

# Election and Political Law

## E-ALERT

September 15, 2009

### TREASURY DEPARTMENT ISSUES NEW POLICY FOR COMMUNICATIONS ABOUT TARP FUNDS

On September 11, 2009, the Treasury Department released [a new policy](#) that will govern communications with Treasury Department officials about the Emergency Economic Stabilization Act ("EESA") process (also known as the Troubled Asset Relief Program or "TARP"). The new rules are "designed to limit the influence of lobbyists and special interests...and ensure that investment decisions are guided by objective assessments in the best interest of the health and stability of the financial system."

For those familiar with the administration's restrictions on lobbying over Recovery Act funds, these new rules will seem very familiar. Treasury's new policy incorporates lessons learned from the adverse reaction to the initial versions of the policy restricting communications regarding stimulus funds (funds available under the American Recovery and Reinvestment Act) (Those rules were summarized in our E-Alerts of [March 24, 2009](#) and [August 3, 2009](#).) Treasury's policy prohibits anyone outside of the executive branch, whether a registered federal lobbyist or not, from orally communicating with Treasury officials about pending EESA applications. And like the Recovery Act policy, communications regarding EESA policy or proposed applications made by federal lobbyists (but not by non-lobbyists) are subject to public disclosure.

Below we summarize some of the new policy's key points:

- *General Logistical and Implementation Questions Remain Unrestricted.* Any person, including a federally registered lobbyist, remains free to communicate with Treasury officials concerning general logistical questions about EESA funding or implementation (e.g., how to apply for funding, a request for information, or a request for a meeting). As long as the communication does not involve advocacy about EESA policy or concern an application for funding, such communications are not restricted.
- *Communications at Widely Attended Gatherings Remain Unrestricted.* The new policy explains that oral communications made at "widely attended gatherings" (as that term is defined in the executive branch ethics regulations) do not involve the same risk of improper influence as private discussions. Communications made in the setting of a widely attended gathering therefore remain unrestricted (this means that a Treasury official need not determine whether an audience at a speaking engagement includes any federal lobbyists). Private conversations held at, in connection with, immediately before or after a widely attended gathering do not fall within this category, and may be subject to the prohibitions or disclosure obligations discussed below.

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Communications made while a formal application for EESA funds is pending may only take place in writing, and those written communications will be publicly disclosed.

- *Oral Communications During the Pendency of a Formal Application Are Prohibited.* No person, whether a registered lobbyist or not, may communicate orally with a Treasury official about a pending application for EESA funds. In fact, the new policy directs that a Treasury official “should immediately end the conversation” if an individual attempts to talk about a pending application. This prohibition extends from the time a formal application for financial assistance is submitted to the time a preliminary approval of EESA funds is provided. A Treasury official may meet with a lobbyist to discuss a planned application, as long as a formal application has not yet been submitted (subject to the disclosure obligations discussed below). The prohibition on oral communications does not apply if the communication is initiated by a Treasury official who is affirmatively seeking information about the application.
- *Written Communications During the Pendency of a Formal Application Will Be Publicly Disclosed.* Treasury officials are directed to submit all written communications from EESA applicants or their representatives (whether or not they are federally registered lobbyists) for posting on the Treasury Department website, within three business days of the communication.

Communications by non-lobbyists regarding EESA policy or applications for funding (provided an application is not pending) are not affected by the new Treasury policy. This is true even for the non-lobbyist employees of an entity registered under the LDA. Communications by federally registered lobbyists, however, will be publicly disclosed.

- *Oral Communications Concerning EESA Policy or Applications for Funding By Federally Registered Lobbyists Will Be Publicly Disclosed.* If a Treasury official engages in an oral communication (via telephone or in-person) with a federally registered lobbyist speaking on behalf of an employer or client about EESA policy or applications for funding, the Treasury official is required to document the conversation in writing, for public disclosure on the Treasury website. The Treasury official must document the date of the contact; the names of the parties to the conversation; the name of the lobbyist’s client(s); and a general, one-sentence description of the substance of the conversation. Any written materials submitted in connection with the conversation must also be disclosed. The disclosure will be posted within 3 business days of the communication.
- *Written Communications Concerning EESA Policy or Applications for Funding By Federally Registered Lobbyists Will Be Publicly Disclosed.* Any written communication from a federally registered lobbyist, on behalf of an employer or client, concerning EESA policy or application for funding will be posted on the Treasury Department website within 3 business days of the communication.

The disclosure obligations only apply to currently registered federal lobbyists communicating on behalf of an employer or client; communications by former lobbyists, lobbyists registered under state or local law, or lobbyists communicating on behalf of someone other than an employer or client are not subject to these disclosure obligations.

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A Q&A document that accompanies the statement of policy notes that Treasury officials should not avoid all contact with registered lobbyists on EESA matters. Rather, the policy is intended to ensure the transparency of EESA-related communications.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our election and political law practice group:

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