OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Jul 06, 2010 15:25

PAPER NUMBER: LTR-10-0306 **LOGGING DATE:** 07/06/2010

ACTION OFFICE: CFO

AUTHOR: Peter Orszag

AFFILIATION: OMB

ADDRESSEE: Heads of Depts and Agencies

SUBJECT: Identifying and documenting costs of govenment activities related to the BP deepwater horizon oil spill

ACTION: Appropriate

DISTRIBUTION: RF

LETTER DATE: 07/01/2010

ACKNOWLEDGED No

SPECIAL HANDLING:

NOTES:

FILE LOCATION: ADAMS

DATE DUE: **DATE SIGNED:**

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

THE DIRECTOR

July 1, 2010

M-10-29

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag
Director

SUBJECT: Identifying and Documenting Costs of Government Activities Related to the BP Deepwater Horizon Oil Spill

The purpose of this memorandum is to establish common guidelines for Federal agencies to use when identifying and documenting costs related to the BP Deepwater Horizon Oil Spill (Oil Spill). It stresses the importance of good record-keeping and cost documentation with respect to Oil Spill-related costs in order to promote appropriate stewardship and accounting of these expenses, maintain accountability to taxpayers, and support current and prospective claims for reimbursement under the Oil Pollution Act of 1990 (OPA90) and other laws. To advance these objectives, this memorandum:

- Provides guidelines on the kinds of costs that agencies should be tracking;
- Establishes the need to coordinate Federal cost information collection efforts in order to reduce duplicate reporting, minimize administrative burden, and comply with the Paperwork Reduction Act (PRA); and
- Instructs agencies to continue close coordination with their State, local and tribal counterparts to implement this guidance and support them in their efforts to collect and track information.

The guidance builds on practices that agencies are already employing to track costs related to the Oil Spill. It addresses questions that agencies have raised and shares best-practices observed since the start of the Oil Spill. As the scope of this guidance is limited to tracking costs of Federal agencies and providing States with suggested approaches for classifying certain benefit payments, it does not implicate the independently administered claims process.

Further, the guidance does not address processes for reimbursement, either from the U.S. Coast Guard (USCG)'s Oil Spill Liability Trust Fund (OSLTF) (for an overview, see: http://www.uscg.mil/npfc/About_NPFC/osltf.asp and http://www.uscg.mil/npfc/docs/PDFs/OSLTF_Funding_for_Oil_Spills.pdf), or directly from responsible parties. Nor does it convey legal advice or supplant current or future guidance from the Department of Justice (DOJ) pertaining to documentation for cost recovery. Moreover, agencies should track expenses whether or not they currently believe them to be recoverable. The Office of Management and Budget (OMB) recommends that the agencies consult with OMB, DOJ, and USCG regarding questions about reimbursement, and direct legal questions to DOJ.

Nor does this guidance address Natural Resources Damages (NRD). These will be tracked under existing regulations and procedures. An overview of the Natural Resources Damages Assessment (NRDA) process is available here: http://www.deepwaterhorizonresponse.com/posted/2931/DHR_USFWS_NRDAR_DamageAssesRestFS.542371.pdf. The National Oceanic and Atmospheric Administration's guidance on NRDA is available at: http://www.darrp.noaa.gov/library/pdf/ppd.pdf.

While this memorandum does not request reports to OMB, agencies should anticipate and begin planning for future Budget Data Requests on the types, costs, and period of performance for Oil Spill-related activities.

To the extent practicable, agencies should apply the guidelines described in this memorandum to the tracking of both past and future expenses related to the Oil Spill. Please contact OMB if you have specific concerns about the feasibility of this or other tracking efforts. Agencies should exercise caution before making investments in new system capabilities without consulting with OMB. Procedures for submitting data to FACTS II will remain unchanged.

Questions about this memorandum can be addressed to Shoshana Lew, at SLew@omb.eop.gov.

Thank you for your attention to these matters, and please bring this memorandum to the attention of any personnel in your organization who will be involved in these matters.

Attachment

Identifying and Documenting Costs of Government Activities Related to the BP Deepwater Horizon Oil Spill

Table of Contents

Section 1. **Overview**

Section 2. **Agency Costs**

Section 3. **Benefit Related Payments to Individuals, Families, and Small Businesses**

Section 4. **Lost Revenue from Taxes, Royalties, and Other Fees**

Section 5. **Paperwork Reduction Act Requirements**

Section 1. Overview

1.1. What is the purpose of this guidance?

The purpose of this guidance is to establish a common framework for Federal agencies to utilize when identifying and documenting costs related to the BP Deepwater Horizon Oil Spill (Oil Spill). This guidance stresses the need to segregate those costs to preserve options for cost recovery and reimbursement. This includes Oil Spill-related expenses that are not currently covered by a Pollution Removal Funding Authorization (PRFA) or Military Interdepartmental Purchase Request (MIPR) approved by the Federal On-Scene Coordinator (FOSC).

1.2. What categories of costs does this guidance address?

This guidance establishes guidelines related to identifying and documenting:

- Agency costs for activities related to the Oil Spill;
- Costs that result from the payment of benefits to individuals, families, or small businesses as a result of the Oil Spill;
- Lost revenue from taxes, royalties, and other fees related to the Oil Spill.

1.3. What are the roles of agencies with respect to communications with States and localities on tracking needs and protocols?

For each relevant program (e.g., unemployment compensation, food assistance), Federal agencies should communicate with States and localities – as appropriate – about the best way to track information given different States' and localities' information collection systems, capabilities, and cost constraints. Agencies' senior officials, or their designees, should be available to answer questions and share best practices in the event that States and localities seek guidance with respect to information collection.

Section 2. Agency Costs

For the purposes of this guidance, agencies should track all expenses that can be reasonably related to the Oil Spill. If there is doubt as to whether a particular cost is related, it is better to account for it, and later revise the totals downwards based on subsequent guidance. For "removal costs" that are being covered by a FOSC-approved PRFA or MIPR as defined by OPA90, 33 U.S.C. § 2701(31), the documentation that is already being provided to the USCG is sufficient for the purposes of this guidance.
Moreover, documented costs should include both current base appropriated funds that are spent on Oil Spill-related activities and any funding that is tied to a future supplemental appropriation related to the Oil Spill.

Documented costs should represent total costs, which include "direct" costs (e.g., travel to the region, transportation equipment, etc.) and "indirect costs" – or overhead – which cannot be tied to a specific activity but are nonetheless related to the Oil Spill. Examples of both are provided below.

2.1. What are examples of direct agency costs that agencies should identify and document?

What follows is a representative, non-exhaustive list of costs that could be related to the Oil Spill. The items on this list are not mutually exclusive:

- Salaries and overtime for full-time personnel assigned to work on the Oil Spill (including administrative personnel, and D.C.- and field-based program officers);
- Costs associated with temporary Federal agency personnel assigned to work on the Oil Spill;
- Transportation equipment (including but not limited to boats/cutters, aircrafts, and vehicles);
- Travel expenses and per diem, including a wide range of costs incurred while on travel. (For more information, see the GSA travel regulations: http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=14161);
- Office supplies, equipment, and capital and/or maintenance costs for new or expanded field sites;
- Cost of materials, equipment, and supplies related to clean-up;
- Shipping costs and materials;
- Cost of work, services, and materials procured under contract for purposes related to the Oil Spill;
- Costs associated with condition monitoring and assessment (for example, hiring additional personnel to do public health monitoring); and
- Costs that reflect agency activities to mitigate the impacts of the Oil Spill. For example, these costs may include mobilization of resources to coordinate benefit issuance and the dissemination of public information;

2.2. What steps should agencies take to document the costs described above?

Methods of documentation can include segregation of cost information about the relevant activities in financial systems, business systems (i.e., grant and contract writing systems), benefit issuance systems, personnel time and attendance systems, and reporting systems.

At a minimum, relevant agency activities and the costs of such activities should be readily distinguishable from other activities. To the extent it is impractical to segregate agency activities related to the Oil Spill in relevant systems, agencies may propose for OMB review alternative approaches to achieve the same objective.

Where an agency is documenting outlays of actual expenditures, the documentation retained by the agency should be sufficient to pass muster by examination under GAAP or under other generally accepted accounting principles that apply to that particular agency. Where outlays are not identified on the basis of actual, individual expenditures (owing to disproportionate expense of doing so or other compelling impracticability), then the methods used to identify and document the outlay should be generally accepted for that purpose, and the results obtained should be reproducible by others with access to the data and methods employed.

2.3. How do we determine total costs?

Total costs are calculated by adding allocations of general and administrative (G&A) and overhead costs to direct costs as well as the value of fringe benefits to direct labor costs. For example, salary expense represents only the direct cost associated with personnel. The actual costs to the agency include fringe benefits, such as the government's share of health care, as well as other benefits, such as the government's thrift savings account payments. In addition, such costs as human resource department functions can be allocated across the employee population for the agency component served by that department.

In general, overhead and G&A costs are necessary costs that support a range of activities and are often called "indirect costs" because they cannot be attributed to a specific activity. Instead, these costs are those (a) incurred for a common or joint purpose benefitting more than one activity and (b) not easily assignable to the activities they specifically benefitted. Overhead and G&A costs should be allocated to specific activities in a fair and equitable manner.

For Oil Spill-related activities, the overhead costs can occur at several levels of the agency, such as the Department, Regional or Bureau level. They should include coordination, planning, budgeting, and oversight costs related to the Oil Spill. Some examples of allocable overhead costs are:

- Maintaining central administrative offices or functions to support activities. These functions can include human resources, technical support, legal or general counsel, etc.;
- Maintaining central financial management including developing a budget or budgets and maintaining financial and managerial accounting of the activities;
- Developing strategy and policy for the implementation of the activities;
- Providing legal assistance in the implementation of the activities;
- Providing management and oversight of the activities; and

- Performing review and audit of the activities.

Agencies should identify and allocate overhead and G&A costs associated with direct Oil Spill-related costs, as described in 2.1 and 2.2 above. The documentation in agency financial, managerial, and cost accounting systems should sufficiently identify these costs as related to Oil Spill activities. This can be done by setting separate account and specific accounting object code by types of expenditures.

Contract actions supporting the Oil Spill effort should be identified in the Federal Procurement Data System-Next Generation (FPDS-NG) using a new National Interest Action (NIA) value of "Gulf Oil Spill 0410," which was created to track cost and other information related to Oil Spill contracts. FPDS-NG web portal users should select the value "Gulf Oil Spill 0410" in the NIA drop-down; Contract Writing Systems using FPDS-NG V 1.4 should use the code "010G" when creating/updating documents through Business Services.

Agencies must clearly document the allocation basis for each type of overhead cost associated with activities related to the Oil Spill. For example, the allocation of audit service costs can be done by calculating the percentage of total audit time spent on audit of Oil Spill-related activities. Agencies should use their existing cost allocation plan to allocate the overhead costs related to these activities. If no cost allocation plan exists, agencies that expect to incur in excess of $10 million of direct costs should develop a cost allocation plan based upon the guidelines provided in OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, (http://www.whitehouse.gov/omb/circulars/a087/a87_2004.pdf). This plan should be submitted to OMB for review no later than 60 days after publication of this guidance.

Relevant OMB-A-87 sections regarding overhead costs are Attachment A, Section F. *Indirect Costs* and Attachment E. *State and Local Indirect Cost Rate Proposals*. OMB is available to provide training on the application of OMB Circular A-87 to assist the agencies in identifying overhead costs for oil spill-related activities. OMB may request modification to the proposed plan to provide consistency across agencies. Plans should be submitted to Gil Tran at Hai_M._Tran@omb.eop.gov. For reference, a sample plan for documenting costs (including overhead costs) from the Environmental Protection Agency is attached. Of particular note is the third section for "Charging and Recovering Headquarters and Regional Administrative Costs."

2.4 What should I do if I have difficulty determining whether a cost is "direct" or "indirect"?

As both kinds of costs should be captured in your documentation, the focus should be on establishing a cost as Oil Spill-related, rather than on parsing the nature of the expense.

Section 3. Benefit Payments to Individuals, Families, and Small Businesses

This guidance describes the importance of tracking both claim-by-claim and macro-economic impact of relevant programs, recognizing the limitations of each approach and the need for a hybrid approach. It establishes a suggested set of information that should be collected as part of the benefit delivery intake process in order to categorize claims as relating to the Oil Spill. It also responds to questions that States have raised from time to time about tracking benefits and payments.

3.1. What programs and costs are covered under this section?

Federal agencies administering programs that make payments to individuals, families, or small businesses are covered under this section. This includes State-operated benefit programs that use Federal funds. Programs providing unemployment compensation, food assistance, and loans to small businesses, among others, fall under this category.

3.2. What are the suggested methodologies for identifying Oil Spill-related costs?

The methods established for each program should include:

- Standard procedures for identifying which individual payments are Oil Spill-related. These should cover collection of information at the time of application, where feasible, and retention of information that can be used at a later date to identify those payments that relate to the Oil Spill; and,

- An analytical model to supplement a claim-by-claim review in cases where it may not be feasible to accurately account for all Oil-Spill related claims on an individual payment basis.

Agencies administering applicable programs should work with the DOJ and OMB to establish valid and reliable methods in paying Oil-Spill related benefits for identifying: (1) benefit costs incurred by the government; and (2) any other costs to Federal agencies that are related to the Oil Spill.

Because States and localities administer many Federal benefit programs using varying processes and systems, it may not be possible to establish uniform approaches across all jurisdictions. Federal agencies should work with individual States and localities to determine what processes can be implemented cost effectively, balancing the need for accurate documentation with the goal of minimizing burden and costs.

3.3. What types of data elements would help support determinations of Oil-Spill related benefit payment claims?

Many types of data could help support a determination that a specific benefit payment is related to the Oil Spill, such that it would be appropriate to seek reimbursement from responsible parties. Examples include:

- Date of application for benefits or change in circumstances;
- Self-attestation from individuals that their need for assistance is related to the Oil Spill;
- A personal identifier assigned by the state and/or the recipient's Social Security or Tax ID number, so that data from multiple sources can be linked. This would help limit duplicate payments and reduce the need to collect the same data multiple times under different programs;
- Address;
- Employer;
- Employer's industry or beneficiary's occupation;
- Circumstances that led applicant to seek assistance;
- If applicant was previously receiving assistance, the circumstances that led to continued or increased needs; and
- Whether the applicant filed claims with or received payments from responsible parties.

3.4. What should I do if I have concerns about the privacy issues associated with sharing personal information, like the identifiers listed above?

This guidance does not call for the sharing of personal identifiers. Rather, identifying information like the types listed above should be maintained within the same systems that already collect personal information to operate various programs. In the event that additional information becomes necessary to support reimbursement efforts or for other reasons, DOJ will work with the affected programs' agencies on a case-by-case basis. This guidance should be implemented consistent with applicable law, including privacy protections.

3.5. What steps should agencies take to minimize unnecessary burden and costs of data collection and record retention?

Some of the required individual documentation suggested in 3.3 may be retrievable by linking administrative databases rather than requiring multiple collections from beneficiaries. Federal agencies should work with States to determine the most efficient and effective ways to collect and analyze this information while reducing burden on applicants.

For certain programs, supporting data on individual claims may not need to be reported by States to Federal agencies at the outset. Instead, States could collect and retain information about individuals until claims have been settled, only sharing the information if deemed necessary. The level of reporting will likely vary by program. However, States are expected to report aggregated data to the appropriate Federal agencies with sufficient detail to permit Federal oversight of the program.

3.6. Will the Federal government or a State seek reimbursement from responsible parties or other sources for federally-funded benefit programs that are State-administered?

For each federally-funded benefit payment program that is operated by States, the applicable Federal agency should consult with OMB and the DOJ to determine an appropriate approach to cost documentation, based in part on whether the Federal government or the State is expected to seek reimbursement from responsible parties or other sources. After this consultation, the agency should issue program-specific guidance that clarifies cost-documentation needs. Consultation and guidance issuance should be completed as soon as possible but no later than 60 days after the publication of this Memorandum.

3.7. What approach should be taken to address duplicate payments?

Regular coordination between State program operators and responsible parties may enable reimbursement procedures that prevent duplicate payments while assuring that the affected individual is fully compensated for lost earnings and other damages. To the extent a duplicate payment is identified, the agency shall document the circumstances of such payment to support future recovery and reconciliation procedures.

Section 4. Lost Revenue from Taxes, Royalties, and Other Fees

4.1. What steps should Federal agencies take to assist in the tracking of lost revenue and other receipts?

None at this time. The Oil Spill will likely lead to a loss in tax revenue and other receipts at the Federal, State, and local levels. OMB will continue working with the Department of the Treasury and the Internal Revenue Service (IRS) to identify data sources and methods to estimate Federal revenue losses. The Treasury and IRS will consult with States and other agencies, such as Departments of Commerce and the Interior, to identify royalties, excise taxes, and other taxes that might be impacted by the Oil Spill. Ultimately, estimating revenue and tax loss may require statistical analyses of tax collections over time and across regions. The IRS will also examine how compensation payments (for lost income, lost capital, and other losses) will be treated under the tax code.

Section 5. Paperwork Reduction Act Requirements

5.1. What should agencies do to make sure that they are in compliance with the Paperwork Reduction Act (PRA) when they collect information pertaining to the Oil Spill?

Agencies should be aware that their efforts to collect information from the public regarding the Oil Spill are subject to PRA, and therefore subject to OMB's standard PRA review process. For purposes of the PRA, the "public" includes State and local governments, as well as businesses and individuals. Examples of the kinds of activities that may be subject to the PRA can include, but are not limited to, requesting the same data from ten or more counties or parishes, or ten or more members of the public within one or more counties or parishes.

The PRA was designed, among other things, to "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government" and to "improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society." Federal agencies play a critical role in collecting and managing information in order to promote openness, reduce burdens on the public, increase program efficiency and effectiveness, and improve the integrity, quality, and utility of information to all users within and outside the government. Before Federal agencies require or request information from the public, the PRA directs them to: (1) to seek public comment on proposed collections; and (2) submit proposed collections for review and approval by OMB. OMB's Office of Information and Regulatory Affairs (OIRA) reviews agency information collection requests. When OMB approves an information collection, it assigns an OMB control number that the agency must display on the information collection. OMB has issued regulations and guidance to promote agency compliance with the PRA.

Given the circumstances surrounding the Oil Spill, agencies may request "emergency" OMB review, which may allow the agency to streamline or bypass the public notice procedures and/or receive expedited OMB approval. The grounds for justifying emergency reviews include (1) likely public harm if normal clearance procedures are followed or (2) the occurrence of an unanticipated event. More information on PRA rules and procedures is available at http://www.whitehouse.gov/omb/assets/inforeg/PRAPrimer_04072010.pdf.

5.2. In the event that OMB determines a data collection effort is not subject to PRA, what should agencies do to ensure coordination?

OMB notification should occur even in the event that the collection effort is not subject to PRA, with the goal of fostering communication and identifying and streamlining similar analytical efforts across the Federal government as they occur.