



**SOCIAL SECURITY**  
Office of the General Counsel

**MEMORANDUM**

**Date:** June 1, 2009

**Refer To:** S9

**To:** Senior Staff and Contract Officers

**From:** Thomas W. Crawley /s/  
Designated Agency Ethics Official

**Subject:** Presidential Memorandum: Ensuring Responsible Spending of Recovery Act Funds –  
INFORMATION

On March 20, 2009, the President issued an Executive Branch-wide Memorandum entitled, "Ensuring Responsible Spending of Recovery Act Funds." A copy of the President's Memorandum is at [http://www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-20-09/](http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-20-09/). In this memorandum, I am providing you with guidance about your Recovery Act related communications with federally registered lobbyists.

You should remember that the Presidential Memorandum and the guidance provided in this memorandum control your interactions with federally registered lobbyists only when you communicate with a federally registered lobbyist regarding Recovery Act funds. If your contacts with federally registered lobbyists do not relate to the Recovery Act, you should seek guidance from the Office of the General Counsel regarding the applicable procedures and limitations regarding such contacts. The following information details actions you must take to properly conduct Recovery Act related communications with federally registered lobbyists.

A. What is a lobbyist?

You must determine if the person with whom you are communicating is a federally registered lobbyist. The Presidential Memorandum requires the agency to use the definition of lobbyist from the Lobbying Disclosure Act of 1995. The Lobbying Disclosure Act states:

"lobbyist" means any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a six month period.

2 U.S.C. § 1602 (10).

You must merely ask the individual if he/she is a federally registered lobbyist. You are not required to independently verify the truthfulness of the response. The Presidential Memorandum applies only to communications with individuals who are currently federally registered lobbyists, including federally registered lobbyists for governmental or non-profit entities. If you or the individual with whom you are communicating are uncertain about his/her status, you may contact the Office of the General Counsel to obtain assistance. Once you know whether the individual is a federally registered lobbyist, you must determine the category of communication involved.

## B. Categories of Communications

The Presidential Memorandum identifies three categories of communications: “logistical questions,” “general Recovery Act policy issues,” and “a particular project proposed to be funded under the Recovery Act, or particular application or applicant for funding.” The distinction is whether the communication relates to a particular project or applicant, which would likely be the source of payment for the federally registered lobbyist, as opposed to a federally registered lobbyist communicating with an agency official on logistical questions or Recovery policy matters (e.g. modernization of the Nation’s infrastructure, energy independence, educational opportunities, affordable health care and middle-class tax relief). You must make an assessment of the nature of the communication before proceeding with the communication.

### 1. Logistics Communications

If the communication relates only to logistical issues of the Recovery Act, you **may** have an oral communication with a federally registered lobbyist. Logistical issues of Recovery Act funding or implementation include a request for a meeting, a request for the status of an action, 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. Such logistical matters must not include an attempt to communicate about Recovery Act policy issues or a particular project or application for funding under the Recovery Act.

The President aimed his Memorandum at furthering the transparency of oral communications between Federal officials and federally registered lobbyists concerning the Recovery Act. One means to achieve this aim is to permit oral communications between agency officials and federally registered lobbyists at widely-attended gatherings. A widely attended gathering is a gathering attended by either a large number of people from throughout an industry or profession, or by those representing a wide range of interests. If the agency official is speaking publicly to the entire gathering, including federally registered lobbyists, the Memorandum permits an agency official to speak about logistical or policy issues regarding the Recovery Act. However, if the agency official is merely attending a widely attended gathering, the Memorandum does not permit an agency official to have private Recovery Act related communications with federally registered lobbyist.

### 2. Policy Issues Communications

The second category of communications discussed in the Presidential Memorandum is general policy issues concerning Recovery Act funding. Examples of general policy issues include discussions supporting funding of certain general populations, categories of projects, or broad geographical areas. If the oral communication is about general policy issues concerning the Recovery Act and does not touch upon particular projects, applications or applicants for funding, you **may** participate in a policy issue communication with a federally registered lobbyist. The agency official involved in the

communication must inform the federally registered lobbyist that:

We will document the fact of this policy conversation in writing, including the name of the lobbyist and other participants, together with a brief description of the conversation, for public posting on our agency's recovery website within 3 days.

After the communication, you must document the discussion by using the “Registered Lobbyist Contact Disclosure Form.” You may access the form at [http://contacts.gsa.gov/webforms.nsf/0/235BD4FA1C6D292A862575A7005C8FC8/\\$file/SF%20LLL1\\_04\\_09.pdf](http://contacts.gsa.gov/webforms.nsf/0/235BD4FA1C6D292A862575A7005C8FC8/$file/SF%20LLL1_04_09.pdf). You must complete this form for each oral communication, whether the communication is in-person or by telephone, with a federally registered lobbyist regarding Recovery Act policy matters. You must then send the completed form to [stuart.besser@ssa.gov](mailto:stuart.besser@ssa.gov). Mr. Stuart Besser, Division Director, Ethics and Disclosure Division, Office of General Law, is our point of contact for Recovery Act communications with lobbyists. Mr. Besser will review the form for completeness and forward it for posting on our Recovery Act website within 3 business days of the communication.

### 3. Particular Project, Application, or Applicant Communications

Other than the above situations, if a federally registered lobbyist communicates with you or contacts you, via telephone or in-person, regarding a particular project, application or applicant for funding under the Recovery Act, you **may not** have an oral communication with the federally registered lobbyist. You must inform the federally registered lobbyist:

Under the President’s Memorandum, I cannot speak with any federally registered lobbyists about the use of Recovery Act funds in support of particular projects, applications, or applicants. A federally registered lobbyist’s communications must be submitted in writing. Within 3 days, we will post the communication publicly on SSA’s recovery website.

If you receive a written communication from a federally registered lobbyist regarding specific projects, applications, or applicants for Recovery Act funding, you must immediately upon receipt of the communication send it to Mr. Besser, at [stuart.besser@ssa.gov](mailto:stuart.besser@ssa.gov), for review and posting to the agency website.

### C. Assistance

This memorandum contains specific guidance to you regarding communicating with federally registered lobbyist about the Recovery Act. You will find additional information, including a copy of the Presidential Memorandum, guidance from the Office of Management and Budget, and a Recovery Act flow diagram at our Recovery Act website at <http://mwww.ba.ssa.gov/recovery/>. I encourage you to visit the website to obtain continuing information regarding this important undertaking. The attorneys in the Office of the General Counsel are available to provide training to you or your staff to ensure that you are meeting the aims of the Presidential Memorandum. Please feel free to contact Mr. Besser at 410-965-3194 to discuss your questions, concerns or training needs.