



September 2023

Government Shutdown Considerations for Government Contractors and Grantees

Government shutdowns present challenges for many Americans. For federal contractors, the potential shutdown on Sept. 30 could be particularly challenging.

While there is no way to know how long this one could last (the shutdown of 2018-19 lasted 35 days), contractors should be prepared for all scenarios. Here we offer action items government contractors should consider before the shutdown begins.

- ✓ Compile a list of all active contracts/grants and a list of all pending contract awards.
- ✓ For each active contract/grant, note the following:
 - Is my effort currently funded?
 - Is it possible to continue performing, or will the inability to access federal facilities or personnel make it impossible?
 - Does the work fit within an exception from shutting down, e.g.:
 - (1) expressly authorized by statute;
 - (2) avoids imminent threat to the safety of human life or protection of property;
 - (3) necessary to the President's constitutional duties or

- (4) necessarily implied by 1-3.
 - How will all employees assigned to the contract/grant be affected?
 - Must continue to work in a federal facility;
 - Can continue working at contractor facility/remote;
 - Must stop work;
 - Can be reassigned to other work;
 - May need to be furloughed.
 - Has the Contracting Officer given specific direction about continuing or ceasing performance?
- ✓ Assuming that obligations will continue but that federal payments will cease:
- How will I mitigate costs?
 - How will I cover payroll and expenses, e.g., line of credit?
 - How will I track shutdown costs to support a potential future claim?
- ✓ Make a deliberate plan for employees:
- Direct employees to take leave where possible;
 - Manage salaried workers who are entitled to a full week’s pay if they do any work;
 - Manage (e.g., disable access to) work laptops and devices to enforce stop work directives;
 - Vet any planned employment actions with counsel.

Additional Information and FAQs

Pending awards. In general, agencies may not award new contracts during a shutdown. But many awards are likely to be made on the eve of a shutdown. This may create unique questions concerning the timing of any bid protest. Those in such a situation should consult protest counsel immediately.

Shutdowns are conducted Agency by Agency. The White House maintains a [list of Agency-specific shutdown plans](#). Reach out to your Contracting Officer or Agreements Officer to seek any additional specific direction.

Should I stop work? In general, you should only stop work at the Government’s direction. Where performance under an already-issued contract or grant is not impacted by a lapse in appropriations, performance can continue. Generally, agencies may not incur a new obligation during a shutdown by signing a new contract or grant, by extending a contract or a grant, or by exercising a renewal option. But an agency may incur an obligation (e.g., by awarding a contract to support an emergency activity, such as the minimal necessary guard services to protect a facility), but the agency cannot pay the contractor until appropriations are enacted.

Will I get paid? In general, routine, ongoing operational and administrative activities relating to contract or grant administration (including payment processing) cannot continue when there is a lapse in funding. An Agency may continue to make payments if funds have already been obligated in prior years, with “no-year” or multi-year funding.

IT Contracts. For IT operations, agencies must take into consideration the agency's cybersecurity risk posture and avoid making determinations that would result in any imminent threat to Federal property. However, support for the continued operation of the single system (whether by agency IT staff or by a contractor) should be the minimum necessary to maintain functionality and ensure the security and integrity of the system. In addition, the mere benefit of continued access by the public to information about the agency's activities would not warrant the retention of personnel or the obligation of funds to maintain (or update) the agency's website during such a lapse. When the lack of IT access affects interactions with an agency and the public, agencies may extend deadlines for activities as necessary to compensate for the period of the lapse in appropriations and the unavailability of the website.

Other Resources

OMB has a list of [frequently asked questions](#):

The Congressional Research Service has some reports relevant to shutdowns:

- [Past Government Shutdowns: Key Resources](#) (Sept. 22, 2023)
- [Federal Funding Gaps: A Brief Overview](#) (Sept. 7, 2023)
- [How a Government Shutdown Affects Government Contracts](#) (Jan. 10, 2019)

The above list of government contractor considerations relies upon past Government policies and practices. It is not provided as legal advice. Every contractor/grantee should seek specific direction from its Contracting Officer or Agreements Officer. In the event of a Government Shutdown that is not yet resolved, Greenberg Traurig will host a webinar giving an update on the shutdown for contractors with a Q&A session on Tuesday Oct. 3 at 4 p.m. ET. Please [click here to RSVP for this event](#).

Authors

This GT Alert was prepared by:

- [Jeffery M. Chiow](#) | +1 202.331.3149 | Jeff.Chiow@gtlaw.com
- [Robert Mangas](#) | +1 202.530.8507 | mangasr@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Berlin. [~]Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia. [«] Las Vegas. London. [°] Long Island. Los Angeles. Mexico City. ⁺ Miami. Milan. ^{*} Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. Seoul. [∞] Shanghai. Silicon Valley. Singapore. [°] Tallahassee. Tampa. Tel Aviv. [^] Tokyo. [°] United Arab Emirates. [<] Warsaw. ⁻ Washington, D.C.. West Palm Beach. Westchester County.

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. [~]Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [«]Khalid Al-Thebity Law Firm in affiliation with Greenberg Traurig, P.A. is applying to register a joint venture in Saudi Arabia. ^{}Operates as a separate UK registered legal entity. ⁺Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [»]Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [∞]Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. [°]Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. [^]Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. [±]Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimbengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [<]Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. ⁻Greenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2023 Greenberg Traurig, LLP. All rights reserved.*