

15 FAM 320 WAIVER/APPROVAL PROCEDURES FOR SHORT-TERM LEASES (STLS)

*(CT:OBO-27; 03-08-2012)
(Office of Origin: OBO)*

15 FAM 321 WAIVERS FOR LEASES WITH RENTALS IN EXCESS OF \$25,000 OR EXCEEDING THE RENTAL BENCHMARKS FOR POST

(CT:OBO-27; 03-08-2012)

Posts must submit requests for waivers/approval to the Bureau of Overseas Buildings Operations (OBO) *through the Electronic Lease Waiver Request (E-LWR) application*. Leases executed by a USAID contracting officer in the name of USAID must be submitted to the Overseas Management *Division, Office of Management Services*, Bureau for Management, USAID/Washington (USAID/W - *M/MS/OMD*). Requests for approval of renewals must be received by OBO, USAID/W - *M/MS/OMD*, or the paying agency at least **1** month before the advance notification period required by the terms of the lease.

15 FAM 322 WAIVERS FOR LEASES EXCEEDING SPACE STANDARDS

(CT:OBO-27; 03-08-2012)

- a. Posts must request waivers/approval of residential leases exceeding space standards in the following situations:
 - (1) At posts where the only available housing exceeds the space standards *for the proposed occupant; and*
 - (2) *In cases where an agency believes that the space standard will adversely affect an employee's ability to perform his or her official responsibilities. The justification for such requests must document the representational requirements for the employee, providing any*

supporting information from the current or previous incumbent. To justify a waiver, the representational requirements must exceed the estimates outlined in 15 FAM 264.3-3. Such requests must be approved first by the single real property manager (SRPM) and the post interagency housing board (IAHB) and subsequently by the chief of mission (COM).

- b. Requests for waivers or approval of new leases and renewals that exceed the space standards must be directed to OBO for *Department leases or USAID/W - M/MS/OMD for USAID leases*, and to the parent agency, as appropriate, using the *E-LWR application*.
- c. *Prior approval* is *required* for a change of occupancy during the basic or renewal term of a lease. *If a change of occupancy occurs*, OBO, or *in the case of a USAID lease, M/MS/OMD*, and parent agency approval *are* required for units that are over standard. *The lease (if under \$25,000 per year)* may be extended or renewed without prior approval *from OBO or USAID/W (M/MS/OMD)* if *it expires during the tour of an employee*. *Such extensions can only be done to the end of the tour. Approval is given for a specific occupant and/or family*. The lease cannot be extended beyond the tour of a current occupant without approval by OBO.

15 FAM 323 ADVANCE LEASE PAYMENTS

(CT:OBO-27; 03-08-2012)

- a. Whenever possible, lease payments should be made monthly or quarterly. Posts may execute leases with provision for advance payments without prior *OBO* and parent agency approval, provided such payments are not due more than 12 months in advance and all other lease criteria are met. In the event that the lessor requires an advance payment of more than 12 months, post must obtain OBO approval before executing the lease. For USAID, payments may be made up to 18 months in advance or to the end of the next fiscal year, whichever is the shorter period, without prior approval from *USAID/W - M/MS/OMD*. However, if a USAID lease is part of the embassy housing program, OBO approval is required.
- b. An advance lease payment is one for which the U.S. Government is obligated to make rental payments in advance for a rental period greater than that for which market rents are customarily quoted. For example, in U.S. real estate markets, rents are typically quoted on a monthly basis (with payments due at the beginning of each month). If a U.S. lessor required payments for the first 12 months at the onset of the lease, this

would be considered an advance payment.

- c. Advance payments for periods greater than 12 months (18 months for USAID) require justification and *may* be approved by OBO and parent agencies on a case-by-case basis. Advance payments are considered the exception, not the rule, in lease negotiations. Although it is recognized that in some real estate markets abroad advance payments of rent may be the only means to obtain a lease, advance payments for extended periods should be avoided for these reasons:
 - (1) Lessors have a reduced incentive to honor their obligations under the lease once the advance payment is made;
 - (2) In the event of force majeure (e.g., an act of God, war) where the premises are left *uninhabitable* through partial or total destruction, it is difficult or impossible to obtain immediate and satisfactory restitution of the premises or a rebate of the unearned portion of the rent;
 - (3) In the event of currency devaluation (in terms of the U.S. dollar), the U.S. Government is precluded from taking advantage of the more favorable exchange rate;
 - (4) In the event of a decline in market rental values, the U.S. Government is precluded from taking advantage of the more favorable market rental terms; and
 - (5) Financially, it is prudent to withhold payments as long as possible so that such money is available for other opportunities. Providing advance payments commits a larger than usual sum of money, can be riskier, and is typically not the most efficient use of funds.
- d. Posts must consider the “time value of money” in calculating the value of an advance payment and seek appropriate discounts for advance payment. “Time value of money” is the concept underlying compound interest *that* holds that 1 *dollar* received today is worth more than 1 *dollar* received in the future due to opportunity cost, inflation, and the certainty of payment. (See 15 FAM Exhibit *323(1)* for further details on calculating advance payments using the time value of money concept.) *The Office of Master Planning and Evaluations* in the *Directorate of Planning and Real Estate in the Bureau of Overseas Buildings Operations (OBO/PRE/MPE)* can assist the post in calculating advance payments.
- e. Requests for approval of advance payments for periods greater than 12 months (*18 months for USAID*) *must* follow the instructions in 15 FAM Exhibit *323(2)*.

15 FAM 324 LEASES WITH OFFSHORE PAYMENTS OR PAYMENTS IN OTHER THAN LOCAL CURRENCY

(CT:OBO-27; 03-08-2012)

Rental payments made to landlords (individuals or financial institutions) in other than local currency must be permissible under local law. Any offshore payment requires a *separate telegraphic* waiver from *the Directorate of Planning and Real Estate, Office of Real Property Management, Bureau of Overseas Buildings Operations (OBO/PRE/RPM)*. *For guidance on cable preparation, refer to 91 State 354178. Further information is available from OBO/PRE/RPM.*

15 FAM 325 LEASES FOR SPACE TO BE CONSTRUCTED TO U.S. GOVERNMENT SPECIFICATIONS

(CT:OBO-27; 03-08-2012)

Post must submit proposals to have a lessor construct or alter leased or proposed leased space to OBO and the parent agency for prior review and approval. For leases signed by USAID, post must submit proposals to USAID/W - *M/MS/OMD* for prior review and approval. A complete justification must accompany the request.

15 FAM 326 LEASES CONTAINING NONSTANDARD CLAUSES

(CT:OBO-27; 03-08-2012)

The standard clauses that must be included in U.S. Government lease agreements are described in 15 FAM Exhibit *341(1)*. Except as authorized by OBO or, USAID/W - *M/MS/OMD* for USAID leases signed by USAID contracting officers, no leases will contain the following provisions:

- (1) The U.S. Government payment of insurance charges on buildings or other appurtenances to the realty or on personal property, whether privately or U.S. Government-owned;
- (2) The U.S. Government assumption of responsibility for damage

occasioned to or by visitors through the use of halls, stairways, elevators, or other common conveniences and areas at their disposal;

- (3) A lien in favor of the lessor upon U.S. Government-leased property;
- (4) The payment of a bonus or premium in connection with the procurement of quarters;
- (5) The submission of disputes to boards or panels for arbitration, or to the jurisdiction of the local courts (such rights cannot be waived at post without specific approval from the Department of State); and
- (6) An agreement to indemnify (hold harmless) the lessor from injuries and damages that occur on the premises.

15 FAM 327 ADVANCE LEASE AGREEMENTS

(CT:OBO-27; 03-08-2012)

- a. Leases for premises under construction or to be constructed, or for premises in need of additional work prior to occupancy, for which a definite occupancy date has not been established, or other leases for which the date of occupancy is more than 3 months subsequent to the signing of the lease, require prior OBO and parent agency approval. Leases signed by USAID require prior approval from USAID/W - *M/MS/OMD*.
- b. The information parent agencies need *varies* depending upon the circumstances. Posts should contact OBO, USAID/W - *M/MS/OMD* for USAID leases, or the appropriate parent agency when such leases are being considered.

15 FAM 328 LEASES CONTAINING AN OPTION TO PURCHASE

(CT:OBO-27; 03-08-2012)

- a. If advantageous to the U.S. Government and allowable under local law, leases may contain an option to purchase. Prior OBO approval is required if the lease/purchase or purchase option agreement requires lease payments in excess of market rental rates or if the purchase option clause differs significantly from the sample shown in 15 FAM Exhibit 328.

- b. For USAID leases, USAID missions must obtain approval from USAID/W - *M/MS/OMD* before including an option-to-purchase clause in leases. USAID/W - *M/MS/OMD* will seek the Office of Management and Budget's (OMB) approval of such leases.

15 FAM 329 UNASSIGNED

15 FAM EXHIBIT 321 ELECTRONIC LEASE WAIVER REQUEST

(CT:OBO-27; 03-08-2012)

- a. This exhibit provides *guidance on* the *Electronic Lease Waiver Request (E-LWR)* used to request *required lease* waivers as noted under *paragraph c of this exhibit*. *The E-LWR system automatically transmits lease waivers to the Office of Real Property Management, in the Directorate of Planning and Real Estate, in the Bureau of Overseas Buildings Operations (OBO/PRE/RPM) or to the Overseas Management Division, Office of Management Services, Bureau for Management, USAID/Washington (USAID/W - M/MS/OMD) for USAID-leased properties. Information and instructions on accessing the E-LWR are located on the OBO intranet Web site under OBO/PRE/RPM.*
- b. Posts *must* prepare *E-LWRs* following the prescribed format. Requests must be supported by clear, strong rationales and precise, complete data. As waivers are approved, posts must update the post administrative software suite real property application (*Web* PASS RPA) database to reflect the new or updated information.
- c. Waivers are required:
 - (1) For all new or renewal leases that will exceed the maximum annual dollar amount of \$25,000 *or the rental benchmarks set for post* at any time during the term of the lease;
 - (2) *All new or renewal leases that will exceed the annual dollar amount of \$50,000 at any time during the term of the lease;*
 - (3) *For all functional leases;*
 - (4) *For all designated properties; and*
 - (5) *For leases or housing assignments that exceed the occupant's maximum space standards.*
- d. Posts *must* submit *E-LWRs in accordance with the requirements of the E-LWR application*.

15 FAM EXHIBIT 323(1) **USING THE “TIME VALUE OF MONEY”** **CONCEPT TO CALCULATE ADVANCE PAYMENT** **OF RENT**

(CT:OBO-27; 03-08-2012)

Posts must consider the “time value of money” concept in calculating the amount of an advance payment. The principles below explain this concept.

- (1) Advance payments *must* not be calculated by merely multiplying the rental value by the number of rental periods or the term. For example, in calculating the advance payment for a \$1,000 per month rental for 12 months, it is incorrect to simply multiply the term (12) by the rental value (\$1,000) and realize a value of \$12,000 since it does not consider the “time value of money.”
- (2) To properly consider the “time value of money,” the present value cost of the proposed advance payment (\$12,000 in day 1 of the rental term) must be compared against the present value of a routine stream of rental payments (for example, \$1,000 per month for 12 months). The difference between the two present values represents the “time value of money” or, alternatively, the premium cost to the *United States* for the advance payment. Present value calculations are typically performed through the use of financial calculators, computer programs, or financial tables.
- (3) When the “time value of money” is considered, as in the example above, and an appropriate discount rate is selected, the advance payment for the example above would be less than \$12,000. The discount rate is never less than the interest rate at which the U.S. Government would borrow the money used to pay the advance.
- (4) If an annual discount rate of 8 percent were selected and the standard monthly lease required prepayment at the beginning of each month, the correct advance payment satisfying the 12-month rental would be \$11,572. The difference between the incorrect method of developing an advance payment (multiplying the rental value by the term—\$12,000) and the correct way (considering the time value of money—\$11,572) would be a savings to the U.S. Government of \$428.
- (5) The *Office of Master Planning and Evaluations*, in the *Directorate of*

Planning and Real Estate *in* the Bureau of Overseas Buildings Operations (*OBO/PRE/MPE*) can provide technical assistance to post personnel in calculating advance payments.

15 FAM EXHIBIT 323(2) **REQUESTS FOR APPROVAL OF ADVANCE** **PAYMENTS**

(CT:OBO-27; 03-08-2012)

Requests for approval of advance payments for periods greater than 12 months *must* specify:

- (1) Whether, during the process of the lease negotiation, a discount for the advance payment already has been agreed upon. If a discount has been negotiated, explain the terms of the discount, e.g., "the lessor agreed to a 10 percent discount of normal routine terms in return for an advance payment of 1 year's rent";
- (2) The OBO post administrative software *suite's* real property application (*Web* PASS RPA) Property Identification Number (PropID);
- (3) The property use code (e.g., OBC, COB, RES/CMR);
- (4) The term and the amount of the proposed advance payment (specified in local currency);
- (5) The total amount and terms of the lease (if different than item (4) of this exhibit);
- (6) The monthly rent and the annual escalation rate for comparable properties for a similar period;
- (7) Whether advance payments are customary in the local real estate market and the period of the advance payment (in months);
- (8) The customary time period for leases in the local real estate market (e.g., 1 year, 2 years, 3 years);
- (9) Today's exchange rate;
- (10) The interest rates at which the lessor can safely borrow or invest money;
- (11) The reason for the advance payment or lessor's motivation; and
- (12) The benefits to be gained by the U.S. Government from an advance payment.

Direct requests to the *Office of Real Property* Management, in the *Directorate of Planning* and *Real Estate in* the Bureau of Overseas Buildings Operations (*OBO/PRE/RPM*) for State or to the Overseas Management *Division, Office of Management Services*, Bureau for Management, USAID/Washington (USAID/W - *M/MS/OMD*) for leases signed by USAID's contracting officer.

15 FAM EXHIBIT 328

CLAUSES TO USE IN A LEASE WITH OPTION TO PURCHASE

(CT:OBO-27; 03-08-2012)

With prior approval from the *Directorate of Planning and* Real Estate in the Bureau of Overseas Buildings Operations (*OBO/PRE*) for State or the Overseas Management *Division, Office of Management Services*, Bureau for Management, USAID/Washington (USAID/W - *M/MS/OMD*) for USAID, clauses such as the following may be used in a lease with option to purchase.

“The Lessor hereby grants to the Lessee, in consideration of the rental rates agreed to above, a firm option to purchase in fee simple, absolute and free of all encumbrances, the premises covered by this lease, including land, improvements and all appurtenances, for the sum of _____.”

“This option to purchase shall continue open and in force for the basic term and optional renewal terms as granted in this lease. If and when the Lessee exercises the said option to purchase, the Lessor covenants and agrees to convey to the United States Government an unencumbered fee simple absolute title (complete and perpetual ownership) to the premises covered by this lease, including the land, improvements and all appurtenances, by deed with covenant of warranty and covenant against encumbrances, said deed to be registered by the Lessor (Vendor) in accordance with the laws of _____.”