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Agency Plans Add Another Element of Accountability to Recovery Act Spending

On May 17, the Obama administration released the next wave of Recovery Act information, this time by posting Agency Recovery Plans on Recovery.gov. These plans, which are mandated by the Recovery Act, include broad, agency-wide plans and program-specific plans on how each federal agency intends to expend its appropriated Recovery Act funds. Like other Recovery Act-related data dissemination, this latest phase in Recovery Act spending transparency marks another move in the right direction but needs some refinement.

All agency-wide plans contain four sections:

- **Broad Recovery Goals** - Essentially a recovery mission statement and contains a declaration of each agency's goals for the recovery

- **Competition on Contracts** - Information on how much that agency's Recovery Act funds will be awarded through contracts
- **Contract Type** - A discussion of the extent to which that agency will rely on competitively bid contracts
- **Accountability Plan** - A narrative description of how that agency plans to implement accountability policies

Agency Recovery Plans also include separate "Program Plans," which detail the programs the agencies are implementing as part of their Recovery efforts, and include the following sections:

- **Objectives**
- **Measures**
- **Schedule and Milestones**
- **Projects and Activities**
- **Review Process**
- **Cost and Performance Plan**
- **Energy Efficiency Spending Plans**
- **Program Plan Award Types**

There are some 270 Program Plans, spread across 28 of the federal agencies that have received Recovery Act funds. Although the reporting format is consistent for all plans, the programs detailed in the plans range from simple expansions or extensions of old programs, such as the Early Head Start Recovery Plan, to complex new programs, such as the State Fiscal Stabilization Fund Recovery Plan, which will provide funds to the states to "avoid reductions in education and other essential public services."

Each of these Program Plans has detailed information about the program, such as objectives, timelines, measurement criteria, review processes, and award types. And while a comprehensive survey of the nearly 300 program-specific plans would provide insight into how well each agency is formulating and promulgating Recovery Act spending plans, a sampling of plans reveals unevenness of information quality both between and within agencies.

For example, the Department of Energy lists several programs for which "No Data Available" appears under most of the major section headings, while the U.S. Army Corps of Engineers' Program Plans consistently lack information under the "Measures" section. These two agencies are the outliers, however, as other agencies are fairly comprehensive in completing section detail. However, for all program plans, nowhere is the total appropriated amount clearly stated. Although one can view this information in each agency's Weekly Report in another section of the Recovery.gov website, this basic but important information should be included in each Program Plan.

While information in the plans is uneven, it is easy to find. Links to Agency Plans are prominently displayed on the Recovery.gov website. Not only can one browse by agency, but also by Objectives, Public Benefits, Types of Programs, and Measures of Performance to find

different programs. While increased functionality is certainly welcomed, browsing by the latter four options produces a seemingly-random list of agency programs.

One interesting feature within these four sections is a word cloud of top keywords used in each of the sections that is clickable and will pull up the specific section of the program plans that mention those words. This allows both instant understanding for users of the topic areas most cited in agency plans, but also allows for a quick search that narrows the list of programs to just those related to "construction" or "health" – topics that cut across programs and agencies.

Finally, like most websites that seek to disseminate information as broadly as possible, Recovery.gov includes RSS feeds for all the agency and program plans. Unfortunately, while a Program Plan RSS feed is available on Recovery.gov, each agency does not have its own Program Plan feed, forcing the user to subscribe to a feed that contains information on all Recovery Act Project Plans.

Despite some need for improvement, that these Agency and Program Plans are available in a single location and in a user-friendly format is laudable. And while they can sometimes be just vague summaries of programs whose specifics are months away from being released, the promulgation of these plans is yet another step in the right direction by an administration seeking to make Recovery Act spending transparent and accountable. Citizens, government watchdogs, program advocates, and the news media have another criterion by which to evaluate Recovery Act spending.

Congress Meekly Moves toward DOD Acquisition Reform

Both the House and the Senate unanimously passed legislation in early May to overhaul the Department of Defense's (DOD) acquisition process for major weapons systems. While the goal of this legislation is to reform and strengthen the procurement process used at DOD to limit cost and schedule overruns, many of the provisions included in the Senate bill fall short.

The Weapon Systems Acquisition Reform Act of 2009 (S. 454) was introduced by the two top members of the Senate Armed Services Committee, Sens. Carl Levin (D-MI) and John McCain (R-AZ), on February 23 and has moved rapidly through the Senate. The Levin-McCain bill seeks to strengthen the 1981 Nunn-McCurdy Provision, an amendment inserted into the FY 1982 Defense Appropriations bill. Nunn-McCurdy currently requires the Secretary of Defense to notify Congress if a project exceeds 30 percent of its original cost and certify that a program exceeding 50 percent of its original estimate is essential for national security, is the only option available, and is adequately structured to prevent future cost growth.

Rather than simple notification, the Levin-McCain bill calls for any weapons program experiencing "critical" cost growth, defined as over 50 percent, to be terminated unless the Secretary of Defense certifies that the project is "essential to the national security of the United States." Additionally, even if the program receives certification from the secretary, the Defense Department would cancel the most recent certification granted to the project and require it to

obtain a new one that guarantees timeframes and costs for the remaining work before the project continues.

While these standards are tougher than the 1981 law, the Senate bill still contains significant limitations, some of which were added to the bill as it moved through committee mark-up and the amendment process on the floor. First, allowing a project to be classified as "essential to national security" creates a loophole for the Defense Department to continue with business as usual. Second, the establishment of the Director of Independent Cost Assessment (DICA) – an important position – did not create a sufficiently wide jurisdiction for review, as the DICA can only review those programs that receive their certification to move forward from the Under Secretary for Acquisition, Technology and Logistics. Finally, the legislation does not do enough to encourage competition in the different stages of development for a weapons program because Congress can simply grant a waiver, again based on "national security," or if it is believed that competition would not provide an ample amount of cost savings.

The Levin-McCain bill also continues to allow defense contractors to develop multiple parts of a weapons project. Reform advocates, such as Travis Sharp at the Center for Arms Control and Non-Proliferation, claim that this allows contractors to "grade their own tests," as the company responsible for the engineering or technical assistance of a project also works on the development or construction of the weapons system. In order to bring more scrutiny to weapons acquisition, an independent assessment of the progress made during development of weapons systems is needed.

It is not surprising that this legislation is insufficient to truly reform DOD's acquisition process. Introduced in late February, the measure coasted through the legislative process because some legislators are averse to truly reforming a broken system that still provides their districts with high-paying defense contracting jobs. Evidence of this aversion is an amendment to the Levin-McCain bill introduced by Sen. Patty Murray (D-WA). The amendment would require the Pentagon to notify Congress of the impact of the cancellation of a major weapons program on the industrial base. Murray originally wanted the amendment to automatically prohibit the cancellation of a weapons program if it would have a significant impact on the industrial base, but that requirement would essentially protect all major weapons programs and negate the intent of the review process.

With the legislation currently in conference, House and Senate members are attempting to hash out the few differences between the two versions of the bill. Despite the shortcomings of the legislation, it is still possible a properly structured conference agreement will emerge in time for President Obama to sign the legislation before the Memorial Day recess. If the final product includes an independent cost analyst, stringent criteria for cancelling a program with endemic cost overruns, and more thorough measures to prevent organizational conflicts of interest at different stages of weapons development, the bill will take a meaningful, if small, step toward reforming the procurement process at the Department of Defense.

Congress Seeks Hidden Truth on Torture

On May 13, a Senate Judiciary subcommittee led by Sen. Sheldon Whitehouse (D-RI) held a hearing on the treatment of terrorist suspects in the custody of U.S. government personnel. The hearing was the first to formally discuss torture after the release of four key Bush administration memoranda that established broader interrogation policies. The hearing prompted the Justice Department to release two additional documents concerning internal Bush administration deliberations over policy.

The four Bush-era torture memos recently released by the Justice Department and authored by the Office of Legal Counsel (OLC) framed much of the hearing's discussion. Whitehouse stated during the hearing, "We were told that waterboarding was determined to be legal, but were not told how badly the law was ignored, bastardized and manipulated by the [OLC] nor were we told how furiously government and military lawyers rejected the defective OLC opinions." The memos authored between 2001-03 and released by the OLC on April 16 gave President George W. Bush exclusive authority over detainees and restricted Fourth Amendment rights.

The Subcommittee on Administrative Oversight and the Courts heard testimony in an attempt to better understand the development of Bush administration policies on the treatment of suspected terrorists who were detained by American forces. Testimony demonstrated the negative impact of torture on national security and the reaction of several agencies to the memos shortly after they were written. The record seems to show that high-level officials dissented against OLC interrogation policies but were quieted by the Defense and Justice Departments.

Ali Soufan, a key witness and former FBI agent, testified that the Bush administration's policy allowing allegedly unlawful interrogation methods impaired intelligence gathering. Soufan stated that the more aggressive tactics were "ineffective, slow and unreliable, and as a result harmful to our efforts to defeat al-Qaida." Soufan cited the interrogation of Abu Zubaydah in March 2002 as an example. Soufan, who was present for the questioning, recounted that FBI methods aimed at establishing a rapport with Zubaydah quickly led to actionable intelligence. However, when the Central Intelligence Agency (CIA) stepped in, according to Soufan, and used harsh techniques, Zubaydah stopped talking. The Bush administration had argued that Zubaydah stopped talking because he was trained to resist interrogation methods.

Philip Zelikow, formerly a counselor for the Bush State Department, testified concerning his attempts in 2005-06 to prohibit "cruel, inhuman, and degrading" interrogation methods. Zelikow mentioned two documents not previously published. In these 2005 documents, Zelikow proposed the creation of an alternative legal framework that would secure standardization of interrogation policy on a level at or above those of coalition partners and define "humane treatment." Zelikow had argued that American handling of detainees under OLC memos was not in compliance with Geneva standards (and thus U.S. law) and made specific recommendations to establish military commissions. While well received by State Department Secretary Condoleezza Rice, Zelikow's position was outright rejected by Defense Secretary Donald Rumsfeld. Zelikow went on to report that orders were given for his memos to be collected and

destroyed. Despite the order, the State Department has retrieved the documents and is currently reviewing them for possible declassification.

Although Congress has set out on a fact-finding mission to uncover the truth behind past American torture practices, the Obama administration seems to be moving in the opposite direction. Although the administration moved to release the OLC memos in an effort toward transparency, it has refused to hold accountable those who created and carried out these policies. The president also went back on previous statements that he would release photographs of detainees tortured while in U.S. custody, stating that to do so "can serve no public good."

Congress Attempts to Restore Teeth to Whistleblower Protections

On May 14, the House Committee on Oversight and Government Reform held a hearing on H.R. 1507, the Whistleblower Protection Enhancement Act of 2009. The bill is Congress' most recent attempt to reform whistleblower protections after failing to pass substantively similar bills in the previous two sessions and abandoning a bipartisan whistleblower amendment to the American Recovery and Reinvestment Act.

Rep. Edolphus Towns (D-NY), chairman of the committee, hailed the legislation as "a landmark step in restoring Congress' intent to protect employees from retaliation." The legislation closes several loopholes in the current protections for whistleblowers by expanding protections to include contractors and national security and intelligence employees, as well as improving the procedures for responding to charges of retaliation.

Rajesh De, Deputy Assistant Attorney General at the Office of Legal Policy within the Department of Justice offered testimony before the committee for the administration. De expressed support for many changes the legislation proposes. However, De raised concerns that the law "not inadvertently make it more difficult for civil servants in supervisory roles to discipline employees who themselves engage in such acts or whose job performance is otherwise inadequate." All indications are that this concern is unfounded. Other civil service legislation has neither clogged the courts nor restricted managers from firing employees for justifiable reasons.

A second concern from the administration pertains to national security. While agreeing that "whistleblowers in the national-security realm must have a safe and effective method of disclosing wrongdoing without fear of retaliation," the administration is concerned that the bill could result in the release of classified information. De suggested "an extra-agency avenue within the Executive Branch for federal employees who wish to make classified disclosures to Congress." Individuals would first seek approval for any disclosure to Congress from the Inspector General and head of their agency. If they decline to do so, employees could appeal to the extra-agency board "composed of senior presidentially-appointed officials from key agencies within and outside of the intelligence community." Such a mechanism would likely prevent

agencies from wrongfully withholding information from Congress but could fail if the desire for secrecy derived from the White House and was supported by appointees.

Michael German of the ACLU refuted some of the administration's concerns in his testimony, stating, "By providing safe avenues for agency employees to report waste, fraud and abuse to the appropriate authorities and to Congress, there will be less of a need to anonymously leak information in order to have serious problems adequately addressed." German added that "FBI and other intelligence community employees have the training and experience required to responsibly handle classified information and the severe penalties for the unlawful disclosure of classified information will remain intact after this legislation passes." Congress must have sufficient capability to perform its constitutional duty of overseeing the executive branch and respond in the case of misuse of funds or other misdeeds.

Angela Canterbury of Public Citizen also testified about the urgent need for the reforms contained in the legislation. Canterbury presented a letter that 286 organizations, including OMB Watch, signed, calling on President Obama and Congress to take "Swift Action to Restore Strong, Comprehensive Whistleblower Rights." The Whistleblower Protection Enhancement Act of 2009 satisfies all of the recommendations from the letter save one: it does not neutralize the government's use of the state secrets privilege.

Currently, H.R. 1507 is being studied by both the House Committee on Oversight and Government Reform and the House Committee on Homeland Security. The Senate has a similar bill of its own, S. 372, which is comparable in substance, though it lacks the same protections for employees at national security and intelligence agencies.

White House Role in Rulemaking Could Improve, Report Says

The White House is a major player in agency rulemakings, affecting both the content of regulations and the length of time needed to complete them, according to a recent Government Accountability Office (GAO) report. The report comes as advisors to President Barack Obama consider reforms to the regulatory process.

GAO examined the speed and transparency of agency rulemaking activity, as well as the role of the Office of Information and Regulatory Affairs (OIRA). Under Executive Order 12866, Regulatory Planning and Review, agencies seek the approval of OIRA before proposing or finalizing major regulations.

GAO examined 12 rules reviewed by OIRA and published between January 2006 and May 2008. The examination found that OIRA made "significant changes" to four of the rules, including changes to the actual text of regulations. In four other cases, OIRA made less significant changes to the regulations' explanatory preambles.

GAO found that agencies generally document the outcome of OIRA reviews, including changes made at OIRA's behest, but the quality of documentation and methods for public disclosure

vary. The report says that internal documents could be difficult to put into context, noting, "[A]gencies did not always clearly attribute changes made at the suggestion of OIRA, and agencies' interpretations were not necessarily consistent regarding what constitutes a substantive change." GAO also cited difficulties using the government's online rulemaking docket, Regulations.gov, to find relevant documents.

GAO notes, "Executive Order 12866 does not specify how agencies should document the changes made to draft rules after their submission to OIRA, nor is there any governmentwide guidance that directs agencies on how to do so."

To improve transparency, GAO said both agencies and OIRA should begin "better identification of when agencies made substantive changes to their rules as a result of the OIRA review process, attributing the sources of changes made during the review period, and clarifying the definition of substantive changes."

GAO's critiques could alter political and policy calculations in an ongoing effort to revise the way rules are written and approved at the federal level. White House officials, tasked with developing ideas for reform, are likely to seriously consider the comments and recommendations from GAO, whose reports are widely considered to be fair and accurate audits of government activity.

In a Jan. 30 memo, Obama asked the White House Office of Management and Budget (OMB), OIRA's parent agency, to consult with rulemaking agencies and develop recommendations that could serve as the basis for an executive order replacing Executive Order 12866. OMB later asked the public for its ideas and posted public comments online.

In its comments, OMB Watch called for OIRA to play a different role in agency rulemakings. OIRA should be less of an editor and gatekeeper and instead focus on assisting agencies in identifying priorities and areas where new regulations could benefit the public. OMB Watch also called for greater transparency at all stages of the rulemaking process.

Obama instructed OMB to gather the thoughts of rulemaking agencies and develop recommendations within 100 days. Since the deadline, May 10, the Obama administration has given no indication as to whether recommendations have been sent to Obama or when next steps should be expected. The administration has not released the comments federal agencies submitted to OMB.

Cass Sunstein, the lead advisor to Obama and OMB Director Peter Orszag on regulatory issues and the presumptive OIRA administrator, has yet to be confirmed by the Senate. He currently serves as a senior advisor to Orszag. Sunstein appeared May 12 before the Senate Homeland Security and Governmental Affairs Committee (see related article). Sunstein will be largely responsible for implementing any reforms to the process, especially changes to the relationship between OIRA and agencies.

The GAO report addresses issues outside of the OIRA-agency relationship, including the analytic requirements imposed on agencies and their effect on the length of rulemakings. GAO identified

22 different laws and executive orders that require agencies to assess a regulation's potential impact on different economic and social sectors or subpopulations.

In addition to the Administrative Procedure Act, which outlines the basic steps for the rulemaking process, including public notice and opportunity for comment, GAO found that agencies most commonly had to address requirements set by Executive Order 12866, the Paperwork Reduction Act (PRA), and the Regulatory Flexibility Act (RFA). The PRA requires agencies to seek OMB approval when attempting to collect information from ten or more people, among other things. The RFA requires agencies to assess the potential impact of a regulation on small businesses and to consider lower-impact alternatives.

The requirements in the numerous other laws and orders were seldom triggered in the rules GAO studied.

OIRA is also a factor in the time it takes for an agency to complete a rulemaking. In addition to OIRA's formal review – which typically lasts 60 days but may last 120 days or longer – agencies take additional steps to preemptively stem White House critiques. According to GAO, "[R]ules that require OIRA and interagency review typically need additional time for the external review process and, according to some agency officials, trigger additional internal scrutiny."

Agencies spent an average of approximately four years developing the rules GAO examined. One Food and Drug Administration rulemaking lasted 13 years, the report says.

The report also recommended agencies improve methods for keeping track of the amount of time and resources spent on rulemaking. "Agency officials were unable to identify the staffing or other resources (such as contracting costs associated with preparing expert analyses or convening public meetings) for regulatory development," according to GAO. The lack of information can make it more difficult for managers to identify slow points in the process.

GAO released the report May 11, though it is dated April 2009. GAO prepared the report in response to a 2007 request from then-Chairman of the House Oversight and Government Reform Committee Henry Waxman (D-CA). The report, titled, *Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews*, is available online at www.gao.gov/new.items/d09205.pdf.

OIRA Nominee Sunstein Promises Law and Pragmatism Will Guide Decisions

During his May 12 confirmation hearing, President Barack Obama's choice for regulatory czar, Cass Sunstein, portrayed himself as a pragmatist, one who will not use economic analysis as a straitjacket for regulations. In pledging to look to the law first for regulatory guidance, Sunstein tried to distance himself from past regulatory czars who strongly supported economic analysis to judge the adequacy of health, safety, and environmental rules.

Obama nominated Sunstein April 20 to lead the Office of Information and Regulatory Affairs (OIRA), the small office within the White House Office of Management and Budget (OMB) that reviews proposed and final regulations and paperwork requirements. The office also has responsibilities over federal statistics, dissemination of information, and general information resources management.

Sunstein is a highly respected legal scholar who authored a number of provocative writings on regulations and the regulatory process in his decades in academia. He worked briefly in the Department of Justice's Office of Legal Counsel before embarking on an academic career. Thus, his hearing before the Senate Homeland Security and Governmental Affairs Committee was the first opportunity to hear how he would approach the practical task of implementing Obama's regulatory agenda.

The committee's chair, Sen. Joseph Lieberman (I-CT), and ranking member Sen. Susan Collins (R-ME) both asked pointed questions about Sunstein's approach to managing OIRA and certain specific policy areas. Lieberman asked Sunstein, an ardent supporter of cost-benefit analysis (CBA), to distinguish himself from President George W. Bush's first OIRA administrator, John Graham, another advocate of using CBA in regulation.

Graham's nomination received substantial opposition from the public interest community and from within the Senate for his consistent hostility to protections for public health, safety, and the environment. Many of these same groups have voiced concern that Sunstein would be too much like Graham in his approach. Lieberman opposed Graham's nomination because he worried that Graham's advocacy for cost-benefit analysis and risk tradeoffs would be used to frustrate the development of regulations – a worry that proved well founded. Lieberman asked Sunstein why a senator who opposed Graham should support him.

Sunstein responded that his approach to using CBA was "inclusive and humanized," meaning that agencies should take qualitative considerations into account. Moral and distributive values, for example, should be considered in regulatory decision making. CBA should not be used, he argued, to put regulations into an "arithmetic straitjacket" and that it should be subordinate to laws that mandate agencies' regulatory actions. CBA is not an appropriate tool to use when regulating under the Americans with Disabilities Act, for example, Sunstein noted.

Lieberman also asked the nominee about two controversial articles Sunstein wrote questioning the constitutionality of the Clean Air Act and the Occupational Safety and Health Administration (OSHA). The two articles were prompted by court opinions in which these legal questions were raised. Sunstein noted that the conclusions in both articles are that the law and the agency are constitutional, and he was setting out the roots by which both the act and OSHA's authority should be judged constitutional.

In Collins' opening statement, she acknowledged concerns about the nominee's intentions regarding government-wide privacy policies, a concern also expressed by Sen. Daniel Akaka (D-HI), the only other senator in attendance.

In addressing the privacy protection issues the two senators raised, Sunstein noted the need for OIRA to work with other executive branch offices in implementing the provisions of the range of statutes that have privacy implications. For example, new information technology challenges may require the 1974 Privacy Act to be updated, but Sunstein said that he had not drawn conclusions about the need for changes and would work with others to review relevant laws such as the privacy statute and the Freedom of Information Act.

Sunstein was less forthcoming in his answers to questions about the relationship between OIRA and the agencies. Both in the hearing and in response to questions submitted to the nominee by the committee prior to the hearing, Sunstein avoided specifics about what he would like to see changed about the rulemaking process.

When asked, "Do you believe that OIRA should be an activist office, steering regulation in particular directions?" Sunstein sidestepped the question, writing, "I believe that OIRA has a role to play in promoting compliance with the law and with the President's commitments and priorities – and that it can do so in a manner fully consistent with its mission."

His answers highlighted the need to look to statutory direction and presidential priorities, improve transparency at OIRA, and the importance of collaboration with both agencies and other executive branch offices. He expressed no opinion about the need to amend OIRA directives to agencies (such as the Graham-era directive about the use of CBA), nor about whether the actions of independent regulatory commissions (for example, the Securities and Exchange Commission and the Federal Communications Commission) should be subject to OIRA oversight and review. Both of these topics are issues he has written about, but he deferred these matters to others in his answers to the committee. As a result, the public does not have a clear indication of Sunstein's views regarding these two important regulatory topics.

Lieberman indicated at the end of the hearing that he intended to support Sunstein's nomination. According to the *Clean Air Report* (subscription required; no link available), Collins told reporters after the hearing that Sunstein had addressed many of her concerns. The committee is expected to vote on the nomination soon. If approved by the committee, the nomination would be forwarded to the full Senate for a vote.

Disclosure of Recovery Act Lobbying Far from Comprehensive

President Barack Obama's March 20 memo restricts communications between federally registered lobbyists and executive branch employees on use of Recovery Act funds and requires disclosure of written communications. A closer examination of the summaries of lobbyist contacts with federal agencies shows that there are few online postings of those communications; some agencies have not posted any contacts at all. According to a review of the 29 agencies receiving stimulus money, only 110 contacts had been disclosed as of May 18.

The memo and subsequent guidance from the Office of Management and Budget (OMB) call on agencies to post all written communications and summaries of any meetings with registered lobbyists to agency websites within three business days of the communication.

There is currently a minimal amount of reporting on agency websites, with 16 out of the 29 agencies thus far listing lobbying contacts. There may very well be a lot of lobbying taking place, given the $787 billion total in stimulus funds, but current public disclosure suggests either that this is not the case or federally registered lobbyists are not involved.

For example, the Energy Department is distributing more than $40 billion of stimulus money, but as of press time, only seven lobbyist contacts had been listed on the agency's website.

Additional examples of this disclosure follow:

- The Army Corps of Engineers listed 18 stimulus contacts from lobbyists
- The Health and Human Services Department has posted nine
- The Transportation Department has listed one
- The Department of Education has disclosed five
- The Department of Justice divided lobbyist communications between two offices – the Office of Justice Programs and Office on Violence Against Women, and the Office of Community Oriented Policing Services – with 20 postings between them

Agencies Reporting Communications with Federally Registered Lobbyists

Agency	Number of Lobbying Notices	The amount the agency is currently committed to spend
Corporation for National and Community Service	1	$38.45 million
Department of Agriculture (USDA)	9	$1.83 billion
Department of Commerce	2	$333.97 million
Department of Education (ED)	5	$25.443 billion
Department of Energy (DOE)	7	$3.876 billion
Department of Health and Human Services (HHS)	10	$29.066 billion
Department of Justice (DOJ): 2 Offices: Office of Justice Programs and Office on Violence Against Women (OJP/OVW) and Office of Community Oriented Policing Services (COPS)	20	$640.479 million
Department of Labor (DOL)	3	$15.937 billion
Department of Interior (DOI)	3	$74,000
Department of Transportation (DOT)	1	$11.736 billion
Environmental Protection Agency (EPA)	1	$2.103 billion
Federal Communications Commission (FCC)	21	$24.421 million

General Services Administration (GSA)	2	$174.708 million
National Aeronautics and Space Administration (NASA)	1	$0
Small Business Administration (SBA)	2	$89.891 million
U.S. Army Corps of Engineers (USACE)	18	$61.712 million

Those agencies that have not reported any lobbying contacts include the Defense Department, the Department of Homeland Security, the Department of Housing and Urban Development, and the Department of Veterans Affairs. There are some agencies – for instance, Homeland Security – that say they have not been contacted by lobbyists, while others do not reference lobbying contacts at all. Still others simply reference online locations where the information will eventually be placed.

Overall, there is a vast amount of inconsistency among agencies. Some refer to lobbying contacts as "interested parties," while others list "lobbyist correspondence." The General Services Administration has two pages, one for "written communications" and one for "other communications."

According to *The Washington Post*, Norm Eisen, White House counsel for ethics and government reform, "attributes the paucity of lobbying contacts on agency Web sites to the stimulus still being in its early stages and to agency meetings attended by mayors or corporate executives."

Another possible reason for the apparent lack of disclosure has been largely ignored until recently. Major corporations are not restricted from requesting federal aid under the Recovery Act memo. One of the ways they can do so is by sending in non-registered lobbyists or non-lobbyist executives: the restrictions contained in the memo only apply to those registered under the Lobbying Disclosure Act (LDA).

Because non-registered lobbyists and non-lobbyist staff are unrestrained by Obama's memo, executive branch staff who meet with such people are free from any reporting requirements; disclosure simply does not apply to these contacts. As the Recovery Act memo is currently fashioned, company executives, lawyers, consultants, clients, or state-registered lobbyists can meet with federal officials to discuss particular projects and related funding, and no one has to disclose anything.

Another point of concern that open government boosters have raised is the lack of a "one-stop shop" on the Web for lobbying disclosure data. To obtain any of this information, one must go to each agency's Recovery Act webpage and then locate any lobbying communications. Instead of this haphazard, scattershot method of disclosure, advocates have requested that all lobbying information be placed in one easily accessible, fully searchable centralized database that covers all agencies. Without waiting for the government to act, the news service ProPublica has created a centralized location for such lobbying information.

There is a 60-day evaluation period for the stimulus lobbying restrictions, which closes May 19. Eisen says he is reviewing various options for modifications to the rules, including requiring disclosure of all communications from lobbyists and non-lobbyists. However, those who have met with the administration to discuss their concerns have not heard information about any possible changes. OMB is expected to issue a report to the White House on how various agencies are responding to the rules. Ideally, modifications will be made that create greater transparency and encompass the intent of the rules.

Surge of Voter Reform Efforts Spreads Across the Nation

There is a new surge of voter reform efforts sweeping the nation. Some of these efforts are designed to stimulate voter participation by easing barriers to voter registration through use of electronic mediums such as the Internet and e-mail. Other measures seek to impede the voting process in response to allegations of voter fraud during the 2008 elections, despite research indicating that voter fraud cases are rare and greatly exaggerated.

Gov. Mitch Daniels (R) of Indiana recently signed a bill allowing online voter registration; the bill makes Indiana the fourth state to allow voter registration via the Internet. Supporters of the legislation believe that it will increase voter turnout by providing an additional avenue for citizens to register to vote. Indiana Secretary of State Todd Rokita, who is supportive of the measure, told *The [Indiana] Times*, "We use technology in every one of our other transactions in life." But, "for some reason, we're afraid to use technology in our most sacred civic transaction – voting," he said.

Kansas is attempting to use technology to assist U.S. soldiers and diplomats by allowing them to vote by e-mail. Currently, the state allows overseas soldiers and diplomats to fax their ballots; however, overseas personnel have greater access to e-mail than fax machines, according to the *Wichita Eagle*. The e-mail provision has wide support in the Kansas House, but the bill faces stronger opposition in the State Senate due to a "provision that would make it harder for those back home to have a friend or relative deliver their absentee ballot to county election officials," according to the *Wichita Eagle*. Opponents of the provision requiring numerous signatures to deliver an absentee ballot worry that the stringency will result in an increase in rejected ballots.

Oregon is another example of a state attempting reforms to ease the voting process for military and overseas voters. State legislators recently introduced a bill that would allow military and overseas voters to vote by fax; the legislation has already passed a state House committee. The bill would make an exception to a state law that requires an original signature to verify identity by allowing "election officials to compare the signature on a fax with the signature on a voter registration card to verify an identity," according to KTVZ.com, the website of central Oregon's NBC affiliate.

On the flip side, other states are attempting to create more obstacles to the voting process. For example, Georgia recently passed a law requiring proof of citizenship to register to vote, which is subject to review by the U.S. Department of Justice. Opponents of the law fear that it may

disenfranchise low-income and minority voters. A survey by the Brennan Center for Justice indicates that up to 13 million American citizens lack documentation. The study also notes that those in the lowest-income bracket are more than twice as likely to lack documentation of citizenship as those in higher-income brackets. The law "has been enacted even though there is no indication that non-citizen voting is a problem in the state," according to the Progressive States Network.

This law makes Georgia only the second state, after Arizona, to require residents to prove citizenship before they can register to vote. Since Georgia is one of the states that is required to get "preclearance" under Section 5 of the Voting Rights Act (VRA) of 1965 before enacting new election laws, the Justice Department must approve this measure.

In a related matter, a decision is expected in June in *Northwest Austin Municipal Utility District No. 1 (NAMUDNO) v. Holder*, a case challenging the constitutionality of Section 5 of the VRA. This case will decide whether Georgia and other covered states need to get "preclearance" in the future.

Texas is also attempting to add more obstacles to the voting process with a state House bill that would require a photo ID to be presented at polling places. Those without a photo ID would be forced to cast a provisional ballot; such ballots are often not counted. Supporters of the bill claim the measure is necessary to prevent undocumented immigrants from voting, but opponents claim the bill will disenfranchise low-income, minority, elderly, and disabled citizens, according to the *El Paso Times*. The Texas Senate passed a photo ID bill along partisan lines, but the Texas House is more evenly split between Democrats and Republicans. If it does pass, it will need approval from the Justice Department before it is enacted, since Texas is also subject to Section 5 of the VRA.

On the federal level, Sen. Charles Schumer (D-NY), chairman of the Senate Rules and Administration Committee, wrote a letter to Attorney General Eric Holder urging the Justice Department to sue states that are not complying with the National Voter Registration Act (NVRA), also called the Motor Voter Act. NVRA requires public assistance agencies and other select agencies to offer voter registration materials. According to a press release from Schumer's office, at least 18 states are not complying with the requirement. Schumer's letter highlighted *Voter Registration: Assessing Current Problems*, a study presented to the Senate Rules Committee in March. The study noted that "one of the key concerns is that eligible individuals are not offered the option to register and vote at state motor vehicle agencies, public assistance agencies, and agencies that provide services to people with disabilities."

Schumer also wrote a letter to President Obama asking him to designate the Department of Veteran Affairs (VA) as a voter registration agency under NVRA. The letter states, "During the debate over the Veterans Voting Support Act, we heard from veterans groups, state election officials, disability advocates and voting rights organizations. They all urged a greater role in voter registration for the VA."

During the 2008 election season, the VA was opposed to allowing nonpartisan groups to register veterans on VA property. Many groups faced barriers when attempting to conduct nonpartisan voter registration and were also restricted from providing logistical information.