



Department of Energy
Washington, DC 20585

March 11, 2021

MEMORANDUM FOR THE FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

FROM

Karin Dasuki

**Karin
Dasuki**

Digitally signed by
Karin Dasuki
Date: 2021.03.11
08:54:03 -05'00'

Director, Office of Finance and Accounting
Department of Energy, Office of the Chief Financial Officer

Thomas Griffin

Thomas P. Griffin

Digitally signed by Thomas P.
Griffin
Date: 2021.03.11 09:17:44 -05'00'

Director, Office of Financial Policy and Audit Resolution
Department of Energy, Office of the Chief Financial Officer

SUBJECT

Federal Accounting Standards Advisory Board (FASAB):
*Implementation Guidance for Leases & Omnibus Amendments to
Leases-Related Topics*

The Department of Energy (DOE) appreciates the opportunity to comment on FASAB's implementation guidance. Detailed comments provided by DOE offices are consolidated in the attached.

Please note that the Bonneville Power Administration provided comments discussing differences between the FASAB implementation guidance and private-sector accounting standards for leases established by FASB. While we recognize that many of the comments relate to the fundamental requirements contained in SFFAS 54, we are providing them for FASAB's consideration for potential future updates to SFFAS 54. DOE power marketing administrations, including the Bonneville Power Administration, follow both FASAB and FASB standards for different reporting requirements; the differences between the two sets of standards creates additional challenges and workload. Closer future alignment between the FASAB and FASB standards would simplify accounting for the DOE power marketing administrations.

Please contact Tynesha Douglass at (202) 586-6144 with any questions regarding this response.

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."

Accounting Firm	<input type="checkbox"/>	
Federal Entity (user)	<input checked="" type="checkbox"/>	
Federal Entity (preparer)	<input checked="" type="checkbox"/>	
Federal Entity (auditor)	<input type="checkbox"/>	
Federal Entity (other)	<input type="checkbox"/>	If other, please specify: <input type="text"/>
Association/Industry Organization	<input type="checkbox"/>	
Nonprofit organization/Foundation	<input type="checkbox"/>	
Other	<input type="checkbox"/>	If other, please specify: <input type="text"/>
Individual	<input type="checkbox"/>	

Please provide your name.

Name:

Please identify your organization, if applicable.

Organization:

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.

The Department of Energy (DOE) generally supports the proposed statement and TR proposals. Our comments include concerns expressed by Bonneville Power Administration regarding differences between FASAB and FASB standards for leases. This concern is documented separately throughout our response, along with other observations made during our review.

From a real estate perspective, the Statement and TR proposals are not in alignment with federal real estate terminology and the terminology used OMB Circular A-11, Appendix B. These differences will create difficulties for those tasked with interpreting the guidance who do not have specialized real estate experience. Closer alignment between the terminology used in the FASAB guidance with standard Federal real estate terminology would ease implementation and coordination between accounting and real estate professionals.

DOE supports additional guidance addressing lease reporting. Many leases include cost elements that are not relevant to the transaction, or do not disclose the interest rate used. Lessors (vendors and sales representatives) structure leases to hide the true nature of the transaction or key elements of costs.

*Implementation Guidance for Leases & Omnibus Amendments to Leases-Related Topics***Bonneville Power Administration Concerns Relating to Differences between FASAB and FASB Standards**

The Bonneville Power Administration (BPA) markets electric power and constructs facilities necessary to transmit power. Each month BPA integrates its financial and budgetary reporting into the accounting system of DOE. This integration requires BPA to follow a dual reporting concept, reporting as a commercial enterprise and a governmental entity. BPA commercial accounts are mapped to SGL proprietary accounts. BPA crosswalks its commercial accounts, maintained in accordance with FASB, to Federal Standard General Ledger accounts, maintained by DOE, in accordance with FASAB. DOE appropriately includes the BPA financial activity because SFFAS 34, The Hierarchy of GAAP, including the Application of Standards issued by the FASAB states that “general purpose financial reports prepared in conformity with accounting standards issued by the FASB also may be regarded as in conformity with GAAP for those entities that have in the past issued such reports.”

As a self-financing entity, operating as a utility in a regulated industry, BPA’s financial accounting records are based on FASB GAAP. These standards enable BPA to comply with the statutory requirement to report combined financial statements, including those of the Federal Columbia River Power System (FCRPS) hydro facilities, and to participate in the bond market backing third-party municipal bonds. BPA adopted FASB Topic 842 Leases effective Oct. 1, 2019. For Federal reporting purposes, all changes resulting from the adoption of ASC 842 are reversed and reported in accordance with SFFAS 5. Based on our preliminary assessment of this TR, BPA’s recommendations for the Board are:

- Align the right to control criteria (SFFAS 54, paragraph 3) with FASB ASC 842-10-15-4.
- Add guidance on Build-to-Suit and Failed Sale Leaseback situations similar to ASC 842-40-55-5.
- Add a policy for the election to combine lease and non-lease components similar to ASC 842-10-15-37.

BPA encourages the Board to consider aligning SFFAS 54 with ASC 842 to avoid imposing burdensome dual reporting requirements on agencies subject to both commercial and governmental activity. BPA intends to follow FASB GAAP in instances where SFFAS 54 is not aligned with FASB per SFFAS 34.

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.

Scope and Definition Question #4 - The requirement is to determine the market rent, yet it is not clear who is required to review the market data. The requirement is not in line with the Federal agency market and appraisal requirements. Also, throughout the document there is reference to intragovernmental leases which do not

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exist. If there is use of other Federal space by another Federal agency, the definition is a permit unless leasing space through GSA, which appears to be excluded under this document.

Bonneville Power Administration Concerns Relating to Differences between FASAB and FASB Standards

Page 12 Question #8 - Both of the examples propose an underlying asset that is not economically or physically distinct. Referencing FASB and GASB standards, items such as right-of-ways and easements must be capable of being physically distinct. Partial use of land is not an underlying asset, the land itself is the underlying asset. The land is, therefore, the only unit of account considered to be physically distinct. Since neither of the agreements' propose to give control of the land itself, and there are substantial secondary use alternatives, the control criterion is not met in either example. Since the control criterion is not met, neither of the arrangements meet the definition of a lease.

- Agreement #1 would be a lease if the right of way holder controlled other uses of the land, for instance if as a result of the pipeline no other use of the land above ground was possible.
- Agreement #2 could be a lease if the grazing rights holder controlled when the other uses occurred.

Page 13 Question #10 - The tower agreement fails to consider the lessors unit of account, in general FASB and GASB have found that when considering partial uses of larger spaces, the control element is often not met. In a rural area where the tower is in the middle of a field the land owner will generally view the field as a single asset and not account for parts of the field as a single unit, as such, this agreement would not constitute a lease since control is not for the entire asset. In an urban area where the units of account are smaller, this could be considered a lease.

- Note, this same methodology would apply to tower attachments for antennas since the tower itself is considered the unit of account. Placing an antenna at a point on the tower does not fulfill the control requirement and this agreement would not be a lease.

Page 13 Question #11 - This definition of control is counter to FASB and GASB definitions. The lease must be for a specific asset, a right of unilateral substitution does not allow the lessor to obtain control, unless the right of substitution provides no benefit to the lessor. The right of substitution cannot be distinct from the underlying asset, as only items which are tangible can be leased; a lease itself is intangible, but must be for a tangible asset. This paragraph implies that since the lease is a right to use an asset as long as some asset exists, then a lease exists. A lease must specify a specific asset, this is consistent not just with the new FASB and GASB standards, but is in alignment with all three body's historical practices for lease accounting.

Page 13 Question #12 - This should not meet the definition of a lease for two reasons. First, the lack of a specific asset due to unit of account, the tower is the asset, not a point of attachment on the tower. Second, the right of substitution by the

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

lessor prevents the lessee from obtaining control and this would again fail to meet the lease requirements.

Page 14 Question #14 - This will result in significant divergence between FASB and FASAB as it fails to consider any type of build-to-suit lease agreement.

Page 16 Question #22 - This view will create divergence for reporting under FASB and FASAB as bright line tests such as cancelable periods, are contrary to FASB's requirement to consider the probability of such cancelation, making the lease term different under each standard. This also does not seem to meet the goals of providing accurate financial information for users. Both parties know that cancelation is highly unlikely, yet each party will fail to report the assets or liabilities for this lease even though it is reasonably certain to continue. This should follow the same treatment as in question 23.

Page 26 Question #52 - We recommend the Board consider allowing an option, by the reporting entity, to combine lease and non-lease components to avoid divergent reporting for dual reporting entities.

Page 31 Question #71 - This is inconsistent with FASB, which would record this as a sales type lease and derecognize the asset. It is important to allow for entities to consider the probability of actions and account for the economics as they will play out rather than a legal technicality in a contract. The inverse of this example should also account for as a purchase. If a lessee has a purchase option that it is reasonably certain to be exercised, the accounting should be the exact same as a contract transferring ownership, without an option at the end of the lease. To do anything less would allow for entities to engage in economically similar transactions and structure the contract slightly different (a purchase option vs an ownership transfer) to obtain very different accounting outcomes.

Page 39 Question #98 - We recommend the Board examine the FASB guidance on build-to-suit agreements and failed sales. In this example, the contractor never has control of the asset. If the entity were to lease the asset for the majority of its value or useful life, this would be accounted for as a purchase, and financing of the purchase. The FASB guidance seems to better follow the economics of the transaction. Aligning FASAB with FASB standards will prevent burdensome dual reporting requirements for some federal entities.

Omnibus Amendments

Page 5 Paragraph #3. The treatment proposed, under SFFAS 54, diverges from the treatment under FASB and the guidance for payments during construction or build-to-suit guidance. For dual filers this will create a significant reporting burden.

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. DOE would like to document the below implementation issues.

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

Page 14 Question #16 - A detailed listing of examples would be beneficial to assist in assessing expenses.

Page 15 Question #22 – This section details that if a lease is cancelable by either the lessee or lessor at any time, the cancelable period is excluded from the lease term. Probability of exercising the termination option is not a consideration. This is in contrast with Question 23 which details that periods that are only cancelable by the lessee should be included in the lease term if it is probable the option to terminate will not be exercised. For the lease scenario in Question 22, if the lease is cancelable at any time, and therefore not included in a lease term, does this mean the lease is not a capitalized lease and should be treated as a period expense?

Page 20 Question #34 - More clarification is requested to determine if this is similar to a Lease-to-Own scenario and does this accounting treatment include a corresponding Finance Loan vs. prior SFFAS 5 & 6 accounting treatment for a Capital Lease Asset and corresponding Lease Liability? It would help if a clarification is provided on the financed sale of the asset by the lessor and how this impacts the lessee under SFFAS 54 paragraph 25.

Page 21 Intragovernmental Lease Section – Adding examples that relate to GSA lease scenarios would clarify the intragovernmental treatment of contracts involving Occupancy Agreements. In these agreements GSA does not own the asset being leased to a Federal entity (a building leased by GSA and then subleased to a Federal entity, GSA being both a lessor and lessee).

Page 25 Question #50 - Adding clarification on which discount rate an entity should use would be helpful.

Page 40 Question #102 - The last sentence proposing the difference in the lease asset and lease liability adjustment be made to the beginning balance of cumulative results of operations, in the statement of changes in net position for the period in which the change is required, appears to be in conflict with the SFFAS 54 paragraph 97a where it indicates that the change should be made in the period of implementation and applicable future periods, and no adjustments should be made to previously reported expense or revenue. Clarification should be provided on the adjustment being made to the beginning balances or in the period of implementation and applicable future periods. Additionally, it appears the second portion of the question still needs to be addressed.

Scope and Definition Section

Question #6 - The document addresses easements but it does not align with the Department of Justice Title Requirements or the Uniform Relocation Act. The guidance should not have differing definitions than Federal law and regulations.

Question #16 - The document refers to in leasing actions but does not clarify how receivables are being captured.

Question #38 - It is not clear as to why the reporting entity receiving funds would recognize them as an expense.

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

Question #56 - It is not clear what is included under operating costs. This example only excludes utilities and janitorial service. The non-lease component is not clear. OMB Circular A-11 allows for removal of maintenance and operating costs but requires scoring of improvements to an extent. Other costs in leases, such as, improvements, above standard maintenance, taxes, insurance, or security are not addressed.

Bonneville Power Administration Concerns Relating to Differences between FASAB and FASB Standards

As previously stated, the definition of control and the significant divergence from FASB reporting are concerning. For dual filers the burden of divergent reporting standards will lead to waste and inefficiencies.

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

DOE does not have any comments for this item.

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. DOE would like to submit the below comments on the scenarios.

- A lease is a lease regardless of whether the payments are at market value, below or above.
- The TR is correct in applying SFFAS to these transactions but, disclosure in the Financial Statements should be "less than full cost" or "not an arm's length" transaction.
- The paragraph indicates the TR does not need to be applied if immaterial. However, the scenarios throughout have many examples that appear too immaterial. Clarifying whether immateriality is guided by funding and/or size would be helpful.

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

Bonneville Power Administration Concerns Relating to Differences between FASAB and FASB Standards

If the Board updates the definition of control to align with FASB, then the paragraph should reflect that the lessee must control the underlying asset during the lease term.

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

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proposed guidance addresses implementation issues under potential scenarios. Please describe any alternative views or suggestions for improvement.

The guidance under this paragraph is not clear. Overall, working with the realty specialist and/or those who perform other leasing actions would help make this a clearer document.

Bonneville Power Administration Concerns Relating to Differences between FASAB and FASB Standards

The PMAs, recognize sales to other governmental entities for FASB purposes.

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.

As mentioned in our comment for QFR 2, paragraph 98 shows no transfer of control to the contractor so there is no lease to be recognized.

If DOE leased an asset (building) to another federal agency, and that entity leased DOE back a portion of the building, these would be transactions existing on the federal books using appropriate Other Party Identification codes and would not be reported by both entities as discussed in the response for non-federal assets. This guidance would not be applicable to existing, or potential, intragovernmental transactions.