

Exposure Draft Questions for Respondents (QFR)
and Specific Matters for Comment (SMC)

Due: February 5, 2021

Implementation Guidance for Leases & Omnibus Amendments to Leases-Related Topics

Please select the type(s) of organization responding to this exposure draft. If you are not responding on behalf of an organization, please select "individual."

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| Accounting Firm | <input type="checkbox"/> | |
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Please email your responses to fasab@fasab.gov. If you are unable to respond by email, please call (202) 512-7350 to make alternate arrangements.

QFR 1 Do you generally support the proposed Statement and TR proposals as a whole? Please provide reasons for your views.

DHS Response: DHS supports the proposed Statement and Technical Release as a whole. The Statement and TR provide clear guidance for applying the requirements of SFFAS 54 and address several implementation issues faced by federal agencies.

QFR 2 Are there specific aspects of the proposed Statement and/or TR that you disagree with? If so, please explain the reasons for your positions, the paragraph number(s), and/or topic area(s) of the proposals that are related to your positions, and any alternatives you propose and the authoritative basis for such alternatives.

DHS Response: DHS does not disagree with any aspects of the proposed Statement or the TR.

QFR 3 Are you aware of any implementation issues that are not addressed in the proposed Statement and/or TR? Do any ambiguous areas remain that could lead to challenges with implementing SFFAS 54 requirements? If so, please provide examples of the issues and any references to applicable guidance, and/or topic area(s) related to the issues, and any potential solutions you propose.

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DHS Response: DHS has identified the following areas that need further clarification/guidance:

- a. **Additional guidance on how to calculate a lease liability and a PP&E right-to-use lease asset as provided in paragraphs 40-53 of SFFAS 54.**
- b. **The requirement to obligate lease expense costs upfront needs to be aligned with OMB guidance. Periods for which both the lessee and the lessor have an option to terminate the lease without permission from the other party are excluded from the lease term as cancellable periods in SFFAS 54. This is not aligned with OMB A-11 (Appendix B, Paragraph 3) which considers the full term of the lease including renewal options unless specific circumstances exist. Unless the two are aligned, this may result in a different lease term for certain leases, which would then result in a difference in the lease liability and lease asset values. For leases that score as capital under OMB A-11 and which require budget authority to be obligated upfront, we are concerned of how that difference may impact the obligation process.**
- c. **Paragraph 6 of the implementation guidance states that a permanent easement are not leases because of the permanent characteristic of the agreement. We are concerned that applying this argument to other types of leases could reduce the visibility of those agreements. While we understand a permanent lease may not meet the criteria to give rise to a lease liability and lease asset, we believe it should still be treated as a lease for disclosure purposes.**
- d. **The analysis presented in paragraph 9 creates confusion as it does not consider that the right of first refusal that the reporting entity has constitutes a right to control access to economic benefits. We believe that clarifying what constitutes “economic benefit” and “consideration” as suggested in SMC1 below would be helpful for this scenario. We also believe that additional guidance to help identify embedded leases which would be based on a simpler transaction would be helpful.**
- e. **Based on paragraph 11, we understand that the contract is what drives the lease rather than the asset. We believe this may create inconsistencies in how leases are accounted depending on how they are contracted. For example, this may create a difference in the lease liability and right of use asset of a lease that is extended through renewal option or through the signature of a separate contract. We believe the lease should be tied to the asset in order for this not to happen and suggest clarifying the guidance.**
- f. **Paragraph 22 states that cancelable periods should be excluded from the lease term, regardless of the amount of the cancellation penalties. We are concerned that this could create significant differences in how similar agreements are accounted for, which would incentivize an agency to structure its contracts differently. We would suggest to either consider any cancellation penalty to preclude that a period be considered cancelable or to add materiality guidance to the cancellation penalty.**

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g. Regarding paragraphs 27 and 51, we would like to suggest that the reassessment may be performed when the decision to renew or terminate is completed and documented, to be defined based on the agency's processes. Because of our procurement processes, there may be a significant lag between the decision taking and the communication of the decision to the other parties, regardless of the fact that this communication is only perfunctory. We would also suggest that paragraph 51 be clarified to define what "elects to exercise the renewal option" means if different from our suggestion above.

QFR 4 Are there specific aspects of these proposals that you favor or otherwise wish to provide comments on?

DHS Response: DHS does not have any specific aspects of these proposals that we favor or have any other further comments.

SMC 1 Is the proposed guidance under paragraph 4 of the proposed TR applicable to federal lease scenarios to your knowledge? Please provide feedback regarding the usefulness of the proposed guidance in the context of those scenarios and/or the extent to which you believe the proposed guidance addresses implementation issues under potential scenarios. Please describe any alternative views or suggestions for improvement.

DHS Response: Paragraph 4 of the TR is applicable to certain Components of DHS. For example, no-cost leases with other Federal entities and free or below-cost use of space with non-Federal entities. A Component recognizes these lease-like events if they result from stand-alone lease agreements that grant the Component exclusive use of the space, and if the benefits are material to the Component. The Component would also apply the guidance for Contract or Agreement Combinations in paragraphs 78-79 of SFFAS 54 in determining if these lease-like events should be treated as leases in accordance with the standard.

We need clarification for the following: If reporting entity enters into a lease such as the one described with knowledge of the rent differential (market vs lease rate), should the full cost provisions of SFFAS 4 apply to this arrangement, notwithstanding that it is not an intragovernmental lease? The TR recognizes that the arrangement is at less than full cost. SFFAS 4, paragraph 15 defines cost as "the monetary value of resources used or sacrificed or liabilities incurred to achieve an objective, such as to acquire or produce a good or to perform an activity or service." Arguably given the definition of cost, the arrangement as described, if between a Federal and non-federal entity is at full cost. The FASAB/AAPC might consider removing the "less than full cost" language from the TR or acknowledging that "full cost is the amount paid in an arms-length transaction in contracts/leases with non-Federal entities.

We also would like clarification whether both terms "economic benefits" and "consideration" are only referring to monetary benefits and consideration.

SMC 2 Please provide feedback regarding the usefulness of the proposed guidance under paragraph 13 of the proposed TR and/or the extent to which you believe the proposed

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guidance addresses implementation issues related to federal oil and gas leases. Please describe any alternative views or suggestions for improvement.

DHS Response: While DHS does not have any lease agreement for oil and gas exploration, development or production, we have the following two questions for further clarification: (1) Should the reference to “lease liability” in this paragraph be changed to “lease receivable”, since this guidance applies to a reporting entity that is the lessor? and (2) Should the guidance/reference to the lessee be omitted? Paragraph 13 guidance relates to accounting by the lessor.

SMC 3 Is the proposed guidance under paragraph 95 of the proposed TR potentially applicable to intragovernmental transactions that are similar to a sale-leaseback to your knowledge? Please provide feedback regarding the usefulness of the proposed guidance in the context of those scenarios and/or the extent to which you believe the proposed guidance addresses implementation issues under potential scenarios. Please describe any alternative views or suggestions for improvement.

DHS Response: DHS recommends revising SFFAS 54 paragraph 89 to explicitly state that intragovernmental sale-leaseback transactions do not include transactions that would qualify as a sale. Suggested revision is underlined in the paragraph below:

Sale-leaseback transactions involve the sale of an underlying asset by the owner and a lease of the property back to the seller (original owner). A sale-leaseback should include a transaction that qualifies as a sale to be eligible for sale-leaseback accounting. A sale-leaseback transaction that does not include a transaction that qualifies as a sale should be accounted for as a borrowing by both the seller-lessee and the buyer-lessor. Intragovernmental sale-leaseback transactions do not qualify as a sale and should be treated as a borrowing by both intragovernmental parties.

Further, additional guidance would be needed for the lending and borrowing of a intragovernmental sale-leaseback transaction.

SMC 4 Is the proposed guidance under paragraph 98 of the proposed TR applicable to existing and/or potential intragovernmental lease-leaseback transactions to your knowledge? Please provide feedback regarding the usefulness of the proposed guidance in the context of those scenarios and/or the extent to which you believe the proposed guidance addresses implementation issues under potential scenarios. Please describe any alternative views or suggestions for improvement.

DHS Response: Same response as SMC 3 above.