

DOJ Response to FASAB Exposure Draft "Lease Implementation Guidance Updates: Amendments to Technical Release (TR) 20" Paragraph 13

The AAPC has proposed a revision to paragraph 91 of TR 20. This paper documents the Department of Justice's (DOJ) analysis and response to Exposure Draft Question for Respondents (QFR) 3 about whether we support the clarifying amendments/technical corrections presented, specifically related to international leases.

Original TR Language (FASAB Handbook, Version 21 (06/22)):

91. Reporting entity "Agency ABC" enters into a lease agreement on behalf of the U.S. government with a lease term of 10 years for the right to use a residential property on international soil. The occupancy assignments and transfers of occupancy assignments amongst various reporting entities within the U.S. government (including reporting entities other than Agency ABC) and their related personnel is managed by a government services officer employed by Agency ABC and an interagency housing board. Occupancy assignment durations are based on tours of duty and oftentimes 2 years or less, but may extend beyond 2 years. Rental payments are made directly to the original lessor by the occupying agencies assigned. How should such a lease be reported by Agency ABC?

The requirements of paragraphs 87-88 of SFFAS 54 would apply, and Agency ABC would account for the original lease (as original lessee) and subleases (as sublessor) as separate transactions. The original lease would meet the definition of a right-to-use lease asset on the books of the original lessee, whereas the sublease would meet the definition of an intragovernmental lease between the original lessee / sublessor and the sublessee. The original lease resides with the Agency ABC under its legislative authorities and, therefore, this is not a legal transfer or assignment of the lease contract to another reporting entity, but a sublease.

Proposed TR Revision (May 30, 2023):

Reporting entity Agency ABC enters into a 10-year lease agreement on behalf of the U.S. government for the right to use a residential property on international soil. The economic benefits and services of the underlying assets are expected to be derived by Agency XYZ. How should such a lease be reported, either by Agency ABC or Agency XYZ?

It depends on whether Agency ABC is acting in the capacity of an agent or a principal.

If Agency ABC is acting in an agent capacity (i.e., similar to a broker), Agency ABC is providing a service to Agency XYZ. In such circumstances, Agency ABC does not provide consideration to the lessor or receive consideration from Agency XYZ. Therefore, Agency ABC would not recognize the lease liability. The lease payments are made to the non-federal lessor directly from Agency XYZ's budgetary resources. Accordingly, if Agency ABC is acting in an agent capacity, Agency XYZ would account for the lease (as lessee) and record the lease liability with the non-federal lessor, along with the corresponding lease asset.

If Agency ABC is acting in a principal capacity, Agency ABC is generally responsible for an original lease with the non-federal lessor and a sublease with Agency XYZ. In such circumstances, Agency ABC would provide consideration to the original lessor and receive consideration from Agency XYZ relating to a sublease agreement. Accordingly, if Agency ABC is acting in a principal capacity,

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Agency ABC would record the lease liability with the non-federal lessor, and account for an intragovernmental sublease with Agency XYZ in accordance with paragraphs 87-88 of SFFAS 54.

DOJ Analysis:

The Department of Justice (DOJ) has several agencies that actively participate in the International Cooperative Administrative Support Services (ICASS) program for Overseas Residential Housing (ORH or aka Overseas Housing Pool) that would be affected by the proposed TR revision. DOJ is considered to be one of the top 5 customers of the ICASS program across the federal government. The FBI, DEA, and Criminal Division are the primary participants in the DOJ. The following table captures DOJ activity based on the primary DOJ participants’ experience with the ICASS ORH program:

Data/Info	FBI	DEA	CRM
Approximate # of leases for foreign housing that your employees occupy in a year	375	FY 2023 occupancy = 570; Total positions 759	95
Average estimated annual cost for overseas residential leases (Note: Posts have different COLA so range of individual lease costs may significantly vary)	Ranges from \$25,000-\$100,000 per person/year; approx. \$9M - \$38M	Approximate 5-yr average budget for GLQ, lease costs only, is \$31M annually; FY 2023 budgeted amount is approx. \$37M.	Approx. \$45,000 - \$160,000 per person/year; approx. \$4M - \$15M
Average # of years an employee occupies a lease	1-3 years depending on the time at post	Most posts are 3-year posts except any with a hardship aspect which are 2-year posts. Employees can extend in 1-year increments after the initial assignment, but those extensions are unpredictable as an employee drives the decision.	1-3 years. Commits funds in one-year increments.

DOJ Does Not Have Adequate Documentation to Meet the Requirements of Revised Paragraph 91

The DOJ does not currently have adequate documentation to analyze overseas residential leases in enough detail to account for them as proposed in the revised paragraph 91.

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Each participating DOJ component signs an annual MOU with each State Department Post that they will need services from in the following fiscal year. This MOU documents agreement to participate in Leasing Services and the ORH and requires DOJ to follow the program regulations outlined in the FAM (15 FAM). See example MOU and relevant FAM regulations governing ORH:



DOJ Lease MOU
Example Doha_Redacted



ICASS MOU Paris
FY24_Redacted.pdf



15 FAM 160.pdf



15 FAM 340.pdf

While the FAM regulations state that Posts will upload lease documentation to the Real Property Application (RPA) system, the system is a State Department system, regardless of which agency is occupying the leased property and paying the rent consideration and DOJ must rely on State Department data to identify leases assigned to DOJ personnel. While the relevant agency has copies of lease documents (examples attached below), the copies are not necessarily the final signed contracts with the landlords (of the three components, three out of four leases sampled were not signed). We must rely on State Department data to identify the leases and relevant lease data necessary to calculate lease liability/assets in accordance with SFFAS 54. Lease costs are quoted in foreign currencies, and foreign currency exchange rates/costs will need to be factored into the calculation of the lease liability/asset for leases in this area.

Following are a few examples of leases that DOJ components currently have. Below the lease documents, we highlight key points that show the vast variety of rent situations that DOJ feels have not been considered in the revised guidance.

Example Lease / Arrangement #1: Mexico

Initial Lease Term – 60 months. Renewal Option period of 60 months. Total potential lease term of 120 months.

Total potential rent – Initial term - \$237,000. Renewal Option period will be based on fair market value calculated 6 months before the expiration of the current lease term. Given the variability in the fair market value assessment, if the option period is considered probable at initial lease measurement, the calculation of the lease asset must use the original lease cost (\$237,000) as the basis for the fair market value of the option period. Any other increase or decrease should be considered a variable rate at this time, and therefore excluded from the calculation of the lease liability/asset. Total potential rent of \$474,000.

Total DOJ occupancy commitment: 12 months. This lease was reassigned after the departure of the assigned DOJ employee.

Example Lease / Arrangement #2 – San-Salvador:

Initial Lease Term – 60 months. 1 renewal option period of 60 months. Total potential lease term of 120 months

Total potential Rent with option period: \$307,200

Total DOJ occupancy commitment: 36 months

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Example Lease / Arrangement #3 - Cartagena:

Initial Lease Term – 51 months. Renewal Option period of 48 months. Total potential lease terms of 99 months.

Total potential rent with option period – \$250,769.76

Total DOJ occupancy commitment: 36 months

Termination clause – 30 days notice for convenience.

Example Lease / Arrangement #4 – Qatar:

Initial Lease Term – 36 months. 2 renewal option periods of 36 months each. Total potential lease term of 108 months

Total potential Rent: Initial term - \$614,766. Renewal Option period will be based on fair market value calculated 6 months before the expiration of the current lease term. Given the variability in the fair market value assessment, if the option period is considered probable at initial lease measurement, the calculation of the lease asset must use the original lease cost (\$614,766) as the basis for the fair market value of the option period. Any other increase or decrease should be considered a variable rate at this time, and therefore excluded from the calculation of the lease liability/asset. Total potential rent of \$1,844,298.

Total DOJ occupancy commitment: 14 months

Funding/Payment documentation in DOJ’s financial management system:

The funding for the annual expenses for the rent and other charges from the MOU subscription of services for each post are obligated based on a Funds cite provided to the State Department post. ICASS processes payments for different ICASS services, and sends VADR files for upload into the DOJ financial management system:

Document	Doc Typ	Doc Num	Title	Status	Amendment Number	Doc Date	System Date Time	Document Fund Amount
○ Itemized Order	JIO	JCRM23000365	FC-Y091065-224746-Qatar-Admin-Residential	Processed		11/02/2022	11/10/2022 20:34:18	\$57,841.94
+ Referenced								
– Referencing								
+ VADR Itemized Payment - No Check	JVP	J230000007867	VADR Payment Document	Processed		12/14/2022	12/14/2022 16:58:24	\$54.66
+ VADR Itemized Payment - No Check	JVP	J230000013069	VADR Payment Document	Processed		02/09/2023	02/09/2023 10:36:28	\$28,148.63
+ VADR Itemized Payment - No Check	JVP	J230000013071	VADR Payment Document	Processed		02/09/2023	02/09/2023 10:36:19	\$612.36
+ VADR Itemized Payment - No Check	JVP	J230000012252	VADR Payment Document	Processed		02/08/2023	02/08/2023 17:19:48	\$54.95
+ VADR Itemized Payment - No Check	JVP	J230000020678	VADR Payment Document	Processed		04/19/2023	04/19/2023 12:57:12	\$54.95
+ VADR Itemized Payment - No Check	JVP	J230000013063	VADR Payment Document	Processed		02/09/2023	02/09/2023 10:36:24	\$54.95
+ VADR Itemized Payment - No Check	JVP	J230000032694	VADR Payment Document	Processed		06/06/2023	06/06/2023 11:45:09	\$219.78
+ VADR Itemized Payment - No Check	JVP	J230000013070	VADR Payment Document	Processed		02/09/2023	02/09/2023 10:36:30	\$4,206.04

Supporting documentation is not provided for each individual charge uploaded from the VADR batch file. Each charge will have a small description, like, “VADR Transaction for 2023, 03, with transaction type of D”. The G/L postings for these charges would need to be updated to reflect the interest method recognition of the lease liability to comply with SFFAS 54 requirements.

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Considering Application of the Proposed Change to Paragraph 91:

Under the original language for TR20, paragraph 91 as shown above, DOJ would report commitments for ICASS ORH assignments as disclosures of intragovernmental lease expenses. The proposed update would assign responsibility for reporting on the ORH lease assignments to the funding/occupying agency (e.g., DOJ).

DOJ has the following concerns with the proposed update:

1. Use of the term “consideration” – The proposed update includes the following language: “If Agency ABC is acting in an agent capacity (i.e., similar to a broker), Agency ABC is providing a service to Agency XYZ. In such circumstances, Agency ABC does not provide consideration to the lessor or receive consideration from Agency XYZ. Therefore, Agency ABC would not recognize the lease liability.” The term consideration in this paragraph is too broad based on the intent of the language, confirmed by the State Department and FASAB after the exposure draft was released for comment, because DOJ does pay State Department “consideration” for participation in the ORH – we pay ICASS share fees for “leasing services” that cover the administrative salary and other costs incurred by State Department to broker leases and manage the ORH, including the administrative costs to review, and assign occupancy of ORH spaces to occupying agencies. We consider the ICASS fee to be an Initial Direct Lease Cost as defined in SFFAS 54 paragraph 14 that is incurred to obtain the leased property, and as such should be included in the calculation of the “Lease asset” value for all ORH lease assignments. DOJ agrees with State Department that the ORH leases do not fit a traditional sublease model as outlined in the second scenario in the proposed update: “If Agency ABC is acting in a principal capacity, Agency ABC is generally responsible for an original lease with the non-federal lessor and a sublease with Agency XYZ.” The MOU agreement that DOJ signs with State Department is not specific to a lease and is a more general agreement to participate in the ICASS ORH service, along with other administrative services, than a specific sublease agreement for a specific property. Given the current proposed language for paragraph 91, neither scenario directly fits the ICASS ORH, and therefore the language should be clarified.
2. Use of the term “Agent” and “Principal”: These terms were not previously used or defined in SFFAS 54 or TR20, and their use in the proposed paragraph 91 could be misinterpreted. Is the distinction between “Agent” and “Principal” primarily based on which agency’s budgetary resources are being used for the lease payments? Can that distinction be explicitly explained in this scenario to avoid confusion with interpretation when considering the actual flow of budgetary resources? Please clarify within the distinction between the “Agent” and “Principal” the expected nature of the payment arrangement. The proposed response currently states: “The lease payments are made to the non-federal lessor directly from Agency XYZ’s budgetary resources.” Entities that utilize Department of State ICASS receive the Voucher Auditor’s Detail Report (VADR) to reconcile and post payments to their financial system. The U.S. Disbursing Officer (USDO) assigned to the Department of State makes direct disbursements from U.S. dollar appropriations of State and other agencies that the USDO is authorized to service as DOJ does not have authority to disburse in foreign currency. Under [4 FAH-2 H-114.1](#), which governs the accountability for disbursements managed by State Department, “The availability of funds for the USDO to make payments chargeable to U.S. dollar appropriations of the Department of State and other agencies is termed “foreign service accountability” (FSA). Funds available in this

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category may be used to pay certified vouchers charged against U.S. dollar appropriations of the Department of State or other agencies which the USDO is authorized to service....(3) The FSA account represents a clearing account for collection and disbursement operations. Each disbursement is charged on the records to a specific appropriation, and each collection is credited to a proper receipt account, thus reducing or increasing the USDO FSA balance." Based on this language, State Department uses a clearing account to pull the payments directly from DOJ funds to pay each Lessor - the DOJ does not make payments directly to each lessor. As such the proposed update to paragraph 91 needs updated/clarified language related to the transfer of budgetary resources from the federal governments to the landlord.

3. Calculation of the lease term / DOJ's responsibility for the lease liability: As noted in the examples provided above, DOJ's commitment to an employee assigned overseas is less than the legal term of the lease signed by State Department to provide housing in the ORH. There is no guarantee that the same housing will be provided to a new DOJ employee when overseas appointments are re-assigned at the end of the initial job assignment. State Department has acknowledged that housing boards at each Post are responsible for allocating housing assignments within the ORH at each post, and that multiple agencies might be responsible for occupying a single lease over the course of the lease term.
 - a. Leases brokered by the ICASS program do not list the funding agency in the legal contracts. The "tenant" in the example agreements provided is the United States of America (e.g. UNITED STATES OF AMERICA, acting by [State Dept POC] of the Embassy of the United States of America at Canberra - Australia or United States of America, acting by [State Dept POC] of the Embassy of the United States of America at Bogota D.T., Colombia)
 - b. Under the FAM regulation 15 FAM 160 attached above, if DOJ must vacate a space early due to changes in employee assignments, DOJ will be responsible for 90 days after the employee vacates the space up to the date the space is re-assigned to another federal employee for occupancy. This limits the funding liability for rent consideration for DOJ.
 - c. DOJ agrees that the consolidated financial statements of the United States of America has a legal obligation for a lease for the entire lease term as noted in the examples above (ranging from 43-120 months). As noted in the background section, employee assignments range from 1-3 years. Depending on the employee assignment length, the lease would be considered a short-term lease by SFFAS 54 for DOJ's commitment to the space. This mismatch in legal contract language vs legal responsibility for funding the rent consideration is not addressed in the proposed paragraph 91 language. State Department has proposed two options for resolving this issue:
 - i. The initial funding agency records the entire lease liability, even though it exceeds the funding commitment that DOJ has signed with State Department and our employee and agrees to transfer the remaining lease liability and lease asset balance to a new funding agency when housing is reassigned.
 - ii. State Department uses an allocation method to prorate costs at each post to different agencies based on their historical assignment of employees to post. This would move from a specific identification of individual lease costs to a generalized historical lease cost to be reported on each individual agency financial statement that participates in the ICASS ORH.

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Has State Department vetted these solutions with FASAB and OMB for compliance with SFFAS 54? Does FASAB support an allocation method rather than a specific lease assignment method? DOJ feels that Option #1 is misleading to readers of the Department's financial statements as it overstates/misstates our specific lease liability at each post since different employees could receive different levels of housing, and therefore we could be over or under reporting individual lease expenses if we report the full lease liability/asset for the "currently" assigned housing, when we are not guaranteed to pay for the full amount reported in our financial statements. Option #2 may present a more accurate picture of DOJ's commitment to the ICASS program, but it blurs the reporting and classification of leases as either short-term or reportable leases. Our commitment to an individual lease / legal participation in the ICASS program is short term in nature (18 months based on MOUs when factoring in the termination clause for services) but our historical costs (aka planned positions at each post) are long-term but cannot be assigned to a specific contracted legal agreement. SFFAS 54 and TR20 do not directly address this type of scenario, and as such DOJ requested additional potential guidance in our response to the Exposure Draft on 6/30/23 that would specifically address the ORH.

4. Materiality thresholds across ICASS participant agencies – the proposed language for paragraph 91 will push reporting of ICASS ORH leases to the funding agency. Each agency will be setting their own materiality thresholds. Individual leases within the housing pool may be considered immaterial, and as a result, expensed as incurred, or assessed as short-term leases and expensed as incurred. Based on individual agency assessments of lease term and materiality, the reporting across different agency financial statements will not be consistent, and the full cost of the ORH will not be reported in consolidation. If the goal of paragraph 91 is to ensure consistent reporting of a subset of foreign leases that are expected to be significant to the Federal Government as a whole, DOJ does not feel that the current proposed guidance will meet this goal given the variance in individual lease cost/term (\$45,000 per year up to \$205,000), and individual agency materiality assessments for individual contracts.
5. Foreign Currency Exchange costs related to Lease liability and lease asset valuation - We will have to factor in foreign currency exchange costs into lease liability/asset valuation as of the measurement date of the lease. TR20 does not currently provide guidance on foreign currency exchange rates, and the remeasure criteria for leases. If/when a foreign lease is remeasured, should the foreign currency exchange rate be updated to the new measurement date if a lease quotes rental costs in a foreign currency rather than US Dollars?

DOJ Recommendations:

DOJ proposes that the ORH leases should be including the transitional accommodation language proposed in the "Transitional Amendment to SFFAS 54" exposure draft to allow for additional time for customer agencies, State Department, OMB, and FASAB to research, and publish a specific guidance document for reporting the ORH leases. We agree that these leases are valid legal liabilities of the United States of America based on the requirements of SFFAS 54 and should be included in the consolidated financial statements of the United States of America, but do not feel that consistent and accurate reporting at individual agency financial statements can be achieved with the guidance provided at this time for FY2024. The legal lease liability for the entire contract does not reside at a specific

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agency-level financial statement, and differing materiality thresholds at different ICASS customer agencies would provide for inconsistent reporting of individual leases within the ORH, and the consolidated reporting would be under-reported as a result. The current guidance also does not directly support a cost allocation method to individual agencies at an aggregate assigned employee level as opposed to a specific lease identification method. If the goal is consistent reporting of the lease liabilities of the federal government, DOJ proposes that shared lease pools like the ORH (or a specific carveout for the ICASS ORH specifically) should be reported on the balance sheet only at the consolidated financial statements of the United States Government, and not at the individual agency level since the legal basis for liability does not rest with a specific agency, and no specific agency has the right to control the underlying asset – only the federal government as a whole, managed by State Department. Individual agencies should be required to disclose their funding commitments for the ORH on the individual agency financial statements.

At a minimum, DOJ requests that paragraph 91 be clarified to apply to non-housing pool leases where the principal and agent scenario can be clearly applied, and that a second question or guidance document that is specific to the shared nature of the ORH be developed.