rejected OLC's opinion. Section 6076 provides that no appropriations "may be used by an executive branch agency to produce any prepackaged news story intended for broadcast or distribution unless the story includes a clear notification within the text or audio of the prepackaged news story that the prepackaged news story was prepared or funded by that executive branch agency." Pub. L. No. 109-13, title VI, § 6076, 119 Stat. 231, 301 (May 11, 2005). The conference report accompanying Public Law 109-13 states that section 6076 "confirms the opinion of the Government Accountability Office dated February 17, 2005."<sup>8</sup> H.R. Conf. Rep. No. 109-72, at 158-59 (2005).

The Antideficiency Act prohibits authorizing an expenditure that exceeds available budget authority. *See* B-300325, Dec. 13, 2002. We have interpreted agency violations of explicit prohibitions on the use of appropriated funds as a violation of the Antideficiency Act. *See* B-302710, May 19, 2004; *see also* B-303495, Jan. 4, 2005. Accordingly, the Department violated the Antideficiency Act because no appropriations are available for the production of materials that violate the publicity or propaganda prohibition. The Antideficiency Act requires the Department to report immediately an Antideficiency Act violation to the President and Congress. *See* 31 U.S.C. §§ 1351, 1517(b). On the same day that the Department transmits reports of its violations to the President and

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conclude that the selection of facts and perspectives was not done to encourage the audience to have a favorable view of new legislation. Thus, even under the OLC analysis, these prepackaged news stories would be propaganda.

<sup>7</sup> We find no difference between explicit advocacy that may be contained in an editorial piece and implicit advocacy of a news story that purposefully reports certain facts and omits other facts to encourage public support for its position.

<sup>8</sup> The conferees were referring to the Comptroller General's circular letter to Heads of Agencies alerting the agencies to our analysis concerning unattributed prepackaged news stories and referencing our HHS and ONDCP opinions.

Congress, the Department must also send copies of those reports to the Comptroller General.<sup>9</sup> *See id.*

## THE MEDIA ANALYSIS

Your letter also raised concerns about the use of appropriated funds to conduct the media analysis. In particular, you expressed concern that the Department may have violated the law by asking Ketchum to assess media reports to determine whether the media reports, among other things, included the message that “The Bush Administration/the GOP is committed to education.”

In a work request, the Department directed Ketchum to “conduct baseline research to benchmark the media coverage for the messages associated with the No Child Left Behind Act . . . in trade and consumer media outlets.” Work Request 2, Statement of Work; Work Request 8, Statement of Work. The Department also directed Ketchum to “use a combination of quantitative and qualitative media analyses . . . [to] help determine if the desired messages are reaching the target audiences; if the issue is being mentioned in a positive way as part of the editorial content; and if spokespeople are effectively referencing the issue in news articles.” *Id.* The stated purpose for the work request was to assist the Department “in determining if the public is gaining an understanding of the law . . . [and] in shaping and designing media activities.” *Id.*

Ketchum delivered several reports to the Department, covering the time period of April 2003 through January 2004.<sup>10</sup> Talbert Letter, at 4. To compile these reports, Ketchum analyzed a random sample of news articles from trade publications, newspapers, magazines, and television and radio programs that referenced the NCLB Act in the text or headline and were published in the relevant time period. *See, e.g.*, No Child Left Behind Benchmark Analysis, April–June 2003 at 3. Ketchum then assigned a value or algorithm to each article based on four criteria, including (1) the type of publication or media outlet publishing the article, assigning higher points to publications that are more widely read; (2) inclusion of positive and negative messages, noting that key messages were determined jointly by the Department and Ketchum; (3) inclusion of expert quotes in support of NCLB; and (4) tonality of the article. *Id.* at 4.

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<sup>9</sup> An agency may send copies of its Antideficiency Act reports in electronic form to AntideficiencyActReports@gao.gov. B-304335, Mar. 8, 2005. In the alternative, an agency may send copies of reports to the following address: Comptroller General of the United States, U.S. Government Accountability Office, Antideficiency Act Reports, Room 7165, 441 G Street, NW, Washington, DC 20548.

<sup>10</sup> The Department provided us with copies of six benchmark analysis reports, including two quarterly reports, analyzing articles published from April through June 2003 and July through September 2003, and four monthly reports, analyzing articles published during October 2003 through January 2004.

In order to determine whether an article had a positive or negative message, Ketchum looked for the presence of 23 different themes within an article. The positive messages that Ketchum looked for in news articles were:

- NCLB supports learning in the early years, helping to prevent learning difficulties that arise later;
- NCLB provides more information for parents about their child's progress;
- NCLB alerts parents to important information on the performance of their child's school;
- NCLB is working to close the achievement gap between "haves" and "have nots";
- NCLB improves teaching and learning by providing better information to teachers and principals/fairer standards for testing;
- NCLB ensures teacher quality is a high priority;
- NCLB gives more resources to schools, such as tutoring services;
- NCLB allows parents more choice (transfer option);
- NCLB makes schools accountable for students' success;
- The Bush Administration/the GOP is committed to education;<sup>11</sup> and
- NCLB is based on scientific methods/proven research to achieve results.

The negative messages that Ketchum looked for were:

- NCLB is not sufficiently funded;
- NCLB law is too vague and confusing and too difficult for states to implement;
- Federal testing requirements contradict existing state requirements; states will have to spend a lot to develop new tests;
- There are wide discrepancies between state criteria for evaluating under performing schools;
- Teacher training programs do not have enough money to train teachers to meet new requirements;
- Better schools will become too crowded/burdened as the school transfer option progresses;
- In some districts, there are no better schools to which students may transfer, or the better schools are already crowded;
- Spending money on transporting students to better schools means taking money away from schools; parents have to spend extra time/money for transportation;
- States do not have enough flexibility; federal government/Bush administration is interfering;
- Increased testing is not a substitute for education reform; "teaching to the test";
- The new law may cause a teacher shortage, as qualification requirements are too rigid; teachers are set up to fail; and

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<sup>11</sup> This positive factor appeared only in the second quarter report, July 2003–October 2003. In other reports the factor appeared as "The Bush Administration is committed to education" or "The Bush Administration/federal government is committed to education."



- States are lowering their standards to avoid negative labels/unfairly stigmatizing schools.

After scoring each article, Ketchum provided the Department with a list of the highest and lowest scoring articles, an analysis of the most prevalent positive and negative messages—both nationally and on an individual state basis—and a summary of articles written by the most prevalent reporters.

As a general matter, an agency may use appropriations to engage in information dissemination and related activity, such as the media analysis, to further its legitimate interest of informing the public about its policies and programs. *See* B-302504, Mar. 10, 2004 (quoting B-130961, Oct. 26, 1972). Indeed, our decisions reflect societal values in favor of a robust exchange of information between the government and the public it serves. *See, e.g.*, B-184648, Dec. 3, 1975 (discussing an agency’s “legitimate interest in communicating with the public”).

After examining all the benchmark analysis reports, including two quarterly reports, we found the assessment of one message that appeared in the second quarter analysis to be inappropriate. Ketchum looked for the positive message—“The Bush Administration/the GOP is committed to education”—in a random sample of articles. The five other reports did not analyze this factor or any other objectionable factor. Under the Purpose Statute, 31 U.S.C. § 1301(a), appropriated funds may be used only for purposes for which they were appropriated and for any expenses that are reasonably necessary for the accomplishment of that purpose. B-303170, Apr. 22, 2005. Stated differently, Congress appropriates funds for official government functions, not for political activities of the administration, B-302504, Mar. 10, 2004, or personal obligations of federal employees, B-261720, Apr. 1, 1996. Appropriated funds are not available to gather information concerning the media’s perception of a political party.

The Department used the “Departmental Management—Program Administration” appropriation under the Consolidated Appropriations Resolution, 2003, to contract for the media analysis. Talbert Letter, at 1. This appropriation is available for carrying out the Department of Education Organization Act of 1979, Pub. L. No. 96-88, 93 Stat. 668 (Oct. 17, 1979). *See* Pub. L. No. 108-7, div. G, tit. III, 117 Stat. 11, 331-2 (Feb. 20, 2003). This Act requires that the Department “inform the public regarding federally supported education programs. . . and . . . collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving the intended purposes of such programs.” 20 U.S.C. §§ 1231a(2), (3).

While the Department may use its funds for a media analysis consistent with the Department’s public information functions under section 1231a(2), the gathering of information regarding the media and public’s favorable view of the Republican (or any other political) Party does not fall within the information functions Congress authorized the Department to perform. We see no use for such information except for partisan, political party purposes. Engaging in a purely political activity such as this is not a proper use of appropriated funds. *See* B-147578, Nov. 8, 1962 (noting that appropriated funds are not available for purely partisan purposes or in an effort to aid a political

party). *Cf.* B-248991, Mar. 3, 1993 (examining the apportionment of “mixed trips” involving official and political business when determining what expenses were consistent with the requirements of 31 U.S.C. § 1301).

The evaluation of the media’s representation of the Republican Party comprises, however, a small part of the entire analysis that Ketchum conducted at the direction of the Department. It is virtually impossible to separate and cost out the amount of funds associated with this factor. The Department incurred little if any additional expense by including the improper factor in one of six analyses, and there is no evidence that the Department otherwise spent funds to benefit the Republican Party. *See* B-136762, Aug. 18, 1958 (finding that although no funds were available for the Deputy Assistant Secretary of Defense’s speech, no additional funds were expended in delivering the speech). We caution that if the Department chooses to conduct media analyses in the future, it should be more diligent in its efforts to ensure that such analyses are free from explicit partisan content.<sup>12</sup>

Although we question whether the media analysis as structured was an effective means of determining where the public needs more information to ensure that parents have “accurate information on which to base decisions about their children’s education,”<sup>13</sup> or to determine “if the public is gaining an understanding of the law,” we do not find that it violated the publicity or propaganda prohibition. Generally, we will not object to an agency’s use of appropriated funds to engage in information functions if the agency justifies its activity as “made in connection with official duties” and there is a reasonable basis for that justification. B-302504, Mar. 10, 2004; B-144323, Nov. 4, 1960.

As its justification for conducting a media analysis, the Department contends that the purpose of the media analysis was to identify “where the media, and therefore the public, needed more information or explanation of how the law would benefit the public” and to ensure that parents would have “accurate information upon which to base decisions about their children’s education.”<sup>14</sup> Talbert Letter, at 6. Although we question the efficacy of using a media analysis of positive and negative messages for assessing the public’s knowledge, we decline to find that this analysis is improper. We have consistently held that an agency’s information dissemination functions include informing the public about the administration’s policies and the defense of those policies. *See* B-302992, Sept. 10, 2004; B-302504, Mar. 10, 2004; B-223098, B-223098.2, Oct. 10, 1986. It is therefore not unreasonable for the Department to track the messages reaching the public. To find otherwise would unduly restrain the recognized and legitimate exercise of the Department’s and the Administration’s ability to inform the public of its policies,

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<sup>12</sup> The Department’s stated purpose in the contract is to determine “if the public is gaining an understanding of the law.” Using an analysis of positive and negative messages—all of which might be true—does not further the Department’s goal of understanding what the public knows about the NCLB Act.

<sup>13</sup> Talbert Letter, at 6.

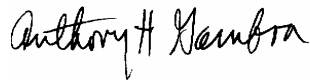
<sup>14</sup> Work Request 2, Statement of Work; Work Request 8, Statement of Work.

to justify those policies and to rebut attacks on those policies. *Cf.* B-302504, Mar. 10, 2004 (noting that restricting materials with some political content would curtail the Administration's legitimate exercise of authority to defend and explain its policies).

## CONCLUSION

The Department's use of appropriated funds to produce a prepackaged news story regarding Supplemental Educational Services that failed to inform the viewing audience of the government source violates the publicity or propaganda prohibition. As we have stated in previous opinions and as recently affirmed by Congress, to avoid a violation of the publicity or propaganda prohibition, an agency must inform the viewing public that the government is the source of the information disseminated. Moreover, because the Department had no appropriation available to produce and distribute materials in violation of the publicity or propaganda prohibition, the Department violated the Antideficiency Act, 31 U.S.C. § 1341. In accordance with 31 U.S.C. §§ 1351, 1517(b), the Department must report immediately its Antideficiency Act violation to the President and Congress and also send a copy of all reports to the Comptroller General.

With regard to the media analysis, there were no appropriations available for analyzing the media and public's opinion concerning the Republican Party's (or any other political party's) commitment to education. However, the media analysis as a whole was within the information functions authorized to be performed and the inclusion of a partisan factor in one of six media reports incurred little if any additional expense. Nevertheless, we caution that, if the Department chooses to conduct media analyses in the future, it be more diligent in its efforts to ensure that such analyses be free from such explicit partisan content.



Anthony H. Gamboa  
General Counsel

## DIGEST

1. Consistent with prior case law, we conclude that the Department of Education's (Department) use of appropriated funds to produce and distribute a prepackaged news story regarding programs under the No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (Jan. 8, 2002), violated the publicity or propaganda prohibition, *see, e.g.*, Pub. L. No. 108-199, div. F, title, VI, § 624, 118 Stat. 3, 356 (Jan. 23, 2004). We disagree with the Department's contention that the prepackaged new story is not covert propaganda because it contained only factual information. To constitute legitimate information dissemination activity, the Department must inform the viewing public that the government is the source of the information dissemination.
2. There are no appropriated funds available for the Department to conduct a media analysis that gathers information regarding the media and public's perception of the Republican Party's (or any other political party's) commitment to education. Because the Department incurred little if any expense by including this purely partisan factor in an otherwise acceptable media analysis, we find that the Department did not violate the publicity or propaganda prohibition. However, we caution that if the Department conducts future media analyses, it should be more diligent in its efforts to ensure that such analyses are free from explicit partisan content.