

Has Uncle Sam Terminated Your Federal Grant? You Have Rights (and Maybe a Financial Claim)

by Alex Hontos, Chris DeLong, and Eric Weisenburger

The first weeks of the Trump Administration have created substantial uncertainty within Dorsey's client base, with many clients assessing their partnerships with the United States government and asking whether they have legal recourse to challenge agency action related to federal grants. Between the Administration's hiring freeze, dramatic shifts in policy and priorities, and now-paused federal assistance funding freeze, Dorsey's clients are asking questions that were unthinkable even a few weeks ago: (1) is the United States a reliable funding partner?; (2) will grant awards be delayed, descope, or terminated altogether?; and (3) what rights do grantees have to challenge agency conduct? Particularly grantees with work touching on diversity, equity, and inclusion (broadly construed), anti-discrimination, clean energy/green technology, immigration, or foreign policy have already seen disruption, receiving notices to stop work or outright termination, and some have been told termination or cancellation of their grants is under consideration.

It is imperative that Dorsey's clients with federal grants or guarantees plan for these significant changes. As part of that planning, Dorsey's clients should assess their rights—and what to do to enforce those rights—in the event of disruption to settled expectations caused by the Trump Administration's policy changes.

What rights do grantees have regarding termination or cancellation of their grants?

As a general matter, federal grantees have enforceable rights (and potentially recourse, including the ability to challenge terminations and the right to seek compensation or additional time for performance) if federal grants are terminated, paused, or otherwise delayed. Although not without uncertainty in the caselaw, courts have construed grants as enforceable contracts—providing some hope for grantees to leverage contract-based remedies.

Grant agreements are generally subject to different rules from federal procurement

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contracts. The Federal Acquisition Regulations (“FAR”) govern management and termination of federal procurement contracts, including contractor rights to challenge termination and compensation for termination and settlement. Grants, though, are generally governed by the terms of the grant agreement, the Office of Management & Budget’s Guidance for Federal Financial Assistance (the “Uniform Guidance”) (2 CFR Part 200) and agency-specific guidance.

The grant agreement may provide the agency with a pathway for termination of the grant at the agency’s convenience or otherwise without any cause. The agreement may also address what remedies a grantee has in the case of termination or stop-work, as well as a process for asserting a claim for compensation for expenses resulting from a termination of the grant and wind up of the underlying work. Grants may also contain agency-specific administrative disputes resolution procedures. Making things more complex still, some agreements incorporate FAR provisions, too.

Agency guidance, and in particular an agency’s form terms and conditions incorporated into agreements or agreed to as a condition of receiving the grant, may also address termination and claims for compensation. Similarly, agency regulations or program-specific regulations may be implicated and supplement the terms of a grant agreement. Each agency’s regulations will differ and need to be analyzed on an agency-by-agency basis, especially with any process or procedure for challenging agency determinations.

The Uniform Guidance addresses grant termination under 2 CFR § 200.340. Per the Uniform Guidance, a grant award may be terminated for a grantee’s breach of the grant agreement, by mutual agreement of the agency and grantee, unilaterally by the grantee on reasonable notice, or by the agency when, “pursuant to the terms and conditions” of the award and “to the extent authorized by law,” the award “no longer effectuates the program goals or agency priorities.” Whether grant terminations linked with the Trump Administration’s unilateral shifts and reversals in policy across a broad spectrum of policy areas are challengeable is an untested question that courts will grapple with soon as grantees start seeking judicial intervention.

Grantees need to assess whether and how they would be compensated for termination-related costs and may consider a challenge to the termination itself. The Uniform Guidance may provide a grantee a basis to seek termination costs, though the grant agreement and agency-specific guidance and regulations also need to be considered. Further, while there is a rich body of decisional law in the context of federal contractors challenging the termination of federal contracts, the law in the context of federal grantees challenging the termination of federal grants is less developed. Grantees can also rely on the grant agreement or agency-specific regulations or guidance to challenge the termination—for example, in 2018, organizations successfully challenged the Department of Health and Human Services’ early termination of grant programs. Grantees may also have breach of contract claims, claims under the Administrative Procedure Act, or other claims for agency refusal to honor awarded grant agreements.

What can grantees do now to protect themselves if termination or cancellation comes?

1. Consult with your counsel/create a gameplan.

Disputes with the government are fundamentally different than disputes with private parties—organizations must understand the unique procedural and substantive rights available under government grants and the specialized causes of action and courts that will adjudicate them. Each grant and grantee stands alone, so it will be important to analyze the agreement, applicable agency guidance, regulations incorporated in the agreement, and the course of dealing with the granting agency to develop firmer strategies for dealing with a termination or cancellation notice.

Grantees may have claims for termination and settlement costs, including close-out costs and associated attorney or consulting fees. Grantees may have other legal claims as well, including a challenge to the termination or even a claim for breach of the grant agreement and breach damages. These rights and claims may be vindicated through agency-level dispute procedures or litigation.

This is an area where specialized legal knowledge and experience truly matters. Challenges to agency conduct can be brought only in certain ways, in certain courts/tribunals, and in certain time frames (which are often short relative to other legal claims).

2. Provide the agency notice of impacts/seek clarity about agency intent.

Build a record with the agency. Seek clarity about agency intent—Dorsey's team has seen guidance from the United States that is, charitably, ambiguous about the agency's directive. This is not a situation that grantees should just accept—communicate your understanding, and seek clarification of, agency directives. Acknowledge receipt but go farther than that. Further, timely notify the agency of cost and schedule impacts associated with agency directives—and do so in writing.

3. Ask for additional time.

For grantees in receipt of a termination notice or request for a close-out proposal, the first step may be to request additional time to comply and respond. The agency may permit a grantee a month or more extension of time to respond with a termination and settlement proposal or may delay termination. This additional time may not just provide the space needed to accurately assess close out or settlement costs but may also permit dust to settle and potential judicial intervention on a Trump administration effort to delay further any ultimate action.

4. Document costs and other impacts associated with stop-work orders and terminations.

Consistent with practices for documenting and tracking costs associated with performance under the grant, grantees should also separately account for costs incurred as a result of a stop work or termination notice, which may include the costs for idle equipment, transportation of employees, storage or disposition of government property, rent on unexpired leases, settlement or termination of subcontracts, and costs for advice of consultants of legal counsel on the settlement or termination, and more.

The law and written grant agreements exist to provide certainty in times of uncertainty. They also exist to ensure that when your counterparty upsets settled expectations and investments, there is a remedy. Though the calculations may be more complex when your counterparty is the United States, it does not mean that your organization's rights can be nullified without recourse.