

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

*(CT:OBO-8; 05-24-2006)
(Office of Origin: OBO)*

15 FAM 321 WAIVERS FOR LEASES WITH RENTALS IN EXCESS OF \$25,000

*(CT:OBO-8; 05-24-2006)
(Uniform State/USAID/Commerce/Agriculture/DIA)*

Posts must submit requests for waivers/approval to the Bureau of Overseas Buildings Operations (OBO) in the format shown in 15 FAM Exhibit 321, with a copy to the paying agency if other than the Department of State. Leases executed by a USAID contracting officer in the name of USAID must be submitted to the Overseas Management *Staff* in the Bureau for Management, USAID/Washington (USAID/W - M/OMS), using the format in 15 FAM Exhibit 321. Requests for approval of renewals must be received by OBO, USAID/W (M/OMS), or the paying agency at least one month before the advance notification period required by the terms of the lease.

15 FAM 322 WAIVERS FOR LEASES EXCEEDING SPACE STANDARDS

*(CT:OBO-8; 05-24-2006)
(Uniform State/USAID/Commerce/Agriculture/DIA)*

- 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 and a housing profile has not been approved;
 - (2) At posts where the only available housing exceeds the space standards and the property has not been approved for inclusion in the housing profile (e.g., overstandard housing for a new position or acquired to replace an existing lease); and
 - (3) 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 should frequently 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 the Bureau of Overseas Buildings Operations (OBO) *or* the Overseas Management *Staff* in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) and to the parent agency, as appropriate, using the format in 15 FAM Exhibit 321.
 - c. Approval is given for a specific employee and/or family. If a change in occupancy occurs during the basic or renewal term of the lease, prior OBO or USAID/W (M/OMS) *for USAID leases*, and parent agency approval is required *for units that are* over standard for the proposed new occupant. Moreover, if the lease expires during the tour of an employee, the lease may be extended or renewed without prior Washington approval (if under \$25,000 per year), but only to the end of that employee's stay at post. The lease *cannot* be extended beyond the tour of the current occupant without prior Washington approval.

15 FAM 323 ADVANCE LEASE PAYMENTS

(CT:OBO-8; 05-24-2006)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Whenever possible, lease payments should be made monthly or quarterly. Posts may execute leases with provision for advance payments without prior Bureau of Overseas Buildings Operations (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 the Overseas Management *Staff* in the Bureau for Management, USAID/Washington (USAID/W - M/OMS). 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 will 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 untenable 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 which holds that \$1 received today is worth more than \$1 received in the future due to opportunity cost, inflation, and the certainty of payment. (See 15 FAM Exhibit 323A for further details on calculating advance payments using the time value of money concept.) OBO’s Evaluation Division in the Real Estate Office (*OBO/RE/EV*) can assist the post in calculating advance payments.
- e. Requests for approval of advance payments for periods greater than 12 months should follow the instructions in 15 FAM Exhibit 323B.

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

(CT:OBO-8; 05-24-2006)

(Uniform State/USAID/Commerce/Agriculture/DIA)

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 waiver from Washington. Information on waiver request formats is available from the Real Estate Office in the Bureau of Overseas Buildings Operations (*OBO/RE*).

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

(CT:OBO-8; 05-24-2006)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Post *must submit* proposals to have a lessor construct or alter leased or proposed leased space to the Bureau of Overseas Buildings Operations (OBO) and the parent agency for prior review and approval. For leases signed by USAID, *post must submit* proposals to the Overseas Management *Staff* in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) for prior review and approval. A complete justification should accompany the request.

15 FAM 326 LEASES CONTAINING NONSTANDARD CLAUSES

(CT:OBO-8; 05-24-2006)

(Uniform State/USAID/Commerce/Agriculture/DIA)

The standard clauses that must be included in U.S. Government lease agreements are described in 15 FAM Exhibit 341A. Except as authorized by the Bureau of Overseas Buildings Operations (OBO) or, for USAID leases, from the Overseas Management *Staff* in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) for 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-8; 05-24-2006)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- 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 three months subsequent to the signing of the lease, require prior Bureau of Overseas Buildings Operations (OBO) and parent agency approval. Leases signed by USAID *require* prior approval from the Overseas Management *Staff* in the Bureau for Management, USAID/Washington (USAID/W - M/OMS).
- b. The information parent agencies *need* will vary depending upon the circumstances. Posts should contact OBO, USAID/W (M/OMS) *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-8; 05-24-2006)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. If advantageous to the U.S. Government and allowable under local law, leases may contain an option to purchase. Prior Bureau of Overseas Buildings Operations (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 the Overseas Management *Staff* in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) *before* including an option-to-purchase clause in leases. USAID/W (M/OMS) will seek the Office of Management and Budget's (OMB) approval of such leases.

15 FAM 329 UNASSIGNED

15 FAM EXHIBIT 321 LEASE WAIVER REQUEST FORMAT FOR RESIDENTIAL PROPERTIES

(CT:OBO-8; 05-24-2006)

- a. This exhibit provides the format to request waivers for residential leases that exceed the maximum annual dollar amount of \$25,000, for leases (new or old) that are outside an approved profile, and for representational housing exceptions. Please send all telegrams to the Real Property Management Division in the Real Estate Office of the Bureau of Overseas Buildings Operations (*OBO/RE/RPM*) or to the Overseas Management *Staff* in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) for USAID-leased properties.
- b. Posts should prepare waiver request telegrams with comprehensive information, following the prescribed format. Requests must be supported by clear, strong rationales and precise, complete data. As waivers are approved and lease data confirmation telegrams are received from posts, posts must update the post administrative software suite/real property application (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 at any time during the term of the lease;
 - (2) For all exceptions for representational purposes; and
 - (3) For leases exceeding space standards that fall outside a post's approved profile, or for posts not having approved housing profiles.
- d. Posts should submit waiver requests following the numbered format below. Each item should be carefully completed in accordance with the instructions. The request must repeat the question in the left-hand column and provide the appropriate information as noted in the right-hand column of the text. Do not repeat the right-hand column text.

<u>Question</u>	<u>Information Required</u>
(1) Post	Name of post where property exists.
(2) <i>Locality Code</i>	<i>Post is Locality Code 1, 2, or 3</i>
(3) Waiver for	
a) Lease over \$25,000	Yes/No If yes, provide complete justification.
b) Lease exceeding <i>the maximum space authorization of the proposed occupant</i>	Yes/No If yes, provide complete justification.
(4) Post approval certification:	
a) Has responsible security officer (regional security officer or post security officer (RSO or PSO)) inspected this property and approved its use by the U.S. Government?	Yes/No
b) Has the post occupational safety and health officer (POSHO) inspected the property to ensure that there are no critical safety and health hazards present?	Yes/No

- c) Does housing board recommend approval? Yes/No
If response to either a or b above is no, waiver will not be granted.
- (5) Lease category information:
- a) Renewal Identify property ID, lease number, annual rental amount in U.S. dollars, and gross/net square meters. Identify any changes in existing lease.
- b) Replacement Give annual rental amount in U.S. dollars, and gross/net square meters of replacement. Give reason/need for replacement. Provide property ID and ease number of unit being replaced. A basic premise of U.S. Government leasing is that there is economy in a stable lease portfolio. A replacement justification should show where additional costs are justified, or that the U.S. Government's costs will diminish.
- c) Net addition Give reason or need for additional property. Provide annual rental amount in U.S. dollars, and gross/net square meters of new property. *Identify new position(s) requiring this additional property.*
- (6) *Lease costs:*
- a) Annual lease amount *in currency of negotiation* Lease cost only.

- b) Currency of payment with exchange rate and U.S. dollar amount* *Provide details if lease is paid in local currency or if the lease is negotiated in one currency but paid in another.*
- c) Funding available* Can post fund lease within available operating allowances? Yes/No
If no, what additional funds are needed for current fiscal year? Provide U.S. dollar amount. Additional funds must be requested from funding agency.
- d) Agency funding lease* Provide agency name. If cost is to be shared by two or more agencies, indicate agency and annual rental amount to be paid by each. Provide U.S. dollar amount.
- e) Other costs associated with the lease that are **not** included in the annual rent* *Posts must ensure that make-ready costs are funded by the occupying agency and that security upgrades are funded by the Bureau of Diplomatic Security as per 15 FAM 165. List and justify additional costs such as condo fees, and realtor fees. Keep in mind that there is a ceiling of U.S. dollars \$5,000 for U.S. Government-funded initial improvements.*

(7) Lease information:

- a) Average annual lease cost for similar property currently under lease* Provide average annual lease cost in U.S. dollars for similar sized properties.
- b) Average annual lease cost for similar property surveyed* Provide estimated average annual lease cost in U.S. dollars for properties surveyed (use current market survey figures). Indicate other properties reviewed and why this property was selected over them.
- c) Proposed lease dates* Specify month/day/year start and end dates (start: mm/dd/yyyy; end: mm/dd/yyyy).

- d*) Scheduled date of occupancy Specify month/day/year (mm/dd/yyyy). Provide justification if vacant more than six weeks.
- e*) Renewal terms Provide explanation for rent increase, if any, or any changes in lease terms.
- f*) Renewal options Yes/No
If yes, please provide renewal notification date, and number and duration of firm renewal options as provided in the lease.
- g*) Purchase option Yes/No
If yes, provide details and date purchase option can be exercised. Right of first refusal is not considered a purchase option.
- h*) Currency used for lease Local, U.S. dollars, or other. If other, provide annual amount and exchange rate.
- i*) Payment address In-country or offshore? If offshore, submit a separate request per instructions in 15 FAM 324. For guidance in telegram preparation, please contact OBO.
- j*) Frequency of payments Monthly, quarterly, semiannually, or other (specify).
- k*) Advance payment Yes/No
If yes, provide the number of years/months rent is to be paid in advance and the amount in U.S. dollars. Submit approval requests for advance payments that are longer than 12 months to OBO and parent agency.
- l*) Discount for advance payment Yes/No
If yes, indicate U.S. dollar amount. If no, why is advance payment necessary? What is U.S. Government getting for its money?

(8) Property

information:

- a) Property use data element Indicate how property is being used as described in post's PASS/RPA (Post Administrative Software Suite/Real Property Application) User Manual, Appendix B.
- b) Address Provide complete street address.
- c) Apt/TH/Det Indicate if apartment (Apt), town house (TH), or detached residence (Det).
- d) Unit number For multiple unit properties held under one lease (RES/MLT), indicate the apartment/unit number for which the waiver is requested.
- e) Space for domestic employees If property includes domestic employees' quarters, provide net floor space of quarters and briefly describe (*e.g.*, one room/one bath). Do not include this measurement in the net square meters figure in item 5a, b, or c in this section.

(9) Occupant

information:

- a) Name Last, first.
- b) Title Position title as indicated in post staffing pattern.
- c) Vice *Name of the previous incumbent of this position.**
- d) Personal grade Specify personal grade of employee (FS-01, GS-12, E-7).*
- e) Position grade Specify grade of position as indicated in the post staffing pattern (FS-04, GS-9, E-3).*
- f) Tour of duty Provide start and end dates of tour of duty using the month/year as follows: start: mm/yy; end: mm/yy (not two years or three years duration).*

- g)* Number of dependents on official orders If no dependents, state none.
- h)* *Names and birth dates* of dependents residing full time at post Indicate number as appropriate.
- i)* *Names and birth dates* of dependents residing away from post more than 50 percent of the year Indicate number as appropriate.
- (10) POC at post for this action:* *Name, telephone, and fax numbers, email address of post contact.*

If post has additional information to support the request, please include it.

15 FAM EXHIBIT 323A USING THE “TIME VALUE OF MONEY” CONCEPT TO CALCULATE ADVANCE PAYMENT OF RENT

(CT:OBO-8; 05-24-2006)

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 should 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 U.S. 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 eight 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 Evaluation Division in the Real Estate Office of the Bureau of Overseas Buildings Operations (*OBO/RE/EV*) can provide technical assistance to post personnel in calculating advance payments.

15 FAM EXHIBIT 323B

REQUESTS FOR APPROVAL OF ADVANCE PAYMENTS

(CT:OBO-8; 05-24-2006)

Requests for approval of advance payments for periods greater than 12 months should 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 one year’s rent”;
- (2) The OBO post administrative software suite/real property application (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 yr., 2 yrs., 3 yrs.);
- (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 Area Management Division in the Operations and Maintenance Office of the Bureau of Overseas Buildings Operations (OBO/OM/AM) for State or to the Overseas Management *Staff* in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) for leases signed by USAID’s contracting officer.

15 FAM EXHIBIT 328

CLAUSES TO USE IN A LEASE WITH OPTION TO PURCHASE

(CT:OBO-8; 05-24-2006)

With prior approval from the Real Estate Office in the Bureau of Overseas Buildings Operations (*OBO/RE*) for State or the Overseas Management *Staff* in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) 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 _____.”