



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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M-10-17

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM:

Peter R. Orszag
Director

SUBJECT:

Holding Recipients Accountable for Reporting Compliance under the
American Recovery and Reinvestment Act

On April 6 2010, President Obama issued a memorandum “Combating Noncompliance with Recovery Act Reporting Requirements,” directing Federal agencies to use every means available to identify any prime recipient required to file a report on FederalReporting.gov who has failed to do so and hold such recipients accountable to the fullest extent permitted by law. As required by the President’s Memorandum, OMB has reviewed existing guidance and is providing updated guidance, including additional actions and strategies, designed to assist agencies in fulfilling their responsibility to hold recipients accountable for reporting compliance.

Recipients are required by Section 1512 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) to report quarterly as a condition of the receipt of funds. The vast majority of recipients have complied with the reporting obligations; however, where a recipient has failed to meet these obligations, agencies will be held accountable for taking appropriate actions to enforce the reporting requirements. The President’s Memorandum provides examples of the types of actions agencies should take, where authorized and appropriate, including terminating awards; pursuing measures such as suspension and debarment; reclaiming funds; and considering, initiating, and implementing punitive actions. Federal agencies are reminded that the terms and conditions of Recovery Act awards, when coupled with other existing policies and procedures, provide a robust mix of actions available to address non-compliance.

This Memorandum highlights additional steps beyond existing policies and procedures that OMB has determined necessary to carry out the President’s directive for more aggressive action in addressing recipient non-compliance. This Memorandum:

- Instructs Federal agencies to contact new recipients prior to the beginning of each reporting period to notify them of their reporting obligations.
- Directs Federal agencies to contact recipients who in prior quarters have not reported when required and pursue consistent and comprehensive follow-up to achieve reporting.
- Mandates use of available tools to actively monitor recipients during the reporting period and requires outreach to recipients that have not reported prior to the close of the reporting period.

- Requires Federal agencies to obtain recipient compliance with their reporting responsibilities or pursue sanctions and remedies.
- Requires Federal agencies to report non-compliant recipients to OMB within five days of the quarterly close.

Questions (or requested clarifications) pertaining to this guidance document should be sent to recovery@omb.eop.gov for timely review. Thank you for your cooperation.

Attachment

ATTACHMENT

The Memorandum For The Heads Of Executive Department And Agencies, “*Combating Noncompliance with Recovery Act Reporting Requirements*,” issued April 6, 2010 directs Federal agencies to further intensify their efforts to improve reporting compliance. This guidance provides Federal agency Senior Accountable Officials (SAO’s) with additional actions and strategies for implementation to improve reporting compliance and the potential recapture of Recovery Act funds from non-compliant prime recipients.

1. What actions will Federal agencies take to intensify efforts to improve compliance by newly awarded Recovery Act recipients required to file reports in FederalReporting.gov?

Recipients reporting for the first time must be notified of their reporting obligation under Section 1512 by the Federal awarding agency in writing either through the contract or financial award documents, or through a separate letter. These agencies will be required to contact new recipients no later than ten business days prior to the beginning of each reporting period to remind them of the reporting requirements and the consequences of non-compliance. This contact can be made through a phone call with an accompanying letter faxed or mailed to the recipient. Awards made within the ten business days prior to the beginning of the reporting quarter will be informed of their reporting obligation at the time of the award through the written award document and verbally via a phone call.

2. What actions will Federal agencies take to obtain compliance by Recovery Act recipients required to file reports in FederalReporting.gov, but failed to do so in the prior reporting period?

Prior to the beginning of a new reporting period, recipients that were noncompliant in the prior reporting period must be contacted by their Federal awarding agencies to remind them of the reporting requirements and the consequences of non-compliance. This contact must be timely and may be completed through a phone call or email with an accompanying letter faxed or mailed to the recipient. Agencies must continue to follow-up with these recipients throughout the reporting period to consistently and comprehensively pursue compliance.

3. What actions will Federal agencies take to track recipient reporting?

Federal agencies must use the daily data extracts provided from the FederalReporting.gov system during each reporting period to perform data quality reviews of the filed recipient reports and to determine if all award recipients on the Federal agency comprehensive award list (Master List of Agency Awards) have fulfilled their Recovery Act, Section 1512 reporting responsibilities.

4. Are Federal agencies required to contact the recipients during the reporting period?

Yes, when an agency identifies a recipient who is not reporting, the agency is required to contact the recipient. Recipients that have not filed a report at least three business days before

the end of the report submission phase must be contacted (through phone call or email) by the Federal agency to ascertain the recipient's ability to submit its report and to ensure timely filing. Again, in the case of recipients who do not comply in prior periods, agencies are required to consistently follow-up throughout the period (not just in the last three days).

5. What steps will agencies take to address non-compliant recipient reporters?

Federal agencies must identify and establish contact with recipients who failed to submit a report during the recipient report submission period. SAO's will ensure that:

- Federal agencies inform the recipients in writing of the potential consequences of current and continued non-compliance of the Recovery Act, Section 1512 reporting responsibilities.
- Federal agencies will determine the specific reasons a recipient failed to submit a report. The Federal agency will provide additional assistance to ensure compliance during the next reporting cycle, such as:
 - Appropriate outreach and assistance for recipients experiencing technical challenges, or other situations where the agency may be able to either provide direct assistance or an appropriate referral to avoid similar problems in the next reporting cycle.
 - Increase award monitoring and surveillance techniques regarding reporting, including monitoring the recipient on progress in the steps necessary to overcome any challenges to successful reporting for the next quarter.
- If the recipient is non-responsive, Federal agencies shall take appropriate actions, which can include restricting access to the awarded funds until the recipient becomes responsive and implementing additional sanctions and remedies.

6. How will Federal agencies address repeatedly non-compliant recipient reporters?

In cases where a recipient of an ARRA award is non-compliant for two or more consecutive reporting periods, SAO's will ensure appropriate action is taken within 20 business days. Actions can include (but is not limited to) enforcement of terms and agreement provisions contained within relevant awarding documents such as:

- Increasing award monitoring and surveillance regarding reporting, such as requiring frequent progress reports.
- Including the recipient's failure to comply with reporting requirements as part of the recipient's performance record.
- Formally elevating the failure to perform in accordance with the terms and conditions of the award within the recipient's organization or company.
- Withholding payments until the recipient becomes fully compliant with Section 1512 reporting requirements.

7. What tools and sanctions are available to agencies to ensure recipient compliance with reporting?

Federal agencies will obtain recipient compliance with the Recovery Act, Section 1512 reporting responsibilities or they will utilize the sanctions or remedies provided under 2 CFR Part 176 for recipients of grants or other non-contractual awards, and FAR Section 4.1501(c) and (d) and, when determined appropriate, the processes identified in the termination clause for recipients of Federal contract awards. Sanctions or remedies may include:

- Terminating Federal funding
- Initiating suspension and debarment of the prime recipient
- Taking other enforcement action as the agency determines appropriate to the circumstances.

8. How will Federal agencies report non-compliant recipient reporters and the agency action taken?

Federal agencies are required to report to OMB quarterly on non-compliant recipients. This action must be completed within five business days of the close of the quarterly agency review and comment period. Agencies will use the template and instructions found on the MAX Community web page (Federal access only). Each agency must complete the template, including a description of action taken to ensure recipient reporting of Recovery Act dollars, and to elimination of waste, fraud and abuse by recipients. This should also include the reason that the agency believes the recipient is non-compliant. All non-compliant templates (along with subsequent revisions) must be certified by the Federal agency SAO before submission.

The guidance contained within this memorandum is not intended, and shall not be construed, to limit the ability of Federal agencies to take otherwise lawful and appropriate actions with respect to claims of fraud, waste and abuse.