



OCT 27 2002

MEMORANDUM FOR ASSISTANT REGIONAL ADMINISTRATORS

FROM: WILLIAM H. MATTHEWS *William H Matthews*  
ASSISTANT COMMISSIONER – PT

SUBJECT: Pricing Policy Clarification #3  
Separation of the Standard Clauses into Leased and Owned Sets

The attached pricing policy clarification provides information on the separation of the Standard Clauses into leased and owned sets within the OA Tool.

The clarification was initiated based on customer feedback regarding the OA Tool. Customers have indicated that from their perspective, the separation of the clauses would clarify and possibly reduce the length of the Occupancy Agreement (OA). The OA Tool Team separated the clauses into occupancy types. The Pricing Panel reviewed and finalized the clause separation with input from the Regional Pricing POCs.

A copy of this clarification is being provided to the Regional Pricing POCs for dissemination within each Region. If you have questions regarding this clarification, please contact the National Pricing Points of Contact, Mary Gibert at 202-501-0096 or Kevin Rothmier at 816-926-1100.

Attachments

cc: Assistant Commissioners, Regional PT Directors, Regional Pricing POCS



**Effective Date:** October 7, 2002

**Purpose:** Policy Clarification #3 on Occupancy Agreement Standard Clauses

**Desk Guide Appendix A, pages A-1 through A-4**

**Existing Desk Guide Language:**

Pages A1-A4 include the current Standard Clauses that address both leased and owned occupancies as appropriate in each clause. This one set of Standard Clauses is used for both leased and owned occupancies.

**Clarification:**

The Standard Clauses have been separated, resulting in a separate set of Standard Clauses for leased and owned occupancies. Attachment A includes the Standard Clauses for owned occupancies and Attachment B includes the Standard Clauses for leased occupancies.

Replace pages A1-A4 with Attachments A and B. Attachment C provides the OA Tool instructions related to the separation of the Standard Clauses within the OA Tool.

**Attachments**

Federal Standard (Mandatory) Clauses  
Revised October 7, 2002

1 A) While this occupancy agreement (OA) addresses financial terms that cover multiple fiscal years, the parties agree that:

The tenant agency may relinquish space upon four (4) months' notice. Thus, at any future time, the tenant agency's financial obligation can be reduced to four (4) months of Rent, plus the unamortized balance of any tenant improvements financed through PBS, plus any rent concession not yet earned. Any free Rent or other concession given at the beginning of the occupancy term must be allocated on a pro-rata basis over the entire OA term, and the unearned balance repaid to PBS.

The tenant's financial obligations for years beyond the current year do not mature until the later year(s) are reached. Thus, there is no requirement that the tenant agency certify that current year funds are available to defray future year obligations.

The tenant's future years' obligation to pay Rent is subject to the availability of funds, but the tenant agrees to make a good faith effort to meet its obligations as they arise.

B) In the case of Federal construction, the parties agree that PBS is responsible for providing the funds necessary to acquire land (if appropriate), design and construct the building shell, and fund the tenant agency's tenant improvement allowance. The tenant agency is responsible for any tenant improvement costs in excess of the tenant improvement allowance. The parties further agree that savings or cost over-runs on the acquisition of land or the design and construction of building shell will not result in increases or decreases in the tenant allowance amount, except in the case of prospectus level projects, where bids for the construction of the shell are over the approved budget. In this case, it is permissible to lower the tenant allowance in order to increase the shell budget, but only with approval of the tenant.

The tenant agency can appeal to the PBS asset manager in cases in which the agency's assigned tenant improvement allowance is inadequate to provide basic functionality for the space.

C) Building services to be provided are outlined in the PBS Real Property Customer Guide. Additional or upgraded services beyond those identified are provided by PBS on a reimbursable basis. Charges for certain recurring reimbursable services may be billed on the PBS Bill. Recurring charges for overtime utilities, enhanced custodial services, mechanical O&M HVAC, mechanical O&M others and additional guard services are eligible for billing on the PBS Bill provided the tenant agency has been designated as a "participating agency". The charges must be initiated by the tenant agency and renewed annually. The recurring RWA processing fee will be assessed against each service billed.

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D) Federal rental charges will consist of a shell rent plus amortized tenant improvements, if applicable. There may be additional charges for operating expenses, security, joint use, parking, and other space items such as antennas.

Regardless of the OA term, the shell rate or "as is" rate is set for periods up to but not beyond 5 years. For OAs with terms beyond 5 years, the shell or "as is" rent will be re-appraised every 5 years. In the case of buildings priced on a "Return on Investment" approach, shell rents will be locked for the duration of the OA. Charges for operating expenses, joint use space, parking, and security may be adjusted on an annual basis.

2 E) The tenant agency's obligation to pay Rent for the space governed by this OA commences upon the date the space is ready for occupancy, typically the substantial completion date. Substantial completion is signaled by PBS acceptance of the space as substantially complete.

"Substantially complete" and "substantial completion" means that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in the construction contract, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

For large projects where phased occupancy of space assigned to a tenant in a Client Billing Record (CBR) occurs, the rent start date is set to be the one date that is the adjusted, weighted midpoint of all the individual blocks...a composite rent start date. The actual occupancy date of the individual blocks of space in the CBR should be used to calculate the weighted midpoint rent start date for the CBR. If phased occupancy by CBR occurs, the rent start date for each CBR will be when the space associated with it is substantially complete.

If there is a *substantial* punch list for the space, GSA may offer a rent discount to the tenant while the punch list work is being completed to compensate the tenant for inconvenience caused by having a significant amount of construction occur in their space during business hours. If, for security purposes, after hours work is required, GSA will ensure adequate security is provided while the contractor is in the tenant's space.

GSA does not provide tenant agencies a grace period before rent start to accomplish the physical move into the space or for installation of personal property such as phones, furniture, computers, etc.

3 F) In the event the space covered by this OA involves a tenant agency move, once a design and construction schedule has been established it must be

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incorporated into this OA. Once part of this OA, the schedule becomes binding upon the tenant agency as well as upon PBS.

Delay in project completion caused by either a) tenant agency failure to meet the review and approval times provided in the construction schedule, or b) tenant changes to project scope, will be borne by the tenant agency. As a consequence of tenant-caused delay, PBS may decline to postpone the scheduled substantial completion date (thereby advancing Rent commencement for the space) by the duration of the tenant-caused delay, on a day to day basis; this may result in rent charges at two locations simultaneously for the tenant. Additional direct expenses caused through tenant-caused delay or changes in project scope are chargeable against the tenant allowance; in the event the tenant allowance has been exhausted, the tenant must pay the lump sum cost by RWA. In summary, the tenant is responsible for the delay claim of the affected contractor and for rent that GSA budgeted to start on the date included in the Occupancy Agreement. If partial occupancy of the building is not possible due to one agency change, that agency is liable for the other tenant's rent who are unable to occupy their space on the date contained in their Occupancy Agreement.

The rent start date should be adjusted for delay of occupancy caused by PBS failing to deliver the *real property* on time. The rent start date should not be adjusted for delay of occupancy caused by a GSA contractor failing to install *personal property* on time with one exception. For those personal property items that have been included in the general construction contract, such as telephone and data systems, or audio/video systems, and the systems are not ready, the rent start date should be adjusted. Delayed furniture delivery and installation, which is not part of the general construction contract, is not reason for delaying the rent start date.

In its role as building owner, PBS may also be the cause of delay. Expenses associated with PBS-caused delay incurred by the tenant, for such things as additional storage for furniture, re-procurement expense, or additional consulting fees, will be credited against the tenant's rent obligation to PBS for the new space.

In the case of excusable delay (e.g., force majeure or any other delay the cause of which is beyond the reasonable control of either PBS or the tenant agency), neither PBS nor the tenant agency may pursue the other for the consequences of the delay.

G) The parties hereby agree that iterations of OAs prepared before completion of a building design, and before final security/joint use charges are provided, contain preliminary financial terms only. Financial terms in preliminary OAs are not binding on either party; they are estimates for budgeting purposes. Accordingly, tenant agency signature on preliminary OAs does not bind the agency to the specific financial terms in the OA; rather, execution by the tenant

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agency constitutes that agency's commitment to the project. Until site purchase or contract award to a design architect, the tenant agency has the right to cancel the proposed project without financial obligation.

4 H) The services that PBS provides to its customers are listed on the PBS website: [http://hydra.gsa.gov/pbs/pt/opm/pricing\\_desk/index.html](http://hydra.gsa.gov/pbs/pt/opm/pricing_desk/index.html) or the March 2002 edition of the Pricing Desk Guide. Unless PBS provides otherwise in writing, the cost of these services is included in PBS's rents and fees. Any services beyond those identified in the Pricing Desk Guide are provided by PBS for an additional charge.

I) The tenant agency agrees that it will undertake no alterations to the real property governed by this OA without prior approval from PBS.

J) The tenant agency must pay for tenant improvements in excess of the allowance by RWA. The tenant agency also has the right to pay lump sum for tenant improvements below the allowance threshold. The ability to make lump sum payments below the allowance threshold is only available at assignment inception, and only for the customization component of the allowance in new space. In backfill or relet space, if the tenant can accept existing tenant improvements "as is" or with modifications, the tenant can elect to waive all or part of the general allowance. Further, once the tenant allowance is set, if the agency then wishes to make a lump sum payment for improvements which are charged against the allowance, PBS cannot accept payments below the allowance threshold by RWA.

K) At the end of this OA term, if the tenant cannot remain in the space covered by this OA, the tenant is responsible for funding the physical move to new space. In the event PBS displaces or allows another user to displace the tenant before the expiration of the OA term, PBS must fund, or require the new user to fund, the tenant's physical move, and relocation of the tenant's telecommunications equipment. PBS must also reimburse, or require the new user to reimburse, the tenant for the undepreciated value of any lump sum payments the tenant made toward tenant improvements and the Rent differential at the new location until the displaced agency has time to budget. The Rent differential is calculated on all elements of Rent except the amortized tenant improvement cost.

L) The parties agree that PBS is amortizing through a specific charge in Rent the portion of the tenant improvement allowance the tenant elects to use. The tenant has funding responsibility for replacement, renewal or alteration of tenant improvements. PBS is responsible for replacement and renewal of all building shell elements.

Leased Standard (Mandatory) Clauses  
Effective October 7, 2002

1 A) While this occupancy agreement (OA) addresses financial terms that cover multiple fiscal years, the parties agree that:

The tenant agency may relinquish space upon four (4) months' notice. Thus, at any future time, the tenant agency's financial obligation can be reduced to four (4) months of Rent, plus the unamortized balance of any tenant improvements financed through PBS, plus any rent concession not yet earned. Any free Rent or other concession given at the beginning of the occupancy term must be allocated on a pro-rata basis over the entire OA term, and the unearned balance repaid to PBS.

The tenant's financial obligations for years beyond the current year do not mature until the later year(s) are reached. Thus, there is no requirement that the tenant agency certify that current year funds are available to defray future year obligations.

The tenant's future years' obligation to pay Rent is subject to the availability of funds, but the tenant agrees to make a good faith effort to meet its obligations as they arise.

B) The tenant agency can appeal to the PBS asset manager in cases in which the agency's assigned tenant improvement allowance is inadequate to provide basic functionality for the space.

C) Building services to be provided to the tenant agency for the operating expense portion of the Rent are specified in the PBS Solicitation for Offers (SFO) which is made part of the lease contract. A copy of the lease contract is provided to the tenant agency. Additional or upgraded services beyond those identified in the SFO are provided by PBS or the lessor on a reimbursable basis. Charges for certain recurring reimbursable services may be billed on the PBS Bill. Recurring charges for overtime utilities, enhanced custodial services, mechanical O&M HVAC, mechanical O&M others and additional guard services are eligible for billing on the PBS Bill provided the tenant agency has been designated as a "participating agency". The charges must be initiated by the tenant agency and renewed annually. The recurring RWA processing fee will be assessed against each service billed.

D) The underlying lease contract rent will be passed through to the tenant agency. For a non-fully serviced lease, the cost of operating services not covered by the lease will also be passed through to the tenant agency. The PBS fee in leased space, calculated at 8% of the annual lease contract cost plus the cost of separately contracted operating services, will also apply. Charges for security and GSA-installed improvements may apply as well.

Charges for operating expenses, joint use space, parking, security and real estate taxes may be adjusted on an annual basis.

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2 E) The tenant agency's obligation to pay Rent for the space governed by this OA commences upon the date the space is ready for occupancy, typically the substantial completion date. Substantial completion is signaled in the case of leased space by the granting of an occupancy permit.

"Substantially complete" and "substantial completion" means that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

For large projects where phased occupancy of space assigned to a tenant in a Client Billing Record (CBR) occurs, the rent start date is set to be the one date that is the adjusted, weighted midpoint of all the individual blocks...a composite rent start date. The actual occupancy date of the individual blocks of space in the CBR should be used to calculate the weighted midpoint rent start date for the CBR. If phased occupancy by CBR occurs, the rent start date for each CBR will be when the space associated with it is substantially complete.

If there is a *substantial* punch list for the space, GSA may pursue a rent discount with the lessor while the punch list work is being completed to compensate the tenant for inconvenience caused by having a significant amount of construction occur in their space during business hours. If, for security purposes, after hours work is required, GSA will ensure adequate security is provided while the contractor is in the tenant's space.

GSA does not provide tenant agencies a grace period before rent start to accomplish the physical move into the space or for installation of personal property such as phones, furniture, computers, etc.

3 F) In the event the space covered by this OA involves a tenant agency move, once a design and construction rider or schedule has been made part of a lease contract, the rider/schedule must be incorporated into this OA. Once part of this OA, the schedule/rider becomes binding upon the tenant agency as well as upon PBS.

Delay in project completion caused by either a) tenant agency failure to meet the review and approval times provided in the lease rider, or b) tenant changes to project scope, will be borne by the tenant agency. As a consequence of tenant-caused delay, the lessor may decline to postpone the scheduled substantial completion date (thereby advancing Rent commencement for the space) by the duration of the tenant-caused delay, on a day to day basis; this may result in rent charges at two locations simultaneously for the tenant. Additional direct expenses caused through tenant-caused delay or changes in project scope are



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chargeable against the tenant allowance; in the event the tenant allowance has been exhausted, the tenant must pay the lump sum cost by RWA. In summary, the tenant is responsible for the delay claim of the affected contractor and for rent that GSA budgeted to start on the date included in the Occupancy Agreement. If partial occupancy of the building is not possible due to one agency change, that agency is liable for the other tenant's rent who are unable to occupy their space on the date contained in their Occupancy Agreement.

The rent start date should be adjusted for delay of occupancy caused by the lessor failing to deliver the *real property* on time. The rent start date should not be adjusted for delay of occupancy caused by a contractor failing to install *personal property* on time with one exception. For those personal property items that have been included in the lease contract, such as telephone and data systems, or audio/video systems, and the systems are not ready, the rent start date should be adjusted. Delayed furniture delivery and installation, which is not part of the lease contract, is not reason for delaying the rent start date.

In its role as tenant representative, PBS may also be the cause of delay. Expenses associated with PBS-caused delay incurred by the tenant, for such things as additional storage for furniture, re-procurement expense, or additional consulting fees, will be credited against the tenant's rent obligation to PBS for the new space. In the case of lessor-caused delay, if there is a liquidated damages clause in the lease, PBS will pursue the lessor for the value of the damages.

In the case of excusable delay (e.g., force majeure or any other delay the cause of which is beyond the reasonable control of either PBS or the tenant agency), neither PBS nor the tenant agency may pursue the other for the consequences of the delay.

G) The parties hereby agree that iterations of OAs prepared before selection of a lessor, contain preliminary financial terms only. Financial terms in preliminary OAs are not binding on either party; they are estimates for budgeting purposes. Accordingly, tenant agency signature on preliminary OAs does not bind the agency to the specific financial terms in the OA; rather, execution by the tenant agency constitutes that agency's commitment to the project. Until lease award, the tenant agency has the right to cancel the proposed project without financial obligation.

4 H) The services that PBS provides to its customers, are listed on the PBS website:  
[http://www.gsa.gov/Portal/content/pubs\\_content.jsp?contentOID=122838&contentType=1008](http://www.gsa.gov/Portal/content/pubs_content.jsp?contentOID=122838&contentType=1008) or the March 2002 edition of the Pricing Desk Guide. Unless PBS provides otherwise in writing, the cost of these services is included in PBS's rents and fees. Any service beyond those identified in the Pricing Desk Guide are provided by PBS for an additional charge.

**Leased Standard (Mandatory) Clauses**  
**Effective October 7, 2002**

I) The tenant agency agrees that it will undertake no alterations to the real property governed by this OA without prior approval from PBS. Further, any alterations that might obligate PBS under a lease must be approved by the responsible PBS contracting officer.

J) The tenant agency must pay for tenant improvements in excess of the allowance by RWA. The tenant agency also has the right to pay lump sum for tenant improvements below the allowance threshold. The ability to make lump sum payments below the allowance threshold is only available at assignment inception, and only for the customization component of the allowance in new space. In backfill or relet space, if the tenant can accept existing tenant improvements "as is" or with modifications, the tenant can elect to waive all or part of the general allowance. Further, once the tenant allowance is set, if the agency then wishes to make a lump sum payment for improvements which are charged against the allowance, PBS cannot accept payments below the allowance threshold by RWA.

K) At the end of this OA term, if the tenant cannot remain in the space covered by this OA, the tenant is responsible for funding the physical move to new space. In the event PBS displaces or allows another user to displace the tenant before the expiration of the OA term, PBS must fund, or require the new user to fund, the tenant's physical move, and relocation of the tenant's telecommunications equipment. PBS must also reimburse, or require the new user to reimburse, the tenant for the undepreciated value of any lump sum payments the tenant made toward tenant improvements and the Rent differential at the new location until the displaced agency has time to budget. The Rent differential is calculated on all elements of Rent except the amortized tenant improvement cost.

L) The lessor bears the responsibility for replacement and renewal of shell items. PBS will also oblige the lessor to fund cyclic paint and carpeting within the tenant's space, as provided in the lease contract.

OA TOOL Instructions  
Effective October 7, 2002

The existing Standard Clauses will be removed from the OA Tool and will no longer automatically populate the OA. OAs created in the OA Tool prior to October 7, 2002 will have the combined standard clauses. OAs created in the Tool on or after October 7, 2002, will have the new separated clauses.

For both Federal and Leased occupancies, the individual OA user must add the 4 appropriate clauses sets.

To add clauses to an OA, user must

Go to Assign Clauses Screen

Click Add Clause Button

Select CategoryGSA

Select Type           OPTIONAL

Select Clause Type   LEASE01           OR    FEDERAL01

Click Add Clause Button

Select CategoryGSA

Select Type           OPTIONAL

Select Clause Type   LEASE02           OR    FEDERAL02

Click Add Clause Button

Select CategoryGSA

Select Type           OPTIONAL

Select Clause Type   LEASE03           OR    FEDERAL03

Click Add Clause Button

Select CategoryGSA

Select Type           OPTIONAL

Select Clause Type   LEASE04           OR    FEDERAL04

Save

The below statement will appear at the beginning of the 1<sup>st</sup> paragraph of the 1<sup>st</sup> clause:

Leased:

Paragraphs 1 to 4 apply to lease OAs only and include subparagraphs A to L. These clauses replace the former Lease/Federal paragraphs.

Owned:

Paragraphs 1 to 4 apply to federal OAs only and include subparagraphs A to L. These clauses replace the former Lease/Federal paragraphs.

Failure to follow the above instructions will result in no Standard Clauses appearing in the OA. Although the Standard Clauses will be listed under GSA Optional, they remain mandatory clauses, which must appear in every OA.

*Desk Guide except (page 2-2).*

***PBS Standard Clauses***

*The clauses contained in this section (See Appendix A) succinctly spell out the obligations of the both PBS and the customer agency during acquisition and/or design and construction of space as well as occupancy. The standard clauses are to be included in every Occupancy Agreement and are mandatory.*