

Federal Government Shutdown: Impact on NAU federally sponsored grants and contracts

The Anti-deficiency Act prohibits federal agencies from incurring obligations that are in advance of, or that exceed, an appropriation. Thus, with certain limited exceptions, an agency may not incur obligations when the funding source for the obligation is an appropriation that has lapsed, or in this case, during a federal government shutdown.

The following information and Q&As address principally the impact on grant and contract activities during a lapse of appropriations (government shutdown).

Continuation of Performance

Q: Can Grant and Contract Performance Continue During Gov't Shutdown?

A: Unless the federal sponsoring agency provides notification to the Office of Sponsored Projects (OSP) to the contrary, performance under an already-issued contract or grant is not impacted by a lapse in appropriation, and performance may continue to proceed with its work during government shutdown period. An example is the situation where an agency has already obligated funds representing the entire price under a contract or task order before the funding lapse began, or where the agency may use multi-year or no-year funds to incur new obligations for the contract or grant.

Incurring New Obligations for Contracts or Grants

Q: When an appropriation has lapsed, may the federal sponsoring agency or I incur a new obligation - by signing a new contract or grant, or by extending a contract or a grant, or by exercising a renewal option -when the funding source for that obligation would be the lapsed appropriation?

A: No - except in very limited circumstances.

There are very limited circumstances under which such may continue, notwithstanding the lapse in appropriations. These limited circumstances are when the continued performance of the contract or grants administration is "necessarily implied" for carrying administrative activities (funded out of annual appropriations) that are necessary to disburse benefit payments under entitlement programs, such as social security benefits, for which an indefinite appropriation provides the funding for the benefits (and for which there is a congressional authorization to make regular payments to beneficiaries).

Another example might be a grant program that cannot proceed to the next milestone under the previously-awarded grant unless the grant administrator provides approval for continued performance. If the grant program is one that is mandated by Congress, and if failing to proceed to that next milestone during the period of the funding lapse would violate a statutory timetable, then in that case the review and approval by the grant administrator would be a "necessarily implied" activity, and thus could occur even though there has been a lapse in the appropriation that funds grant administration. "Necessarily and Implied" activities are narrowly defined. Please

contact the AVP, Sponsored Projects (Michael.nichols@nau.edu) to determine whether your grant/contract is a necessarily and implied activity.

Grants and Contracts Requiring Agency Supervision or Technical Assistance for Performance

Q: In the absence of such supervision or support, may I nevertheless continue performance?

A: The absence of appropriations would generally prevent the continuation of such supervision or support during a gov't shutdown. Thus, the performance by contracting officers, contracting officer technical representatives, contract administration personnel, and grants management specialists of routine oversight, inspection, accounting, administration, payment processing, and other contracting or grant management activity would generally not continue.

However, if the continued supervision or support during the lapse period is not critical to continued performance during that period, then you may continue to proceed with the work. That said, it is always prudent to be in communication, when feasible, with the contracting officers, contracting officer technical representatives, and grants management specialists to avoid a misunderstanding.

Payments Obligations during Shutdown Period

Q: Will NAU be able to collect payment from federal funding agencies during shutdown period?

A: Generally no. The fact that the government would incur interest penalties under the Prompt Payment Act or other law due to the delay in payment caused by a funding lapse does not provide a legal justification under the Anti-deficiency Act for an agency to continue to make payments during a funding lapse.

An exception would exist in the situation in which making the payment to a contractor or grantee during the funding lapse is "necessarily implied"

Proposal Submission and Award Management Systems during Shutdown Period

Q: Will sponsors' proposal submission and award management systems be operable during shutdown period?

A: Generally no. However, some systems (i.e. Grants.gov) may be operable but the submission of proposals, progress reports, or other award management reports may be halted. OSP has a list of pending proposals and upcoming reports due within the next 1-2 weeks and will coordinate with the applicable sponsors and advise when alternative due dates have been established. In the meantime, please contact your assigned OSP Grants and Contracts Administrator (GCA) if you have question regarding the submission of your proposal. You can find your assigned GCA on the OSP website via the following url <https://nau.edu/Research/Sponsored-Projects/Resources/OSP-Teams/>. You can also send an e-mail to the OSP general e-mail box at nau-osp@nau.edu

NAU employees working at federal facilities/land

Q: What do I do if I currently have a Grant or Contract that Requires Performance at a Federally-owned or operated facility/land?

A: Please contact Kerri Byrd at kerri.byrd@nau.edu

The Office of Sponsored Projects (OSP) will continue to monitor the government shutdown and will provide updates on the impact on NAU federally sponsored grants and contracts. Please contact OSP (NAU-OSP@nau.edu) if you have questions in the interim.

The following is a link to the contingency plans of specific federal agencies during the shutdown:

<https://www.whitehouse.gov/omb/agency-contingency-plans/>