



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

July 24, 2009

M-09-24

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag
Director

SUBJECT: Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds

On April 7, 2009, my office (OMB) issued interim guidance to implement section 3 of the President's March 20, 2009, Memorandum entitled, "Ensuring Responsible Spending of Recovery Act Funds." The purpose of the President's Memorandum was to enhance merit-based decision-making with respect to Recovery Act funds and to require transparency for contacts between lobbyists and government officials concerning Recovery Act funding.

The President's Memorandum directed OMB to review agency implementation and experience with the protocol specified in the Memorandum. The President's Memorandum also stated that OMB should assist and issue additional guidance, as needed, to facilitate implementation of the Memorandum across the Executive Branch.

On May 29, 2009, based on OMB's recommendations, the President asked OMB to issue new guidance, after further consultations with agencies and outside stakeholders, in order to better promote the March 20, 2009, Memorandum's goals of merit-based and transparent agency decision-making with regard to Recovery Act funding. Based on that process, we have updated the sample guidance for your internal use and adaptation. The attached is intended to supersede all prior written OMB and other agency guidance on this subject.

The prohibition on oral communications between Federal agency officials and federally registered lobbyists regarding specific Recovery Act projects that was contained in the President's Memorandum has been clarified. That restriction applies in the context and at the stage where concerns about merit-based decision-making are greatest – the period beginning after the submission of formal applications for, and up through awards of, competitive grants or other competitive forms of Federal financial assistance under the Recovery Act. The restriction also has been expanded to cover, generally, all persons outside the Federal Government (not just federally registered lobbyists) who initiate oral communications concerning pending competitive applications under the Recovery Act.

Agency officials are still required to disclose all other communications with federally registered lobbyists concerning Recovery Act policy or projects, except those that concern purely logistical questions or occur at widely attended gatherings. A web tool is being developed to facilitate disclosure of lobbyist contacts concerning the Recovery Act, and the tool will be available shortly for your agency's use.

The attached may be used as a template for distribution to your employees as updated guidance. It should be adapted to include your internal agency points of contact, and should be distributed to your staff as quickly as possible, with a copy to the OMB General Counsel's office at recoverycommunications@omb.eop.gov. Please contact the OMB General Counsel's office with any questions regarding the President's Memorandum or this guidance.

Enclosure: Sample Updated Guidance Memorandum for Executive Branch Departments and Agencies on Communications with Registered Lobbyists and Other Persons About Recovery Act Funds

Sample Updated Guidance Memorandum for Executive Branch Departments and Agencies For Distribution to Employees

UPDATED INSTRUCTIONS REGARDING COMMUNICATIONS WITH REGISTERED LOBBYISTS AND OTHER PERSONS ABOUT RECOVERY ACT FUNDS

On March 20, 2009, the President issued a Memorandum entitled, "Ensuring Responsible Spending of Recovery Act Funds." The purpose of the President's Memorandum was to facilitate Federal agencies' merit-based decision-making in awarding Recovery Act funds by, among other things, helping ensure that communications between federally registered lobbyists and Federal agency officials are transparent. This updated guidance outlines the actions you are required to take whenever you receive or participate in oral or written communications with any outside persons or entities regarding Recovery Act funding determinations. This supersedes all prior written OMB and other agency guidance on this subject.

A. Unrestricted Oral Communications On Logistical Questions Related to the Recovery Act

The President's Memorandum does not place any restrictions on communications between Federal agency officials and any outside persons, including federally registered lobbyists, concerning general questions about the logistics of Recovery Act funding or implementation. Such matters may include an outside person's request for a meeting, an inquiry concerning the status of an action, an inquiry concerning the deadlines or logistics of Recovery Act funding opportunities, or any other similar administrative request, if the request does not involve advocacy about Recovery Act policy or a particular project or application for funding under the Recovery Act. (This was the case under the initial guidance and has stayed the same under the updated guidance.)

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

- (1) how to apply for funding under the Recovery Act;
- (2) how to conform to deadlines;
- (3) to which agencies or officials applications or questions should be directed;
or
- (4) requests for information about program requirements and agency practices under the Recovery Act.

B. Unrestricted Oral Communications At Widely Attended Gatherings

The President's Memorandum is aimed at furthering the transparency of oral communications with Federal officials concerning Recovery Act funding. Such transparency aims are achieved with respect to communications made at "widely attended gatherings." A gathering is widely attended when it is attended by a large number of people from throughout an industry or profession who represent a wide range of interests. The term is defined and implemented in ethics regulations at 5 C.F.R. § 2635.204(g)(2) and related interpretive guidance, and is regularly construed and applied by your designated agency ethics official. Thus, the President's Memorandum imposes no further restrictions on such oral communications by any persons at widely attended gatherings. (This also was the case under the initial guidance and has stayed the same under the updated guidance.)

The restrictions below, however, do apply to private oral communications that may happen to occur at, in connection with, or immediately before or after, a widely attended gathering. In other words, private conversations at a widely attended gathering are not covered under this exemption.

C. Oral Communications During Period Following Submission of a Formal Application for a Competitive Grant or Other Competitive Form of Federal Financial Assistance Under the Recovery Act, and Up Through Awards of Competitive Recovery Act Funds

During the period of time commencing with the submission of a formal application by an individual or entity for a competitive grant or other competitive form of Federal financial assistance under the Recovery Act, and ending with the award of the competitive funds, you may not participate in oral communications initiated by any person or entity concerning a pending application for a Recovery Act competitive grant or other competitive form of Federal financial assistance, whether or not the initiating party is a federally registered lobbyist. This restriction applies unless:

- (i) the communication is purely logistical (Part A above);
- (ii) the communication is made at a widely attended gathering (Part B above);
- (iii) the communication is to or from a Federal agency official and another Federal Government employee;
- (iv) the communication is to or from a Federal agency official and an elected chief executive of a state, local or tribal government, or to or from a Federal agency official and the Presiding Officer or Majority Leader in each chamber of a state legislature; or
- (v) the communication is initiated by the Federal agency official.

If an individual or entity contacts you to talk about a pending application for a competitive grant or other competitive form of Federal financial assistance under the Recovery Act and if the contact does not fall within any of the excepted categories above, you should end the conversation.

Before submission of a formal application for competitive grants or other competitive forms of Federal financial assistance under the Recovery Act, and after the award of such funds, any person or entity, whether or not a federally registered lobbyist, may (consistent with any other applicable law, regulation, or agency policy) communicate with you orally or in writing about any matter concerning Recovery Act policy or any particular project for funding that is not the subject of a pending application for competitive funding under the Recovery Act.

Federal departments and agencies should seek to notify the public, through particular notices of funding opportunities under the Recovery Act, to which competitive funding opportunities these restrictions apply.

D. Oral and Written Communications With Federally Registered Lobbyists Concerning Recovery Act Policy or Projects For Funding, and Written Communications By Registered Lobbyists Concerning Pending Applications

If you communicate with or are contacted, via telephone or in-person, by any persons outside the Federal Government (including persons associated with for-profit companies, non-profit organizations and state and local governmental entities) regarding Recovery Act policy or projects for funding, you should first ascertain that the contacting party is not restricted from communicating with you orally under Part C above. Even if Part C does not limit oral communications, you must ask if any person participating in the oral communication is a federally registered lobbyist speaking on behalf of a client (or, in the case of an in-house registered lobbyist, on behalf of an employer) for whom the lobbyist is registered. This requirement applies unless the communication is purely logistical (Part A above) or the communication occurs during a widely attended gathering (Part B above).

If any person is a federally registered lobbyist speaking on behalf of a client or employer for whom the lobbyist is registered, please take the following steps:

- (1) **Inform the person(s) that you will document** the fact of the conversation in writing, including the name of the lobbyist and other participants, together with a brief description of the conversation, for public posting on the agency's recovery website within 3 days.
- (2) **Subject to the exceptions contained in Part A and Part B above, document each in-person or telephonic conversation concerning Recovery Act funding** with a registered lobbyist immediately after the conversation. You may either use the attached electronic form (remember that this form must be posted on the website within 3 days of the conversation), or the technology tool available at [add agency's web link to tool]. The technology tool has been designed so that you may request that the outside participants of the meeting fill in the requested information into the fields in the first instance, subject to

your and other agency officials' review of the information for accuracy and completeness prior to its posting on your agency's website. Please be sure your posting includes:

- (i) the date of contact,
- (ii) the names of the parties to the conversation,
- (iii) the name of the lobbyist's client(s),
- (iv) a general, one-sentence description of the substance of the conversation, and
- (v) attachments that consist of any written materials prepared by outside participants of the meeting that were submitted in connection with the meeting.

- (3) **Submit the form to the appropriate person within your agency.** If you choose to fill out the physical form rather than using the technology tool, please send your form containing the above-required information, via e-mail, to [the appropriate official designated by your agency]. That official should review the form for completeness and forward it for posting on your agency's website within 3 business days of the communication.

If you receive a written communication from a federally registered lobbyist on behalf of a client or employer concerning Recovery Act policy or projects for funding (including, but not limited to, any written communication from a federally registered lobbyist about a pending application), then please submit that written communication to your designated agency official for posting on the agency's website within 3 business days of the communication, in accordance with step (3) immediately above.

* * *

If you have any questions about the President's Memorandum, or this guidance, please refer to the attached "Frequently Asked Questions" which provides specific examples, or contact [designated agency point of contact] at [agency phone number].

Enclosures:

- (1) Frequently Asked Questions
- (2) Registered Lobbyist Contact Disclosure Form

FREQUENTLY ASKED QUESTIONS

Q: How does the updated guidance differ from the earlier guidance on this same subject?

A: The prohibition on oral communications between Federal agency officials and federally registered lobbyists regarding specific Recovery Act projects that was contained in the earlier guidance has been clarified to apply to the stage and context where concerns about merit-based decision-making are greatest – during the period commencing after the submission of formal applications for, and up through awards of, competitive grants or other competitive forms of Federal financial assistance under the Recovery Act. At the same time, the restriction has been expanded to cover, generally, all persons outside the Federal Government (not just federally registered lobbyists) who initiate oral communications concerning pending competitive grant or loan applications under the Recovery Act.

Q: Does the new version of the guidance still require Internet posting of lobbying contacts?

A: Yes, the updated guidance continues to require prompt Internet disclosure of oral and written communications with federally registered lobbyists concerning Recovery Act policy or projects for funding. The guidance also requires Internet disclosure of written communications with lobbyists concerning pending applications for competitive funding under the Recovery Act.

Q: A local business group has contacted me to discuss how to apply for funding for transportation projects. May I talk with members of the group?

A: Yes. This area of discussion falls within the category of general logistical and implementation issues concerning the Recovery Act, and thus you may talk with the group without restriction to answer its questions. However, if the group includes federally registered lobbyists and the discussion veers to advocacy about Recovery Act policy or a particular project or application for funding under the Recovery Act, you should document your discussion and forward that documentation to your agency representative for posting on the Internet. You should decline to discuss any pending applications for competitive grants or other competitive forms of Federal financial assistance under the Recovery Act.

Q: I have received a request to meet with federally registered lobbyists who represent a construction company. Company officials have stated openly that they plan to apply for a competitive grant under the Recovery Act to fund a specific project in upstate New York. May I talk with the company's lobbyists about that project?

A: Yes. So long as the company has not submitted its formal application for the competitive grant in question, you may meet with the company's lobbyists to discuss the matter in any way that is appropriate under other applicable law, regulations, and agency

guidance. You must document your meeting with the lobbyists, however, and forward your documentation to the appropriate agency representative for posting on the Internet.

Q: Do the restrictions on oral communications with persons or entities concerning pending competitive grant applications, contained in Part C of the sample guidance, apply to applicants or applications for formula grants?

A: No. Because formula grants are not competitive, the restrictions of Part C of the sample guidance are not applicable. The guidance focus on competitive grants and other competitive forms of financial assistance because that is where concerns about merit-based decision-making and special access are the greatest. In the competitive grant context, there should be a level playing field among applicants, and decisions should be made on the merits with no special access to Federal officials by some applicants. By contrast, in formula-driven grant contexts, grantees (in many situations, state and local governmental entities) are designated by statute and do not have to compete with others to receive their awards from Federal agencies. Because they are not competing for grants, restricting their communications with Federal agency officials during the grant process would not enhance, and might impede, the quality or merits of agency decision-making.

Q: What sorts of Federal assistance is included by the phrase “and other competitive forms of Federal financial assistance”?

A: Competitive loans are an example of a covered form of competitive Federal financial assistance.

Q: What is meant by, and how broad is, the exception for agency official-initiated conversations about pending applications for competitive grants or loans? Does the fact that an agency official is returning a phone call of an applicant make the conversation agency-initiated?

A: The purpose of this exception is to allow agency officials to obtain the information they need or seek about pending applications in order to evaluate the applications, among other things. An agency official should not receive, be willing to receive or respond to communications concerning pending applications unless the official affirmatively seeks or requires information about the application.

Q: I have received a request to meet with representatives of a corporation that has filed an application for a competitive grant. The representatives want to discuss the merits of the corporation’s proposal. The representatives are not federally registered lobbyists. May I speak with them?

A: No. Because the corporation has filed an application for a competitive grant, its representatives may not initiate communications with you orally about the merits of the application or proposal.

Q: Shouldn't I simply avoid all contact with federally registered lobbyists about Recovery Act matters, so I don't have to document anything?

A: No. The purpose of the President's Memorandum is to provide transparency to certain communications with federally registered lobbyists concerning the Recovery Act, not to bar such communications. You should proceed with all communications in accordance with the protocol.

Q: Do the reporting requirements that apply to lobbyists apply to all lobbyists – including lobbyists for governmental entities, lobbyists registered under state laws, and individuals who were federally registered lobbyists in recent years but are no longer so registered?

A: The reporting requirements of the Memorandum apply to communications with individuals who are currently federally registered lobbyists, including lobbyists for governmental or non-profit entities, and who are communicating on behalf of a client for whom they are registered. The reporting requirements do not apply to individuals who have been previously registered but are no longer federally registered; to individuals registered to lobby under state rather than Federal laws; or to federally registered lobbyists who are not communicating on behalf of a client (or, in the case of an in-house registered lobbyist, on behalf of an employer) for whom they are registered.

Q: A group has called me to discuss concerns about how funding is being allocated to certain geographic areas. May I speak with members of the group?

A: Yes. Regardless of whether the group includes federally registered lobbyists, you may speak with members of the group about funding allocation. You may not speak with any member of the group, however, about any pending Recovery Act competitive grant or competitive loan applications before the agency. If the group includes federally registered lobbyists, you should document the contact on the attached form.

Q: I am scheduled to deliver a speech to a group of business leaders about how to apply for Recovery Act funds. Must I pre-screen the group for federally registered lobbyists? If federally registered lobbyists are present, do I need to document each of their questions as a lobbying contact?

A: If the speech is before a widely attending gathering, you do not need to determine whether federally registered lobbyists are present, and you may discuss the Recovery Act without documenting the discussion.

Q: How do I know if a caller or meeting participant is a federally registered lobbyist or if the caller or meeting participant has submitted a formal application for a competitive grant?

A: You should simply ask your caller or meeting participants the applicable questions.

Q: How much information do I need to include on the Lobbyist Contact Disclosure form?

A: The form is meant to document the fact and date of your contact, along with the identity of the lobbyist, his or her client, and a one-sentence description of the general topic or topics of discussion. Additional detailed information is not required.

Q: Are there any exemptions in the revised protocol for communications with other government employees?

A: You may have oral communications at any time, even after the submission of a formal grant application, with (1) other Federal employees, and (2) elected chief executive of a state, local or tribal government, or the Presiding Officer or Majority Leader in each chamber of a state legislature.

Q: Do the documentation requirements of the President's Memorandum concerning lobbyist communications apply only to individuals who are federally registered lobbyists, or to lobbying organizations and their employees more generally?

A: The documentation requirements apply only to communications with individuals who are federally registered lobbyists, and not with lobbying organizations or their non-registered employees more generally.

Q: To whom should I turn for further questions about how to deal with specific situations?

A: You should contact your designated agency ethics official, in the first instance, or another designated agency point of contact.

REGISTERED LOBBYIST CONTACT DISCLOSURE FORM

This form is to be completed by Executive Branch employees who are contacted by registered lobbyists regarding the Recovery Act. This report includes a written description of each contact, the date and time of the contact, and the names of the registered lobbyist(s) and the employee(s) with whom the contact took place. The information on this form will be available to the public on the Executive Branch agency's recovery website. **Written materials prepared by registered lobbyists should be attached to this form for posting on the website.**

To be completed by the employee contacted.		
Date and time of contact:	Name of the Employee(s) Contacted (Name and Title)	Brief description of the contact: (attach separate sheet if necessary)
Name of the Employee(s) who prepared this form:		Date:

Registered Lobbyist(s) Name:	Title:	Firm or Organization, if applicable:	Client: