



THE DIRECTOR

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

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M-10-05

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM:

Peter R. Orszag

SUBJECT:

Improving Compliance in Recovery Act Recipient Reporting

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, P.L. 111-5 ("Recovery Act"). As required by Section 1512 of the Recovery Act, recipients have submitted reports on the use of Recovery Act funding through a nationwide data collection process. This effort is unprecedented in the breadth and depth of transparency it provides to the American public.

While the response rate for the first quarter of required reporting demonstrates that a significant majority of recipients reported timely and complete reports, a preliminary review of FederalReporting.gov data indicates that a number of recipients have not filed as required by Section 1512 of the Recovery Act and OMB guidance. In order to provide the public with the transparency and accountability envisioned by the Recovery Act, we must take steps to ensure all recipients understand their reporting obligations and the consequences of non-compliance.

Recipients who have failed to submit a Section 1512 report as required by the terms of their award are considered to be non-compliant. Non-compliant recipients, including those who are persistently late or negligent in their reporting obligations, are subject to Federal action, up to and including the termination of Federal funding or the ability to receive Federal funds in the future.

Federal departments and agencies are reminded that these 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. Beginning immediately, and consistent with these existing terms and policies, Federal departments and agencies must take the following actions to improve compliance with Section 1512 recipient reporting:

1. Identify non-compliant recipients. While most agencies have incorporated this step into their Recovery Act risk mitigation plans, each agency must compile a verified and detailed list of recipients who were required to report in the October period but failed to do so. Using the template and instructions found at <https://max.omb.gov/community/x/LYHoFw>, each agency must submit a completed template to the Office of Federal Financial Management by close of business December 4, 2009, via recovery@omb.eop.gov. This list is a first step in a two part process that will identify all recipients who received an award but did not file a report. OMB will provide guidance on additional measures agencies are to take once they are finalized.

2. Determine an appropriate outreach method and establish contact with each recipient who failed to report by the quarterly deadline, and:
 - a. continue to instruct each non-reporting recipients to submit reports for the forthcoming and subsequent reporting quarters;
 - b. determine the specific reasons a recipient failed to submit a report as required;
 - c. provide assistance to recipients who experienced technical challenges, difficulty in understanding coding 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;
 - d. describe in plain language the consequences of current and continued non-compliance;
 - e. confirm the non-reporting recipient is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the reviewing Federal department or agency; and
 - f. provide documentation in appropriate administrative records.
3. Assess the severity of the non-compliance and the circumstances surrounding the non-compliance. From this assessment, Federal departments and agencies are to determine the need, if any, for future action regarding each non-filing recipient, including but not limited to:
 - a. those provided in OMB Memorandum M-09-10 Section 6.4 and M-09-21 Sections 4.1 and 4.6;
 - b. enforcement of terms and agreement provisions within relevant awarding documents, including—
 - i. sanctions provided under 2 CFR Part 176 for recipients of grants or other non-contractual awards, and FAR 4.1501 for recipients of Federal contract awards;
 - ii. inclusion of the recipient's failure to comply with the reporting requirements a part of the recipient's performance record; and
 - iii. other appropriate enforcement action.
4. Beginning with the next reporting period and for each subsequent reporting period thereafter, determine the applicability of agency regulations promulgated in furtherance Executive Orders 12549 or 12689, including regulations and guidance provided at FAR Subpart 9.4 and 2 CFR 215.62 or the agency's implementation of the OMB Circular A-102, for each recipient who fails to submit required reports for two or more successive quarters.

If the non-compliance appears to be fraudulent, Federal Departments and agencies are to refer the matter to other appropriate agency officials such as the officer responsible for criminal investigation.

Agency efforts have been essential to the level of success seen in the initial round of Recovery Act recipient reporting. Through the efforts listed above, Federal department and agencies can help recipients meet their legal duty and further President Obama's and Congress' commitment to unprecedented levels of transparency in the use of the public's funds.

Thank you for your extensive engagement in this first-of-its-kind effort.