



## CHAPTER 11:

# Prospectus-Level Leases

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## 1. Introduction

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This chapter of the Leasing Desk Guide, issued jointly by the General Services Administration (GSA) Public Buildings Service (PBS) Office of Real Estate Acquisition and Office of Real Property Asset Management, replaces PBS' October 31, 2007, memorandum entitled "Updated Lease Prospectus Guidance," and provides guidance relating to the laws, regulations, and policies impacting GSA's Capital Investment and Leasing Program (CILP) for leases. This chapter includes information on GSA's statutory authority, the method for calculating whether a lease exceeds the prospectus threshold, definitions of key terms, and several fundamentals of lease prospectuses and related matters. Information on alterations in leased space also is provided.

All members of a project team involved in delivering a lease must have knowledge of these fundamentals and requirements.

GSA's Capital Allocation Division (PTAB) is available to consult on project-specific issues and questions.

## 2. Statutory Authority

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40 U.S.C. § 585(a) authorizes the Administrator of General Services (Administrator) to enter into lease agreements for real property for a term not to exceed 20 years to accommodate a Federal agency in a building or improvement that is in existence or being erected to accommodate the Federal agency and authorizes the Administrator to assign and reassign space to Federal agencies.

40 U.S.C. § 3307(a)(1) and (2) impose a limit on Congress's ability to appropriate funds for GSA to lease space or to alter leased space, if the expenditure exceeds threshold dollar amounts as adjusted annually according to 40 U.S.C. § 3307(h). The statute provides that appropriations may only be made if the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives (Committees or authorizing Committees) adopt resolutions approving the amount and purpose of the appropriation. The dollar amount of the limitation is commonly referred to as the prospectus threshold. The Administrator is required to submit a prospectus for any proposed project exceeding the prospectus threshold to the Committees for their consideration in adopting the resolutions<sup>1</sup>

Please note, however, that since this is a self-imposed limitation by Congress on its ability to appropriate funds, Congress may choose to ignore this provision and may appropriate funds to GSA for these purposes without consideration of a prospectus or adoption of a resolution. Congress, through annual appropriations acts, authorizes a lump sum to GSA for the rental of space. GSA may obligate against the lump sum for any and all leases for the fiscal year.

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<sup>1</sup> GSA first sends the proposed prospectus to the Office of Management and Budget (OMB) for review and clearance before submission to the Committees.



### 3. Prospectus-Level Lease Types

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As a matter of strict interpretation of fiscal law, GSA may obligate funds for any lease regardless of whether the Committees have adopted resolutions approving the project. Note that GSA's annual appropriations act has historically provided "that funds available to the General Services Administration shall not be available for expenses of any... acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, has not been approved...." The Office of General Counsel has long opined that this limitation constitutes a legislative veto that violates the separation of powers provisions of the U.S. Constitution consistent with the seminal U.S. Supreme Court case of *Immigration and Naturalization Service v. Chada*, 462 U.S. 919 (1983), and, therefore, is not a legal limitation on the use of the funds appropriated.

The relationship between GSA and its authorizing Committees is paramount. The Committees expect that GSA will not award any projects over the threshold unless approved, and, as a matter of comity, GSA honors that expectation. GSA's policy is to not enter into leases above the prospectus threshold unless the Committees adopt resolutions approving the project. Committee approval is commonly referred to throughout this and other chapters of the Desk Guide as the "required prospectus approval," "prospectus authority," or "required prospectus authorization" for the lease project. GSA requires resolutions approving prospectuses as a matter of policy. GSA is required by law to submit the prospectus, but the approval process is a limitation on appropriations and not a limitation on GSA's leasing authority.

Note: The above discussion represents a legal analysis of the mechanics behind the prospectus submission process. This analysis is not a license to diverge from the prospectus process, unless instructed to do so by PTAB and the Office of General Counsel.

Projects over the prospectus threshold must be consistent with the terms of the adopted resolutions, the 20-year maximum lease authority, and the lease scoring requirements as defined in OMB Circular A-11, Appendix B. See Desk Guide Appendix F, Determination of Operating or Capital Lease Classification for Budget Scoring. Occasionally, the Senate and House resolutions have slight inconsistencies. In such cases, it is GSA's policy to conform to the most restrictive language in the adopted resolutions. If Leasing Specialists receive conflicting resolutions, they must obtain instructions from PTAB before continuing with the lease.

It is permissible to procure a lease for a firm term of 20 years with options that extend the term beyond 20 years. These options may only be exercised at a later date so that at no time will the lease term exceed 20 years. If the net annual rent for the option period exceeds the prospectus threshold, resolutions must be received before executing the options.

## 3. Prospectus-Level Lease Types

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Various prospectus-level lease types are defined below. The prospectus request must reference one of these types when categorizing a lease in the description section of the prospectus. From a procurement standpoint, these definitions may differ from definitions in other chapters of the Desk Guide.

**Replacement lease** is a lease with new terms, conditions, and lease number that replaces an existing leasehold interest after the expiration of the lease in place. The current lessor, or any prospective offeror, can make an offer to provide the space.

**Succeeding lease**— A non-competitive (Sole Source) lease acquisition secured to cover continued occupancy of the current premises at the end of a lease term without a break in



tenancy. It establishes new terms and conditions and has a new lease contract number. Such a lease is generally used where acceptable new locations are not identified or are identified, but a Cost-Benefit analysis indicates that an award to an offeror other than the current lessor will result in substantial relocation costs or duplication of costs to the Government, and the Government cannot expect to recover such costs through competition.

**Superseding lease** is a new lease that replaces an existing lease before expiration of the existing lease. It is procured following noncompetitive sole source procedures. It establishes new terms and conditions and has a new lease number. The Government may consider executing a superseding lease to replace an existing lease when the Government needs to make substantial space alterations or other material changes to the terms and conditions of the existing lease, or where market rates have changed substantially.

**Interim lease** is a lease at a current location procured to bridge the gap between a current lease and some other long-term solution, be it relocation to Government-owned space or some future lease at the same or some other location. Interim leases include short-term renewal options and lease extensions.

**New lease** is a lease intended to meet a new requirement for a client agency. The client agency may be currently located in existing leased space, Government-owned space, non-GSA-controlled space, or in no space at all.

## 4. Prospectus Requirement

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A lease action requires a prospectus when the total space requirements included in the lease agreement will result in a net annual rent<sup>2</sup> (total annual rent minus operating expenses paid directly to the lessor) that exceeds the current prospectus threshold. The prospectus threshold applied to a particular lease procurement is the prospectus threshold in effect during the **fiscal year of the lease award**, not the fiscal year when the lease term begins or the fiscal year when the prospectus request is submitted to OMB and the Committees. The threshold amount sets the minimum net annual rent for which a prospectus is required.

GSA adjusts the thresholds for submitting lease and lease alteration prospectuses annually as authorized by 40 U.S.C. § 3307(h). This adjustment is based on the Building Cost Index of the Engineering News-Record published by the McGraw-Hill Companies. When GSA submits its CILP (generally in the late winter or spring), it notifies Congress of the adjusted annual prospectus threshold amount for the specific fiscal year applicable to the CILP under consideration.

The following table shows prospectus thresholds for the CILP fiscal program years 2009 through 2012. This information is online for GSA employees at the PTAB Web site or in the Annual CILP Planning Call at GSA CILP.<sup>3</sup>

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<sup>2</sup> Net annual rent – to determine net annual rent, subtract only operating expenses paid directly to the lessor from the total annual rent due under the Lease Agreement. See subparagraph 4.a, Determining Whether a Prospectus Is Required.

<sup>3</sup> Access to the Annual CILP Call Web site is available through IBM Lotus Quickr with valid login credentials. Users must log in using their GSA email address and their GSA Identity password (same as Project Information Portal login) to be directed to the CILP Call Web site.



4. Prospectus Requirement

Prospectus threshold for:	Fiscal Year*			
	FY 2009	FY 2010	FY 2011	FY 2012*
Construction, repair and alteration, lease	\$2,660,000	\$2,790,000	\$2,790,000	\$2,790,000
Alterations in leased space	\$1,330,000	\$1,395,000	\$1,395,000	\$1,395,000

**Any proposed lease action that results in an estimated net annual rent that falls within 10 percent of the annual prospectus threshold warrants special attention. Before GSA executes any lease action that falls within 10 percent of the threshold, GSA's Leasing Specialists must obtain approval from PTAB.**

Caution: Seeking prospectus authority out-of-cycle to "rescue" a procurement that exceeds the threshold takes more time and explanation than getting the authority in advance. All prospectuses must be reviewed by GSA Central Office, cleared by OMB, and approved by the Committees. The Committees' review schedule is not completely predictable, and business meetings are rarely held to address emergency submittals. Failure to plan on GSA's part is not an emergency requiring Committee action.

**a. Determining Whether a Prospectus Is Required**

A lease prospectus is required when the total space requirements of an agency (or several agencies) or buildout needs for functional office space will result in a lease with a net annual rent exceeding the prospectus threshold that applies to the fiscal year of lease award.

To determine net rent, Leasing Specialists and the regional Office of Portfolio Management must subtract only operating expenses paid directly to the lessor from the total annual rent due under the lease agreement. Annual rent under the terms of the lease consists of two components: base rent and operating expenses. As illustrated in GSA's Lease Asset Business Plans, net rent is the amount of consideration for use of the land and buildings or portions of the buildings, and operating expenses include costs for services such as heat, electricity, water, and janitorial services. **Real estate taxes are a component of net rent and must be included in the proposed rent that is being compared to the prospectus threshold.** All costs that are amortized and paid to the lessor through the lease agreement, such as initial space alterations up to the tenant allowance limit (general plus customization), are included in the average annual rent. In addition, the cost of any GSA lump sum payments made to reduce the rent are amortized and included in the average annual rent calculation for purposes of determining whether a prospectus is required. GSA does not submit a prospectus request for initial tenant space alterations funded by an agency reimbursable work authorization (RWA).<sup>4</sup> Leasing Specialists and the regional

<sup>4</sup> As to whether client agency funding that GSA intends to accept and use is legally available for the intended purpose of the RWA work, appropriations available to agencies to fund necessary expenses, including maintenance or operating expenses, also are expressly made available by Congress to pay GSA for expenses of renovating and altering buildings and facilities under GSA's control, even if the funds are in an amount equal to or in excess of GSA's statutory prospectus threshold. This authorization is set forth annually in GSA's appropriations act. For example, Public Law 111-117, Div. C, Title VII, General Provisions—Government-wide, Section 705, provides:

Appropriations available to any department or agency during the current fiscal year for necessary expenses, including maintenance or operating expenses, shall also be available for payment to the General Services Administration for charges for space and services and those expenses of renovation and alteration of buildings and facilities which constitute public improvements performed in



Office of Portfolio Management must not include the PBS fee in the maximum proposed rental rate, as this is an internal governmental transfer payment and is not paid to the lessor. This fee also must be excluded from the fully serviced rate for scoring purposes.

If the sum of the base rent components multiplied by the rentable square feet (RSF) in the proposed lease equals or exceeds the annual prospectus threshold, the regional Office of Portfolio Management must submit a prospectus. Although the net rent determines if a prospectus must be submitted, the actual prospectus request must reflect the cost of a fully serviced lease; therefore, the regional Office of Portfolio Management must add back the operating expenses when calculating the proposed total annual cost and maximum rental rate per RSF. The total annual cost consists of what GSA pays to a lessor, plus any other costs outside the lease (such as for electricity) that the Government pays directly to the provider of that service, and is assumed to cover the cost of a fully serviced lease. If the Government were to pay for operating expenses separately outside the lease agreement, those costs must be added to the prospectus amount. The authorization must reflect the anticipated total annual cost of the lease, including any other costs paid to service providers of the type that would normally be included in a lease agreement (not personal property). Operating costs under the term of the lease are allowed to escalate from year to year.

If official Government parking is required and can be provided within the prospectus rental rate, no breakout of parking cost is required. If the agency requires a number of official parking spaces above what is in the prospectus rent, then the proposed total annual cost of parking must be identified as a separate line item in the prospectus description. For scoring purposes, the annual parking cost must be divided by the total RSF requirement and added to the prospectus rental rate per RSF to confirm operating lease treatment. For agencies with high security requirements that require control over all parking spaces, the regional Office of Portfolio Management and the Leasing Specialist should consult with PTAB.

If the lease agreement calls for a stepped rent or a change in the base rent, GSA must calculate a "levelized" net rent to determine whether a prospectus is needed. To levelize the rent, the regional Office of Portfolio Management, in consultation with the Leasing Specialist, must:

1. Calculate the present value of the stream of annual net rental payments (annual rent minus operating expenses) using the OMB-provided discount rate consistent with the lease term,<sup>5</sup> and
2. Amortize the resulting present value over the term of the lease using the same discount rate used to calculate the present value stream. This will yield an annual payment that is the same for each year over the entire term of the lease—a levelized net rent.

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accordance with the Public Buildings Act of 1959 (73 Stat. 479), the Public Buildings Amendments of 1972 (86 Stat. 216), or other applicable law.

Based on the above-quoted provision (and assuming the same or a substantially similar provision continues to appear in future annual GSA appropriations acts), client agency appropriations for necessary expenses, including operation and maintenance funding, would be available to fund repair and alteration expenses incurred by GSA in connection with agency RWA work in buildings and facilities under GSA's control. Accordingly, it is not necessary for a client agency to certify that its RWA funds for these purposes are exempt from the requirements of 40 U.S.C. § 3307. (GSA's Reimbursable Work Authorization National Policy Document issued June 21, 2010)

<sup>5</sup> OMB specifies annually which discount rate to apply to levelized calculations, and this rate changes annually. The latest rates can be found at OMB Circular A-94, Appendix C, updated December 2010, on the OMB Web site.



A simplified spreadsheet for levelizing rent is available online at the Capital Allocation Division Web site.

### **b. When to Determine Whether a Prospectus Is Required**

The Leasing Specialist must determine at several points in the lease procurement process whether a prospectus is required:

1. An initial determination is made as soon as client agency requirements are received.
2. If the initial determination is that the procurement is below the prospectus threshold, that determination should be reevaluated whenever there are significant changes in real estate market conditions or client agency requirements that could alter the initial determination. Check for these conditions several times throughout the procurement process.
3. Before signing the lease, verify that the proposed net annual rent remains below the prospectus threshold.
4. Before amending the lease, verify that the proposed net annual rent remains below the prospectus threshold. Any Lease Amendment that would modify the cost per square foot, total annual cost, lease term, or amount of leased space, or any other material change to the original lease agreement, requires a reevaluation of the lease and consultation with the regional Office of Portfolio Management to ascertain that:
  - The existing lease, initially below prospectus level, remains below the prospectus threshold;
  - Any modification, regardless of whether the original leasing action is above or below the prospectus threshold, does not introduce a scoring problem;<sup>6</sup> and
  - The existing lease, if initially above prospectus level, still complies with the terms of the prospectus and the Committees' resolutions.

If a Lease Amendment pushes a below-prospectus lease beyond the prospectus threshold, or if a Lease Amendment causes a prospectus-level lease to exceed the parameters of the resolution, the Leasing Specialist must consult with PTAB, who will contact the Office of Regional Counsel, before taking any further action. GSA may need to seek approval of an amended prospectus.

If a modification to the lease is initiated before the client agency begins occupancy, include any additional costs and change in square footage in the evaluation of the applicable prospectus threshold and confirm operating status. If a modification to the lease is initiated after occupancy, the Lease Contracting Officer and the regional Office of Portfolio Management must consider the materiality and timeframes involved before the execution of the Lease Amendment. The key to determining the next step is to define whether the changes to the lease were foreseeable before occupancy or were truly independent modifications to the lease raised by the client agency after occupancy. If the changes were foreseeable before occupancy, then a new prospectus would be necessary. If the changes were due to unforeseen circumstances, then a new prospectus may not be necessary. For example, if immediately after occupancy an agency were to receive a new mission authorization that requires additional personnel and expansion space is required, a new

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<sup>6</sup> See additional information on scoring under paragraph 11, Scoring Risks.



prospectus would not be necessary. The Lease Contracting Officer must document the lease file and consult with PTAB before executing any modification to the lease and follow competition requirements in procuring the additional space. See Desk Guide Chapter 6, Change in Square Footage - Expansion and Reduction, for guidance.

### **c. When to Submit a Prospectus**

Project submittals for the lease prospectus program must take into account a projection of how much time the region needs to acquire the space consistent with the requirement and project schedule.

Certain project scenarios warrant a longer lead time for preparing, submitting, and executing complex lease proposals. If the region has any question about the time needed for submitting the prospectus, the regional Office of Portfolio Management must consult with PTAB and be prepared to provide a brief description of the proposed project (such as, square footage required, proposed rental rate per RSF, proposed total annual cost), a discussion of the agency's current housing situation, and a justification for why the project is being requested for a particular fiscal year.

### **d. Submittal Requirements**

Instructions for preparing and submitting a prospectus and the required supporting documents are provided in the Annual CILP Planning Call at GSA CILP.

### **e. Identify Congressional Districts and Delineated Areas in the Prospectus**

In each lease prospectus, GSA must correctly identify the appropriate congressional districts affected by the proposed action. The identified district or districts must be contained in whole or in part within the delineated area specified in the prospectus narrative. If the delineated area is the central business district (CBD), for instance, then the header must include the congressional district or districts that the CBD covers.

The congressional district used for succeeding/superseding lease projects must be the district where the project building is located.

The submitted prospectus must include a map identifying the delineated area or the specific building location. The body of the prospectus must include a narrative description of the delineated area and the names of the streets marking the northern, eastern, southern, and western boundaries of the area. Use of summary information is permitted when boundary streets or highways are numerous, complex, and difficult to follow. If the delineated area is in an underdeveloped area where street names are not available, include a map that clearly identifies the delineated area and indicates nearby points of reference, such as landmarks or monuments.

For lease extensions, superseding leases, and lease renewal options, the body of the prospectus must include the correct street address for the project building. The delineated area identified in the prospectus narrative must match the area specified in the heading.

When the procurement process begins, the delineated area in the request for lease proposal or solicitation for offers must be identical to the delineated area in the prospectus. Historically, GSA's annual appropriation act requires that GSA's authorizing and appropriations committees be notified of any changes to the delineated area. For example, Public Law 111-117, Div. C, Title





4. Prospectus Requirement

V, Financial Services and General Government Appropriations Act, 2010, Section 515, states the following:

In any case in which the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate adopt a resolution granting lease authority pursuant to a prospectus transmitted to Congress by the Administrator of the General Services Administration under 40 U.S.C. 3307, the Administrator shall ensure that the delineated area of procurement is identical to the delineated area included in the prospectus for all lease agreements, except that, if the Administrator determines that the delineated area of the procurement should not be identical to the delineated area included in the prospectus, the Administrator shall provide an explanatory statement to each of such committees and the Committees on Appropriations of the House of Representatives and the Senate before exercising any lease authority provided in the resolution.<sup>7</sup>

**f. Milestones**

The Annual CILP Planning Call at GSA CILP always identifies the schedule for regional submission of lease prospectuses to Central Office. The table below shows a generic timeframe for lease prospectus milestones and submissions. Fiscal year dates and deadlines will appear in the Annual CILP Planning Call or be sent by the Capital Allocation Division with separate guidance to the regions. Direct any questions about the status of a lease prospectus that cannot be answered at the regional level to the Capital Allocation Division.

	Q1			Q2			Q3			Q4			Q1			Q2			Q3			Q4		
	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S
Lease Prospectuses Submitted to Central Office																								
PTAB Review																								
Transmittal to OMB																								
CO Circulation and Signature																								
Transmittal to Congress																								
Resolutions																								

Upon transmittal to Congress, GSA can advertise for the requirement

Upon receipt of matching resolutions, GSA can award the lease.

GSA must give OMB and our authorizing Committees sufficient time to review and approve prospectus-level projects. For this reason, when working with client agencies, it is critical that regional employees not wait until the last minute to initiate and submit a prospectus. OMB and Congress will rarely act on prospectus emergencies.

<sup>7</sup> This language appears on an annual basis and, in any communication to Congress to modify the delineated area, you must reference the latest statutory citation.



## 5. Prospectus-Level Lease Construction

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Requirements that may result in lease construction need sufficient lead time to allow for space under the new lease to be available for occupancy by the time the existing lease expires, so such project submissions must be consistent with the time frame required for delivering the space and verifying the availability of client agency funding.

**Any project where lease construction is the potential housing solution warrants special attention, and these projects must be discussed with PTAB before submitting the proposed lease prospectus.** Leasing Specialists and Contracting Officers must not seek or promise to deliver a lease construction solution that excludes existing buildings in a market that meet the needs of the client agency.

If no viable solution for housing the agency or agencies other than lease construction is identified and GSA believes that a lease construction proposal consistent with a market rent rate is possible, then GSA may select a site with an assignable option that can be made available to a competitively selected developer. GSA is permitted to undertake a general market analysis to determine the availability of space in the market as part of the requirements development/determination of the options phase.

Site selection and design of lease construction projects are also subject to location policies, the National Environmental Policy Act, and Section 106 of the National Historic Preservation Act, all as detailed in Chapter 14.

## 6. Advertising

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Leasing Specialists may advertise for a prospectus-level requirement only **after** the prospectus has cleared OMB and has been submitted by GSA to the Committees. Broad market surveys not tied to a specific project can be used to establish the overall availability of space or sites. Such surveys might be instrumental in developing a prospectus and may be undertaken during requirements development.

After GSA has submitted the prospectus to the Committees, the Leasing Specialist may pursue the procurement to the point of lease award. However, the lease cannot be awarded until GSA has received the adopted resolutions approving the project from the Committees.

## 7. Adopted Resolutions

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As a matter of GSA policy, a prospectus-level lease project must receive adopted resolutions approving the project from the Committees. Once the resolutions are adopted by the Committees, GSA may enter into a lease agreement. Once all resolutions are received, the Lease Contracting Officer may award the lease, provided that the necessary client agency funding is available for moves, furniture, information technology, RWAs, etc., and the terms and conditions of the lease are consistent with the Committees' resolutions.



## 8. Conformity With the Committees' Resolutions

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After receiving offers from prospective lessors for a prospectus-level requirement, but before awarding the lease, the Lease Contracting Officer must review the offers to verify that they comply with the resolutions and confirm the following:

- The total RSF in an offer does not exceed the maximum in the resolutions. Any proposed housing plan change requires consultation with PTAB and subsequent notification to the Committees.
  - There is no tradeoff of square footage for rental rate and vice versa even if the total annual cost remains within the total amount in the adopted resolutions. The RSF cited in a single prospectus may be used to lease space in more than one building. However, the maximum RSF, the maximum rental rate per RSF, and the total annual cost may not be exceeded.
  - There are no major changes to the housing plan. Minor changes to the housing plan are permissible. For example, if a lease has been awarded and the agency is unable to occupy all or part of the space under the lease, the Administrator has the authority to assign and reassign space to another agency, consistent with the terms of the lease.
  - The following situations are not permitted; if special circumstances require deviation from this policy, the regional Office of Portfolio Management must contact PTAB:
    - A prospectus project is approved for agency X, which determines before award that it no longer requires the space. It is not permissible to use the Committees' resolutions obtained for agency X to lease space for agency Y.
    - Resolutions are adopted for 200,000 RSF in a particular city. However, if before lease award only 150,000 RSF is needed to satisfy the requirement (thus creating a surplus of 50,000 square feet), it is not permissible to use the 50,000 square foot surplus to acquire space for another agency need or for any requirement not clearly identified in the prospectus.
- The offer does not exceed the maximum rental rate per RSF in the adopted resolutions. If a lease procurement is delayed beyond the projected effective date of the lease that was stated in the prospectus, the regional Office of Portfolio Management, in coordination with the Leasing Specialist, is permitted to escalate the authorized maximum proposed rental rate per RSF from the originally projected fiscal year effective date to a revised fiscal year effective date. This escalation must be calculated only if a delay forces the lease effective date to slip into a future fiscal year. The award date **cannot** be used as the starting date for such escalation unless the fiscal year of the award and the fiscal year of the effective date are the same. For example, if a lease is projected to be awarded in FY 2011 and effective in FY 2012, but, due to slippages in schedule, does not take effect until FY 2013, 1 year of escalation at the rate identified in the prospectus (FY 12 to FY 13) is permitted, not two (FY 11 to FY 13). Leasing Specialists must use the appropriate escalation rate, as stated in the footnote of the prospectus, to escalate the rent rate.
- The offer does not exceed the total annual cost stipulated in the adopted resolutions.



- If the annual rent over the term of the lease is constant (not a stepped rent), compare the first year with the approved total annual cost in the prospectus. The first year rent cannot exceed the total annual cost in the resolutions.
- If the proposed rent is a stepped rent, to determine whether an offer exceeds the total annual cost stipulated in the resolutions, the Leasing Specialist must levelize the rent and calculate the per square foot cost to confirm that it does not exceed the maximum per-square-foot rent in the resolutions. Instructions for levelizing rent are under subparagraph 4.a, Determining Whether a Prospectus Is Required. The levelized net rent plus the first-year operating expenses cannot exceed the total annual cost in the resolutions.
- The offer does not include a lease term that exceeds the term cited in the adopted resolutions.

Leasing of parking spaces must comply with the terms and conditions of the adopted resolutions. If there are any variations from the resolutions, the Leasing Specialist must consult with PTAB.

The Leasing Specialist must discuss any proposed change to a prospectus-level lease with the regional Office of Portfolio Management before any lease award takes place. Changes to a prospectus-level lease may require notification to our authorizing Committees, or an amended prospectus.

## 9. Postaward Monitoring

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Any postaward Lease Amendment that would modify the cost per square foot, total annual cost, lease term, amount of space under lease, operating lease status, or any other material change to, but not accounted for in, a prospectus-level lease requires an evaluation by the regional Office of Portfolio Management and consultation with PTAB before any action can be taken. **The Leasing Specialist must obtain the concurrence of the regional Office of Portfolio Management and document that concurrence.**

## 10. Interim Leasing

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The following provision has generally been included in lease prospectuses submitted to OMB and the Committees:

Approval of this prospectus will constitute authority to provide an interim lease, if necessary, before the execution of the new lease.

Beginning with the FY 2012 lease prospectus submissions, GSA will use the following provision:

GSA will execute such interim leasing actions as are necessary to ensure continued housing of the client agency prior to the effective date of the new lease. It is in the best interest of the Government to avert the financial risk of holdover tenancy.

The Committees' resolutions approving a prospectus typically include a blanket approval of interim leases without specifying the amount of space, rental rate, or lease term. The Committees'



resolutions include the provision: "Approval of this prospectus also constitutes authority to execute an interim lease for all tenants, if necessary, prior to the execution of the new lease."

Interim leasing is required when the current lease expires before the effective date of the new or replacement lease. Interim leasing allows short-term extensions (generally 3 years or less) to prospectus-level leases that expire before the effective date of the new lease. The interim lease is intended to avoid holdover occupancies. The interim leasing provision does not allow prolonged occupancy at the current location, but rather only enough time for an agency to occupy the space acquired under the new or replacement lease. Continued occupancy of current space after lease expiration and absent a standstill agreement, lease extension, or short-term lease constitutes a lease holdover. Holdover tenancy subjects the Government to financial risk, including potential penalties for continued occupancy of space without the lessor's agreement. Rent payments are still due during the period of holdover tenancy and are made without regard to the current interim leasing provision for prospectus-level leases not yet approved by the Committees. See Desk Guide Chapter 10, Lease Holdovers, Standstill Agreements, and Condemnations, for more information on lease holdovers.

Appropriations are made for the current fiscal year for which payments are due through the rental of space budget activity within GSA's Federal Buildings Fund. These funds are legally available for the payment of rent, regardless of the nature of the lease agreement. The proposed interim leasing provision serves to put our Committees on notice of GSA's intent to enter into interim leases, where necessary, even if our Committees have not acted on the underlying prospectus. The proposed language clarifies that GSA intends to use its legal authority to enter into interim lease agreements to avert the financial risk of holdover tenancies.

Using interim leasing authority does not reduce the term of the lease approved in the adopted resolutions. For example, if agency X occupies space under a lease that is set to expire in 2010 and the Committees have adopted resolutions for a new 10-year lease with an anticipated effective date of FY 2010 but, due to unforeseen circumstances, the new leased space will not be ready for occupancy until 2012, GSA may enter into an interim lease for agency X until the new leased space is ready. The 2 years spent do not count against the 10 years of the new lease. If the space is ready for occupancy in 2012, the new lease may be for a term of 10 years, or until 2022.

While there is no prescribed rental rate for interim leasing, the Leasing Specialist and Lease Contracting Officer must try to secure an interim rate at an existing location consistent with either the current rental rate or otherwise consistent with market rents in the area.

## 11. Scoring Risks

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All prospectus-level leases must be evaluated against all of the criteria in OMB Circular A-11, Appendix B, to distinguish capital leases from operating leases. All prospectus-level leases with a term of more than 5 years must include a 90 percent scoring analysis upon receipt of client requirements as part of the submission of the prospectus package to Central Office and again before awarding the lease.



No lease, whether below or at prospectus level, may be awarded without a completed determination of operating lease treatment.<sup>8</sup> Leasing Specialists and Lease Contracting Officers must refer to the latest GSA scoring policy for specific guidance on prospectus-level lease construction and the exercise of options and expansions to prospectus-level leases. See Desk Guide, Appendix F, Determination of Operating or Capital Lease Classification for Budget Scoring, for more information on lease scoring.

## 12. Prospectuses for Alterations in Leased Space

40 U.S.C. § 3307(a)(3) requires a prospectus for all post-occupancy alterations in leased space when the estimated total project cost—regardless of whether payment for the alterations is made using GSA lump-sum funds or amortized in the rent—exceeds the annually adjusted threshold amount for alteration projects in buildings under lease to GSA (which, as of FY 2012, is \$1,395,000).

Government initial space alteration expenditures for a new lease are not governed by the prospectus threshold for alterations in leased space. **However, GSA must not use such expenditures inappropriately to buy down the rent to avoid submitting a lease prospectus.** Therefore, according to PBS' pricing policy, absent a deviation an agency may not pay a lump sum for shell and first-generation general tenant allowance elements. This is because the pricing policy requires GSA to deliver basic functional space without the agency lump-sum payments. If GSA cannot deliver basic functional space below the prospectus dollar limitation, a prospectus will be required. If GSA does receive a lump sum payment from a client agency for the buildout that would otherwise be provided by GSA, that payment must be reflected in the calculation to determine whether a prospectus must be submitted.

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<sup>9</sup> While every lease must be evaluated to determine operating lease treatment, a project may go forward as a capital lease if an informed decision is made to do so and GSA is prepared for the budget consequences. Approval must be obtained from the Commissioner with OMB concurrence to proceed with a capital lease.