

March 22, 2019

MEMORANDUM FOR: REGIONAL COMMISSIONERS, PBS  
REGIONAL LEASING DIRECTORS  
REGIONAL LEASE ACQUISITION OFFICERS



FROM: ALLISON H. AZEVEDO  
ASSISTANT COMMISSIONER FOR THE OFFICE OF  
LEASING - PR

SUBJECT: LEASING ALERT (LA 19-02) – Consistent Treatment of Rents  
During Lease Holdovers

1. **Purpose.** This Leasing Alert establishes specific guidance for the treatment of tax and operating cost rental adjustments as well as amortized rental components for tenant improvements (TI) and Building Specific Amortized Capital (BSAC) during holdovers, including standstills. This Leasing Alert clarifies existing guidance in Leasing Desk Guide (LDG) Chapter 10 (Lease Holdovers, Standstill Agreements, and Condemnations), Section 2, (Rental Payments During Holdovers).
2. **Background.**
  - a. A holdover is a tenancy at sufferance that is created when the Government continues to occupy the leased premises beyond the expiration date of the lease term, without an agreement between the parties to continue the occupancy. A standstill agreement is a temporary measure that preserves the status quo between the Lessor and the Government during a lease holdover. Holdover tenancies should be avoided whenever possible as holding over without the benefit of an agreement may lead to friction between the Lessor and the Government. Lease Contracting Officers should present Lessors with standstill agreements in every case well in advance of lease expiration where a holdover seems likely. Please refer to LDG Chapter 10 for additional information regarding alternatives to holdover tenancies, including the use of standstill agreements.

- b. Current LDG guidance states that GSA should continue to pay rent during holdover at the same rate in effect prior to expiration. However, this guidance does not address whether or not to process tax or operating cost escalations during a holdover tenancy. In addition, the guidance does not address lease scenarios where the amortization of TI and BSAC rental components coincide with lease expiration. Due to the lack of clear policy direction on these issues, regions were not addressing these consistently. As a result, the Office of Chief Financial Officer (OCFO) raised these issues to the Office of Leasing, requesting further clarification. In response, the Office of Leasing is issuing this Leasing Alert to provide the following additional guidance with respect to holdover payments:
- c. Guidance:
- i. Standstill Agreements: For holdovers that are subject to standstill agreements, where both parties stipulate that the terms and conditions of the expiring lease remain in full force and effect, the Government shall process any escalations or adjustments when they would have normally been processed and paid under the terms of the original lease.
  - ii. Operating Cost Adjustments: Unless the Government and Lessor have entered into a standstill agreement, the Government shall not process operating cost adjustments for leases in holdover status. This is because there technically is no lease contract in effect during a holdover tenancy. Once the lease has been extended, the Government will process any past operating cost adjustments that would have otherwise been due and issue catch up payments (or, in the event of a decrease in the CPI, process a rental reduction). The extension must take the prior operating costs into consideration and clearly present how the operating base and accrued CPI adjustments will be treated for the holdover period. If the holdover is followed by a succeeding lease that is backdated to the expiration of the prior lease, the succeeding lease must clearly address the Government's rental payments made to the Lessor during the holdover period and how those are to be credited against the succeeding lease rental.
  - iii. Real Estate Tax Adjustments: For leases in holdover status, the Government shall process real estate tax adjustment requests in a manner similar to a terminated lease, meaning that the Government shall pro-rate the real estate tax adjustment to coincide with the portion of the tax year that the Government had an active lease contract in the building. Once the lease has been extended and the holdover has ended, the Government shall process the remainder of the payment/withhold to cover the full tax year for the full time of the Government's occupancy.
  - iv. TI and BSAC Rent Components: As stated under LDG Chapter 10, it is GSA policy, where the Government occupies space after expiration of a lease and before execution of a succeeding lease or new lease, to continue to make monthly rental payments **at the then-current**

**rental rate stated in the expired lease.** As clarification, this policy applies even if the current rent at lease expiration includes TI and/or BSAC rent which has been fully amortized at the expiration of the lease. Any overages and/or shortfalls in the negotiated lease extension rate should be addressed specifically in the lease extension or succeeding lease.

3. **New REXUS/OA Data Entry Procedures.** Under current REXUS business rules, REXUS automatically defaults to processing any CPI operating cost adjustments that would have been due. Therefore, when a lease enters into holdover, the Lease Contracting Officer (LCO) or Responsible Government Associate (RGA) will have to change the lease escalation defaults in REXUS, as indicated under Attachment 1, in order to prevent improper automated CPI operating cost adjustments.
4. **Effective Date.** This Leasing Alert and its attachment are effective immediately. It applies to all leases in holdover or subject to a standstill agreement now and in the future.
5. **Applicability.** This Leasing Alert and its attachment are mandatory and apply to all General Services Administration (GSA) real property leasing and portfolio activities.
6. **Cancellation.** None.

**Attachment 1, Instructions and Procedures for Updating REXUS to Prevent Automated CPI Operating Cost Adjustments for Holdover (without Standstill Agreement).**

## **Attachment 1**

### **Instructions and Procedures for Updating REXUS to Prevent Automated CPI Operating Cost Adjustments for Holdover (without Standstill Agreement)**

During Holdover, REXUS automatically defaults to continuing the generation of CPI operating cost escalations upon the lease anniversary and sending the action(s) to the BA53 budget analyst and then to the zonal Administrative Lease Contracting Officer (ALCO) for approval.

If the lease goes into Holdover with no Standstill agreement, the user must proactively override REXUS' default settings in order to stop escalation payments.

If the lease goes into Holdover with a Standstill agreement, then the user does not need to override the default CPI escalation adjustments.

**These steps must be taken in REXUS when you are changing the status from Active to Holdover, to stop CPI operating cost escalations.**

**Note: These steps and REXUS screenshots are based on leases with an "Annual" Escalation Type (standard lease operating and tax clauses). For other escalation types, please consult your Lease Contract Administration Zone.**

1. Open REXUS and open the Lease which you want to Holdover.
2. Select "Holdover" from the "Lease Action" drop-down.
3. Follow steps from latest version of REXUS user manual to process holdover payments - populating Extension Reason, Standstill indicator and Project Number (if applicable). Select the "Save Proposed" button.
4. Enter the Escalations tab, and then click on the action icon  next to the Unit/block Number. A pop up box will appear. In the Escalation Information box, for Escalation Type, select "Real Estate Tax Lump Sum Only" from the drop down box (assuming that the lease is subject to tax adjustments). Then, select the "Save" button, the user will be returned to the lease. Remember to update all units/blocks associated with the lease. (See Figure 1 below.)

Figure 1

**Lease Escalations**

Unit/Block No. 1

**Escalation Information**

\*Escalation Type: Real Estate Tax Lump Sum Only

**Tax Information**

Tax Abatement: [v]

No. of Months: [ ]

Start Date: [ ]

End Date: [ ]

**Lease Costs**

Insert Operating Rent Payment Line

Base	Escalation Amount
*Base Year: 2013	
Base Cost of Services (Annual): \$30,600.35	
*Base Cost of Services/RSF: \$7.142938842	
*Insurance: \$0.00	
Total Annual Operating Rent: \$30,600.35	
*Taxes: \$0.00	

Calculate

\*Operating Rent Escalation Clause: 1 month

\*Escalation Month / Day: 02/16

**Base Taxes**

Tax Escalation Clause: Yes

Real Estate Tax	BID
Base Tax: \$276,614.90	
Period Start Date: 07/01/2018	
Period End Date: 06/30/2019	
Local Taxes Due: 10/01/2018	
Tax Bills Due to GSA: 11/30/2018	
Payment Effective Date: [ ]	
Current Tax Amount: [ ]	
Escalation Amount: [ ]	

Calculate

Insert Payment

Cancel Save

5. Enter Payment tab and update digest remarks to reflect current scenario. Once all updates are made to the lease, the user should select "Validate and Proceed" button. This will open the transaction pop up, where source documentation can be attached and contracting officer will be selected, and user can then select the "Submit" button for R620/Lease Action approval.

6. Once an extension agreement is reached and the holdover has ended, follow steps from latest version of REXUS user manual to process an Extension. Ensure to set the escalation type back as the lease language calls by entering the Escalations tab, and then

click on the action icon  next to the Unit/block Number. A pop up box will appear. In the Escalation Information box, for Escalation Type, change the drop down selection to relevant escalation type (in this example, change back to "Annual."). Then select the "Save" button; the user will be returned to the lease. Remember to update all units/blocks associated with the lease. For leases that were in holdover for 12 months or less, the catch-up adjustments will be processed automatically by REXUS; for holdovers longer 12 months, these adjustments will be processed manually by the zonal Lease Contract Administration team. (See Figure 2 below.)

Figure 2

**Lease Escalations**

Unit/Block No. 1

**Escalation Information**

\*Escalation Type: Annual

**Tax Information**

Tax Abatement:

No. of Months:

Start Date:

End Date:

**Lease Costs**

Insert Operating Rent Payment Line

	Base	Escalation Amount
*Base Year	2013	
Base Cost of Services (Annual)	\$30,600.35	
*Base Cost of Services/RSF	\$7.142938842	
*Insurance	\$0.00	
<b>Total Annual Operating Rent</b>	<b>\$30,600.35</b>	
*Taxes	\$0.00	

**Calculate**

\*Operating Rent Escalation Clause: 1-month

\*Escalation Month / Day: 02/16

**Base Taxes**

Tax Escalation Clause: Yes

	Real Estate Tax	BID
Base Tax	\$276,614.90	
Period Start Date	07/01/2018	
Period End Date	06/30/2019	
Local Taxes Due	10/01/2018	
Tax Bills Due to GSA	11/30/2018	
Payment Effective Date		
Current Tax Amount		
<b>Escalation Amount</b>		

**Calculate**      **Calculate**

Insert Payment       Insert Payment

**Cancel**    **Save**