

SHUTDOWN IMPACT: GSA LEASING (PART 2)

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At Day 33 of the Federal Shutdown, which is now the longest shutdown in U.S. history, owners and investors of property leased to the Federal Government continue to wonder whether the Government will be able to pay its January rent payments that are due in early February. This concern is not lost on GSA, as reflected in a recent statement posted on its website: *“GSA also is aware of concerns from the Lessor community regarding GSA’s ability to make timely rent payments. GSA is diligently exploring all available options to ensure its rental obligations are met in a timely manner.”* It is unclear, however, how the Agency will address this pressing issue.

As noted in our previous article, the question is not whether the Government will pay its full rent obligations, but when it will make these payments. What remains at risk is the timing of nearly half a billion dollars in rental payments due in early February, affecting more than 8,000 leases in the GSA portfolio. GSA leases typically do not contain any provision allowing the Government to delay rent payments, and the reliable receipt of those payments is an important factor to the value of GSA leases in the market. Missing or delaying a scheduled rent payment potentially could put numerous GSA lease-secured commercial mortgages into default and eventually increase GSA’s cost to acquire leased properties. Moreover, this type of payment disruption could result in a downgrade of the U.S. Government’s credit rating.

While the consequences of a delay in payments would be significant, there is a potential path forward for the Federal Government to make the next cycle of rental payments. It is important to understand the mechanics of the GSA budget to see the potential near-term resolution.

GSA makes payments to private landlords through its Federal Buildings Fund Rental of Space Account. In its FY2019 Budget, the Agency requested about \$5.6B, which translates into a monthly rental obligation of approximately \$470M for the space it occupies in privately-leased facilities. Because the GSA Public Buildings Service receives funding that can be carried forward from one year to the next, the Agency was able to use “carry-over” funds from last year to meet its December rent obligation. However, the current balance of GSA’s Rental of Space Account is insufficient for the Government to fund the next cycle of rental payments.

Although the Rental of Space Account may be dwindling, there are other funds in GSA’s coffers that potentially could be brought to bear on this issue. A review of the FY2018 Agency Financial Report for GSA shows almost \$4.9B in unspent funding from prior years across the various accounts within the Federal Buildings Fund, funds that GSA can carry-forward and use in the current fiscal year. A significant portion of these unspent funds reflects money that Congress has appropriated, but the Agency has not yet spent, for new construction, acquisition, and repairs and alterations to Federally-owned buildings. For now, these funds are sitting idle, waiting to be spent as the Agency moves forward to execute these capital projects. During this current

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shutdown period, the probability is extremely low that the Government will spend this money as these activities are largely prohibited under GSA's current shutdown guidelines.

Technically speaking, GSA has the money in its various accounts in the Federal Buildings Fund to make its next cycle of rental payments. One potential solution would be for the Government to transfer these unspent capital funds on a temporary basis to the Rental of Space account to fund the next cycle of rental payments. When the Government is funded and open for business once again, GSA could replenish these capital accounts. GSA has statutory authority to move funding among its various accounts, but not without prior approval from the House and Senate Appropriations Committees. While this may seem like a tall order in today's environment, approval of this type of funding transfer at the committee level would be far less complex than enacting the full-year appropriations bills that are currently at the center of the Shutdown debate, and which must be passed by the full House and Senate and signed by the President.

In the past, there have been 20 instances of a Federal Government shutdown, with the first one taking place under the Ford Administration. Never before has the Federal Government faced such a real and significant threat of delaying payments for its privately-leased space. As we continue into these uncharted waters, it is helpful to see a potential solution for the Government to fund the next cycle of rental payments and avoid significant disruption and consequence, at least in the short-term.

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