



## **Topic: Introduction to Occupancy Agreements**

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**Link to Series Information: [CES Historical Topics](#)**

1. Please explain the lease buyout cost issue. I thought that 2% of the 8% PBS fee covered lease costs until space is rented after we leave.

The PBS fee is applied as a separate charge for leased space and is contingent upon the tenant agency's final agreement to occupy the space. If the tenant agency withdraws before the lease award, no fee applies.

The lease buyout costs applies to cancelable assignments only. If a tenant decides to cancel its plans for occupancy after PBS obligates the government to a contract, and before rent starts, then in the case of a lease the tenant agency is liable for the **lesser** of:

the 16 month rental obligation had it occupied the space, plus the unamortized balance of the tenant improvements, *or* the lease buyout costs.

The PBS fee for leased space is a flat 7% fee, not 8%. The fee is designed to cover the contract risk, lease acquisition services and lease administration. It is not broken out into percentages to cover specific actions; rather the total amount covers all these actions. The fee is not reduced or increased regardless of the services the tenant agency may wish to self-perform. (The only exception is with non-cancelable space and USPS space). PBS is a full-service real estate provider; the flat fee structure provides incentives to tenant agencies to use the full complement of services that PBS offers.

2. Under Administrative OAs - how is it not necessary for Agency Signature when continuing occupancies in leased and owned space—Extensions, Renewals and Succeeding leases?

In owned space, continuing occupancy is when the tenant agency remains in the same space that it occupied during the prior OA term. If a continuing occupancy is initiated, provided there is no change to the USF and no new tenant improvements are added, only an administrative OA will be sent to the customer. A signature is only required when PBS or the tenant agency mutually agree to revise the OA terms.

In leased space, continuing occupancy is characterized by the execution of a lease extension, succeeding lease or superseding lease or the exercise of a renewal option.

- In a lease extension, if the extension is advancing only the lease expiration date and there are no changes in the rent or square footage, no signature on the OA is required and only an administrative OA will be sent to the customer.
- In a succeeding or superseding lease, agency signature is still required on the OA; however until the OA is fully executed, PBS may still immediately bill the customer (pass through lease rents

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plus the PBS fee) in the interim until such signature is obtained. That is, provided there is no expansion of space nor have any tenant improvements been added.

- Lease renewals still require the tenant agency sign the OA.

3. What if the Agency is not going to stay in place? The OA expires so this should be the end of an OA unless we enter into a new agreement?

The OA gives the tenant agency a right to occupy the space for a specific duration, called the OA term. Tenant agencies do not have a perpetual right to occupy the space identified in the OA. If a tenant agency is not going to continue its occupancy, the tenant agency (in both federally owned and leased space) is responsible for funding their own physical moves and telecommunications costs at the end of their occupancy terms. Relocation should be accomplished so that by the expiration date of the OA, the space is entirely vacated. If for some reason the agency cannot have the space vacated by the expiration date, then PBS should develop a continuing occupancy OA for the necessary new term.

4. If the space is accepted by GSA in the middle or end of the month, does the agency owe rent for the entire month in which the rent is to start?

Rent is collected based on an agency's occupancy status on the 15th of the month. Rent is always collected based on a full month's rent, and partial month rent breakouts are not permitted. If the occupancy starts after the 15th, we do not bill until the following month.

5. I think Kelly stated that tenant agency can't remain in spaces perpetually. What if they still have a need for the space after the initial term of the OA, do they need to go through the process to start a new OA but still remain where they were initially place or do they have to move?

In owned space, a continuing occupancy is one in which the tenant agency remains in the same space that it occupied during the prior OA term. Before the conclusion of the OA term, usually 18 to 24 months in advance, PBS is to prepare a new OA version and send it to the tenant agency. Provided there is no change to the USF and no new tenant improvements are added, no tenant agency signature is required.

In leased space, as the end of the lease term approaches, PBS and the tenant agency work together to develop the leasing strategy for the follow on term. If PBS and the tenant agency choose to exercise a renewal option (from initial lease term) then the terms of the renewal would apply. If PBS and the tenant agency decide to enter into a succeeding or superseding lease, then the new terms of the negotiated lease will apply and the underlying lease contract reflects the pass through cost. In either case, the tenant agency is required to sign the OA.

6. At what point in the process will GSA determine whether or not an OA is non-cancellable?

PBS reviews each space assignment and uses the criteria in the Pricing Desk Guide, section 5.2 to designate the space as cancelable or non-cancelable. The decision must be made at the beginning of the leasing action. The OA must indicate that the space is non-cancelable in the first draft of the OA and at the beginning of the OA term. Once the space designation has been made, it may not be changed during the OA term. For a subsequent OA term, PBS reviews current market conditions and space qualities before determining whether the space maintains its' current designation.

7. Are all Federal agencies required to lease space through GSA? Or do some agencies have authority that allows them to lease space on their own without going through GSA?

There are some agencies that have been granted Congressional authority to lease space on their own without going through GSA.

8. When should we expect to receive the final OA?

The tenant agency should expect to receive the final OA after the space has been substantially complete and operationally functional. If the pro forma OA was signed for sufficient amount, no signature for the final OA is required. The final OA is the billing OA and reflects rent charges.

9. Is a 10 year lease, 5 year firm, considered a non-cancellable lease?

Leases are not designated as cancelable or non-cancelable. The OA is designated as cancelable or non-cancelable. The firm term of the lease has no bearing on the determination of whether the OA is cancelable or non-cancelable. Non-cancelable space is characterized by the low probability of PBS finding a backfill tenant due to specific qualities of space including:

- 1) Remote or not easily accessible location
- 2) Lease construction
- 3) Special purpose use or build out necessitating significant capital outlays to retrofit the space to a more conventional use
- 4) Unusual term
- 5) Lack of any realistic federal need for the space, other than the requesting tenant agency

10. Why can't agencies request a non-cancellable OA where the PBS fee is reduced but the agency is still liable for the rent and cannot give the 120 notice to relinquish the space?

The designation of the non-cancelable OA is not an “option” available to tenant agencies, rather a determination that is made based solely by PBS on its probability of finding a backfill tenant due to the criteria listed above in question #9.

Also important to note, PBS does not require 120 days to relinquish space. Instead, PBS requires *4 months* (written) notice to relinquish space after the criteria listed in the Pricing Desk Guide, section 5.3.1 has been met. The distinction between days and months is important because months have varying amounts of days and 120 days does not account for working business days.

11. How is the OA different than a lease?

The OA is a formal interagency agreement between GSA and the tenant agency. Under the OA, PBS will honor its terms and expects the tenant agency to honor its terms as well. The OA covers financial specifics and responsibilities of both parties and keeps the customer informed of rent changes and project costs. The OA can also serve as a budgeting tool, since it documents the current and future rent a tenant agency can expect to pay and thus the current and future revenue that PBS can expect to collect. An OA is signed between GSA and the tenant agency for all space assignments, whether they are in federally owned buildings or GSA leased space.

The lease is an agreement between GSA and lessor which is enforceable by law.

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12. Can clauses in the OA be crossed out or changed?

No – clauses in the OA cannot be crossed out or changed. If pen and ink changes are made to the OA, a letter should be sent to the tenant agency stating that the pen and ink changes are not valid and will not be honored. If there are questions about the OA please contact your realty specialist to resolve outstanding issues.

13. How many pro forma OAs are we supposed to receive?

There is no set number of OAs the tenant agency should receive. However, throughout the project life cycle, the tenant agency should receive OAs to reflect the most up-to-date terms. A signature on the pro forma OA is required if financial terms or square footage increase.

14. How do we do a digital signature on an OA?

GSA accepts digital signatures on OAs. The signature should be from the same person that would normally sign a paper OA. Each agency may have different processes set up, so you will need to contact your IT department to determine how to attach the signature to your OA.

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