



Summary of OMB April 3 Interim Guidance on Implementation of the Recovery Act

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On Friday, April 3, the Office of Management and Budget (OMB) issued an interim updated guidance to federal agency heads on implementation of the Recovery Act. The new guidance “supplements, amends, and clarifies” the initial guidance issued on Feb. 18. Provisions mentioned in the February guidance not specially mentioned in this guidance have neither been repealed nor changed.

OMB is seeking public input on the interim guidance. Feedback must be submitted by April 17th to recovery@omb.eop.gov and should have the term “guidance feedback” in the title of the email.

This report summarizes key elements from the OMB guidance.

Sub-Award Reporting

The guidance continues to use the statutory language in the Recovery Act to define a “recipient,” which is “any entity that receives Recovery Act funds directly from the Federal Government (including Recovery Act funds received through grant, cooperative agreement, loan, or contract) other than an individual and includes a State.” Reporting requirements apply to prime non-federal awardees only, but these awardees are also responsible for “reporting on their use of funds as well as any sub-awards (i.e., sub-grants, subcontracts, etc.) they make.” This guidance limits “sub-awards” to first-tier sub-awards only.

However, the guidance also states that “OMB plans to expand the reporting model in the future to also obtain...information [on awardees beyond first-level awards], once the system capabilities and processes have been established.” Missing is mention of *when* these capabilities and processes may be established.

The guidance also states that the OMB Director has the authority, granted by the Federal Funding Accountability and Transparency Act of 2006 (the law that created USASpending.gov that was sponsored by then Sen. Obama and Sen. Tom Coburn), to require “Federal agencies to collect information from all Federal recipients on all tiers of sub-awards” and that “[t]he Director also has the authority under the Transparency Act to expand reporting requirements to include additional relevant

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information.” (The Transparency Act required USASpending.gov to provide sub-award information as of Jan. 1, 2009, but that has not yet happened.)

Initial recipient reporting will now occur three months later than initially required. In the initial guidance, OMB established a July 10 deadline for recipient reports. In this version, that deadline has been pushed back to Oct. 10. The statute requires reports no later than 10 days after each quarter. So the delay is equal one reporting period.

Centralized Data Collection and Registration

OMB is “moving aggressively” to develop a central collection system for recipient reports. Federal agencies are to instruct recipients of Recovery Act funds to begin submitting recipient reports (those specified in Sec. 1512 of the Recovery Act) on Oct. 10 of this year, and that they “should assume the central system capability will be online and available no less than 45 days before the Oct. 10, 2009, statutory quarterly reporting deadline.” It remains unclear if *all* entities that receive Recovery Act funds would report to this central system. At this point, it appears only the prime recipient will report.

In the section that addresses grants and cooperative agreements, the guidance states that first-tier sub-awardees should obtain DUNS numbers and should register with the Central Contractor Registration (CCR) system. It is not clear, however, that first-tier *subcontractors* receiving funds from prime-contractors must register.

Jobs and Other Program Performance Data

Employment data (and other required data as specified in Sec. 1512 of the Recovery Act) will be collected by federal agencies from prime recipients only. The prime recipient, be it a state government or private organization, is required to report an estimate of jobs created or retained to “support or carry out Recovery Act projects or activities managed directly by the recipient, and if known, by sub-recipients.” Prime recipients are responsible for “reporting on their use of funds as well as any sub-awards (i.e., sub-grants, subcontracts, etc.) they make.” In cases in which a federal agency gives money to a state, the state would be required to report employment data on each project that the state has undertaken with those Recovery Act funds.

The guidance states that recipients are to report a brief description and an estimate of the jobs created or retained. Job creation and retention figures are to be based on aggregate hours worked converted into a figure for full-time-equivalent (FTE) positions. Yet it leaves it up to each recipient to determine how many hours equal a FTE.

For each Recovery Act program authorized by a federal agency, the authorizing agency must submit a plan for that program to OMB. The guidance enumerates a dozen elements that must be included in program-specific plans. One of these elements is “expected quantifiable outcomes consistent with the intent and requirements of the legislation.” The guidance also notes that the terms in conditions that are to accompany Recovery Act grant awards leaves “significant discretion to Federal agencies” on how and what performance data awardees must report as part of their quarterly recipient reports.

The guidance also notes that the reporting specified in Sec. 1512 of the Recovery Act is the “minimum which must be collected.” Agencies would have, within the limits of other statutes, the authority to require more detailed data on Recovery Act expenditures from their awardees than is specified in the Act.

Contract Posting

The Feb. 18 guidance required agencies to post to the agency website and to Recovery.gov summaries of contracts or orders (or modifications to an existing contract or order) over \$500,000 along with a description of the required product and service. It also said the summary would be posted to a special section of Recovery.gov if any contract was not fixed-priced and competitively awarded. At that time CAR encouraged OMB to include a full copy of the contract or order along with a copy of the Request for Proposals. The April 3 interim guidance makes no mention of full contract language posting.

State-Level Reporting

The guidance states that Federal agencies “should provide States the flexibility to determine the optimal approach for collecting and transmitting” recipient reporting data. A state would be allowed to either “create a central point of contact responsible for transmitting” recipient reports required of awardees of Recovery Act funds awarded by the state. “Alternatively, a State may prefer to have individual State agencies or recipients separately report to the Federal government rather than relying on a single point of contact to consolidate the information centrally for transmission.”

Some have argued that this flexibility creates opportunities for delay and possible manipulation of the data. Others have argued that the flexibility is vitally important to facilitate movement of the data.

Federal Agency Reports

Under the Feb. 18 OMB guidance, agencies have been providing weekly reports on Recovery Act obligations and expenditures. These reports were to move to monthly, instead of weekly. However, the April 3 interim guidance keeps the weekly reporting in place, and gets rid of the monthly reports.

OMB instructs agencies to make all “Major Communications, Funding Notifications, and Financial and Activity Reports” available through feeds that allow the public or government agencies to obtain the information through subscription. OMB prefers Atom 1.0, but says the RSS is acceptable. OMB also says if an agency cannot provide a feed then it must provide the information to a URL with a structured format so that the public can obtain the information.

The OMB guidance provides little instruction to the agencies on how these feeds are to work or what content must be in each feed. Currently, some agencies are providing feeds

and others are not. This means the only way to open weekly reports from the federal agencies is to visit the website and download the Excel spreadsheet.

OMB does instruct agencies to include in their weekly Excel spreadsheets a column on the program name. Currently, agencies are providing the Treasury Account Number and how much has been committed and dispersed. The problem was there was no cross-walk between Treasury Account Numbers and the common name for the program or project. The new guidance changes that.

What's Missing?

The OMB interim guidance does not address feeds from the Central Contractor Registration (CCR) system, the new central reporting system (called FederalReporting.gov), or Recovery.gov. Without these feeds, the public will not have a way to obtain the data through subscription and there will be minimal machine-to-machine communication.

The OMB guidance also does not address improvements in the Recovery.gov website. This may be because OMB does not have authority over Recovery.gov. Earl Devaney, the new chairman of the new Recovery Act Transparency and Accountability Board (RAT Board), has statutory responsibility for Recovery.gov. The guidance is from OMB, not the RAT Board.

The OMB guidance also does not address how the recipients of the Recovery Act must report or what content they must report.

Other

New Guidance for USASpending

USASpending guidance will be updated, and reporting deadlines have been changed. The deadline for award reporting on USASpending.gov has been changed from 20 days from the end of the reporting period to five.

Prepared by: OMB Watch with assistance from Good Jobs First