

Government Contractors and the Fall 2025 Government Shutdown: Risk Management and Best Practices

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Shutdown, again. This advisory helps contractors manage operations during this period.

FIRST STEP FOR GOVERNMENT CONTRACTORS AND COMPANIES SUBJECT TO US EXPORT CONTROLS.

Contractors should closely monitor their customer and regulatory agencies' websites for shutdown guidance, as agencies like DoD, DOJ, and others have already issued instructions.^[1] Each agency may have slightly different responses, so staying informed is crucial. Contractors should be particularly mindful of: (1) when contractors must halt work, (2) what work and costs are reimbursable during the shutdown, (3) cost-saving measures that comply with labor laws, and (4) the impact of future administrative delays on commercial operations.

WHAT STAYS OPEN? ESSENTIAL ACTIVITIES THAT CONTINUE DURING A GOVERNMENT SHUTDOWN.

During a government shutdown, contractors must decide whether to continue work or stop. A shutdown does not automatically suspend contractual obligations or government payments. According to DoD's^[2] recent September 2025 guidance, contracts are not terminated or paused unless new funding is needed, and the contract does not support an excepted activity.^[3] Contractors should assess if their work requires new appropriations and whether they can access necessary government personnel and resources. If a contracting officer issues a stop work order, contractors must comply. Without such an order, contractors must determine if their contract supports excepted government activities and review how it is funded before proceeding.

Does Your Contract Qualify to Support Activities Excepted from the Anti-Deficiency Act?

Determining whether your contract supports activities excepted from the Anti-Deficiency Act (ADA) is crucial during a government shutdown. The ADA generally prohibits federal agencies from incurring obligations or making expenditures in excess of appropriations, but it allows for specific exceptions. The ADA permits four activities without appropriations in a shutdown scenario:

- Contracts may continue if they support activities funded by multi-year or indefinite appropriations (e.g., a common indefinite appropriation is Social Security)
- Statutorily authorized obligations that expressly permit obligations in advance of appropriations — such as those under the “Feed and Forage Act,”^[4] which permits the DoD and Department of Homeland Security to contract for necessary clothing, fuel, quarters, transportation, subsistence, and, among others, medical supplies absent appropriation.
- Activities authorized by “necessary implication” may proceed (e.g., emergency services, essential agency

functions, distributing Social Security checks, *etc.*).

- Obligations necessary to fulfill constitutional duties, including national security and foreign relations, are also excepted.^[5]

If your contract is deemed necessary for these excepted activities, you may be required to continue performance, and new awards may be issued even during a shutdown. Contractors should consult agency-specific shutdown guidance and communicate with their contracting officers to confirm their contract's status and ensure compliance with all legal requirements.

For work subject to the ADA, how is that contract funded?

If you haven't received a stop work order and your contract isn't for an excepted activity, the main issue is how your contract is funded. If it's fully funded, you should keep working unless your contracting officer tells you otherwise. DoD Guidance states that contractors can continue work under contracts awarded before appropriations expired, up to the amount already obligated, regardless of whether the work supports excepted activities. This applies to other agencies as well. For contracts with multi-year or no-year appropriations, employees and contractors are generally expected to continue working.

Some contracts aren't affected by federal funding gaps, such as those with Non-Appropriated Fund Instrumentalities, which use their own revenue, or contracts involving the sale of surplus government property, where payment comes from shared profits. Contracts funded by revolving or "no year" funds may also continue, but if they require federal deliveries or approvals, a shutdown could still halt work.

The greatest risk during a shutdown is for incrementally funded contracts subject to clauses like Availability of Funds or Limitation of Cost. If funding runs out or required notices can't be given, contractors may end up working "at risk," with no guarantee of payment.

A Shutdown's Impact on Litigation and Administrative Deadlines.

Contractors and their counsel should not assume any deadline is waived or extended due to a shutdown. DoD Guidance states that "imminent or ongoing legal action" will continue, but actions depend on each court or tribunal's approach. Contractors should monitor public announcements and consult the specific forum's guidance.^[6] Unless clear instructions state otherwise, assume all deadlines remain in effect.

Additional Shutdown Complications

The shutdown presents practical challenges that can disrupt contract performance, even for fully funded agreements. Many federal facilities will close, and employees will be furloughed, making it difficult to deliver contract items or obtain required government approvals. Contractors may find themselves unable to perform if no federal personnel are available to supervise, inspect, or accept deliverables. The ADA prohibits federal employees from working without pay, so contractors should not expect communication from furloughed staff. If your contract relies on access to federal facilities or personnel, you may face significant delays regardless of funding.

Additionally, many agencies face previously mounting administrative burdens and possible layoffs due to an announced potential reduction in force (RIF), which a prolonged shutdown could worsen. A recent OMB memo

directs agencies to prepare for a RIF if funding lapses, programs lack alternative funding, and are not aligned with presidential priorities.^[7] Companies should expect delays except for national security or foreign policy matters, and monitor for violations. A RIF may significantly impact agencies and industries during, and even after, the shutdown.

To manage these risks, maintain close contact with your contracting officer, as only they can provide authoritative guidance. If unavailable, consult the Office of Management & Budget's shutdown guidance, which refers contractors to the agency-specific contingency plans available on each agency's website for details on excepted activities and available services.^[8]

REIMBURSEMENT FOR WORK DURING THE SHUTDOWN

The ADA generally prevents government liability during a shutdown, but Congress often retroactively pays federal employees. Contractors, however, should not expect similar treatment, as outsourcing allows the government to shed liabilities quickly. Fully funded contracts or those supporting excepted activities can be reimbursed for work performed during a shutdown, but contractors may face increased costs or delays. These should be documented and discussed with the contracting officer, and claims or requests for equitable adjustment may be necessary.

Reimbursement is more complex for (1) contracts under stop work orders or (2) nearing their obligated funding limits (working "at risk"). Both scenarios are addressed below.

Cost Recovery for Contracts Under A Stop Work Order

Once a stop work order is issued, contractors must immediately comply and take all reasonable steps to minimize costs, as outlined in FAR 52.242-15. This can be challenging, especially if all work is halted, leaving little room to reassign resources. Contractors may face tough choices between shutting down operations or maintaining capacity, each with risks for future performance and cost disputes. The contracting officer decides if cost minimization was sufficient, and contractors can file a claim if they disagree.

Thorough documentation and communication with the contracting officer are essential, though access may be limited during a shutdown. When the stop work order is lifted, the government must provide an equitable adjustment to the contract's schedule or price if the order increased costs or time, provided the contractor requests it within 30 days. For cost reimbursement contracts, adjustments may also include estimated costs and fees.

To secure any adjustment, contractors should carefully track and document all costs, delays, and actions taken during the stop work period.

Working "At Risk" in Contracts Subject to Limitation of Funds or Similar Provisions

For contracts subject to a Limitation of Funds or similar provision, the government cannot pay for work performed or costs incurred beyond the amount already obligated. Any work done after reaching the funding limit is deemed "at risk," thus, the government is not required to retroactively reimburse those costs. While the government may choose to pay for such work, it is not obligated to do so, providing it significant discretion and leverage. Unlike a stop work order, there is no contractual right to an equitable adjustment due to insufficient funding.

Contractors should generally avoid performing work at risk, but this may be unavoidable during a government shutdown. In such cases, contractors must decide whether to halt operations, risking future performance issues, or continue working with the possibility of nonpayment. If work at risk is necessary, contractors should document all actions and costs, and consult with their contracting officer and legal counsel to determine if reimbursement is possible.

If continuing work at risk, contractors should submit invoices and request written commitments from the contracting officer regarding payment. Depending on the situation, a formal request for equitable adjustment may also be needed.

NAVIGATING COST SAVINGS AND EMPLOYMENT LAW CHALLENGES

During a government shutdown, contractors often consider cost-saving measures to offset lost revenue, especially when contracts face stop work orders, funding lapses, or unavailable government personnel. Any action—such as furloughs, pay reductions, or layoffs—must comply with the Fair Labor Standards Act (FLSA), state law, and Department of Labor regulations. For non-exempt employees, employers may reduce hours or furlough staff without pay for time not worked. Exempt employees, however, should only be furloughed in full-week increments to preserve their exempt status. Employers must ensure no work is performed during furloughs, as any work triggers pay obligations. Furloughed employees may qualify for unemployment benefits, and extended furloughs can impact eligibility for health or retirement benefits. Pay reductions are allowed if they meet minimum wage and FLSA requirements, and advance notice may be required under state law. Employers may also require use of accrued paid leave or seek volunteers for unpaid leave. Temporary reassignment and layoffs are options, but layoffs must comply with the WARN Act^[9] and state notice laws. Documentation and legal compliance are critical throughout.

NATIONAL SECURITY ENFORCEMENT, LICENSING, AND ADMINISTRATIVE PROCESSING CONSIDERATIONS

During a government shutdown, and except for urgent matters involving national security or foreign policy, companies should expect significant delays from agencies like the U.S. Department of Commerce's Bureau of Industry and Security (BIS), the U.S. Department of State's Directorate of Defense Trade Controls (DDTC), the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the Committee on Foreign Investment in the United States (CFIUS), and the U.S. Department of Justice (DOJ) National Security Division. Most routine licensing, classification, and advisory services will likely be suspended, though enforcement actions will most likely continue. For instance, excepted employees will keep working on export controls, sanctions, and urgent CFIUS matters. Further, criminal investigations will continue as a matter of course; as such, companies should stay attentive and report potential violations during the shutdown. Additionally, CFIUS review periods will be extended in limited circumstances, and new filings may not be processed. Agencies may operate minimally if funds are available, but federal contractor involvement could be impacted. Companies should continue to monitor internally for violations and check agency websites for updated guidance.

CONCLUSION

Federal contractors should maintain communication with contracting officers and regulators, monitor government decisions, document all actions, and seek legal counsel to ensure compliance and manage risks during a

shutdown.

[1] *E.g.*, DoD, [Contingency Plan Guidance for Continuation of Operations in the Absence of Appropriations \(Updated\)](#) (Sep. 2025); DOJ, [U.S. Department of Justice FY 2026 Contingency Plan](#) (Sep. 29, 2025).

[2] *A.k.a.*, The Department of War under the current Trump Administration.

[3] DoD, [Contingency Plan Guidance for Continuation of Operations in the Absence of Appropriations \(Updated\)](#) (Sep. 2025).

[4] 41 U.S.C. § 11.

[5] See 43 Op. Att’y Gen. 293 (1981), at https://www.energy.gov/sites/prod/files/2013/10/f3/Shutdown.OLC_.1981.general.pdf; Supp. Att’y Gen. Memo. (Aug. 16, 1995), at <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2014/11/10/1995-08-16-lapse-in-appropriations.htm>.

[6] For instance, as of October 1, 2025, the Government Accountability Office has notified the Bar of its closure, and across the board, a day for day tolling of protest-related filing deadlines. See [Bid Protests | U.S. GAO](#) (“NOTICE CONCERNING GOVERNMENT ACCOUNTABILITY OFFICE (GAO) BID PROTESTS 1. GAO is closed due to a lapse in appropriations. This includes the GAO bid protest office). Whereas, the Armed Services Board of Contract Appeals (ASBCA) and Civilian Board of Contract Appeals (CBCA) are open to receiving new appeals but litigation deadlines may be affected for already pending appeals. See ASBCA, <https://www.asbca.mil/> (“In response to the Federal Government’s current shutdown, the ASBCA has furloughed all non-essential personnel. However, we are open to receive new appeal filings via email and we expect parties to continue to submit timely notices of appeal, regardless of the shutdown. Please continue to send all notices of appeal to asbca.recorder@mail.mil. If you are a party in an appeal that has already been submitted to the Board with a filing or other non-filings (i.e., discovery, reports, depositions, etc.) due during the government shutdown, please be advised that these due dates will be suspended for the duration of the government shutdown. All filing due dates and appeal schedules will be updated once the government returns to an open status), and CBCA, <https://www.cbca.gov/> (“The Civilian Board of Contract Appeals (Board) will remain open for the purpose of accepting electronic, in-person, courier, and express mail submissions during the appropriations lapse. All hearings and conferences scheduled to occur during the lapse in appropriations are canceled. Any statutory limitations on the time within which a filing must be made will not be waived or tolled during the appropriations lapse. With the exception of statutory deadlines, each judge has the discretion to modify the deadlines established in a specific case that occur during and after the lapse in appropriations).

[7] OMB, [Special Instructions for Agencies Affected by a Possible Lapse in Appropriations Starting on October 1, 2025](#) (Sep. 2025).

[8] White House, <https://www.whitehouse.gov/omb/information-resources/guidance/miscellaneous/> (stating “[i]n accordance with [Circular A-11](#), agency contingency plans for a lapse in appropriations are hosted solely on each agency’s website) (last accessed Sep. 30, 2025).

[9] 29 U.S.C. §§ 2101-2109.

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