Public Buildings Service

DATE: April 18, 2023

MEMORANDUM FOR: Regional Commissioners, PBS
Regional Portfolio Directors, PBS
Regional Leasing Directors, PBS

FROM: Chad Gilchrist
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Office of Portfolio Management and Customer Engagement (PT)

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SUBJECT: Asset Management Alert (AMA - 2023 - 3): Non-cancellable Designations for Occupancy Agreements in Leased Space

PURPOSE:

This memorandum serves as interim guidance of the U.S. General Services Administration (GSA), Public Buildings Service (PBS), to apply a consistent, deliberate application of non-cancellable designations to Occupancy Agreements (OA) in leased space under existing pricing policy.

BACKGROUND:

The Federal Buildings Fund (FBF) is financed by, among other things, income from rental charges assessed to Federal agencies occupying federally owned and leased space under the jurisdiction, custody or control of GSA that approximate commercial rates for comparable space and services. The legislative history for the law that created the FBF indicates that Congress believed that GSA could provide the best value to the taxpayer by providing space strategically, aligning customer needs with federal and leased markets, and requiring occupant agencies to be directly accountable for the cost of their space needs.

The current PBS *Pricing Desk Guide*, 5th Edition, effective August 1, 2020 *(*the "*PDG*"*)*, identifies that "[n]on-cancellable space is characterized by the low probability of PBS finding a backfill tenant due to specific qualities of the space …", which includes, among other possible elements, the "[l]ack of any realistic federal need for the space, other than the requesting agency …" as well as "[a]ny other factors that would significantly impair PBS's ability to backfill

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the space." Historically, market conditions led GSA toward longer term lease deals in order to drive lower costs, and high demand and probability of backfill presented low risk exposure for firm lease terms and cancelable occupancy arrangements with tenants.

However, with approximately 50 percent of GSA's leases expiring in the next 5 years, together with anticipated decreases in general office space demand, PBS will need to award leases before the long-term impacts of the recent changes in workplace needs are truly understood. Thus, PBS is issuing this interim guidance to ensure that portfolio and leasing directors work with our customer agencies to assess accurately the need for current and future leased space. To do otherwise might result in the acquisition of excess leased space and cause a financial drain to the FBF, which may impact GSA's ability to provide workspaces and furnishings at best value to the American taxpayer

PROPOSED SOLUTION:

- Align strategic lease terms with customer agency demand so that firm-term leases align with non-cancellable OAs between occupant agencies and GSA.
- Apply current pricing policy consistently and deliberately under the current real estate environment, recognizing the decreased possibility of backfilling vacant space.

As responsible stewards of taxpayer dollars, the purpose of this guidance is to support customers in rightsizing their footprints and avoid the acquisition of unneeded leased space. Consequently, PBS is temporarily realigning its standard practice so that all new occupancies in leased space will generally be non-cancellable.

APPLICABILITY:

1) For a new occupancy in leased space, all OAs regardless of the lease type (*e.g.*, new lease, new replacing lease, new lease construction) will be non-cancellable (see *PDG*, subsection 2.2.1, "New Occupancies"). For lease expansions, the new space will be added to the existing occupant agency's OA and will follow that OA's designation. For expansion space for a new occupant agency, a new non-cancellable OA will be established.

2) Other than lease extensions, for a continuing occupancy in leased space (*i.e.*, renewal options, succeeding leases, superseding leases, or new replacing leases that result in the occupant agency remaining in the same space), all OAs will also be non-cancellable. In these cases, the OA designation will need to be changed to non-cancellable (see *PDG*, subsection 2.2.2., "Continuing Occupancies").

3) All pending lease awards with a draft OA that is cancellable must immediately be reviewed by the region and revised to non-cancellable if it meets the criteria for applicability listed above.

- OA occupant agency signature is required when the Cancellable/Non-cancellable (C/NC) designation changes; however, if the occupant agency signature cannot be obtained, the Regional Portfolio Director may approve proceeding with the leasing action to protect the government's financial interests. In these cases, PBS must demonstrate attempts to secure the occupant agency's signature. PBS must keep documentation of the communication effort in the project file and should continue to seek signature to enact the occupant agency's billing (see *PDG* subsection 2.1.3., "Signature Page").

- Per *PDG* section 5.2., "Non-Cancellable Space," when significant changes occur in a project before the beginning of the OA term, PBS may revisit the cancellable or non-cancellable designation.

4) For leases that have been awarded but not yet occupied by the customer agency, the designation of the OA will not change.

5) Per *PDG* subsection 2.16.2, "PBS Fee Exceptions," for all the above OA non-cancellable assignments, the PBS Fee is reduced to 5%. For U.S. Postal Service-owned buildings, the PBS Fee is 4%.

6) The term of the OA will continue to match the term of the lease. For leases with specific renewal option periods, whether or not PBS evaluated the option before the lease award, the option period is not to be included in the OA term.

7) The customer agency will not be charged rent for space in a non-cancellable OA if the OA expires, the space is released, as permitted under the lease terms and conditions, or there is occupancy by a backfill tenant to the extent that the backfill tenant agency's rent (not including tenant improvements) covers the rent due under the lease.

8) Exceptions to this guidance must be escalated through the Regional Commissioner to the Assistant Commissioner for Portfolio Management and Customer Engagement and the Assistant Commissioner for the Office of Leasing in PBS Central Office for consideration and approval.

<u>EFFECTIVE DATE</u>: This interim guidance is effective as of the date of issuance, unless modified, canceled or reissued. The interim guidance will expire on September 30, 2024.

<u>CANCELLATION</u>: PBS's Cancellable/Non-Cancellable Tool will not need to be used in making OA C/NC determinations.