OFFICE OF GOVERNMENT & COMMUNITY AFFAIRS

Unless Congress and the Administration can come to an agreement by October 1st, 2013, the federal government and individual agencies will be forced into a period of significantly curtailed operations often referred to as a government shutdown. The Office of Management and Budget (OMB) has instructed each federal agency to issue preliminary guidance on how activities would be curtailed during a shutdown. Most of the agencies began doing this over the past few days. This memo provides a brief summary on how programs and agencies most important to universities – primarily federal student aid and research grants – would be affected by a government shutdown.

Background

Each year Congress must pass 13 annual appropriations bills to avoid a shutdown of government functions by September 30th, the end of the federal fiscal year. Currently, none of the fiscal year (FY) 2014 appropriations bills have been signed into law. If any of the 13 annual appropriations bills have not been signed into law by September 30th of any given year, a “Continuing Resolution” (CR) is required for the federal government to continue operate most agencies and programs.

Currently, the U.S. House of Representatives is insisting on including a delay of the Affordable Care Act, or Obamacare, the President’s signature health care initiative, in any legislation to keep the government funded. The U.S. Senate and the Obama Administration are rejecting any efforts to change or delay the health care law, insisting on a “clean” CR to fund the government until a longer-term fiscal year 2014 spending bill can be completed. If an agreement on a CR cannot be reached by midnight, September 30th, many federal agencies and programs will be forced to begin the process of a government shutdown.

Under a shutdown, not all government functions actually cease. Programs and activities carried out with mandatory spending and those that have already been funded (such as certain contracts and grant activities funded under the previous years’ appropriations) will continue. Activities that, if suspended, would imminently threaten the safety of human life or the protection of property or would infringe upon the constitutional responsibilities of the President, will continue. Lastly, individual agencies must determine which employees are necessary to carry out this limited set of programs and functions. These employees are referred to as “essential” employees, and will continue working through a government shutdown.

Federal Student Aid Programs

Based on guidance from the Department of Education and previous federal shutdowns, a short-term shutdown would appear to have minimal impact on student aid processing and funding. Because most of the Federal Student Aid programs are forward funded (i.e., funding for the current award year primarily comes from last year’s budget), most of the funding is already in place for the 2013-14 award year. Here is an excerpt from the Department of Education’s guidance: “As a result of the permanent and multi-year appropriations, Pell Grants and student
loans could continue as normal. Staff and contractors associated with these areas will continue to work, and only skeletal program operations would continue under the “significant damage” standard. Mandatory and carryover funding is also available for servicing contracts and many other administrative functions.”

While nothing is certain in such an unpredictable political environment, current guidance and past precedent would indicate normal grant and loan processing in the near future irrespective of a short-term federal shutdown. Should a shutdown become prolonged, it is possible that processing would be impacted, but at this stage it is difficult to speculate on the extent or manner of any impact.

Federal Research Agencies

Each of the federal research agencies has begun to issue similar general guidance on how a shutdown will affect federally funded grants. Based on agency guidance and past shutdown experience, we are reasonably confident of the following:

- Research and work on existing federal grants can continue, allowing faculty research to proceed uninterrupted.
- In general, Sponsored Programs will be able to draw down funds from research agencies to cover expenditures on current awards. The NIH has announced that it will maintain the Payment Management System to allow the processing of existing grant drawdown requests.
- There will be no new notices of grant awards or contracts during the shutdown period.
- Each agency will handle submissions of grant proposals through Grants.gov and other portals differently, some remaining operational and some will be unavailable. NSF has announced that its Fastlane proposal preparation and submission system will be unavailable during a shutdown. Under these scenarios, applications will be queued for action when government operations resume.
- Federal agency program and grant officers will not be available for consultation during a shutdown.
- There will be no technical support for the government’s electronic systems.

Passports and Visas

The State Department has announced that it will keep most consulates and embassies open during a shutdown (they closed during previous shutdowns), so this means that most visa and passport processing should continue. There are some exceptions, however. For instance, if a passport and visa agency is located in a government building affected by a lapse in funding, the facility may become unsupported by State Dept. processing workers.

Medicare and Medicaid Payments

Federal Medicare and Medicaid payments to doctors and hospitals for senior citizens and low-income residents will continue under a government shutdown.

Interaction with Federal Agency Officials and Staff

As discussed above, in the event of a shutdown, agencies will designate certain employees as “essential,” and these staffers will continue to work; all other federal employees will remain at home until a CR is in place. “Essential” employees are typically those who have an immediate impact on national defense, homeland security, law enforcement and health and safety. At the
Department of Education and most research agencies, where employees do not carry out those functions, only a handful of people (typically only the head of each office and a few more people department-wide) have been designated as essential.

The Office of Government & Community Affairs (OGCA) will continue to keep you apprised should the Office of Management & Budget or any of the federal agencies provide additional guidance on shutdown operations. If you have any questions, please contact Steve Heuer, Director of Government Relations at 202-654-8329 or at steve.heuer@nyu.edu.