

Lease/Purchase Program Guide



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The Lease/Purchase Program of the Office of the State Treasurer provides convenient, cost-effective financing for State agencies, colleges and universities for real estate projects and equipment purchases.

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Lease/Purchase Program Guide

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I. Overview

The Lease/Purchase Program provides convenient, low-cost financing for State agencies.

Pooling agency financings and standardized legal documents help keep borrowing costs low.

The Office of the State Treasurer manages the administration and regulatory compliance of the program.

The form of financing contracts must be approved by the State Finance Committee.

The State Legislature must approve proposed real estate financing contracts.

The Lease/Purchase Program provides State agencies with an alternative way to finance essential real estate and equipment over a multi-year period. The program is structured to ensure State agencies benefit from economies of scale and the State's low tax-exempt financing rates.

Legal and administrative costs for each agency are minimized through the use of standardized documentation. All necessary tax and legal analysis and opinions are provided by counsel through the Office of the State Treasurer (OST). Once financing documents have been completed and borrowing rates set by the market, each agency receives a detailed schedule of semi-annual payments due on its outstanding leases. Funds are made available to agencies on a reimbursement basis upon receipt of detailed invoices and proof of payment. OST also monitors refunding opportunities.

To ensure compliance with tax and legal requirements, OST periodically requests information to monitor the spend-down of proceeds and the use of the facilities that have been financed.

Authorization

The State is authorized by [Chapter 39.94 RCW](#) to enter into financing contracts for agencies to acquire real and personal property (real estate and equipment). Financing contracts are lease/purchase contracts or capital leases with a term of more than one year, which (1) provide that title to the property secures performance of the State, or (2) transfer title to the property to the State by the end of the term. Financing contracts do not include operating leases.

The form of financing contracts is subject to approval by the State Finance Committee. State Finance Committee approval of the aggregate amount of financing contracts outstanding is also required. General State Finance Committee guidelines for use of the program are shown in [Guidelines for Use of Financing Contracts](#).

State law requires prior legislative approval of real estate financing contracts. Real estate projects and contracts are typically authorized in the Capital Budget. Most equipment financings do not require explicit legislative authorization, although OST policy requires prior legislative approval for financing major acquisitions of certain personal property such as information systems.

The Lease/Purchase Program uses standardized documentation which



Standardized documents allow agency financing contracts to be pooled and sold to investors as Certificates of Participation (COPs).

Agencies pledge their budget appropriations to lease payments.

Funds must be spent on capital expenditures for assets that serve an essential public purpose.

allows the contracts to be consolidated or “pooled” periodically and sold to investors as Certificates of Participation (COPs). COPs offer investors ownership interests or participation in the lease payments made by State agencies. By pooling financing requests in the name of the State of Washington, OST provides individual State agencies access to economies of scale and the lower tax-exempt interest rates available to the State.

When an agency enters into a lease under this program, it pledges its budget appropriation for payment of the lease. This is true regardless of whether it may anticipate making payments from other revenues.

RCW 39.94 prohibits State agencies from negotiating financing leases directly with vendors or other lenders.

Program Parameters

Proceeds of financing contracts must be spent on capital expenditures, in accordance with state accounting guidelines and under federal tax laws applicable to tax-exempt obligations. All costs to be reimbursed through the financing must have been determined by OFM and the agency to be capital expenditures that will be properly chargeable to the capital account of the financed property.

Certain upfront costs such as design, delivery and setup, and some training do qualify for financing. Expenditures for sales and use tax may also be financed. Note that design costs may not be financed before equipment is acquired or construction begins because design, by itself, does not create a tangible asset.

Proceeds of financing contracts cannot be used to pay operating expenses. Maintenance and insurance are operating expenses and cannot be financed.

Proceeds of financing contracts must be spent on assets serving an essential public purpose. Agencies must represent in their financing contracts that the property to be financed is essential for carrying out its functions and responsibilities.

COP financings are for tangible assets that could be relinquished if the Legislature chooses not to appropriate funds for lease payments. Also, COP borrowings are “secured” financings, i.e., investors have rights to the underlying property in certain situations when investors do not receive payment on a timely basis. Agencies must be able to offer a security interest in the asset being acquired and must commit to maintain the property in working order and condition over the life of the borrowing. If a State agency cannot reasonably make these



Financing contracts may not be used to provide funds for grants or loans.

Finance terms must be at least one year and not extend beyond the useful life of the property.

It is always possible to finance for a term that is shorter than the useful life.

The minimum threshold for borrowings is \$10,000.

representations about the property to be financed, the property is not suitable for COP financing.

Financing contracts may not be used to provide funds for grants or loans.

State agencies should acquire equipment in accordance with State law and internal agency procurement policies. Construction projects are subject to public works requirements.

The term of each COP must be greater than one year and no longer than the expected useful life of the asset being financed. Standardized guidance on the useful life of specific assets is available in the OFM State Administrative & Accounting Manual (SAAM), Chapter 30.50, Capital Asset Class and Location Code List and Useful Life Schedules, and online [here](#). For unique or used equipment, the OST staff can provide assistance. OST practice is to limit the maximum maturity to 20 years in order to efficiently pool multiple lease/purchase transactions in each COP.

For administrative efficiency, OST has established a minimum borrowing threshold of \$10,000 for each lease. Consider combining smaller requests for equipment of the same expected useful life or purchasing assets with available funds.

All property financed on a tax-exempt basis is subject to federal tax restrictions regarding private business use.

A real estate project needs to be ready to proceed before it is financed. The financing cannot be executed until the construction contract has been awarded or the acquisition completed. For acquisitions, agencies must first acquire the building or land and obtain title to the property prior to issuing the COP. For new construction, OST requires agencies to have entered into a construction, design-build or general contractor/construction manager (GCCM) contract for the project prior to issuing a COP. Generally, proceeds must be spent within 18 months.



II. Financing Equipment

This section describes four key steps in the lease/purchase financing process for equipment.

1. Submit a Notice of Intent to Lease/Purchase with agency contact information.
2. Purchase, accept and install the equipment. Request a Certificate of Insurance.
3. Submit 3 sets of signed documents (original and two copies) before the COP cut-off date.
 - a. Financing Addendum
 - b. Copy of Notice of Intent
 - c. Personal Property Certificate
 - i. Invoices and Proof of Payment
 - ii. Certificate of Insurance
 - d. Certificate Designating Agency Representatives
4. COP Sale

1. Submit a Notice of Intent

Submit a Notice of Intent as soon as possible *after* selecting the equipment and deciding to finance its acquisition, and *before* taking delivery. To comply with IRS reimbursement requirements, expenditures made more than 60 days prior to the date of the Notice of Intent cannot be reimbursed.

Provide purchasing and accounting contacts on the Notice of Intent. The purchasing contact should be able to provide information regarding equipment details and scheduling, and the accounting contact is important for disbursements and lease payments. Some agencies delegate responsibility for lease/purchase transactions to one individual.

Briefly describe the type of equipment to be financed. For example: energy efficient equipment, vehicles or computers. More specific information is required later in the process.

Estimate the dollar value to be financed. Provide a high estimate as an amendment to the Notice of Intent is required for any revision that increases the amount to be financed. The minimum size for each financing is \$10,000. Consider combining smaller requests for equipment of the same expected useful life.

Request a repayment term in years. Remember that the finance term may not exceed the useful life of the equipment. Agencies may request a shorter term. OST can provide estimates of payment schedules for alternative terms.

Estimate when the equipment will be delivered and installed.

Indicate which account your agency will charge when lease payments are made.

Sign the Notice of Intent. The Notice of Intent must be signed by the agency director or by an authorized representative. Note that submitting a Notice of Intent does not obligate the agency to use the Lease/Purchase Program.



The Notice of Intent will be reviewed for:

- ✓ Completeness
- ✓ Essentiality of equipment
- ✓ Length of finance term vs. useful life
- ✓ Acceptance date compliance with tax laws (60 day test for reimbursement)
- ✓ Signature

OST will assign a transaction identification number and acknowledge acceptance of the financing application to the purchasing contact identified on the Notice of Intent.

If an agency subsequently decides NOT to finance the equipment, please notify the OST Lease/Purchase contact.

2. Purchase Equipment

Select the equipment to be purchased in accordance with agency procurement and approval regulations. For example, financing for computers or telecommunications equipment for amounts in excess of the agency's delegated authority may require approval from the Office of the Chief Information Officer. Similarly, energy conservation projects may require approval by the Energy Program in the Department of Enterprise Services.

Inspect the equipment and install it before submitting final financing documents. The COP pledges a security interest in all financed equipment. Agencies should list themselves as both legal and registered owners on titled assets.

Insure the equipment for both liability and property damage. Check with OFM's Office of Risk Management to determine if the equipment is covered by the self-insurance pool for liability or requires a commercial policy.

The equipment serves as collateral for financing and must be maintained in good working order. If equipment becomes unusable, the equipment must be repaired or replaced with equipment of equal value and useful life. If not, the agency must immediately prepay the lease.

3. Submit Financing Documents

Three sets of financing documents (original and two copies) should be submitted after the equipment has been delivered and installed. OST reviews financing documents to confirm they are complete, signed and accurate. Financing documents include:

a. Agency Financing Addendum

The Agency Financing Addendum is a one page addendum to the State's Master Financing Contract. It specifies the details of the agency's lease, establishes the contractual obligations of the agency and confirms the intent of the agency to make lease payments. The Agency Financing Addendum is



signed by (1) the agency director or a designated representative and (2) the Deputy State Treasurer for Debt Management or a designated representative.

Definitions of the terms used in the Financing Addendum are found in Appendix I to the addendum. Appendix II includes a more extensive description of contractual terms and provisions.

b. Notice of Intent

The agency should include a copy of the previously submitted Notice of Intent.

c. Personal Property Certificate

The Personal Property Certificate describes the equipment, the vendor(s), and the amount to be financed and specifies directions for disbursement of the financing proceeds.

Specific details regarding the property are necessary to describe the property as collateral. It is important to list all equipment related to the disbursement amount being requested. A spreadsheet can be attached if necessary.

Disbursement directions indicate if the funds received on the COP closing date are to be distributed by OST as a reimbursement to the agency or held until a later reimbursement request(s) is submitted.

Attach the following to the Personal Property Certificate:

- i. Copies of Invoices — Copies of all invoices for the equipment listed on the Personal Property Certificate for which the agency is requesting reimbursement.
- ii. Proof of Payment – Proof of payment for each invoice submitted can be in the form of a remittance advice or payment register from an official payment system, an expenditure activity report from Enterprise Reporting, or a cancelled warrant. Each vendor must receive payment before reimbursements are made.
- iii. Certificate of Insurance – If the equipment is covered by the State’s self-insurance pool, submit the written Certificate of Insurance from OFM’s Office of Risk Management demonstrating liability and property damage insurance coverage and stating that insurance will be automatically renewed annually. If the equipment is not covered, you must submit evidence of a separate commercial insurance policy.

d. Certificate Designating Authorized Agency Representatives

This Certificate authorizes certain individuals to execute and deliver Financing Contracts for each agency. It must be signed by the agency director and notarized. Once an original Certificate is on file with OST, photocopies may be submitted for subsequent transactions.



4. COP Sale

Generally twice a year, OST "pools" agency requests for equipment and real estate financings. Interests in this consolidated pool of lease/purchase contracts are sold to investors as Certificates of Participation (COPs). The borrowing rates for each agency are set based on the interest rates resulting from the COP sale.

For each COP sale, OST has established a "cut-off" date by which documents must be received. For example, all financing documents for a spring financing must typically be received by mid-January; for a fall financing, by mid-June. Contact OST program administrators or check the OST website for upcoming cut-off dates.

On the COP sale date, OST executes a competitive market sale which sets the borrowing costs for the financing. On the COP closing date (approximately two weeks following the sale date), proceeds are received and distributed to agencies in accordance with the agencies' disbursement directions. Typically funds are distributed to the agency as a reimbursement.

If the equipment has not been fully delivered or the project not completed, proceeds are temporarily held by OST in the Local Government Investment Pool (LGIP). Subsequent disbursements are made following OST's receipt of a *Request for Release of Proceeds* form certifying that the goods or services have been received, as well as a Personal Property Certificate along with invoice(s) and proof of payment(s). Proceeds must be spent only on the equipment described in the Notice of Intent and in accordance with IRS spend-down rules, typically within 18 months.

Additional Instructions for Energy Efficiency Equipment

As in all equipment financing contracts, the maximum term of energy equipment financing contracts is set by the expected useful life of the equipment as shown in the OFM (SAAM), Chapter 30.50, Capital Asset Class and Location Code List and Useful Life Schedules. The term may also be shortened for market efficiencies as lease/purchase contracts are pooled into COP transactions.

Occasionally, energy equipment acquisitions cannot be fully completed and installed by the cut-off date for each COP sale. In certain cases, the financing nonetheless may be able to proceed if additional documentation is provided by the cut-off date. This includes:

- ✓ A signed energy services contract with a guaranteed final price;
- ✓ A documented project timeline with a definitive completion date;
- ✓ Written proof that at least 30% of the total finance amount will have been spent by the COP closing date;
- ✓ A cover letter indicating the total finance amount, the requested reimbursement amount, and certification that the remaining balance will be spent within 18 months after the closing date; and
- ✓ A detailed list of equipment purchased to date.



Additional Instructions for IT Equipment

It may be challenging to finance IT projects within the State's Lease/Purchase program. As noted above, COP financings are for tangible assets that could be relinquished if the Legislature were to choose not to appropriate funds for lease payments. In addition, agencies must be able to offer a security interest in the asset being acquired as the assets serve as collateral for investors. Finally IT projects often require development over a multi-year period.

Agencies considering lease/purchase financings for IT projects should contact OST early in the planning process and anticipate the following factors:

Legislative Approval: Legislative approval is required for state agency financing contracts used to finance major acquisitions of information systems.

Acquisition of Property: The financing must involve the acquisition of property and the awarded vendor contract must be signed prior to the issuance of the financing.

Capital Expenditures: All components of the project being financed must have been determined by OFM and the agency to be capital expenditures that will be properly chargeable to the capital account of the financed property. The cost of computer software, applicable licenses and hardware, as well as the cost of implementing imbedded software templates and modeling and design of such software may be capitalized. Certain expenditures for technical consulting costs may be capitalized depending on the nature of the work performed by the consultants. Technical consulting costs incurred for installation and modification of software necessary to make the software compatible and operable may be capitalized as part of the underlying cost of purchasing software, particularly if the consultants have contractual responsibility for making the software operational and compatible with the agency's needs. Costs of agency employees involved in the process may be capitalized until the system is operational. Agency employee training costs incurred after the system is operational cannot generally be capitalized.

Security Interest: Agencies are required – without exception - to receive from vendor(s) explicit permission to grant a security interest in information system property. System purchase or license documents must include explicit provisions that permit the state agency to grant the required security interest and permit assignment by the COP trustee to another user notwithstanding any other provisions in the system purchase or license documents to the contrary. OST is willing to provide sample language to address this requirement.

Standard Equipment: Evidence that the product being purchased is an "off the shelf" product with proven industry acceptance is useful in demonstrating the asset has value as collateral for the security. Evidence may include documented references of users with similar products and the functionality of those systems. If the product is not "off the shelf," evidence must be provided showing that the equipment and software are customarily used by like users for similar programs and purposes, and demonstrate a history of successful implementation by other users.

IT projects with Multiple Components: Because of the security and legal structure of COPs, each separately financed component of an IT project must be a discrete capital project, representing completed modules that would be fully functional and valuable even if the additional projects were not completed. Separate legislative authorization is necessary for each financing. In addition, the Legislature should be briefed on the outcome should future portions of the project not receive legislative



authorization or if it is not financed (and therefore not implemented) for any reason. It is critical to inform the Legislature that there is no guarantee the full project will be completed, as problems with budget, timing and completion of projects in earlier phases may mean that future financing cannot proceed. IT projects with multiple components carry more non-appropriation risk (for investors) than usual due to the long rollout and multiple authorizations potentially spanning several biennia. The complete project timeline including the project description of each component along with the desired schedule of COP issuance should be provided to OST prior to any COP issuance.

Average Maturity of COPs: The term of each COP is limited by the expected useful life of the asset being financed. IRS rules also provide certain guidelines that may be used to determine the useful life of the property. For IT systems, the maximum financeable term is typically 7-12 years. The agency must provide supporting documentation demonstrating the useful life of the system.

Contract Review: Service contracts associated with acquisition of software should be made available to OST for review to confirm compliance with regulatory requirements, including any applicable federal tax requirements for tax-exempt financing.



III. Financing Real Estate

This section describes key steps in the lease/purchase financing process for real estate.

1. Legislative Authorization
2. Submit a Notice of Intent and Project Overview Form.
3. Preliminary review of proposed financing with OST and counsel.
4. Submit all agency documents noted on the Checklist before the cut-off date. Other documents will be prepared by OST and sent to the agency. Prior to the COP sale, OST will confirm disbursement instructions and review lease payment procedures with the agency.
5. COP Sale

1. Legislative Authorization

All financing contracts for real estate projects must be authorized by the Legislature, typically in the capital budget or in the transportation budget. Note that authorizations lapse at the end of the biennium. Accordingly, financing contracts must be completed and the financing closed by the last day of the biennium, otherwise reauthorization will be necessary.

Agencies pledge their appropriations to make their lease payments even if they intend to use another revenue stream for payments. Agencies should provide for lease payments in their operating budget.

Authorizations should request authorization for the amount needed for acquisition or construction costs. This figure need not include financing expenses.

2. Submit a Notice of Intent and Project Overview Form

Submit the Notice of Intent and completed Project Overview forms when a project has been authorized and acquisition and/or construction is expected to occur within six months.

Agencies may not be reimbursed with COP proceeds for expenditures made more than 60 days before the Notice of Intent is submitted.

3. Preliminary Review with the Finance Team

Real estate projects and complex acquisition projects often require a minimum of 90 days lead time before a financing can take place. Expect to consult with OST staff and the state's counsel at several points during the financing process.

The finance team (comprised of OST staff, certificate counsel and OST's financial advisor) will discuss the COP financing process in a preliminary review with agency representatives and seek information on several aspects of the project. Agency project leaders should be prepared to provide an overview of the project, including the estimated cost of acquisition and/or construction and timing. Any special budget and financial issues will also be discussed.



Following the meeting, OST staff will provide a summary of the discussion including a list of contacts and a checklist of information and documents required from responsible parties.

The finance team will then develop a schedule for the transaction, working toward a sale and closing date for the COPs. OST must be alerted if the project timeline changes. The financing cannot be executed until a construction contract has been awarded or the acquisition completed and closed. For new construction, OST requires agencies to have entered into a construction contract, design-build or general contractor/construction manager (GCCM) contract with a guaranteed maximum price prior to issuing a COP. For acquisitions, agencies must first acquire the building or land and obtain title to the property prior to issuing the COP. Generally, proceeds must be spent within 18 months.

Any ancillary legal agreements with outside parties related to the project must be reviewed by OST's certificate counsel prior to execution to ensure that requirements of the COP program have been met. This includes documents drafted by the agency's assistant attorney general. Ancillary legal agreements include purchase and sale agreements, construction contracts, property management or other service agreements and any lease agreements between the agency and current or prospective tenants.

Sub-leases or management contracts with private businesses, non-profit organizations or agencies of the federal government may impact the tax status of the borrowing. Agencies should discuss their plans with OST prior to the execution of those sub-leases or management contracts to avoid unintended tax consequences.

Additional legal review is necessary for projects located on land that will not be owned by the State of Washington or a state agency. Lease/purchase financing within the COP program may not be possible unless specific structural and legal criteria are met.

The selection of contractors, construction plans and purchase negotiations are the responsibility of the agency and DES. Construction projects financed through the COP Program must be built as public works projects.

4. Submit All Required Documentation

OST's finance team takes responsibility for completing the financing transaction with the issuance of the COPs in coordination with the agency's acquisition and construction schedule. The agency is responsible for submitting the documentation specified below or other materials requested by the finance team. Some of the documentation will be provided by OST for execution by the agency. The agency is also responsible for informing OST of any material changes in the expected timing of the acquisition and/or construction.

Documentation required for a real estate lease purchase financing includes two primary lease documents which are prepared by OST and its certificate counsel. Other required documentation is shown in the Checklist below.

Financing Lease Addendum

The financing lease addendum is an addendum to the State's Master Financing Lease. It commits the agency to make lease payments to be able to use the specific land or facility being financed. Lease



payments are made to a non-profit corporation appointed by the State Treasurer (currently the Washington Finance Officers Association, or WFOA) which then assigns its rights under the lease to the state's fiscal agent, currently US Bank.

Site Lease

The site lease – an agreement between the agency, OST and WFOA – commits WFOA to lease the land and the facility for a period of time that extends 5 years beyond the financing lease. WFOA prepays its lease commitments with the proceeds received with the issuance of the COP. WFOA assigns its rights to the land and facility to the State's fiscal agent.

The site lease effectively provides a type of back-up to the financing lease. Should the agency fail to make lease payments under the financing lease, the site lease allows the fiscal agent to assume control of the property on behalf of investors. The trustee may determine that it is in the best interests of investors to rent the facility to another entity to repay investors. In all cases, however, the property reverts to the State agency at the end of the term of the site lease. If the agency makes its lease payments on a timely basis, the site lease terminates at the end of the financing term.

5. COP Sale

As noted above in the section on equipment financings, OST periodically consolidates or "pools" several lease/purchase financings and sells interests in the portfolio to investors in the form of COPs. Real estate financings may be pooled with equipment financings. This sale of COP securities sets the borrowing rates for each agency lease/purchase financing.

To efficiently consolidate the financings, OST establishes "cut-off" dates by which all documents must be received. For example, all financing documents for a spring financing must typically be received by mid-January; for a fall financing, by mid-June. Contact OST program administrators or check the OST website for upcoming cut-off dates.

On the COP sale date, OST executes a competitive market sale which sets the borrowing costs for the financing. On the COP closing date (approximately two weeks following the sale date), proceeds are received and distributed to agencies in accordance with the agencies' disbursement directions. Most funds are distributed to the agency as a reimbursement.

If the real estate project has not been completed, proceeds are temporarily held by OST and invested in the Local Government Investment Pool (LGIP). Subsequent disbursements are made following OST's receipt of a *Request for Release of Proceeds* form certifying that the project costs have been incurred, along with invoice(s) and proof of payment(s). Proceeds must be spent only on the project described in the Notice of Intent and in accordance with IRS spend-down rules.



Real Estate Financing Checklist

REQUIRED DOCUMENTS	ACQUISITION	RENOVATION	CONSTRUCTION
Notice of Intent & Project Overview	✓	✓	✓
Legal description of land	✓	✓	✓
Phase 1 environmental report	✓	✓	✓
Phase 2 environmental report, if required	✓	✓	✓
Service contracts or management agreements	✓	✓	✓
State Agency Financing Lease Addendum*	✓	✓	✓
Site Lease*	✓	✓	✓
Acquisition Project			
Title report and title insurance	✓		
Purchase and sale agreement	✓		
Affidavit regarding nationality of seller (FIRTPA)	✓		
Copies of any building warranties or guarantees	✓		
Construction Project			
Construction schedule		✓	✓
Bid documents		✓	✓
Executed Construction Contract		✓	✓
Payment and performance bonds		✓	✓
Site lease if land is leased from third party		✓	✓
If personal property is included in the project:			
Schedule of personal property	✓	✓	✓
UCC search	✓	✓	✓
Equipment leases, if applicable	✓	✓	✓
Use tax affidavit, if applicable	✓	✓	✓
For properties with non-State agency tenants			
Percentage of space occupied by non-State agencies	✓	✓	✓
Copy of proposed leases for non-State agencies	✓	✓	✓
For facilities with continuing tenants:			
Copies of leases	✓	✓	
Assignment of leases to State agency	✓	✓	
Estoppels from tenants	✓	✓	
Security deposits and prepaid rents	✓	✓	

*Indicates document provided by OST to agency for completion/execution.



IV. Disbursement Procedures

Fund Disbursement Procedures

On the COP closing date, the underwriter wires the sale proceeds to OST. As noted above, most of these proceeds are immediately released as reimbursements to agencies. However, there are occasions where an agency has not yet taken possession of equipment, or a project has not been completed. In these cases, the proceeds are deposited and held in the Local Government Investment Pool (LGIP) until the agency has received and paid for the goods or services and seeks reimbursement. Reimbursement requests can be submitted at the will of the agency; however, it is imperative that all proceeds be spent according to IRS spend-down rules.

Following is a more detailed description of the forms that must be submitted for either reimbursement on the COP closing date or for later reimbursement(s):

Request for Release of Proceeds – This form provides the essential information needed in order to begin the reimbursement process. It also provides certification that the goods or services have been received or project costs have been incurred.

Personal Property Certificate (equipment only) – This document serves as the collateral document for OST. It identifies the agency and the designated signer. It also describes the equipment, the vendor(s), the amount to be reimbursed, and directions for disbursement. It is important to list all equipment related to the reimbursement amount being requested. A spreadsheet can be noted and attached if necessary.

Copies of Invoices – Copies of all invoices for which the agency is requesting reimbursement. The invoice amounts must be equal to, or greater than the total requested amount on the request form.

Proof of Payment – Proof of payment(s) for each invoice submitted can be in the form of a remittance advice or payment register from an official payment system, an expenditure activity report from Enterprise Reporting, or a cancelled warrant. It is imperative that each vendor has received payment in advance of your reimbursement submittal.

On occasion, there might be labor charges that are associated with the work being performed on real estate projects and with certain special equipment financings. Because the lease/purchase program is intended to finance capital expenditures - not on-going operating expenses - prior review and approval by OST is necessary. Contact our office for further information on the requirements.



V. Lease Payments

Lease Payments

OST provides payment schedules to the purchasing contact at each agency following the COP sale. Lease payments are due to OST semiannually on June 1 and December 1.

OST will send a payment notice to each agency accounting contact by May 15 and November 15. The notice will provide an itemized list of payments due for all outstanding lease/purchase transactions and a summary of the total due.

Instructions for remitting payment can be found on the payment notices. If you have questions or concerns regarding your agencies' lease payment, contact OST prior to the payment due date.

Prepaying Lease/Purchase Financings

Most COPs are issued for relatively short maturities and cannot typically be restructured to take advantage of lower interest rates over the life of the financing.

Occasionally, agencies need to prepay lease/purchase financings for other reasons. In this case, the agency prepays both principal and interest due over the life of the financing. The funds are used to purchase a portfolio of U.S. Treasury securities to be held in an escrow account.

OST generally discourages prepayments for budgetary reasons. Prepayments will only be arranged for exceptional circumstances. Agencies requesting prepayments must cover all associated costs of the transaction including escrow fees. A minimum of 30-days notice is required to complete a prepayment request. OST cannot schedule prepayments in the month of June.

OST will provide an initial estimate of escrow costs. Once the decision to proceed with prepayment has been made, it is irrevocable. OST will commit to the purchase of the escrow securities and advise the agency of the amount due. Funds must be remitted as scheduled.



VI. Regulatory Post-Issuance Compliance

OST is responsible for monitoring overall compliance with all Internal Revenue Service (IRS) regulations governing tax-exempt finance. Also, each agency is responsible for monitoring its own compliance with these rules with respect to its project. If one lease in a pooled COP financing fails to meet these regulations, the tax exempt status of the entire pooled transaction may be compromised.

Disbursement of COP Proceeds

Disbursement requests will be reviewed in detail to confirm that proceeds are used only for qualified capital expenditures and that requests are supported by invoices and the appropriate proof of payment.

Proceeds must be spent in accordance with IRS spend-down rules, typically within 18 months, with at least 15 percent of the total in 6 months and at least 60 percent in 12 months. Monthly statements from OST will show the minimum spend-down requirements for each lease. OST will contact agencies to monitor the expected spend-down. OST will also confirm that reimbursements are requested for expenditures made no more than 60 days prior to the date of the Notice of Intent.

If spend-down requirements are not met, the agency will be responsible for the cost of any required arbitrage calculations and/or payments to the IRS.

Private Activity

COPs are almost exclusively issued as tax-exempt securities, which means their interest is excluded from gross income for the investor. If it is determined that a security no longer qualifies for tax-exemption, the interest becomes taxable for the COP investor, negatively impacting the value of the COPs.

COPs may be treated as "private activity" bonds and lose their tax-exempt status if they meet the IRS "private business use test" AND the "private payment test".

Private Business Use Test – Private business use is established if a certain percentage – usually above 10 percent - of the proceeds of the COP issue is used for a private company, a non-profit corporation by or any agency of the federal government. Private business use does not include "general public use" such as private drivers on State highways. To avoid unintended tax consequences, agencies considering rental agreements or management contracts with private entities should discuss their plans with OST prior to the execution of contracts.

Private Payment Test – This test is met if debt service on more than 10 percent of the COP issue is secured by (or could be sourced from) private payments or security. This may be a concern if COP-financed facilities are rented to a private company, a non-profit corporation or a federal government agency. The rent-free use of a State facility by one of these entities would not meet the test.

The obligation to monitor private activity continues for the life of the financing, i.e. until the COP has been fully repaid. COPs that may have originally qualified as tax-exempt can become taxable if there is a "change in use" of the financed facility or equipment which includes private use and private payments. For example, if an agency finances the construction of a building with a COP and then later sells the building before the COP has been paid off, the COP may meet both the private business use test and the private payment test. Remedial actions to correct a change in use are sometimes available, but these options are not guaranteed. It is critical that the agencies notify OST as private business use arrangements such as new rental agreements, management contracts or property sales are being considered.