

## **NIH Interim Guidance Regarding Communications with Registered Lobbyists about ARRA Funds**

The HHS and this NIH guidance is intended to promote transparency in communications with Federally registered lobbyists (FRLs) and facilitate Federal agencies' merit-based decision making in awarding Recovery Act funds. The HHS guidance upon which this NIH guidance is based provides a detailed protocol for communicating with lobbyists and documenting and reporting such communications.

It is important to note that this guidance applies only to: 1) pre-award communications regarding ARRA funding – it does not apply to communications regarding the administration of a grant or other funding mechanisms that have already been awarded under non-ARRA monies or after ARRA-funded awards have been made; and 2) communications with Federally registered lobbyists. These rules do not apply to state or local lobbyists and HHS has clarified that the communication applies to the individual FRL, not their lobbying organization or non-registered employees of such organizations. Accordingly, if you have oral communications (in person or by phone) with a non-Federal individual about ARRA, you should start by asking if the person is an FRL. The guidance then provides that:

### **Unrestricted ORAL communications that do not require reporting**

- A. You may have **unrestricted communications** with FRLs on logistical questions related to the Recovery Act. Logistical or implementation-related topics of discussion include:
1. how to apply for funding under the Recovery Act,
  2. how to conform to deadlines,
  3. 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.
- B. You may also have **unrestricted communications** with FRLs at meetings determined to be widely attended gatherings (WAGs). These are public communications made as part of the scheduled session of a widely attended gathering. WAGs have a large number of people with diverse views or interests present and there is an opportunity for an exchange of ideas. WAGs achieve the desired transparency aims, so any aspect of ARRA funding can be discussed. Typically, this exception to the restrictions regarding ARRA funds communications would apply if, for example, you were delivering a keynote address at a scientific meeting and you were asked a question related to ARRA funding from a member of the audience.

The restrictions below, however, do apply to private oral communications between Federal officials and FRLs that may happen to occur at, or on the heels of, a WAG. So, if a Federal

official and a small group which includes a FRL break off from the open, public discussion to talk, that circumstance may trigger the communication restrictions depending on the topic of the discussion.

**Restricted ORAL communications that may require reporting**

C. Oral Communications with Federally Registered Lobbyists on Recovery Act Policy Matters or in Support of Specific Projects or Applicants for Funding

Other than the above situations (A & B), if you communicate with or are contacted, via telephone or in-person, by any persons outside the Federal government regarding Recovery Act matters, you should ask if any person present on the phone or at the meeting is a FRL. Federal officials are not required to verify whether the answer provided to this inquiry is accurate. If any person is a FRL, take the following steps:

1) **Inform the Federally registered lobbyist of applicable restrictions**, a sample template of which follows:

"Under the President's Memorandum, we cannot engage in any oral communications with Federally registered lobbyists about the use of Recovery Act funds in support of **particular projects, applications, or applicants**. All such communications by Federally registered lobbyists must be submitted in writing, and will be posted publicly on HHS' Recovery Website within three business days.

"If the oral communication is about **general policy issues** concerning the Recovery Act and does not touch upon particular projects, applications or applicants for funding, you may participate in the conversation. We will document the occurrence of the policy conversation in writing, including your name, your employer, your client, the same information about other Federally registered lobbyist participants, and the names of the Federal participants, together with a brief description of the conversation, for public posting on HHS' Recovery Website within three business days."

Please note that:

A **“particular project, application or applicant”** is defined as:

- (i) a discrete and identifiable transaction, or set of transactions
- (ii) in which specific parties have expressed an interest

**“General policy issues”** are currently not delineated, but examples include discussions supporting funding of certain populations, how funding will be divided amongst a general category of projects such as autism research, or how funding is being allocated to certain geographic areas. If an inquiry is not about mere logistics (see Section A above) or does not address a particular project, application or applicant, assume for now it falls into a general policy issue category.

2) **If the oral communication proceeds** with the participation of a FRL, you should discuss only logistical questions or provide information regarding Recovery Act programs (as

outlined in part A above) or general policy issues concerning Recovery Act funding, not particular projects, applications, or applicants for funding.

For instance, a Federally registered lobbyist representing a university hospital seeking a Recovery Act grant to develop and test diagnostic screening tools for different populations regarding Autism Spectrum Disorders calls a federal employee at the National Institute of Mental Health. The Federally registered lobbyist wants to speak to the Federal employee about the university hospital's strategic plan to carry out this initiative with ARRA funds. The employee may not speak to the lobbyist because this communication is about a particular project. The employee must ask the lobbyist to submit the communication in writing, which will be timely posted on the HHS Recovery Website.

If a conversation in which a FRL is participating moves to particular projects, applications, or applicants for funding, you should end the conversation and request the lobbyist submit a written statement to you. This truncated conversation does not trigger the reporting or posting requirement. See paragraph 4, below, for when a contact does need to be documented.

- 3) **If a conference or meeting does not** qualify as a widely attended gathering, you must inquire whether participants are Federally registered lobbyists. This requirement may be satisfied, for example, by requesting each individual to sign in at a registration table. The sign-in sheet could include a column for the name and blocks to check: general public, Federally registered lobbyist, press, or other.

**IF AN FRL IS PRESENT**, the meeting should be opened with a review of the meeting ground rules as follows:

- there can be no discussion of particular projects, applications, or applicants for funding under the Recovery Act (discussed more fully above in section C(2)),
- questions or comments about projects, applications, or applicants for funding under the Recovery Act should be put in writing and sent to the employee participating in the meeting or other appropriate agency official (discussed more fully below in section D), and
- discussion at the meeting may cover general Recovery Act policy issues, including Department or agency programs (discussed more fully above in section C(2)). Discussions relating to general Recovery Act policy issues will be documented (described more fully below in section C (4)). Discussions of logistical issues (discussed more fully in section A) do not need to be documented.

- 4) **Document each in-person or telephonic conversation concerning Recovery Act policy matters** with a FRL during or immediately after the conversation. If more than one Federal employee is present during the conversation, ensuring documentation is the responsibility of the most senior Federal official present during the conversation. The Federal employee and NIH have one business day to document the conversation to allow time for review by OGC and posting to the HHS Recovery Website within 3 days.

**Process:**

Accordingly, an NIH employee must **fill out the attached Registered Lobbyist Contact Disclosure Form and e-mail** it to Holli Beckerman Jaffe ( [jaffe@od.nih.gov](mailto:jaffe@od.nih.gov) ) the NIH ARRA Contact for Lobbyist Communications, within one business day of the communication. **Subject line of e-mail must read: “Lobbyist Oral Contact re: ARRA Funding.”** ICs can determine on an individual basis any IC staff who should be copied on this submission.

Note that the form requires the NIH employee to provide:

- the date of contact,
- the name(s) of the Federally registered lobbyists and the Federal employee(s) who were parties to the conversation (including title and IC),
- the name(s) of the lobbyist firm or organization, if any,
- the name(s) of the lobbyist's client(s), and
- a general, one-sentence description of the substance of the conversation.

- 5) **Submit the information to OGC for review.** The NIH ARRA Contact for Lobbyist Communications will submit an email with the accompanying Registered Lobbyist Contact Disclosure Form to the HHS OGC mailbox ( [LobbyReview@hhs.gov](mailto:LobbyReview@hhs.gov) ) within one business day.
- 6) **Submitting the Form for Posting on the HHS Recovery Website.** Once reviewed and cleared by OGC, NIH ARRA Contact for Lobbyist Communications **will enter** the required information into the on-line disclosure form (at <http://lobby.intranet.hhs.gov> ) and submit the completed form. The form should be submitted for posting by 5 pm ET on the **third business day** after the communication. Note this form must be used to report both covered verbal communications regarding policy matters and written communications regarding policy matters and particular projects, applications or applicants (discussed below).

#### **D. Written Communications from Federally Registered Lobbyists**

Note that the above processes apply to unrestricted oral communications (those about logistical or implementation issues, or made at a widely attended gathering) and the reporting of oral communications with FRLs regarding ARRA general policy matters. Federal officials cannot orally discuss particular ARRA projects, applications or applications with FRLs and must cease oral communication and ask them to submit to them, the Federal official, a written inquiry, preferably by email. **All written communications/correspondence** received from FRLs and Federal responses to registered lobbyists regarding specific projects, applications, or applicants for Recovery Act funding, are to be posted on the HHS Recovery Website within 3 business days of the communication. HHS will be using the same on-line form to post written communications used for posting verbal communications. All materials posted on the Web must comply with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C.794d), when submitted to the HHS Recovery Website. Compliance may be achieved as follows:

The Federal NIH official should encourage the FRL to submit written communication via email to Federal officials with supporting documents, if any, hosted on a contacting party or client's Website and linked within the email.

**Process:**

The recipient Federal official will copy and paste the full contents of the written communication in the appropriate fields of the attached **Registered Lobbyist Contact Disclosure Form** and submit the completed form to Holli Beckerman Jaffe ( [jaffe@od.nih.gov](mailto:jaffe@od.nih.gov) ) by 5pm ET of the **second business day** after the communication is received by the IC for NIH review. **Subject line of e-mail must read: “Lobbyist Written Contact re: ARRA Funding.”** The NIH ARRA Contact for Lobbyist Communications will post the information to the HHS website as required on the 3<sup>rd</sup> business day following the written communication.

Any response by Federal officials to the written contact should also be submitted to Ms. Jaffe via email and entered on to the Registered Lobbyist Contact Disclosure Form as described above. This cycle should be repeated as long as the related substantive discussion continues.

Per HHS requirements, any hard copy correspondence will need to be re-typed and that text, including letterhead content, copied and pasted into the appropriate field of the on-line form or attached in a 508 compliant file format. The other fields may be filled in directly. The hard copy correspondence can then be saved as a PDF and the file attached via the form. PDFs may not be attached unless the text version has been entered. Attached electronic files are not necessarily 508 compliant and may be difficult or impossible to make fully accessible.

**Please direct questions regarding this NIH guidance to Holli Beckerman Jaffe,  
the NIH ARRA Contact for Lobbyist Communications at  
301-594-9555 or via email at [jaffe@od.nih.gov](mailto:jaffe@od.nih.gov) .**

## REGISTERED LOBBYIST CONTACT DISCLOSURE FORM

This form is to be completed by Executive Branch employees who are contacted by registered lobbyists regarding **policy issues concerning the Recovery Act**. This report includes a written description of each contact, the date and time of the contact, and the names of the registered lobbyist(s) and the employee(s) with whom the contact took place. The information on this form will be available to the public on the Executive Branch agency's recovery website.

To be completed by the employee contacted.

| Date and time of contact:                       | Name of the Employee(s) Contacted (Name and Title and IC) | Brief description of the contact: (attach separate sheet if necessary) |         |
|---|---|--|---------|
|   |   |  |         |
| Name of the Employee(s) who prepared this form: |   | Date:  |         |
| Registered Lobbyist(s) Name:                    | Title:  | Firm or Organization, if applicable:                                   | Client: |
|   |   |  |         |