August 4, 2023

Fiscal Administrative Procedure Manual Transmittal Letter (FAPMTL) No. 489

To: Fiscal Administrative Procedure Manual Holders

From: Matt Damschroder, Director

Subject: Rental Costs and Lease Agreements

The Ohio Department of Job and Family Services (ODJFS) has amended Administrative Code Rule 5101:9-4-11 "Rental Costs and Lease Agreements." This amendment removes obsolete language and corrects a minor typo.

For questions, please contact your ODJFS Fiscal Supervisor or the BCFTA Helpdesk at CFIS_HELP_DESK@jfs.ohio.gov.

Instructions:

Location	**Remove**	**Insert**
Chapter 4	5101:9-4-11 (effective 5/13/2021)	5101:9-4-11 (effective 8/10/2023)

5101:9-4-11 **Rental costs and lease agreements.**

(A) The county family service agency (CFSA) and the Workforce Innovation and Opportunity Act (WIOA) local area shall follow federal, state, and local regulations when seeking federal financial participation (FFP) for the costs associated with the rental or lease of property and/or equipment. The costs must be necessary and reasonable for proper and efficient performance and administration of the award and must be in compliance with 2 C.F.R. part 200 and generally accepted accounting principles (GAAP).

(B) Definitions

(1) "Amortization" means the method for allocating the cost of "right-to-use" of an asset to periods benefitting from asset use over the lesser of the lease term or economic life.

(2) "Depreciation" means the method for allocating the cost of assets/equipment to periods benefitting from asset use.

(3) "Equipment" means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or five thousand dollars.

(4) "Expensing" means the method for allocating costs claimed as a direct or indirect cost and expensed during the accounting period.

(5) "Lease" means a contract that conveys control of the right to use another entity's nonfinancial asset (the underlying asset) as specified in the contract for a period of time in an exchange or exchange-like transaction.

(6) "Lease liability" means principal or lease payment minus interest, maintenance fees, taxes, insurance, and other fees.

(7) "Lease term" means the period during which a lessee has a noncancelable right to use an underlying asset and also includes extension periods regardless of the probability of the extension period being exercised.

(8) "Nonfinancial asset" means the underlying asset in this rule specifically the control of the right to use the underlying assets not limited to capital assets such as buildings, land, vehicles and equipment. However, the definition of nonfinancial assets does exclude the following: financial assets, intangible assets (other than intangible right-to-use assets), assets financed by

conduit debt, biological assets, inventory, supply contracts, service concession arrangements, and licensing contracts for computer software.

(9) "Supplies" mean all tangible personal property other than those described in the definition of equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-federal entity for financial statement purposes or five thousand dollars, regardless of the length of its useful life.

(C) In determining reasonability, the CFSA or WIOA local area shall research rental/lease costs of property and/or equipment to ensure costs are allowable to the extent that the rates are reasonable and consideration is given to each of the following factors:

(1) Available alternatives;

(2) Comparable property, if available;

(3) Area market conditions; and

(4) The type, useful life, condition, and value of the property being leased.

CFSA and WIOA local area shall review rental/lease agreements periodically to determine if circumstances have changed and other options are available.

(D) Specific requirements for special lease/rental contract types

(1) Sale and leaseback contracts.

A sale and leaseback contract is one under which one party sells property to a buyer and the buyer immediately leases the property back to the seller. While it is acknowledged that an increase in rental costs may result from a change in ownership, the allowable claim to federal programs cannot exceed the amount allowable prior to the sale and leaseback arrangement. Rental/lease costs are allowable only up to the amount that would be allowed had the non-federal entity continued to own the property. Examples of the types of costs included in the calculation of allowable costs are provided in paragraphs (F)(1) and (F)(3) to (F)(6) of this rule.

(2) Less-than-arm's-length lease contracts.

For this purpose, a less-than-arm's-length lease is one in which one party to the lease agreement is able to control or substantially influence the actions of the other. Rental/lease costs are allowable only up to the amount that would be allowed if the non-federal entity owned the property. Examples of the types of costs included in the calculation of allowable costs are provided in paragraphs (F)(1) and (F)(3) to (F)(6) of this rule. Such leases include, but are not limited to, those between the following entities:

(a) Divisions of the non-federal entity;

(b) The non-federal entity under common control through common officers, directors, or members, as in a lease between a county agency and a board of county commissioners; and

(c) The non-federal entity and a director, trustee, officer, or key personnel of the non-federal entity or his/her immediate family as defined in 2 C.F.R. 200.465, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

(d) Lease contracts between the entities described in paragraph (D)(2)(b) of this rule do not meet the definition of a lease under governmental accounting standards board (GASB) 87.

(E) All other types of lease contracts and cost reimbursement.

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~~(1) Capital lease agreements as outlined in "Financial Accounting Standards Board Statement 13," will be used to determine a capital lease. Paragraph (E)(1) of this rule is effective until the effective date or early implementation of paragraph (E)(2) of this rule and is non-applicable thereafter.~~

~~The following will be used to determine a capital lease:~~

~~(a) The CFSA or WIOA local area obtains the title to the property/equipment by the end of the lease term; or~~

~~(b) The CFSA or WIOA local area has an option to purchase the property/ equipment at a bargain purchase price at the end of the lease term. A bargain purchase option only exists if the purchase price is significantly below market value; or~~

~~(c) The lease term (including initial term and renewal options) is equal to seventy-five per cent or more of the estimated economic life of the lease property/equipment; or~~

~~(d) The present value at the beginning of the lease term of the minimum lease payment, excluding that portion of the payments representing executory~~

~~costs, equals or exceeds ninety per cent of the fair value of the leased property/equipment. The portion of the payments representing executory costs such as insurance, maintenance, and taxes including profit are excluded from the present value calculation.~~

~~(e) However, if the beginning of the lease term falls within the last twenty-five per cent of the total estimated useful life of the leased property including earlier years of use, the criterion in paragraphs (E)(1)(c) and/or (E)(1)(d) of this rule shall not be used to determine classification of the lease.~~

~~(2)~~(1) "Governmental Accounting Standards Board (GASB) Statement 87" will be used to categorize existing and new leases for local fiscal years beginning after June 15, 2021; however, early implementation is permissible.

(a) Short-term leases - defined in GASB 87 "as a lease that, at the commencement of the lease term, has a maximum possible term under the lease contract of twelve months (or less), including any options to extend, regardless of their probability of being exercised." Cost reimbursement under short-term leases for costs identified in paragraphs (F)(2) to (F)(6) of this rule are claimed via expensing

(b) Contracts that transfer ownership as defined in GASB 87 "as a contract that transfers ownership of the underlying asset to the lessee by the end of the contract and does not contain termination options, but that may contain a fiscal funding or cancellation clause that is not reasonably certain of being exercised."

(i) When an underlying asset is equal to or greater than the lesser of either the local capitalization threshold or the federal/state capitalization threshold of five thousand dollars, cost reimbursement is accounted for as follows: principal costs under contracts that transfer ownership are claimed via depreciation over the useful life of the asset and all other costs identified in paragraphs (F)(3) to (F)(6) of this rule are claimed via expensing.

(ii) When an underlying asset is less than the lesser of either the local capitalization threshold or the federal/state capitalization threshold of five thousand dollars, cost reimbursement for costs identified in paragraphs (F)(2) to (F)(6) of this rule are claimed via expensing.

(c) Leases that do not transfer ownership as defined in GASB 87 "as a lease other than short-term leases and contracts that transfer ownership as defined in paragraphs (E)(2)(a) and (E)(2)(b) of this rule.

(i) Cost reimbursement under leases that do not transfer ownership is accounted for as follows: Lease liability costs are claimed via amortization over the lesser of the lease term or the useful life of the asset; and

(ii) All other costs identified in paragraphs (F)(3) to (F)(6) of this rule are claimed via expensing.

~~(3)~~(2) Rental/lease costs are allowable only up to the amount that would be allowed had the CFSA and WIOA local area purchased the property on the date the lease agreement was executed. Examples of the types of costs included in the calculation of allowable costs are provided in paragraph ~~(E)~~(F) of this rule.

(F) Calculation of allowable rental/lease costs under the special lease/rental types in this paragraph include expenses such as:

(1) Depreciation or amortization as defined in paragraph (B)(1) of this rule applicable for claiming the principal or lease liability under contracts that transfer ownership and leases that do not transfer ownership;

(2) Operating costs - rent; can also include costs as listed in paragraphs (F)(3) to (F)(6) of this rule;

(3) Interest as outlined in 2 C.F.R. 200.449;

(4) Maintenance costs of keeping the property in efficient operating condition. These costs are not allowable if included in the rental agreement or result in an increase in the property's permanent value;

(5) Taxes; and

(6) Insurance.

(G) Unallowable costs

(1) The rental of any property owned by any individuals or entities affiliated with the non-federal entity, including commercial or residential real estate, for purposes such as the home office workspace is unallowable.

(2) Contracts that transfer ownership must exclude amounts paid for profit, management fees, and taxes that would not have been incurred had the non-federal entity purchased the property per 2 C.F.R. 200.465 (d).

Effective:	8/10/2023

CERTIFIED ELECTRONICALLY

Certification

07/27/2023

Date

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