

Recovery Act: President Obama Restricts Lobbyist Activities

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On March 20, 2009, President Obama issued a memorandum to all Executive departments and agencies that substantially affects the ability of federal lobbyists to communicate with the departments and agencies about the "American Recovery and Reinvestment Act of 2009," Public Law 111-5 (the Recovery Act). The lobbyists targeted are those as defined in the Lobbying Disclosure Act (LDA). On April 7, 2009, the Director of the Office of Management and Budget (OMB) issued additional guidance about the memorandum to Executive Branch agencies.

Although certain parts of the lobbying community have challenged the Administration with respect to these rules, the Administration has yet to rescind or amend them. Moreover, there have been reports on the Internet that some departments and agencies are not discussing certain items with lobbyists because of, among other things, a lack of funds to comply with the Internet posting requirements in the memorandum. The following is a guide to the lobbying rules from the memorandum, as interpreted by the OMB.

1. An Executive department or agency may not consider the view of lobbyists concerning "particular projects, applications, or applicants for funding under the Recovery Act" unless such views are in writing. According to OMB, a "particular project" is a discrete and identifiable transaction, or set of transactions, in which specific parties have expressed an interest.
2. A department or agency must post to its recovery website any written comments from lobbyists "concerning the commitment, obligation, or expenditure of funds under the Recovery Act for

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particular projects, applications, or applicants" within three business days of receipt.

3. Departments and agencies must refuse to meet with or talk on the telephone with lobbyists about "particular projects, applications, and applicants for funding under the Recovery Act" and must screen such lobbyists out of all such meetings and telephone calls.

4. Lobbyists may communicate orally with a department or agency about general Recovery Act issues, but only if the following are true:

- The oral communications do not "extend to or touch upon particular projects, applications, or applicants for funding;"
- A department or agency official reduces the following to writing:
 - The date and time of the contact on policy issues;
 - The names of the lobbyists and officials participating in the discussion; and
 - A short description of the substance of the communication; and
- The department or agency posts the writing to its recovery website within three business days of the communication.

Examples of general policy issues concerning the Recovery Act include, according to OMB, discussions supporting funding of certain general populations, categories of projects or broad geographical areas.

5. The memorandum does not place any restrictions on communications by registered lobbyists concerning general questions about the logistics of Recovery Act funding or implementation. Such matters include, according to OMB, a request for a meeting, a request for the status of an action, or any other similar request, if the request does not include an attempt to communicate about Recovery Act policy or a particular project or application for funding under the Recovery Act.

The following general topics of discussion, for example, may fall within the category of general questions about logistics or implementation, which are not covered by the memorandum:

- How to apply for funding under the Recovery Act;
- How to conform to deadlines;
- To which agencies or officials applications or questions should be directed; and
- Requests for information about program requirements and agency practices under the Recovery Act.

6. The memorandum only applies to communications prior to the award of a grant or other Recovery Act funding, according to OMB; the memorandum does not restrict lobbyists' ability to communicate with officials regarding the administration of a grant that has already been awarded.

7. The memorandum does not apply to non-lobbyist employees of lobbyist organizations.

The Director of OMB is required to provide a review of the implementation of the memorandum, including any recommendations for modifications or revisions, to the president within 60 days.

President Obama's memorandum can be found at www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-20-09/. The OMB Directive, including useful FAQs, may be found at www.scribd.com/doc/14166351/m0916.