



MEMORANDUM

From : CLC Staff
Date : Summary of Obama Administration Lobbying Initiatives

I. Executive Order 13490

On January 21, 2009, President Obama issued Executive Order 13490.¹ The order required every full-time political appointee² in every executive agency to sign an Ethics Pledge, in which the appointee agreed to abide by a lobbyist gift ban and certain “revolving door” restrictions.

A. Gift Rule. The pledge states that appointees may not accept gifts from registered lobbyists or lobbying organizations during their tenure as an appointee. However, certain exceptions apply, and appointees, for instance, can accept gifts if they are based on a personal relationship, relate to a generally-available discount, result from a spouse’s business, are customary gifts provided by a prospective employer, or are authorized by an OGE-approved agency supplemental regulation.

B. Revolving Door Bans. The Ethics Pledge defines three different revolving door bans to which appointees must adhere.

- Incoming appointees may not participate in any “particular matter involving specific parties that is directly and substantially related to [their] former employer or former clients” for two years from the date of their appointment.
- A person who was a registered lobbyist within two years of his/her appointment may not participate in any matter on which he/she lobbied nor “participate in the specific issue area in which that particular matter falls” in the last two years. For example, if an appointee was a registered lobbyist for an environmental group advocating for a clean energy bill, he would not be able to work in a policy area that covers green energy issues, cap-and-trade legislation, climate change issues, etc., for two years from his appointment

¹ Exec. Order No. 13490, 74 Fed. Reg. 4673 (Jan. 26, 2009), *available at* <http://edocket.access.gpo.gov/2009/pdf/E9-1719.pdf>.

² An “appointee” includes full-time non-career Presidential appointees and non-career Senior Executive Service appointees, but excludes any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

date. A registered lobbyist also may not seek or accept employment with any executive agency that he or she lobbied in the previous two years.

- Finally, the lobbying ban restricts outgoing appointees from lobbying any covered executive branch official or political appointee in the Federal government for the duration of President Obama's Administration.

Not all appointees were required to abide by these restrictions because a select few were granted a waiver by either the White House or another agency. A list of appointees who have received waivers is attached as Appendix A at the end of this document.

II. Restrictions on Stimulus Lobbying (March 20, 2009 Memorandum and Revisions)

A. Recovery Act Memorandum. On March 20, President Obama issued a memorandum concerning the distribution of funds under the Recovery and Reinvestment Act of 2009 ("Recovery Act").³ Section 3 of the memorandum established strict rules under which executive department and agency officials are permitted to communicate with registered lobbyists concerning the distribution of Recovery Act funds.

Under Section 3, registered lobbyists were prohibited from making oral communications with executive department officials "concerning particular projects, applications, or applicants for funding under the Recovery Act." The rules broke down in the following manner:

- Before scheduling or commencing any telephone or personal communication with any person relating to Recovery Act funding, executive officials were required to ask if the person was a federally registered lobbyist, and if so, any oral communication between the lobbyist and official was strictly forbidden.
- Lobbyists could submit communications in writing. To keep the process transparent, the memorandum directed the governmental entity or agency receiving the written communication to publish it on its recovery website within 3 business days after its receipt.
- Registered lobbyists were allowed to communicate orally about general policy issues concerning the Recovery Act with government officials, as long as the communication did not address particular projects or applications relating to stimulus funds.
- In the event of such a general communication, the executive branch official was required to immediately document in writing the date and time of the contact, the names of the registered lobbyist and the officials who spoke, and a summary of the communication.

³ Memorandum for the Heads of Executive Departments and Agencies: Ensuring Responsible Spending of Recovery Act Funds (Mar. 20, 2009), *available at* http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-20-09/.

This document had to be publicly posted to the recovery website within three days of the communication.

B. Amendments to Memorandum. The Office of Management and Budget conducted a review of the initial sixty days of implementation of the stimulus lobbying restrictions, and recommended modifications that the Administration subsequently enacted.

- As explained in the White House’s “Update on Recovery Act Lobbying Rules,”⁴ the initial restriction on oral communications with registered lobbyists was expanded to cover all persons. This was implemented to ensure that unregistered lobbyists and other parties that wield significant influence were covered.⁵
- The oral communications ban was limited to apply only during the period after grant applications have been submitted and before awards are distributed. Therefore, the current rules allow lobbyists to meet and communicate orally with executive officials before an application is submitted.
- The internet disclosure mandated in the March 20 memorandum is still required for all communications. Every conversation must be documented and posted to the website of each agency’s that was involved in the communication.

III. Restriction on Lobbyist Participation on Government Advisory Boards

The White House has announced that it is seeking to reduce the number of lobbyists sitting on federal advisory panels.⁶ According to the Washington Post, this initiative potentially will prevent the appointment and reappointment of registered lobbyists to the nearly 1,000 agency boards and commissions estimated to be in existence.⁷

The Administration cannot directly ban lobbyists from advisory committees, as most panels are overseen by specific government agencies and not the White House. This prohibition is therefore not an official ban, but rather a firm arm-twisting. Administration officials have stated

⁴ See Jesse Lee, *Update on Recovery Act Lobbying Rules* (posted May 29, 2009), at <http://www.whitehouse.gov/blog/Update-on-Recovery-Act-Lobbying-Rules-New-Limits-on-Special-Interest-Influence/>.

⁵ *Id.*

⁶ Norm Eisen, *Lobbyists on Agency Boards and Commissions* (posted Sept. 23, 2009), at <http://www.whitehouse.gov/blog/Lobbyists-on-Agency-Boards-and-Commissions>; Norm Eisen, *Why We Bar Lobbyists from Agency Advisory Boards and Commissions* (posted Oct. 21, 2009), at <http://www.whitehouse.gov/blog/Why-We-Bar-Lobbyists-from-Agency-Advisory-Boards-and-Commissions>.

⁷ Dan Eggen, *Lobbyists pushed off advisory panels*, WASH. POST (Nov. 27, 2009), at <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/26/AR2009112602362.html>

that most Cabinet secretaries have adhered to the White House's recommendation by not renewing or appointing lobbyists to advisory positions.⁸

Many lobbyists criticized the Administration's move, arguing that it demonizes the entire lobbyist industry based on the unethical actions of a few select lobbyists. Norm Eisen defended the policy against these accusations via the White House blog, asserting that "this issue is not about the few corrupt lobbyists or specific abuses by the profession, but rather concerns the system as a whole."⁹

Although the number of lobbyists on advisory boards has been greatly reduced under the new policy, top corporate officers are still free to sit on advisory panels if they are not federally registered lobbyists.

⁸ *Id.*

⁹ Norm Eisen, *A Washington that is More Reflective of All of America* (posted Nov. 9, 2009), at <http://www.whitehouse.gov/blog/2009/11/09/a-washington-that-is-more-reflective-of-all-of-america>.

Appendix A

Ethics Pledge Waivers Released by the White House:¹⁰

- Jocelyn Frye, Director of Policy and Projects in the Office of the First Lady
- Cecilia Muñoz, Director of Intergovernmental Affairs in the Executive Office of the President
- William Lynn, Deputy Secretary of Defense
- Valerie Jarrett, Senior Advisor to the President
- Jonathan Kravis, Associate Counsel, White House Counsel's Office
- Chris Weideman, Associate Counsel, White House Counsel's Office

Ethics Pledge Waivers Released by Other Agencies:¹¹

- Herbert M. Allison
- Charles Bolden
- Lanny A. Breuer
- Ash Carter
- Eric Holder
- Joseph Main
- David W. Ogden
- Philip W. Ogden
- Philip R. Reitingger
- Margot Rogers
- Rajiv J. Shah
- James H. Shelton
- Naomi Walker
- Aaron S. Williams

¹⁰ *Ethics Pledge Waivers Released by the White House*, at <http://www.whitehouse.gov/EthicsPledgeWaiversReleasedbytheWhiteHouse>.

¹¹ *Executive Agency Ethics Pledge Waivers*, at http://www.usoge.gov/directors_corner/pledge_waivers.aspx.