

The Stimulus: Unprecedented Restrictions on Communication Between Lobbyists and Federal
Officials

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Introduction

In February 2009, America's unemployment rate stood at an upsetting 8.2 percent, up from 7.7 percent the month before and in contrast to a much lower 5 percent in January 2008.¹ In an effort to fuel the economy and create new jobs, President Barack Obama signed the American Recovery and Reinvestment Act of 2009 into law on February 17.² Also known as the stimulus bill, it appropriated approximately \$787 billion to revitalize the economy.³

The stimulus bill passed not long after Obama took office with his campaign promise to reign in lobbyists and their "special interests" still fresh in the public's mind. While on the campaign trail, Obama frequently broached the topic of lobbyists as a source of corruption and placed the blame for many of America's problems on lobbyists. During one campaign speech, Obama proclaimed, "I intend to tell the corporate lobbyists that their days of setting the agenda in Washington are over" and on another occasion Obama promised Americans his administration was "going to change how Washington works. They will not run our party. They will not run our White House. They will not drown out the views of the American people."^{4,5} Even after taking office, Obama regularly reminded Americans "one of the reasons I ran for President was because I believed so strongly that the voices of everyday Americans ... just weren't being heard over the powerful voices of the special interests in Washington."⁶ It was in this environment of frequent anti-lobbyist rhetoric and economic recession that the stimulus bill passed.

¹ Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, Seasonally Adjusted Unemployment Rate, <http://www.bls.gov/webapps/legacy/cpsatab1.htm>

² AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, Public Law 111-5 February 17, 2009) <http://www.gpo.gov/fdsys/pkg/PLAW-111publ5/content-detail.html> (accessed April 6, 2010).

³ U.S. Government, The Act, http://www.recovery.gov/About/Pages/The_Act.aspx, (accessed April 6, 2010).

⁴ Dan Trudeau, Obama Courts Independents, New Hampshire Public Radio, December 21, 2007, <http://www.nhpr.org/node/14408> (accessed April 5, 2010).

⁵ Peter Overby, Obama Bans DNC from Taking Lobbyists' Money, National Public Radio, June 6, 2008, <http://www.npr.org/templates/story/story.php?storyId=91226631>, (accessed April 5, 2010).

⁶ President Barack Obama, WEEKLY ADDRESS: President Obama Vows to Continue Standing Up to the Special Interests on Behalf of the American People, White House, Office of the President, January 23, 2010.

The environment at the time led the Obama administration to enact unprecedented restrictions on communications between registered lobbyists and federal officials. Although the Obama administration's restrictions on stimulus fund lobbying were created with the meaningful goal of increased transparency in mind, the initial policy was met with much outrage and required revision. Even after the Obama administration released an updated policy, the evidence suggests that the restrictions did not create an environment of increased transparency and instead unfairly demonized lobbyists and possibly even resulted in a decrease in transparency.

The Problem: A Negative Perception of Lobbyists and Worries about “Special Interests”

The passage of the stimulus came at a time when public opinion of lobbyists matched that of Obama's publicly professed opinion. In a Pew Research Center poll conducted in January 2009, 36 percent thought that “reducing the influence of lobbyists and special interest groups in Washington” should be one of Obama's top priorities and an additional 34 percent reported that it should be “important, but [a] lower priority” (see Appendix I). Thus, the public's dislike of lobbyists remained stronger than ever and many blamed much of the current economic situation on lobbyists and “special interests.”

In line with the public's concern, Obama worried that “special interests” would dictate which projects the stimulus money went towards and he perceived special interest influence and lack of transparency as problems. As Obama explained in a White House memorandum, “The Recovery Act is designed to stimulate the economy ... It is not intended to fund projects for special interests.”⁷ He felt that if restrictions were not put in place, the Recovery Act funds would be “distributed on the basis of factors other than the merits of proposed projects or in response to improper influence or pressure.” Thus, the Obama administration created a new

⁷ Barack Obama, “Ensuring Responsible Spending of Recovery Act Funds,” March 20, 2009, in *Presidential Memoranda*, comp. The White House Office of the Press Secretary, (accessed April 6, 2010).

policy to regulate lobbying for stimulus funds in order to ensure that the funds would not become “an excuse for waste and abuse.”⁸

The Goals: Transparency, Merit-Based Decision Making and Reduction of Influence

On March 20, 2009, Obama announced that his administration would enact restrictions to ensure “that public funds are expended responsibly and in a transparent manner.”⁹ In essence, Obama set out three goals for addressing public concern surrounding the distribution of stimulus funds: transparency, merit-based decision making and the reduction of “improper influence.”

In the beginning, the primary goal was to restrict the communication between lobbyists and federal officials in order to prevent Recovery funds from being distributed “on the basis of factors other than the merits of proposed projects or in response to improper influence or pressure.”¹⁰ This was done to ensure that requests that did “not create many jobs or advance our recovery” would not receive Recovery Act funds.¹¹ Thus, Obama promised to create “unprecedented restrictions that will help ensure that lobbyists don’t stand in the way of our recovery.”¹²

The Reform: Restrictions on Communications with Federal Officials

On March 20, 2009, Obama announced the first set of restrictions in a memorandum entitled “Ensuring Transparency of Registered Lobbyist Communications.”¹³ These reforms severely restricted communication between government officials and lobbyists registered under the Lobbying Disclosure Act on matters related to the Recovery Act.

⁸ Barack Obama, “Ensuring Responsible Spending of Recovery Act Funds.”

⁹ Barack Obama, “Ensuring Responsible Spending of Recovery Act Funds.”

¹⁰ Barack Obama, “Ensuring Responsible Spending of Recovery Act Funds.”

¹¹ Barack Obama, “Remarks by the President and Vice President to the Representatives of the National Conference of State Legislators” (Speech, National Conference of State Legislators, Dwight D. Eisenhower Executive Office Building, March 20, 2009)

¹² Barack Obama, “Remarks by the President and Vice President.”

¹³ Barack Obama, “Ensuring Responsible Spending of Recovery Act Funds.”

Section 3a of the memorandum prohibited “an executive department or agency official” from discussing “particular projects, applications, or applicants for funding under the Recovery Act” with a lobbyist registered under the Lobbying Disclosure Act, unless the communication was submitted in writing.¹⁴ In other words, the memorandum banned verbal communication of any kind, including telephone calls and in-person encounters, if the individual was a registered lobbyist.

Section 3c dealt with transparency of written communications between a federal official and a registered lobbyist. It required “all written communications from a registered lobbyist concerning the commitment, obligation or expenditure of funds under the Recovery Act” to be posted on the respective agency’s recovery website no more than three days after the communication took place.¹⁵

However, the restrictions did permit executive department officials and agency officials to discuss general matters concerning the Recovery Act, such as how to apply for funding, as long as it did “not extend to or touch upon particular projects, applications, or applicants for funding.”¹⁶ After a permissible communication regarding general Recovery Act matters took place, the memorandum directed federal officials to immediately document the communication, including the date and time, the names of the registered lobbyists and other officials involved, and a description of what was discussed. As before, the memorandum required that all documented information be placed on the agency’s recovery website no later than three days after it took place.

On May 29, Norm Eisen, special counsel to the president for ethics and government reform, announced that the White House would be issuing an updated version of the Recovery

¹⁴ Barack Obama, “Ensuring Responsible Spending of Recovery Act Funds.”

¹⁵ Barack Obama, “Ensuring Responsible Spending of Recovery Act Funds.”

¹⁶ Barack Obama, “Ensuring Responsible Spending of Recovery Act Funds.”

Act lobbying restrictions, which would expand the policy to include all persons, not just registered lobbyists.¹⁷ The Office of Budget Management officially issued the complete set of new rules on July 24, 2009.¹⁸ As Eisen had mentioned, the new rules expanded the restrictions to include anyone contacting federal officials about the Recovery Act, not just registered lobbyists. Additionally, the new rules constrained communications within a set time period by limiting the ban on oral communication to the period between the submission of an application for Recovery Act funds and either the granting of Recovery Act funds for that project or the rejection of the pending application. During that time window, federal officials were not permitted to verbally discuss a pending application for Recovery Act funds, “whether or not the initiating party is a federally registered lobbyist.”¹⁹ As before, all communication must be documented, including communication not about a specific project currently under consideration.

Furthermore, the new rules clarified what qualified as a non-restricted general issue. It permitted communications concerning “(1) how to apply for funding under the Recovery Act; (2) how to conform to deadlines; 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.”²⁰

The Impact: Obama’s Restrictions Did Not Result in Increased Transparency

After the May 20 announcement, which prohibited all verbal communication regarding the Recovery Act between federal officials and registered, many within Washington responded with outrage. Dave Wenhold, president of the American League of Lobbyists, said, “President Obama has managed to unconstitutionally ban American citizens from one of our most sacred

¹⁷ Norm Eisen, “Update on Recovery Act Lobbying Rules: New Limits on Special Interest Influence,” May 29, 2009, (accessed April 5, 2010).

¹⁸ Peter R. Orszag “Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds,” July 24, 2009, Office of Management and Budget, Washington, D.C. (accessed April 6, 2010).

¹⁹ Peter R. Orszag “Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds.”

²⁰ Peter R. Orszag “Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds.”

rights, and it's flat out wrong ... This is not how a democracy works; this is how a totalitarian regime works."²¹ Several other groups, including the American Civil Liberties Union, also argued that the policy unconstitutionally restricted free speech. Moreover, opponents of the policy felt it unfairly targeted and unjustly blamed lobbyists for the problems within Washington. Many argued, "that the ban on telephone calls and meetings unfairly demonizes one group of people and ignores the role played by lawmakers, corporate executives and other non-lobbyists in securing federal funding for favored projects."²² On the other hand, Elizabeth Alexander, the Vice President's press secretary, argued, "the goal is full transparency. That's entirely consistent with the First Amendment."²³ According to her view, "lobbyists can communicate about specific projects in writing and about policy issues orally. That fully respects freedom of speech — while at the same time ending closed-door lobbyist deal-making in favor of sunlight."²⁴

In addition to the controversy surrounding the fairness of the lobbying restrictions, many felt that the policies would not be effective in achieving the intended goals because the restrictions did little to actually decrease influence. The fact that the restrictions only applied to registered lobbyists and not to others who would undoubtedly be lobbying federal officials for funding represented a major concern. Moreover, many believed that the restrictions would hold back deserving applicants and unfairly favor larger corporations more familiar with the federal government because lobbyists would be unable to help their clients move their funding application forward. According to Wehnold, "many cities and smaller companies rely on private lobbyists to navigate Washington, and they fear that they will be hampered in securing stimulus

²¹ Dan Eggen, "Public interest groups decry Obama's Strict lobbying rules," *Washington Post*, April 1, 2009.

²² Dan Eggen, "Public interest groups decry Obama's Strict lobbying rules."

²³ Kenneth P. Vogel, "Obama order worries speech groups," *Politico*, March 28, 2009, <http://www.politico.com/news/stories/0309/20580.html> (accessed April 5, 2010).

²⁴ Kenneth P. Vogel, "Obama order worries speech groups."

funding because of the new rules.”²⁵ Similarly, Christopher L. Risetto, from the law firm Reed Smith, “also argued that the rules could slow the pace of spending because lobbyists often help clients avoid paperwork errors and other mistakes that can bog down funding applications.”²⁶ Therefore, a variety of concerns criticized the policy as an ineffective means of achieving the Obama administration’s goals.

Finally, many of those opposed to the policy felt that the restrictions would ultimately not change what entities were trying influence federal officials. A *Wall Street Journal* article in April 2009 reported “lobbyists are working around a White House order banning them from seeking details about the \$787 billion economic-stimulus plan by instead sending company executives, lawyers or consultants.”²⁷ Several other news sources also reported similar activities. However, the White House argued that because the policy encouraged companies and organizations to send a business executive or other individual in the place of a lobbyist, the policy had in fact achieved success. Eisen said, “you’re having the actual clients come in, the heads of small businesses, the mayors of towns and governors. . . . The contacts are being done by a broader array of voices and that’s a healthy thing.”²⁸ Despite the White House’s defense of the policy, the reaction to the new restrictions was overwhelming negative.

As a result of the first policy’s inadequacies, the Obama administration released a revised set of rules the following July. The updated rules extend the communication restrictions to all persons, not just registered lobbyists, and limit the restriction on oral communication to the time period between the submission of a funding application and the granting of the award.²⁹

²⁵ Dan Eggen, “Public interest groups decry Obama’s Strict lobbying rules.”

²⁶ Dan Eggen, “Public interest groups decry Obama’s Strict lobbying rules.”

²⁷ Elizabeth Williamson, “Some Lobbyists Try to Skirt Stimulus Ban,” *Wall Street Journal*, April 28, 2009, <http://online.wsj.com/article/SB124088108778961921.html> (accessed April 5, 2010).

²⁸ John Fritze, “Efforts to Lift Veil on Lobbyists Still a Work in Progress,” *USA Today*, May 8, 2009, <http://abcnews.go.com/Politics/story?id=7534089> (accessed April 5, 2010).

²⁹ Peter R. Orszag “Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds.”

However, the new rules have not escaped criticism either. Many people criticized the restrictions for placing too severe of a limitation on communication. In his Politico blog, Josh Gerstein argued the updated policy “would seem to suggest that an average citizen who wants to lobby for or against a certain project cannot call up the White House or his local Housing and Urban Development office ... and say his or her piece.”³⁰ Others worried that the complicated rules, combined with the stigma the Obama administration attaches to lobbying, would “discourage federal officials from meeting with lobbyists at all.”³¹ Lobbyist Howard Marlowe feared federal officials would think, “Oh, the more I talk to lobbyists and put it on the record, the more I’m going to be viewed by my superiors or folks over at the White House as being somehow bad.”³² On the other hand, Citizens for Responsibility and Ethics in Washington released a statement in favor of the updated policy, arguing “it is just good policy that once an application for a competitive loan or grant has been filed, no one – registered lobbyist or not – can lobby the official responsible for handing out the taxpayer funds.”³³ However, in essence, many believe that the policy still casts an unjustly negative light on lobbying.

Like the previous policy, the new policy faces criticism surrounding its effectiveness, particularly with respect to whether the policy successfully promotes transparency. Under the new rules, opponents of the policy argue lobbyists and other interested individuals can still meet with federal officials to persuade the officials to grant their future application for funding. Additionally, according to Wehnold, the policy “does not promote the transparency Obama promised because registered lobbyists are still the only ones whose contacts are disclosed.” It is

³⁰ Josh Gerstein, “WH expands, narrows stimulus lobbying ban,” *Under the Radar*, Politico, May 29, 2009, http://www.politico.com/blogs/joshgerstein/0509/WH_expands_narrows_stimulus_lobbying_ban.html (accessed April 5, 2009).

³¹ Alan Fram, “THE INFLUENCE GAME: Obama limits stimulus lobbying,” *Associated Press*, March 28, 2009, <http://www.guardian.co.uk/world/feedarticle/8426274> (accessed April 5, 2010).

³² Alan Fram, “THE INFLUENCE GAME.”

³³ Citizens for Responsibility and Ethics in Washington, “Crew Applauds Amended White House Restrictions on Lobbyist Communications,” (July 24, 2009), <http://www.citizensforethics.com/node/43787> (accessed April 5, 2009).

true that the agencies do not post communications with non-registered lobbyists on their respective Recovery websites. If the goal, by extending the policy to non-registered lobbyists, was to increase transparency and give Americans an idea of who was vying for the stimulus funds, it seems that all communication should be posted. In short, many are skeptical that the Obama administration's stimulus lobbying restrictions have done anything to increase transparency, despite the intention, and some suggest it has in fact discouraged transparency.

Indeed, a surprising lack of evidence exists to support increased transparency. As of April 2010, most of the agencies had posted a surprisingly small number of communications. The Department of Transportation, for example, reports only eight. In August 2009, the *Washington Post* reported "since the \$787 billion American Recovery and Reinvestment Act passed in February, federal agencies have reported 197 contacts with lobbyists about stimulus grants."³⁴ Likewise, in expressing his frustration with the policy, Paul Blumenthal from the Sunlight Foundation wrote, "Forgive me for not believing that the Pentagon has only been contacted by ONE lobbyist and the Homeland Security Department has had ZERO contact with lobbyists over stimulus spending."³⁵ In contrast to the agency reports, a search for the keyword "stimulus" for the first quarter of 2009 on the Lobbying Disclosure Electronic Filing System reveals over 1052 reports of lobbying for stimulus funds filed by registered lobbyists.³⁶ Furthermore, a search for the second quarter reveals an additional 594 reports.³⁷ Many news articles also point to inconsistencies between the agency reports and registered lobbyist disclosures. On September 1, the ProPublica reported "though more than 800 lobbyists had registered to lobby on stimulus

³⁴ Rita Beamish, "U.S. Meetings With Lobbyists Go Unreported," *The Washington Post*, August 31, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/30/AR2009083002426.html> (accessed April 5, 2010).

³⁵ Paul Blumenthal, "Agencies Not Reporting Stimulus Lobbying Contacts," *Sunlight Foundation*, August 31, 2009, <http://blog.sunlightfoundation.com/2009/08/31/agencies-not-reporting-stimulus-lobbying-contacts/> (accessed April 5, 2010).

³⁶ Lobbying Disclosure Electronic Filing System, <http://soprweb.senate.gov/> (accessed April 5, 2010).

³⁷ Lobbying Disclosure Electronic Filing System.

issues, only a handful actually appeared in lobbying disclosures on agency Web sites.”³⁸ The fact that over 1,000 lobbyists have reported lobbying federal officials for stimulus funds, while hardly any reports have been posted on the agencies’ websites, does not point to increased transparency.

Finally, while the Obama administration’s requirement for agencies to publicly post all written communication received and to post summaries of verbal communication represented a good intention, it created a maze of web pages difficult for the average internet user to navigate. As a CRS report regarding the Obama’s ethics and lobbying reforms correctly states, “a central database of registered-lobbyist contacts with executive branch officials does not currently exist.”³⁹ Each agency posts their respective communications with registered lobbyists on their own agency’s recovery website. Additionally, each agency website links to its recovery page in a different area. The lack of a centralized location means that any curious American citizen who wants to see what entities have communicated with federal agency officials about stimulus funds must go to all twenty-eight agency websites to gain a clear picture (see Appendix II). Additionally, the lack of centralizations means that every report database operates differently, with some being far easier to utilize than others. The quality of reporting also varies greatly. Some reports contain great detail regarding what was discussed and who was present. Others contain a single vague sentence.

Finally, the policy’s reliance on self-regulation and the lack of enforcement makes it difficult to view the policy as effectively tailored to meet its goals. The policy states, “if communication concerns a pending application and is not exempted, the employee is directed to terminate the

³⁸ Olga Pierce, “Stimulus Lobbying Disclosure Promise Still Not Fulfilled,” *ProPublica*, September 1, 2009, <http://www.propublica.org/ion/stimulus/item/stimulus-lobbying-disclosure-promise-still-not-fulfilled-901> (accessed April 5, 2010).

³⁹ *Congressional Record*, 111th Cong., 1st sess., December 1, 2009, vol. R40947, pg. 13 <http://openocrs.com/document/R40947> (accessed April 7, 2010).

conversation.”⁴⁰ Thus, the policy relies on the federal official regulating him or herself. It also does not specify any specific protocols for oversight or for enforcement beyond stating that the “head of each executive department or agency shall immediately take all necessary steps, to the extent consistent with the Act and other applicable law, to comply with this memorandum.”⁴¹

Conclusion

While the Obama administration’s unprecedented restrictions on registered lobbyists seeking to communicate with federal officials about Recovery Act funds were well intentioned, the initial policy met a high-level of resistance and clearly did not advance the goal of increased transparency. Instead, it unfairly demonized lobbyists and unnecessarily prohibited communication, while still allowing others with equal or more interest and influence to verbally lobby for Recovery Act funds.

Furthermore, although the updated policy took a step in the right direction by extending the policy to cover all parties lobbying federal officials for Recovery Act funds and dictating a specific time period for the restrictions to apply, the design of the new policy did not further—and in fact possibly hindered—transparency. It is likely that many people interested in discussing a particular project with a federal official simply did so before submitting their application, thus evading the need for the federal official to document the communication if it was not with a registered lobbyist. Moreover, although the Obama administration extended the ban on oral communication to all persons, only the written communications with registered lobbyists have been posted on the agencies’ recovery websites. This does not promote transparency, because it excludes an entire group of individuals who are also lobbying for funds, even though they are covered under the policy.

⁴⁰ Peter R. Orszag "Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds."

⁴¹ Peter R. Orszag "Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds."

In essence, although the Obama administration's ultimate goal of increased transparency represents a commendable objective, the policy set out by the Obama administration did not effectively achieve that goal.

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Appendix I

OBAMA, BARACK, Special interests

Question: I'd like to ask you some questions about priorities for President-elect Obama and Congress this year. As I read from a list, tell me if you think the item that I read should be a top priority, important but lower priority, not too important or should it not be done. Reducing the influence of lobbyists and special interest groups in Washington.

Source: Pew Research Center

Date: Jan. 22, 2009

Results:

top priority	36%
important but lower priority	34
not too important	18
should not be done	5
don't know/ refused	7

Field Date - Jan 7-11, 2009

Universe: Country: United States

Method: telephone

Sample Size: 1,503

Copyright Info: The Pew Research Center for the People and the Press

Additional Information: Interviews took place on landline (n=1,128) and cell (n=375) phones.

Notes: Asked of form 2 (n=734).

Contact Information: Pew Research Center for the People & the Press

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Pew Research Center for the People & Press. "Obama, Barack, Special Interests." 22 Jan. 2009. New York: Associated Press. Polling the Nations. ORS Publishing. American U Lib., Washington DC. 9 April. 2009 <<http://poll.orspub.com>>

Appendix II

List of Agencies With Recovery Websites

1. Department of Agriculture
2. Department of Commerce
3. Department of Defense
4. Department of Education
5. Department of Energy
6. Department of Health and Human Services
7. Department of Homeland Security
8. Department of Housing and Urban Development
9. Department of the Interior
10. Department of Justice
11. Department of Labor
12. Department of State
13. Department of Transportation
14. Department of the Treasury
15. Department of Veterans Affairs
16. Agency for International Development
17. Corporation for National and Community Service
18. Environmental Protection Agency
19. General Services Administration
20. National Aeronautics and Space Administration
21. National Endowment for the Arts
22. National Science Foundation
23. Office of Personnel Management
24. Railroad Retirement Board
25. Small Business Administration
26. Smithsonian Institution
27. Social Security Administration
28. U.S. Army Corps of Engineers.

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