

POLICY ALERT

OMB ISSUES REVISED GUIDANCE CONCERNING RESTRICTIONS ON LOBBYING COMMUNICATIONS FOR RECOVERY ACT FUNDS

In March 2009, President Obama issued a memorandum outlining new restrictions on lobbyists concerning the American Recovery and Reinvestment Act of 2009 (“Recovery Act”). (Please click [here](#) to read our alert on the March 20 memorandum.) Subsequently, the White House announced that the restrictions would be revised and additional guidance would be forthcoming from OMB. (Please click [here](#) to read our alert on the May 29 announcement). On July 24, 2009, OMB issued revised guidance.

While the Administration’s emphasis continues to be on increased disclosure of lobbyist communications regarding Recovery Act issues, the latest guidance clarifies that the prohibition on oral communications only applies during a specific time period and applies to all communications, not just those made by federally registered lobbyists. As has been the case since the May 2009 announcement by the White House, lobbyists may attend and participate in phone calls and meetings with federal officials so long as the communications are not within the covered period.

The prohibition on lobbyists having oral communications with federal agency officials regarding specific Recovery Act projects is effective from the time of 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 prohibition also extends to all persons outside the federal government (not just registered lobbyists) for the same time period. A summary of the guidance follows.

ORAL COMMUNICATIONS REGARDING LOGISTICAL QUESTIONS

All communications with registered lobbyists concerning Recovery Act policy or projects, except those that concern purely logistical questions, will continue to be disclosed. For example, discussion of the following may fall within the category of general questions about logistics of implementation that would **not** require disclosure: 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, or requests for information about program requirements and agency practices under the Recovery Act. Requests for a meeting, inquiries regarding the status of an action or concerning the deadlines or logistics of Recovery Act funding opportunities or other similar administrative requests also would not have to be disclosed, regardless of whether the communications are made by a registered lobbyist or some other individual.

For communications made at widely attended gatherings, disclosure may not be required unless the communication is a private oral communication. A private conversation at a widely attended

gathering, other than in the context of a panel, forum, etc., may have to be disclosed if it would otherwise have to be disclosed under existing regulations.

PROHIBITION ON ORAL COMMUNICATIONS REGARDING SPECIFIC PROJECTS AND APPLICATIONS

All parties, whether registered lobbyists or not, are prohibited from participating in oral communications during the time period beginning with the submission of a final application by an individual or entity for a competitive grant or other competitive form of federal financial assistance under the Recovery Act until the award of the competitive funds (“covered period”). This prohibition is a complete ban on all oral communications. Any communication must be made in writing and will be publicly disclosed whether or not the written communication is made by a registered lobbyist. This complete restriction is in effect unless any of the following apply—

- The communication is purely logistical.
- The communication is made at a widely attended gathering.
- The communication is to or from a federal agency official and another federal government employee.
- 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.
- The communication is initiated by the federal agency official (i.e., the agency official contacts an applicant to obtain additional information or clarification needed for evaluation of a pending application).

Both before and after the covered period, any person or entity, whether a federally registered lobbyist or not, may communicate with federal agency officials 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.

COMMUNICATIONS BY FEDERALLY REGISTERED LOBBYISTS CONCERNING RECOVERY ACT POLICY

If a federally registered lobbyist communicates with federal agency officials regarding Recovery Act policy or projects for funding outside the covered period, a record of the conversation will be made by the agency official providing the date, name of the lobbyist and other participants, name of the lobbyist’s client, a brief description of the conversation, and any written materials that were submitted in connection with the meeting. The record will be made publicly available. Any written communications will also be made publicly available.

CONTACT INFORMATION

If you have questions regarding this alert, please contact—

Melissa L. Laurenza.....	202.887.4251.....	m Laurenza@akingump.com.....	Washington, D.C.
Cynthia Q. Pullom.....	202.887.4496.....	cpullom@akingump.com.....	Washington, D.C.
Carrie M. Hoback.....	202.887.5153.....	choback@akingump.com.....	Washington, D.C.
Kelly J. Eaton.....	202.887.4162.....	keaton@akingump.com.....	Washington, D.C.