

**Department of Commerce Office of Acquisition Management
Contract and Grants Guidance during a Lapse in Appropriations
September 2021**

The following information is general guidance applicable to all bureaus within the Department of Commerce (DOC). Questions specific to a particular contract, order, grant, cooperative agreement or other financial assistance action should be directed to the Bureau acquisition or financial assistance office. Bureau websites with additional information including points of contact during the lapse are provided below.

Financial Assistance: Generally, grants and other financial assistance actions that were funded and do not require access to Government facilities, active administration by Government personnel or the use of government resources in a manner that would cause the government to incur additional obligations during the lapse may continue performance. The Department's Standard Terms and Conditions (STCs) set forth initial guidance that will be implemented for all DOC financial assistance awards in the event of a lapse in appropriations, or a government shutdown. Recipients should review the STCs attached to their respective award. Additionally, the Grants Officer may issue further guidance prior to an anticipated shutdown. Both GrantsOnline, where applicable, and the Automatic Standard Application for Payment (ASAP) system are anticipated to be operational during a lapse in appropriations. Grantees and cooperative agreement holders with existing awards are authorized to continue to perform and have access to and be able to draw down funds through the ASAP system. Those grantees and cooperative agreement holders receiving payment on a reimbursable basis may not receive payments during a lapse in appropriations.

Contracts and Purchase Orders: Contracts and purchase orders are authorized to continue to the extent that they are not limited by the lapse in appropriations. Access to Government facilities and resources, including equipment and systems, will be limited and personnel necessary to administer contract performance may not be available. If a delivery date for a contract falls during the period of a lapse in appropriations, Government personnel may not be available to receive delivery. Contractors should consult a Contracting Officer before attempting to make delivery.

Generally, supply and service contracts that are funded beyond the date of the lapse in appropriation and do not require 1) access to Government facilities, 2) active administration by Government personnel, or 3) the use of government resources in a manner that would cause the government to incur additional obligations during the lapse in appropriation, may continue. In addition, some contracts may be determined to support Excepted activities and be required to continue. Contracts and purchase orders that are not affected by the lapse in appropriation will typically meet one of the following exemption criteria:

1. The contract is necessary to assist in the orderly shutdown;
2. The contract is funded beyond the date of the lapse, and interaction with Government personnel and use of unavailable government systems/facilities is not required.

3. The contract is funded beyond the date of the lapse, and the salaries of Government personnel necessary for contract administration are paid by other than current fiscal year funds;
4. The contract is necessary to protect in some significant and immediate degree the safety of human life or the protection of property; or
5. The contract is necessary for national security purposes or otherwise authorized by law to continue operations.

Contracts and purchase orders supporting excepted functions such as orderly shutdown, protection of life and property, or national security purposes may continue even in the absence of available funding in accordance with guidance from the Office of Management and Budget and in coordination with the Office of General Counsel. Descriptions of excepted activities within the Department of Commerce will be identified in the agency's contingency plan, which will be posted on Commerce.gov in accordance with OMB A-11, Section 124. Determinations that a specific contract or purchase order supports an excepted activity and may continue in the absence of available appropriations will be made by program offices in coordination with the Office of General Counsel and communicated to Contracting Officers and Contracting Officer Representatives for notification to the affected contractors.

Procurement Memorandum 2011-09 provides a contracts decision tree to assist in understanding which contracts and purchase orders may continue during a lapse in appropriations.

Contracting Officer responsibilities: In order to perform an orderly shutdown, Contracting Officers will review assigned procurement actions and in coordination with the program office and/or contracting officer's representative take the following actions as appropriate:

- Evaluate contracts whose periods of performance may expire and include options and take action to exercise the option, extend the period for exercising the option, otherwise modify the terms of the contract to prevent expiration;
- Review contracts with delivery requirements during the lapse and notify contractor if delivery should be delayed or diverted;
- Review and identify the impacts of a lapse on any solicitations, bid openings, market surveys, requests for information, etc., that will expire or that are scheduled to be conducted during the potential shutdown period and extend the dates as appropriate;
- Take necessary actions to notify affected DOC and industry personnel of any actions taken to cancel, extend, modify or delay any of the above actions.

Program Managers and Contracting Officer Representative responsibilities: Program Managers, Contracting Officer Representatives (CORs) and other Government personnel are NOT authorized to instruct any contractors to proceed with work in any manner that would violate the existing terms and conditions of the contract. Contractors will be directed to consult with a Contracting Officer (CO) before attempting to make a delivery. COs will be available throughout the lapse in appropriation period to provide guidance. CORs, in consultation with the CO, should review the periods of performance and funding levels of their contracts along with the need for government resources, personnel, and access to government facilities and provide appropriate guidance to Contractors and COs regarding whether performance may continue.

CORs and/or program managers, in consultation with the CO or Grants Officer, must identify all acquisition and financial assistance vehicles (contracts, purchase orders, task orders, grants, cooperative institute actions, etc.) that are supporting Excepted activities (using the guidance herein) and must remain in full force and effect to ensure the safety of life and/or property. Once the Office of Management and Budget (OMB) guidance is given, CORs, in consultation with the Contracting Officer, will notify those contractors that are deemed by the Program Office to be performing Excepted work and identify the contractor personnel requiring access to Government facilities. Where required, CORs will coordinate with designated personnel to ensure that the names of contractor personnel requiring access to government facilities during the lapse in appropriations are provided to physical security personnel.

Once the lapse in appropriations has been resolved, generally contractors should return to work for normal operations on the next business day. Contractors are encouraged to watch the national news media and to monitor the Federal Government Status at the Office of Personnel Management's website: www.opm.gov.

Building Access: Access to federal facilities affected by a lapse in appropriations is restricted to the performance of orderly shutdown activities or performing excepted work. Upon entry to a DOC facility during this period of lapse in appropriations, all employees, Government and Contractor, will be required to sign in, and designate the purpose of entering the facility. There are two options for purpose allowed – performing orderly shutdown or performing excepted work.

Contractors who are not designated as performing Excepted work are not allowed access to Government facilities or to utilize government resources in a manner that would incur any additional obligation of funding on behalf of the government during the lapse in appropriation.

Invoice Payments: Per OMB guidance issued January 22, 2019, making timely payments to contractors for work performed prior to a lapse in appropriations is considered excepted work. Bureau personnel and systems necessary for the review, certification and disbursement of properly payable invoices will be available during the lapse to perform those activities. Questions regarding a specific payment should be referred to the cognizant Bureau POCs.

Purchase Cards Procedures: During a lapse in appropriations, the purchase card may be used by designated Excepted purchase card holders only for support of excepted activities. In addition, any cardholder who will be deemed excepted must also have an excepted approving official (with a purchase card program delegation) to review and approve their transactions prior to purchase. Each bureau and office within the Office of the Secretary will provide the SmartPay3 Program Office with those names of Excepted card holders requiring use of the purchase card for excepted activities during a lapse in appropriations. Purchase cards for all card holders except for those identified as Excepted will be deactivated for the period of the funding gap or lapse in appropriations.

Bureau Websites/POC:

NOAA: https://www.ago.noaa.gov/noaa_appropriation_lapse_guidance.html

ES-A: <https://www.commerce.gov/bureaus-and-offices/os/enterprise-services>

NIST: <https://www.nist.gov/oaam>

FirstNet: : <https://www.firstnet.gov/about/doing-business-with-us> / FirstNet.AskProcurement@firstnet.gov

PTO: <https://www.uspto.gov/about-us/organizational-offices/office-chief-financial-officer/office-procurement>

Census: <https://www.census.gov/>

References:

[DOC Financial Assistance Standard Terms and Conditions](#)

[Procurement Memorandum 2011-09](#)

Additional Resources:

- [OPM Furlough Guidance](#)
- [OMB Frequently Asked Questions During a Lapse in Appropriations](#)
- [January 22, 2019 Update to Frequently Asked Questions During a Lapse in Appropriations](#)
- [OMB A-11 Section 124](#)
- [DOC Plan for Orderly Shutdown Due to Lapse of Congressional Appropriations \(September 27, 2021\)](#)