



CLIENT ALERT

Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds

The Office of Management and Budget continues to refine its guidance regarding the President's March 20, 2009 Memorandum that broadly limits interactions between lobbyists and the Executive Branch regarding Recovery Act funds. The new guidance, issued on July 24, 2009, sets forth the conditions under which anyone, particularly federal lobbyists, may communicate regarding elements of the Recovery Act with federal agency officials. This guidance supersedes and clarifies previous guidance on the subject and is available at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-24.pdf.

Under the new guidance:

- 1) The prohibition on oral communications between federal agency officials and federally registered lobbyists applies only during "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."
- 2) This same prohibition applies to all communications from **any** company officials or representatives or other interested parties outside of the Federal government, including federal lobbyists "who initiate oral communications concerning pending competitive applications under the Recovery Act" during the covered period.
- 3) Agency officials need not otherwise avoid contacts with federally registered lobbyists. In fact, the revised guidance advises agency officials to "proceed with all communications in accordance with the protocol."
- 4) The following contacts are not restricted or reportable by agency officials: "communications concerning general questions about the logistics of Recovery Act funding or implementation" such as "requests for a meeting, an inquiry concerning

the status of an action, an inquiry concerning deadlines . . . or other similar administrative requests" as long as the request also does not involve advocacy by a federally registered lobbyist "about Recovery Act policy or a particular project or application for funding under the Recovery Act." *Id.*

5) Agency Officials may participate in widely attended gatherings (as defined in 5 C.F.R. § 2635.204(g)(2)) where the Recovery Act is discussed and may respond to questions without those communications being reportable as long as the communications are made in a public forum. Private conversations at a widely attended gathering are still subject to disclosure.

6) The following communications, either oral or written, made by a federally registered lobbyist representing the lobbyist's client either before the submission of a formal grant application or after the award of competitive Recovery Act funds on any of the following subjects are subject to disclosure on the agency's website: Communications about "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." *Id.* The agency official is to disclose, on the public record, within three days of the communication: the dates of the communication; the name of the lobbyist and other participants to the communication; the name of the lobbyist's clients; a brief description of the conversation; and any written materials submitted in connection with the meeting.

7) Lobbyists still may communicate in writing regarding any "pending applications for competitive funding under the Recover Act" and the agency official will disclose these written communications on the Internet.

8) Communications described in # 6 above by non-lobbyists are not subject to disclosure unless a lobbyist was involved in the communication.

9) Applications for formula grants under the Recovery Act are not covered by the President's March 20 Memorandum or subsequent guidance. Only communications about "competitive grants and other competitive forms of financial assistance" such as competitive loans are covered by the President's Memorandum and subsequent guidance.

For more information, please contact any of the Wiley Rein attorneys listed below.

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