

OMB Issues Final Guidance Banning Lobbyists on Federal Boards

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On October 5, 2011, the Office of Management and Budget (OMB) issued final guidance implementing a ban on the appointment of federally registered lobbyists to federal advisory committees and other boards and commissions. See 76 FR No. 193, at page 61756. OMB's guidance implements President Obama's June 18, 2010 memorandum - on "Lobbyists on Agency Boards and Commissions" - directing executive branch departments and agencies not to appoint or reappoint federally registered lobbyists to boards and commissions.

Under the ban, no "individual who is subject to the registration and reporting requirements of the Lobbying Disclosure Act of 1995 (LDA), as amended," may be appointed or reappointed "to any committee, board, commission, panel, task force, or other similar group (or subgroup) created by the President, the Congress, or an Executive branch department or agency" The ban on the appointment of lobbyists applies to any "subcommittee or any other subgroup that performs preparatory work for a parent board or commission," as well as to the parent body itself. The lobbyist appointment ban also applies to "delegations organized to present the United States' position to international bodies." The ban does *not* apply to "individuals who are invited to attend meetings of boards or commissions on an ad hoc basis." Similarly, it does *not* apply to any individual called upon to "appear before or otherwise communicate with a board or commission to provide testimony, information or input in the same manner as non-lobbyists."

The appointment ban applies only to *federally* registered lobbyists. The ban "does not apply to individuals who are registered as lobbyists only at the state level." Moreover - and significantly, in

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contrast to the scope of the Office of Government Ethics' recently proposed rule to ban gifts from lobbyists to executive branch employees - the lobbyist appointment ban "does not apply to non-lobbyists employed by organizations that lobby."

According to OMB's final guidance, the ban on the appointment of lobbyists to boards and commissions "makes no provision for waivers, and waivers will not be permitted."

Under certain circumstances described in OMB's final guidance, a person who previously served as a federally registered lobbyist may be eligible for appoint or reappointment to a board or commission if he or she has "de-registered," or has been "de-listed" by his or her employer, as a lobbyist and has actually ceased lobbying activities.

The ban on lobbyist appointments to boards and commissions applies to appointments or reappointments made after June 18, 2010. Any federally registered lobbyists whose board service started before that date may serve out the remainder of their terms, but they may not be reappointed if they remain registered lobbyists. Under OMB's final guidance, any person who is not a federally registered lobbyist at the time of appointment to a board or commission, but who becomes a registered lobbyist during their term of board service, will be required to resign or, otherwise, will be removed from the body.

OMB's final guidance became effective 30 days after its October 5, 2011, date of issuance.