

SHUTDOWN IMPACT: GSA LEASING

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Annual funding for a significant part of the Federal Government, including GSA, expired on December 21, 2018, resulting in the current government shutdown. Because the GSA Public Building Service receives funding that can be carried over from one year to the next, GSA was able to utilize carryover funds to continue its real estate functions beyond December 21 and support ongoing operations, including salaries and expenses, on a temporary basis. As the balance of carryover funding has declined in recent weeks, the Agency has furloughed employees beginning Monday, January 7, 2019.

GSA Order ADM 4220.1L: Operations in the Absence of Appropriations, issued on September 24, 2018, identifies a limited number of “excepted” activities within GSA Public Buildings that may continue in the absence of appropriation. These activities are “to protect Federal property under GSA’s custody and control and to continue to provide critical support to other Federal agencies’ exempt and excepted activities for the protection of life and Federal property.” Under the shutdown, GSA leased buildings will remain open to allow tenant agencies to perform vital services and perform essential missions. Although the reduced number of employees reporting to work might suggest an ability to scale back on some services, leases typically do not contain specific shutdown provisions and lessors are required to continue to meet the requirements of the lease.

There are other important items to note regarding GSA Leasing during the shutdown:

- The lapse in appropriations will not reduce the total amount of the Government’s lease obligations. If a contract was fully obligated (as is the case with most GSA leases) before the lapse in appropriations, the contract is in full force and effect and no additional actions are required.
- Although there has never been an instance of it occurring, the length of the shutdown could hypothetically impact the timing of lease payments. GSA makes rental payments in arrears several days after the end of the month. If GSA does not have sufficient budget authority in its Rental of Space Account when January rental payments are due in early February, and no other provision has been made, then payments could be delayed. During the 2013 shutdown, which began on October 1 and lasted for 16 days, the government had re-opened early enough in the payment cycle for there to be no disruption or delay in the timing of payments.
- Brokers working under the GSA National Broker Contracts will continue to work because their function is not funded through annual appropriations but through commissions paid by private sector landlords. But to the extent that the brokers are working with GSA staff who have been furloughed, there may be an impact on on-going lease procurements.

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- Unless notified by the Government or a representative, lessors and offerors are still required to meet submission deadlines and other delivery milestones of contracts and procurements. However, in most instances, new contracts may not be awarded, and contract options increasing the Government's financial obligation may not be exercised except in rare circumstances.
- The shutdown impact on post-award activity (work in progress for new build-outs, tenant improvement projects, build-to-suit projects, etc.) will vary by project based on whether specific projects have been deemed as excepted, whether the work has already been funded, and/or the extent to which staff at GSA and tenant agencies have not been furloughed.

Most of the uncertainty surrounding this shutdown's effect on GSA's leased portfolio revolves around how long GSA goes without funding. While a shutdown ending in the next few days would have a relatively minor impact on Federal leasing, a shutdown that persists into February would require the Government to take unprecedented steps to fund its ongoing rent obligations to avoid significant disruption and consequence.

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