

## Responding to the Partial Government Shutdown Recommended Steps for Property Managers

*Updated 1.21.19*

1. Send out letter to all residents requesting those affected by the government shutdown to please contact the Property Manager (give deadline date).
2. Request documentation of federal employment from affected resident. See Frequently Asked Question #3 below for recommendations on supported documentation. Property managers should also be aware of local laws where special accommodations for federal employees impacted by the shutdown but not others could be a fair housing violation. See Frequently Asked Question #6 below for additional information.
3. Send follow up letter ([sample letter provided by NAA](#)) to affected residents.
4. Draft payment agreement, review with resident and have them sign. Please check your company's policy on payback terms when there are multiple lease holders and one is a federal employee and one is not.
5. Properly document resident file with situation and agreement. (i.e. late fees waived once paid in full, payment due on the 15<sup>th</sup> and the 2<sup>nd</sup>, hold off on filing UD unless agreed upon terms are not met, etc.)

## Frequently Asked Questions

### ***Federal Workers***

1. How long will the shutdown last and how does that apply to payment arrangements made between residents and their landlord?

The length of the partial federal government shutdown is completely unknown and dependent on political factors outside the control of impacted federal employees. Whatever arrangement you make with impacted residents should acknowledge this unknown.

2. What agencies are impacted by the shutdown and are all employees of those agencies furloughed?

Given the large number of agencies and individuals affected, we suggest that owners focus on only those who have requested an accommodation regardless of agency.

3. How can I confirm that a federal employee has been furloughed? What documentation is acceptable?

Owners and operators may consider the following documentation as proof of furloughed status: W-2, Standard Form 50 (SF-50) Notification of Personnel Action, notification email from an official government domain suffix or a federal paystub showing no pay for the period of the government shutdown. A best practice to consider is to request at least two of these pieces of documentation from impacted residents.

4. How will I know when my resident is no longer on furlough?

Given the number of factors that may contribute to this unknown circumstance, we suggest that owners and operators limit their scope to only February rent and reassess as needed.

5. Are federal contractors not currently working due to the shutdown also considered eligible to receive consideration for non-payment of rent?

It is up to owners and operators' discretion whether to consider requests for concessions from government contract employees that may be affected by the shutdown. Please keep in mind that disparate treatment between federal employees and contract workers may be scrutinized under state and local fair housing laws that protect "any lawful source of income". See Frequently Asked Question #6 below.

6. Is it a fair housing violation if I make an accommodation in the lease for a federal employee that is furloughed but not for another resident who has similarly lost their job?

The federal Fair Housing Act does not protect "source of income" in housing. However, source of income is a protected characteristic under some state and local fair housing laws. In those jurisdictions that define the term as including "any lawful source of income" accommodating federal employees but not other residents who are adversely affected by the shutdown (e.g. contractors or other third parties who depend on the federal government for income) could be considered discrimination on that basis. Some property management firms are in fact treating all residents impacted by the government shutdown the same as it relates to a potential accommodation regardless of whether or not they are federal employees.

Owners and operators should consider equal opportunity in their shutdown-related policies by evaluating requests from *any* resident who is demonstrably affected by the shutdown, whether a federal employee or not.

**7. How should I document any accommodations that I make for an impacted resident?**

It is important to document all agreements or arrangements with impacted residents in writing. NAA has prepared a [draft letter](#) to assist in drafting a written record of agreements.

**8. What are some ways to make an accommodation for federal workers who are furloughed?**

There are numerous options for owner/operators to use in working with impacted residents. Waiving late fees and accepting partial payments during the period of the shutdown can be helpful to residents in the short-term with full payment expected once the federal government reopens and workers have received their back pay.

**9. Where can NAA members find more information about general guidance to federal workers impacted by the shutdown?**

Many questions are addressed in the U.S. Office of Personnel Management's (OPM) Guidance for Shutdown Furloughs. The document may be found at the following link: <http://www.opm.gov/policy-data-oversight/pay-leave/furloughguidance/guidance-for-shutdown-furloughs.pdf>.

***Federal Section 8 Housing Subsidies***

**10. What is the fall-out as HUD contracts expire and Section 8 funding is stalled?**

Delayed funding for HUD Project-based Section 8 contracts imperils those communities with existing contracts. In the short-term, they may be able to draw from reserves to continue meeting their mortgage and other obligations, however, long-term this will not be tenable. The financial solvency of these projects will be in question. As well, without funding for new contracts or for renewals, critically-needed affordable units will drop from the supply or will not be added at all. Families needing access to these units ultimately suffer.

**11. What is the impact on the Section 8 Housing Choice Voucher program?**

Federal Section 8 Housing Choice Voucher funding is also impacted by the partial federal shutdown and could temporarily stop flowing. For properties that accept Section 8 vouchers, owners should contact all affected residents to let them know their government payment is currently impacted by the shutdown. While the government's portion of the rent payment may stop, the resident's portion should continue uninterrupted with the expectation that once federal funds are available, outstanding rent owed by the federal government will be paid. Alternatives like drawing from eligible property reserves or securing other financial resources to support the property until government funds start flowing again could help bridge the gap. See Frequently Asked Question #12 below for additional information.

**12. What are the rules regarding eviction of a Section 8 voucher holder during a government shutdown?**

Federal government shutdowns are infrequent and unique. An owner's rights in this situation can be confusing, and involve local laws, so owners should always consult legal counsel before acting.

If there is an existing Housing Assistance Payment (HAP) contract in place and the household has signed and is a party to the HUD Model Lease form, then there is no provision within the lease that would allow the owner to terminate it and evict the resident because the government does not pay its share of the rent. Section 8 voucher residents are still responsible to pay their portion of the rent. As such an owner could evict a voucher holder for not paying their portion of rent. As local laws may provide voucher holders additional protections you should consult local counsel before beginning any eviction proceedings. Further, there is also the potential for significant, negative reputational impacts on the property owner for pursuing the eviction of a Section 8 voucher holder (or furloughed government employee for that matter) during the government shutdown.

It does appear that if an owner's HAP contract expires immediately before or during a shutdown and has not been renewed, an owner could evict a resident. Paragraph 30 of the HUD Model Lease states: "The lease agreement will terminate automatically, if the Section 8 Housing Assistance contract terminates for any reason." Further, Part C of HAP Contract: Tenancy Addendum, Section 9 states: "Lease: Relation to HAP Contract. If the HAP contract terminates for any reason, the lease terminates automatically." Since the lease terminates automatically, the owner would presumably be under no obligation to continue to rent to the resident and would serve a notice of termination and follow the normal legal eviction process under the guidance of your local legal counsel.

There is to our knowledge, however, no precedent for taking such action specifically in a government shutdown scenario. Therefore, owners should anticipate the potential for legal challenges if they pursue this course of action. Owners should carefully consider the pros and cons of pursuing the eviction of a Section 8 voucher holder during the government shutdown.