

Additional Information:

United States Department of Agriculture Uniform Federal Assistance Regulations, 7 CFR Parts 3016, 3019, and 3052.

www.gpo.gov/nara/cfr/index.html

United States Department of Agriculture, Child and Adult Care Food Program Regulation, 7 CFR Part 226.

www.usda.gov/cnd

United States Department of Agriculture, Food and Nutrition Service, Instruction 796-2, Rev. 3, Financial Management -Child and Adult Care Food Program.

Office of Management and Budget Circulars: A-87, August 29, 1997; A-102, March 11, 1988; A-110, November 29, 1993; A-122, June 1, 1998; and A-133, June 24, 1997.

www.whitehouse.gov

United States General Services Administration, Federal Acquisition Regulations, 48 CFR Part 31.

www.gsa.gov

Contact State administering agencies or United States Department of Agriculture, Food and Nutrition Service Regional Offices for a copy of FNS Instruction, 796-2, Rev. 3, Financial Management -Child and Adult Care Food Program.



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**FNS INSTRUCTION
796-2, Rev. 3**

**# 10
SPECIAL LEASE
COSTS**

*This is the tenth in a series of brochures on
FNS Instruction 796-2, Revision 3.*

Allowable costs are limited in certain rental transactions. Special lease situations can occur in the rental of facilities, equipment and supplies.

What is a special lease?

- Less-than-arms-length;
- Material equity lease (capital leases);
- Sale with lease back; and
- Option to purchase lease.

What is a less-than-arms-length lease?

When one party to the lease is able to control or substantially influence the actions of the other party.

What are some examples of less-than-arms-length leases?

- Leases between the institution and a director, trustee, officer or employee of the institution;
- Leases between the institution and a family member of a director, trustee, officer or employee of the institution;
- Leases between divisions of an organization; and
- Leases between organizations under common control.

When are organizations under common control?

Common control occurs when organizations are under the control of the same individual(s) or when the individual(s) hold a controlling interest in both organizations.

What is a material equity lease?

When the lessee obtains an ownership interest in the leased item. A material equity is created when:

- The lease is non-cancelable or cancelable only upon some remote contingency;
- The item must be purchased if the lease is canceled;
- The purchase price at the end of the lease term appears to be substantially below probable fair market value;
- Title to the item passes to the institution at some time during or after the lease period;
- The term of the lease (initial plus any renewals) is equal to 75 percent or more of the economic life of the leased item; or
- A specific portion of the lease payment is applied to the purchase price of the item, whether or not the purchase option is exercised.

What is sale with lease back?

When an item is sold and then leased back to the seller or an affiliate of the seller. The seller may be an individual or business.

What is an option to purchase lease?

This lease does not create a material equity, but does permit the lessor to purchase the item.

What costs are allowable in special lease situations?

Except for lease with option to purchase, allowable costs are limited to the amount that would have been allowed had the institution

purchased or continued to own the item on the date the lease was executed. This amount is computed using the acquisition cost (less the value of land for space and facilities) and following straight line depreciation methods:

- Space and Facilities: 30 year
- Equipment, except automobiles and automated data processing (ADP) equipment: 15 year;
- Automobiles and ADP equipment: 5 year

For option to purchase leases, allowable costs are the lesser of:

- The lease fee;
- The rental cost without the purchase option; or
- The cost to purchase the item including financing costs.

What if the lease fee exceeds the allowable amount?

The excess costs are unallowable. Institutions are not permitted to charge to the program any portion of the rental fee that exceeds the allowable amount.

Must the institution disclose a special lease arrangement to the State agency?

Yes. Special lease arrangements require specific prior written approval. When an institution fails to fully and accurately disclose a special lease, all of the lease costs are unallowable.

NOTE: Additional requirements may apply. Consult 796-2, Rev. 3 and the appropriate administering agency for more information.