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# Presidential Documents

**Title 3—**

## The President

**Memorandum of March 20, 2009**

## Ensuring Responsible Spending of Recovery Act Funds

**Memorandum for the Heads of Executive Departments and Agencies**

My Administration is committed to ensuring that public funds are expended responsibly and in a transparent manner. Last month, I signed into law the ''American Recovery and Reinvestment Act of 2009,'' Public Law 111–5 (the ''Recovery Act'' or ''Act''), an investment package designed to provide a necessary boost to our economy in these difficult times and to create jobs, restore economic growth, and strengthen America's middle class. The Recovery Act is designed to stimulate the economy through measures that, among other things, modernize the Nation's infrastructure, jump start American energy independence, expand high-quality educational opportunities, preserve and improve access to affordable health care, provide middle-class tax relief, and protect those in greatest need. It is not intended to fund projects for special interests.

In implementing the Recovery Act, we have undertaken unprecedented efforts to ensure the responsible distribution of funds for the Act's purposes and to provide public transparency and accountability of expenditures. We must not allow Recovery Act funds to be distributed on the basis of factors other than the merits of proposed projects or in response to improper influence or pressure. We must also empower executive department and agency officials to exercise their available discretion and judgment to help ensure that Recovery Act funds are expended for projects that further the job creation, economic recovery, and other purposes of the Recovery Act and are not used for imprudent projects.

To these ends, I hereby direct that for any further commitments, obligations, or expenditures of funds under the Recovery Act, 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.

**Section 1.** *Ensuring Merit-Based Decisionmaking for Grants and Other Forms of Federal Financial Assistance Under the Recovery Act.* (a) Executive departments and agencies shall develop transparent, merit-based selection criteria that will guide their available discretion in committing, obligating, or expending funds under the Recovery Act for grants and other forms of Federal financial assistance. Such criteria shall be consistent with legal requirements, may be tailored to the particular funding activity, and shall be formulated to ensure that the funding furthers the job creation, economic recovery, and other purposes of the Recovery Act. To this end, merit-based selection criteria shall be designed to support particular projects, applications, or applicants for funding that have, to the greatest extent, a demonstrated or potential ability to: (i) deliver programmatic results; (ii) achieve economic stimulus by optimizing economic activity and the number of jobs created or saved in relation to the Federal dollars obligated; (iii) achieve long-term public benefits by, for example, investing in technological advances in science and health to increase economic efficiency and improve quality of life; investing in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; fostering energy independence; or improving educational quality; and (iv) satisfy the Recovery Act's transparency and accountability objectives.

(b) No considerations contained in oral or written communications from any person or entity concerning particular projects, applications, or applicants for funding shall supersede or supplant consideration by executive departments and agencies of such projects, applications, or applicants for funding pursuant to applicable merit-based criteria.

**Sec. 2.** *Avoiding Funding of Imprudent Projects.* (a) Funds under the Recovery Act shall not be committed, obligated, or expended by any executive department or agency, and shall not be used by any State or local governmental or private grantee or awardee, to support projects of the type described in section 1604 of Division A of the Recovery Act, which states that ''[n]one of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.''

(b) In exercising their available discretion to commit, obligate, or expend funds under the Recovery Act for grants and other forms of Federal financial assistance, executive departments and agencies, to the extent permitted by law, shall not approve or otherwise support funding for projects that are similar to those described in section 1604 of Division A of the Recovery Act.

(c) In exercising their available discretion to commit, obligate, or expend funds under the Recovery Act for grants and other forms of Federal financial assistance, executive departments and agencies, to the extent permitted by law, shall not approve or otherwise support any project, application, or applicant for funding that is imprudent or that does not further the job creation, economic recovery, and other purposes of the Act. To this end, executive departments and agencies shall exercise their available discretion to decline approving or otherwise supporting particular projects, applications, or applicants for funding unless the department or agency has affirmatively determined, in advance, that the project, application, or applicant has a demonstrated or potential ability to: (i) deliver programmatic results; (ii) achieve economic stimulus by optimizing economic activity and the number of jobs created or saved in relation to the Federal dollars obligated; (iii) achieve long-term public benefits by, for example, investing in technological advances in science and health to increase economic efficiency and improve quality of life; investing in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; fostering energy independence; or improving educational quality; or (iv) satisfy the Recovery Act's transparency and accountability objectives.

(d) Where executive departments or agencies lack discretion under the Recovery Act to refuse funding for projects similar to those described in section 1604 of Division A of the Act, or other projects that the executive department or agency deems imprudent or as not furthering the job creation, economic recovery, or other purposes of the Act, the department or agency shall consult immediately with the Office of Management and Budget (OMB) about the project and its funding requirements. Where legally permissible, the department or agency shall:

(i) delay funding of the project for 30 days, or the longest period permitted by law if less than 30 days, in order to ensure adequate opportunity for public scrutiny of the project prior to commitment of funds; and

(ii) publish a description of the proposed project (or project plan) and its funding requirements on the agency's recovery website as soon as practicable before or after commitment, obligation, or expenditure of funds for the project.

(e) Executive departments and agencies, including their respective Offices of Inspector General, shall monitor compliance with the prohibition in section 1604 of Division A of the Recovery Act, referenced in paragraph (a) above, by contractors, grantees, and other recipients of Federal financial assistance (recipients). If a department or agency believes that a recipient has not complied with section 1604, then the department or agency shall (i) promptly notify the Recovery Accountability and Transparency Board; and (ii) take appropriate corrective action that may include, but not be limited to, disallowing or otherwise recovering improperly spent amounts, imposing additional requirements on the recipient to ensure compliance with section 1604 (and other applicable prohibitions and obligations), initiating a proceeding for administrative civil penalties, and initiating a proceeding for suspension and debarment.

**Sec. 3.** *Ensuring Transparency of Registered Lobbyist Communications.* (a) An executive department or agency official shall not consider the view of a lobbyist registered under the Lobbying Disclosure Act of 1995, 2 U.S.C. 1601 *et seq.*, concerning particular projects, applications, or applicants for funding under the Recovery Act unless such views are in writing.

(b) Upon the scheduling of, and again at the outset of, any oral communication (in-person or telephonic) with any person or entity concerning particular projects, applications, or applicants for funding under the Recovery Act, an executive department or agency official shall inquire whether any of the individuals or parties appearing or communicating concerning such particular project, application, or applicant is a lobbyist registered under the Lobbying Disclosure Act of 1995. If so, the lobbyist may not attend or participate in the telephonic or in-person contact, but may submit a communication in writing.

(c) All written communications from a registered lobbyist concerning the commitment, obligation, or expenditure of funds under the Recovery Act for particular projects, applications, or applicants shall be posted publicly by the receiving agency or governmental entity on its recovery website within 3 business days after receipt of such communication.

(d) An executive department or agency official may communicate orally with registered lobbyists concerning general Recovery Act policy issues; provided, however, that such oral communications shall not extend to or touch upon particular projects, applications, or applicants for funding, and further that the official must contemporaneously or immediately thereafter document in writing: (i) the date and time of the contact on policy issues; (ii) the names of the registered lobbyists and the official(s) between whom the contact took place; and (iii) a short description of the substance of the communication. This writing must be posted publicly by the executive department or agency on its recovery website within 3 business days of the communication.

(e) Upon the scheduling of, and again at the outset of, any oral communications with any person or entity concerning general Recovery Act policy issues, an executive department or agency official shall inquire whether any of the individuals or parties appearing or communicating concerning such issues is a lobbyist registered under the Lobbying Disclosure Act. If so, the official shall comply with paragraph (d) above.

**Sec. 4.** *General Provisions.* (a) The Director of OMB shall assist and, as appropriate, issue guidance to the heads of executive departments and agencies to carry out their responsibilities under this memorandum. Within 60 days of the date of this memorandum, the Director of OMB shall review the implementation of this memorandum by executive departments and agencies and shall forward to me any recommendations for modifications or revisions to this memorandum.

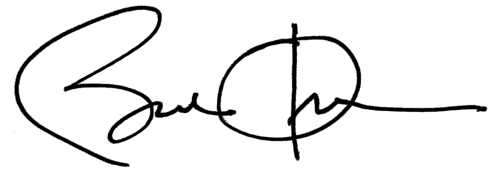
(b) This memorandum does not apply to tax-related provisions in Division B of the Recovery Act.

(c) Nothing in this memorandum shall be construed to impair or otherwise affect: (i) authority granted by law or Executive Order to an executive department, agency, or the head thereof; or (ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(d) This memorandum shall be implemented consistent with applicable law and all OMB implementing guidance, and shall be subject to the availability of appropriations.

(e) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**Sec. 5.** *Publication.* The Director of OMB is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
*Washington, March 20, 2009*

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