

POLICY ALERT

NEW EXECUTIVE BRANCH POLICY REGARDING DECISIONS RELATED TO STIMULUS FUNDS

On March 20, 2009, President Obama issued a memorandum to all heads of executive departments and agencies on the subject of communications with executive branch officials regarding funds available under the American Recovery and Reinvestment Act of 2009 (the “Recovery Act” or “Act”).

The Recovery Act, signed into law in February 2009, is a stimulus bill meant to create jobs and stimulate the economy through infrastructure, energy, education, health care and other such projects. The memorandum requires executive departments and agencies to develop transparent, merit-based selection criteria to be used in committing, obligating or expending funds under the Recovery Act for grants and other forms of federal financial assistance. The criteria should take into account a demonstrated or potential ability to (1) deliver programmatic results, (2) achieve economic stimulus by optimizing economic activity and the number of jobs created or saved in relation to the federal dollars obligated, (3) achieve long-term public benefits and (4) satisfy the Recovery Act’s transparency and accountability objectives.

Perhaps most relevant, the memorandum requires an executive department or agency official to only consider the views of a lobbyist registered under the Lobbying Disclosure Act (LDA) concerning a particular project, application or applicant for funding under the Recovery Act if such views are in writing. Specifically, executive departments and agency officials must inquire at the outset of any oral communication—via telephone or in person—whether any of the individuals or parties appearing or communicating concerning a particular project, application or applicant is a lobbyist registered under the LDA. If so, the lobbyist may not attend the meeting or participate in the call but may submit comments in writing. Written comments from a registered lobbyist concerning the commitment, obligation or expenditure of funds under the Act must then be posted on the recovery Web site within three business days.

The memorandum does not prohibit a lobbyist from assisting with preparing for meetings, conducting background research, developing strategy or drafting talking points and other documents used in meetings with executive branch officials but does place restrictions on the ability of a lobbyist to be present in meetings or on calls in certain circumstances. Additionally, the memorandum does not preclude persons who work with lobbyists, but who are not registered to lobby, from communicating with executive department and agency officials. The memorandum also does not restrict the ability of lobbyists to lobby Congress.

While an executive department or agency official may communicate orally with registered lobbyists concerning general Recovery Act policy issues, the official must document in writing the date and time of the discussion, the name(s) of the registered lobbyist(s) and the official(s) with whom the contact took place, as well as provide a short description of the substance of the communication. These writings must also be posted on the recovery Web site within three business days.

CONTACT INFORMATION

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