



Advertising by the Federal Government: An Overview

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Summary

Government advertising can be controversial if it conflicts with citizens' views about the proper role of government. Yet some government advertising is accepted as a normal part of government information activities.

It is difficult to calculate the amount of funds spent by the federal government on advertising each year. The reasons for this include (1) there is no government-wide definition of what constitutes advertising and (2) there is no central authority to which agencies are required to report advertising expenses.

However, an estimate of the federal government's expenditures on contracts for advertising services can be derived from data in the Federal Procurement Data System. According to these data, federal agencies spent \$750.4 million on advertising services in FY2011.

Agencies' discretion to advertise is limited primarily by restrictions imposed by Congress in authorization and appropriations statutes and by the principles set forth in volume 1 of the Government Accountability Office's (GAO's) *Principles of Federal Appropriations Law*. Any oversight of government advertising expenditures rests with agencies' inspectors general, GAO, and Congress.

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Background

Americans have long been of mixed mind about advertising. On the one hand, advertising is beneficial insofar as it provides information. On the other hand, advertising (be it private or governmental) often attempts to persuade individuals to alter their behaviors.¹

Unease with advertising can be magnified if the advertiser is the government, especially if an advertisement conflicts with widely held beliefs about government.

Many Americans believe that government was established to protect liberty, and that the essence of liberty is the freedom to think and live as one pleases (provided one does not harm others). Many individuals also believe that government should not needlessly or wantonly spend taxpayer money, and that citizens should be thrifty and self-reliant. In light of these beliefs, it is not surprising that controversies have arisen around government advertisements that

- have attempted to dissuade individuals from using marijuana,²
- have promoted the use of social service programs,³
- are viewed as overly expensive or wasteful,⁴ or
- are perceived as possibly misleading.⁵

However, not all government advertising is controversial. Few complain when the government advertises

- federal agency job openings,⁶
- competitions for federal contracts,⁷ or
- the sale of surplus government property.⁸

¹ Paradoxically, this can create an image problem for advertising: “Advertising has always been the Peck’s Bad Boy of American business ... urging us to buy things we probably don’t need and often can’t afford.” Andrew Hacker, “Poets of Packaging, Sculptors of Desire,” *New York Times*, June 24, 1984, section 7, p.1.

² Jacob Sullum, *Saying Yes: In Defense of Drug Use* (New York: Tarcher/Putnam, 2003).

³ Those who advocate self-reliance may take offense at advertisements that encourage individuals to more heavily utilize government support programs. For example, Tom Schatz, president of Citizens Against Government Waste, criticized the use of a blimp to advertise Medicare. “The notion of advertising an entitlement program is strange to begin with.” Citizens Against Government Waste, “It’s a Bird! It’s a Plane! It’s a Huge Boondoggle! Medicare Blimp Costs Taxpayers \$600,000,” *PR Newswire*, November 3, 2003.

⁴ E.g., Mark Longap, “Auto Racing’s Military Sponsorships Questioned,” *Associated Press*, February 23, 2011; and John Fritze, “The National Cycling Team Gets Millions in Postal Funds,” *Indianapolis Star*, July 7, 2002, p. A1.

⁵ E.g., Government Accountability Office, “Department of Health and Human Services—Use of Appropriated Funds for Technical Assistance and Television Advertisements,” B-320482, October 2010, pp. 6-7; and Government Accountability Office, *New Dollar Coin: Public Perception of Advertising*, GAO-GAO/GGD-00-92, April 2000.

⁶ E.g., the federal government’s job posting website, <http://USAJobs.gov>, is heavily trafficked and apparently well regarded. Office of Personnel Management, *Human Resources Flexibilities and Authorities in the Federal Government* (Washington: OPM, 2008), p. 13.

⁷ E.g., 41 U.S.C. 5 requires agencies to advertise in the course of certain procurement activities.

⁸ 40 U.S.C. 101 et seq. sets the federal government property disposition process. On public notification of property and the property disposition process, see CRS Report R41240, *Real Property Disposition: Overview and Issues for the 112th Congress*, by Garrett Hatch.

These sorts of advertisements likely are viewed as part of government's duty to truthfully inform the public about its activities. As one of the Hoover Commission task forces wrote a half-century ago,

Apart from his responsibility as spokesman, the department head has another obligation in a democracy: to keep the public informed about the activities of his agency. How far to go and what media to use in this effort present touchy issues of personal and administrative integrity. But of the basic obligation [to inform the public] there can be little doubt.⁹

Additionally, some government advertising is mandated by law. For example, Congress established the National Youth Anti-Drug Media Campaign in a 1997 appropriations act (P.L. 105-61; 111 Stat. 1272; 22 U.S.C. 1708). This statute directs the Office of National Drug Control Policy (ONDCP) to produce media campaigns to discourage illicit drug use. In recent years, Congress has funded this media campaign at between \$45 million (FY2010 and FY2011) and \$99 million (FY2006 and FY2007).¹⁰

And not all advertisements that tell people what to do are ill regarded. Few have criticized government advertising campaigns that have encouraged citizens to buy war bonds or avoid inadvertently setting forest fires.¹¹

Estimates of Government Advertising Expenditures

The Challenges

The federal government's expenditures on advertising are difficult to ascertain.¹² There are at least two reasons for this: (1) there is no government-wide definition of what constitutes advertising and (2) there is no central authority to which agencies are required to report advertising-related expenditures.

Absent an agreed-upon definition of "advertising" or a government-wide reporting system for advertising expenses, agencies have had great discretion to budget their in-house advertising-related costs. The Government Accountability Office (GAO, then the General Accounting Office) brought this to congressional attention in 1977 after being asked to estimate government-wide advertising expenses:

⁹ The Commission on Organization of the Executive Branch of the Government, *Report of the Task Force on Departmental Management: Prepared for the Commission on Organization of the Executive Branch of the Government* (Washington: GPO, 1949), Appendix E, p. 57.

¹⁰ Office of National Drug Control Policy, *Fiscal Year 2012 Budget* (submission), p. 33; and Executive Office of the President, "FY 2012 Budget and Performance Study Summary: Companion to the National Drug Control Strategy," April 2, 2011, p. 217.

¹¹ Some government advertisements have been very well regarded, such as the "Rosie the Riveter" advertisements during World War II. Ad Council, "Women in War Jobs-Rosie the Riveter (1942-1945)," at <http://www.adcouncil.org/default.aspx?id=128>.

¹² In the past, the Government Accountability Office (GAO) and the Office of Management and Budget (OMB) have surveyed agencies on their advertising expenditures. None of these studies include costs associated with government public service announcements (i.e., advertisements that media run at no charge to the government).

There is no requirement that agencies identify advertising costs within their budgets. Also, budgeting of these costs varies by agency. For example, military recruiting advertising is budgeted under Operations and Maintenance for each of the military departments, and Energy Research and Development Administration recruiting is budgeted under Program Direction, Program Support. Energy Research and Development Administration public information is budgeted under ... Program Support.¹³

The challenges of defining advertising and, therefore, advertising expenses are significant. Hypothetical examples can be illustrative of the challenges.

- An agency's "communications specialist" draws up a press release touting his or her agency's policy achievements of the past year, e-mails copies of it to newspaper editors around the country, and holds subsequent telephone interviews with reporters.
- An agency hires a private advertising firm to help it work with Ad Council to produce a public service announcement that discourages dangerous behaviors that inflict large costs on society and the government. The announcement is run on radio and television stations at no cost to the agency, and the agency's head delivers public speeches on the subject in 10 cities throughout the United States.¹⁴

The questions these examples provoke include the following:

- Do these activities constitute advertising? Or might any of these examples be more accurately characterized as public notification, media relations, or public education activities?
- How should an agency account for the government employee time and agency resources (in-house expenses) related to these activities?
- In accounting for costs, should an agency also tabulate any benefits (or return on investment) of the communications?

One Approach to Estimating Government Advertising Expenses

Despite these challenges, an estimate of the federal government's expenditures on contracts for advertising services can be derived from utilizing data from the Federal Procurement Data System (FPDS).¹⁵

The FPDS has some significant limitations as a data source for agency advertising expenditures. The FPDS does not include expenditures by the legislative or judicial branches or the U.S. Postal Service. Moreover, the FPDS does not include any agency in-house expenses related to

¹³ General Accounting Office, "Government Expenditures for Advertising, B-144618," July 12, 1977, p. 2.

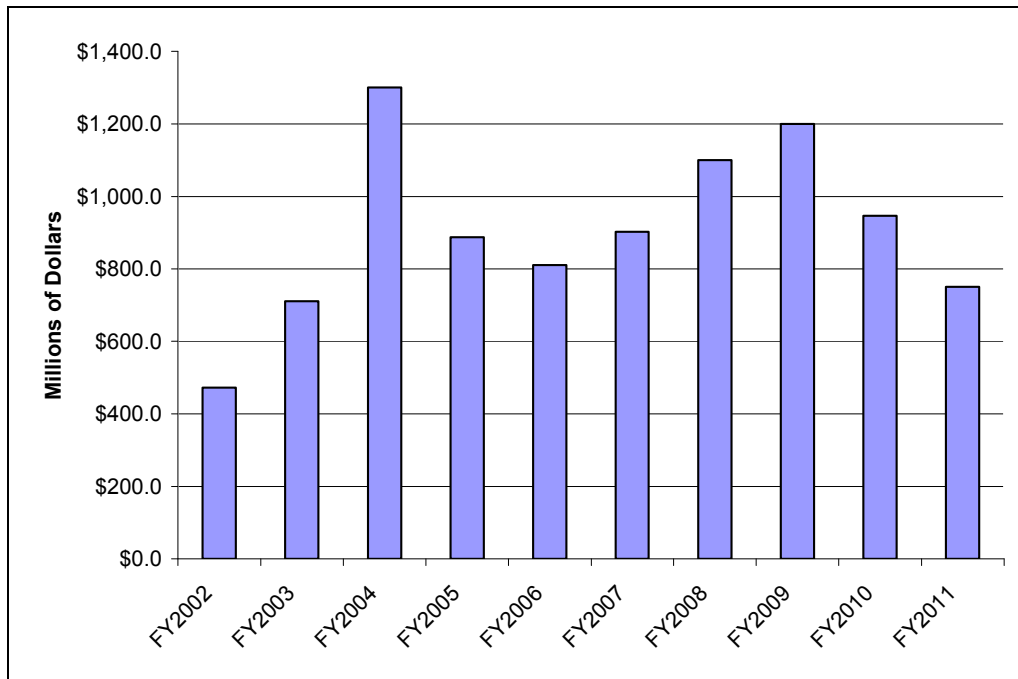
¹⁴ Since 1942, the private, not-for-profit Ad Council has helped the federal government produce public service announcements (PSAs). Through its partnerships, it delivers PSAs to the public via radio, television, print media, and the World Wide Web at no cost to the government. For details and examples, see the website of the Ad Council at <http://www.adcouncil.org/>.

¹⁵ The General Services Administration is responsible for the Federal Procurement Data System. FPDS data may be accessed at <https://www.fpds.gov/> or at <http://www.usaspending.gov/>.

advertising. Finally, without agreement among agencies over what constitutes advertising, any contracting data drawn from FPDS must be viewed with considerable caution.¹⁶

According to FPDS data,¹⁷ federal agencies spent¹⁸ \$750.4 million on contracts for “advertising services” in FY2011.¹⁹ This amount is the least since FY2003. **(Figure 1)**

Figure I. Figure I. Executive Branch Agency Spending On Advertising Services Contracts



Source: Federal Procurement Data System via UsaSpending.gov.

The five agencies that spent the most for advertising service contracts in FY2011 were

- the Department of Defense: \$473.6 million;
- the Department of Health and Human Services: \$87.6 million;
- the Department of the Treasury: \$50.6 million;

¹⁶ For example, one agency might categorize an expenditure as “advertising services” (FPDS product service code R701) and another agency might categorize it as “public relations services” (FPDS product service code R708).

¹⁷ CRS obtained these figures through <http://www.usaspending.gov/>. Searches were conducted for data for agency contract expenditures for “advertising services” (FPDS product service code R701).

¹⁸ The term “spent” refers to federal funds obligated. In federal budgeting, an obligation refers to a “definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received.... Payment may be immediately or in the future.” Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, p. 70.

¹⁹ According to <http://www.usaspending.gov/> data, the federal government also spent \$154.8 million on public relations services in FY2011.

- the Department of Transportation: \$36.7 million;
- the Department of Homeland Security: \$34.7 million.²⁰

Restrictions on Government Advertising

Generally speaking, there are few government-wide restrictions on government advertising. Furthermore, no single agency is charged with tracking and overseeing the advertising expenditures of federal agencies.

Some restrictions on agencies' advertising expenditures may be found in annual appropriations acts, the *U.S. Code*, and the *Code of Federal Regulations*. For example, the Department of Defense has been prohibited from using appropriated funds to pay the costs of advertising by any defense contractor (10 U.S.C. 114 amendments); and 7 C.F.R. 12 contains guidelines for government advertisements promoting blueberries, honey, and mohair, among other agricultural products. For many decades, annual Treasury appropriations laws have contained prohibitions on the use of funds for the purpose of "publicity or propaganda purposes not authorized by the Congress."²¹

A fuller statement of the limitations on government advertising may be found in GAO's *Principles of Federal Appropriations Law, Volume I*.²² Though not an independent source of legal authority, *Principles* does provide some guidance as to what may be viewed as improper and/or illegal agency use of appropriated funds for agency activities that might be construed as advertising. *Principles* begins with the 1919 federal anti-lobbying law (18 U.S.C. 1913) that prohibits agencies from using government funds to pay for advertisements that are designed to sway Members of Congress. *Principles* also describes the prohibitions against "publicity and propaganda" included in appropriations acts since 1949, the limitations on informational activities by agencies, and the prohibition of government use of "publicity experts." *Principles* notes,

Whether an agency's appropriations are available for advertising, like any other expenditure, depends on the agency's statutory authority. Whether to advertise and, if so, how far to go with it are determined by the precise terms of the agency's program authority in conjunction with the necessary expense doctrine and general restrictions on the use of public funds such as the various anti-lobbying statutes.²³

Under the "necessary expense doctrine," an agency may use a general appropriation to pay any expense that is (1) necessary or incidental to the achievement of the underlying objectives of the appropriation, (2) not prohibited by law, and (3) not otherwise provided for by statute or appropriation.²⁴ "Thus," GAO explains, "the Navy could exercise its statutory authorization to

²⁰ As noted earlier in this report, Congress appropriated \$45 million in FY2011 for ONDCP youth anti-drug use media campaign. It is unclear why data from <http://www.usaspending.gov/report> ONDCP as spending \$0 on advertising services.

²¹ Most recently, see P.L. 108-199, Sec. 601.

²² *Principles of Federal Appropriations Law* consists of four volumes and enunciates GAO's understanding of the statutes, regulations, and case law governing proper use of appropriated funds. The relevant portions can be found in General Accounting Office, *Principles of Federal Appropriations Law, Volume I*, GAO Report GAO-04-291P, January 2004, pp. 4-188 - 4-233, especially 4-230 - 4-232. Hereinafter this volume is referred to as *Principles*.

²³ *Ibid.*, p. 4-230.

²⁴ On the necessary expense doctrine, see *ibid.*, pp. 4-19 - 4-35.

promote safety and accident prevention by procuring book matches with safety slogans printed on the covers and distributing them without charge at naval installations.”²⁵

The Department of Justice is responsible for prosecutions under the aforementioned 1919 anti-lobbying law. Otherwise, oversight, investigation, and enforcement of appropriate practices regarding government advertising falls to agencies’ inspectors general, GAO, and Congress.

It is unclear how vigorously the limits on government advertising are being enforced. It does not appear that the Department of Justice has indicted anyone for lobbying with appropriated funds.²⁶ GAO has issued comptroller general opinions that fault agency use of appropriated funds for advertising.²⁷ However, GAO reviews of agency advertising result only after congressional request, and its opinions are advisory—they do not have the force of law. Primary oversight of government agency advertising has been exercised by Congress. In recent years, it has examined some large advertising campaigns, often when some Members of Congress have perceived the advertisements as being overly promotional of a policy or program.²⁸

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²⁵ Ibid., p. 4-231.

²⁶ See General Accounting Office, *Principles of Federal Appropriations Law, Volume I*, p. 4-195.

²⁷ General Accounting Office, *Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Use of Appropriated Funds for Flyer and Print and Television Advertisements*, B-302504, March 10, 2004; General Accounting Office, *Department of Health and Human Services, Centers for Medicare & Medicaid Services—Video News Releases*, B-302710; and Government Accountability Office, *Forest Service—Sierra Nevada Forest Plan Amendment Brochure and Video Materials*, B-302992, September 10, 2004.

²⁸ E.g., U.S. Congress, House Committee on Governmental Reform, Subcommittee on the Census, *Oversight of the Census: Examining the Census Bureau’s Advertising Campaign*, hearing, 106th Cong., 1st sess., July 27, 1999 (Washington: GPO, 2000); and U.S. Congress, House Committee On Oversight and Government Reform, *Analysis of the First Year of the Obama Administration: Public Relations and Propaganda Initiatives* (Washington: H-OGR), staff report, 111th Congress, 2nd sess., August 16, 2010.