Ohio Administrative Code

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

Effective: April 19, 2021

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

(2) "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.

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

(4) "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.

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

(6) "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.

(7) "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.

(8) "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 leasebackcontracts.

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 paragraph (C)(4) 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 paragraph (D)(4) 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.

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

CFSAs and WIOA local areas are required to review all contracts to determine if the contract meets the definition of a lease under the GASB 87 - Leases and if so, must classify the contract by lease type as outlined in paragraphs (D)(3)(a) to (D)(3)(c) for purposes of cost reimbursement. Determinations and classifications must be documented to support the claim of costs.

(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 12 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 (D)(4)(b) to (D)(4)(f) of this rule are claimed via expensing

(b) Leases that transfer ownership as defined in GASB 87 "as a lease 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 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: liability costs under leases that transfer ownership are claimed via depreciation over the useful life of the asset and all other costs identified in paragraphs (D)(4)(c) to (D)(4)(f) of this rule are claimed via expensing.

(ii) When 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 (D)(4)(b) to (D)(4)(f) 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 leases that transfer ownership as defined in paragraphs (D)(3)(a) and (D)(3)(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 depreciation over the lesser of the lease term or the useful life of the asset; and

(ii) All other costs identified in paragraphs (D)(4)(c) to (D)(4)(f) of this rule are claimed via expensing.

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

(a) Depreciation as defined in rule 5101:9-4-10 of the Administrative Code applicable for claiming the lease liability under leases that transfer ownership and leases that do not transfer ownership;

(b) Operating costs - rent; can also include costs as listed in paragraphs (D)(4)(c) to (D)(4)(e) of this rule;

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

(d) 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;

(e) Taxes; and

(f) Insurance.

(E) 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) Leases 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).