

1. Title

Processing of Space Lease Agreements

2. Policy

- Sec. 1 Purpose. This policy provides requirements and guidelines for the leasing of space by The University of Texas System as the tenant. Lease contracts for space shall be entered into in accordance with applicable law and as provided in this policy.
- Sec. 2 Leasing Authority Generally. U. T. System institutions may directly enter into lease contracts for space in accordance with the terms of this policy. Alternatively, a U. T. System institution may choose to have the Texas Facilities Commission (TFC) handle the leasing of space for the institution pursuant to *Texas Government Code* Section 2167.002, which grants TFC the authority to lease space for a U. T. System institution if (i) State-owned space is not otherwise available to the institution; and (ii) the institution has verified it has money available to pay for the lease.
- Sec. 3 New Programs or Program Changes. Any new program or change to currently approved program formats that requires new or additional leased space must be approved through the Office of Academic Affairs or Office of Health Affairs, as appropriate, prior to initiation of the leasing process.
- Sec. 4 Compliance with Fire and Life Safety Reviews Policy. A U. T. System institution leasing space, either directly or with the assistance of the TFC, must comply with the requirements of the U. T. System Fire and Life Safety Reviews policy, UTS135.
- Sec. 5 Approval of Requests for Proposals. Any Request for Proposals (RFP) to provide space in a facility to be constructed to satisfy the requirements of the RFP must be approved in advance by the appropriate Executive Vice Chancellor who, in consultation with the Office of the Board of Regents, will determine if Board of Regents' approval will be required prior to issuance of the RFP.
- Sec. 6 Leasing by U. T. System Institutions.
- 6.1 Methods and General Terms.
- (a) Space may be leased from a private source through:
- (i) competitive bidding,

- (ii) competitive sealed proposals, or
- (iii) direct negotiation, but the U. T. System institution must use the method providing the best value for the State.

It is strongly encouraged that an institution avail itself of the resources in the U. T. System Real Estate Office to identify available space, negotiate lease terms, and determine best value.

- (b) The lease must provide for an initial term of a specified duration and may include options to renew for as many terms (each term must be of specified duration) as the U. T. System institution considers to be in its best interest. Consideration should also be given to negotiating an early termination right on the part of the U. T. System institution.
- (c) Especially if there is a specific source of funds for the lease, the lease contract should be made contingent on the availability of funds to pay for the lease.
- (d) For each lease, the U. T. System institution must comply with the architectural barriers law, *Texas Government Code*, Chapter 469, dealing with elimination of barriers to persons with disabilities.
- (e) A U. T. System institution, assisted by the U. T. System Real Estate Office, may contract with one or more private brokers or real estate agents to assist with obtaining lease space for the institution.

6.2 Lease Payments. U. T. System institutions may pay for the costs of leases with funds appropriated from the General Revenue Fund or from other funds.

Sec. 7 Leasing by the Texas Facilities Commission.

7.1 New Leases and No-Renewal-Option Leases. If a U. T. System institution wishes to use the TFC to (1) lease space not previously leased by the institution, or (2) renew an existing TFC-handled lease having no option-to-renew clause, the institution should follow the following procedures:

- (a) the president or chief business officer should submit the necessary requisition to the TFC, in accordance with the lead time requirements specified by the TFC, and use the forms available on the TFC's web page for Building and Space Leasing:
<http://www.tfc.state.tx.us/divisions/facilities/prog/leasing/>;
and
- (b) the TFC will identify the available space that provides best value for the State and best satisfies the U. T. System institution's requirements and will submit the information about that proposed space to the U. T. System institution for approval. If the U. T. System institution approves, the TFC will prepare lease documents and will also secure the necessary signatures, execute the lease, and transmit it to the U. T. System institution.

7.2 Leases with Option to Renew. If a U. T. System institution wishes to renew a TFC-handled lease that includes an option for renewal, the institution should follow the following procedures:

- (a) the U. T. System institution and the landlord shall advise the TFC by letter that a renewal of the lease term is desired; and
- (b) the TFC will notify the U. T. System institution of approval of the lease renewal by letter.

Sec. 8 Texas Commission of Licensing and Regulation Inspection Requirements Applicable to Leasing by U. T. System Institutions.

8.1 Site Inspection Requirement. If a U. T. System institution plans to lease space having an annual lease expense in excess of \$12,000, then the Texas Department of Licensing and Regulation (TDLR), an entity with which the Texas Commission of Licensing and Regulation (TCLR) contracts, or a person holding a certificate of registration issued by TCLR must perform an on-site inspection of the proposed space before it is occupied by the institution to ensure compliance with TCLR accessibility standards adopted under *Texas Government Code*, Chapter 469 (*Texas Government Code* Sections 469.105 and 469.106).

Note: Even if inspection of the proposed space is not required under this \$12,000 annual lease expense test, the TCLR accessibility standards still apply to the lease space and to the U. T. System institution.

- 8.2 Inspection Documentation. The leasing U. T. System institution will need to assemble for the inspection the following documentation for each space lease and must request an inspection before the institution occupies the leased premises:
- (a) a copy of the lease (including the landlord's address);
 - (b) a copy of the lease specifications if the lease is a TFC-handled lease;
 - (c) the name and telephone number of a contact person on the lease site;
 - (d) a copy of any amendments concerning a delay in occupancy and/or resulting in a change of the effective date; and
 - (e) a copy of the floor plan showing the leasehold premises.
- 8.3 Correction of Noncomplying Conditions of Leased Premises. *Texas Government Code*, Chapter 469, requires that if the inspection identifies conditions on the leased premises that do not conform to the required accessibility standards and the landlord fails to bring the premises into compliance within 60 days after notice (or a longer period authorized by TCLR), then the U. T. System institution must cancel the lease. The Standard U. T. System Space Lease contains provisions requiring the inspection and authorizing U. T. System to cancel the lease if noncomplying conditions are not timely corrected.
- 8.4 TDLR Registration Requirements.
- (a) The leasing U. T. System institution must register each lease having an annual lease expense in excess of \$12,000 with TDLR by submitting a completed "State Lease Registration" form to TDLR. This requirement applies to both initial lease agreements and lease renewals. (*Texas Administrative Code*, Title 16, Section 68.101(a)).

- (b) If a lease has an estimated construction cost of \$50,000 or more, the U. T. System leasing institution must ensure that the design professional with overall responsibility for the design of the building or facility (or the owner of the subject building or facility if there is no design professional with overall responsibility) timely submits a completed "Architectural Barriers Project Registration" form or an "Architectural Barriers Project Registration Confirmation Page," along with related construction documents for the project to TDLR (*Texas Administrative Code*, Title 16, Sections 68.50 and 68.101(a)).
- (c) The forms mentioned under this Section 8.4 are available on TDLR's web page for Architectural Barriers Forms: <http://www.license.state.tx.us/AB/abforms.htm>.
- (d) With respect to TFC-handled leases, the leasing U. T. institution should coordinate with the TFC to ensure TDLR's registration requirements are satisfied.

Sec. 9 Approval by the U. T. System Real Estate Office.

- 9.1 Approval of Standard and Nonstandard Leases. Leases by U. T. System institutions entered into using the Standard U. T. System Space Lease Agreement form, without modifying the substance of that form, do not require U. T. System Real Estate Office review prior to execution unless the lease requires Board of Regents' approval.
- 9.2 Approval by U. T. System Real Estate Office. Leases that (1) deviate in any way from the Standard U. T. System Space Lease Agreement form, (2) contain an option to purchase, a right of first refusal to purchase, or other right or option to purchase the improvements or the land on which the improvements are located, or (3) require Board of Regents' approval must be reviewed and approved by the U. T. System Real Estate Office prior to execution. If the proposed lease requires Board of Regents' approval or if the proposed lease is referred to the U. T. System Real Estate Office by the Office of Health Affairs or the Office of Academic Affairs, then the U. T. System Real Estate Office will provide assistance with and supervision of the lease.

Note: U. T. System institutions are strongly encouraged to involve the U. T. System Real Estate Office in the early

negotiations of space leases. The U. T. System Real Estate Office will consult with the institution, at the institution's request, on any space lease. Leases can be complex and difficult to negotiate. The U. T. System Real Estate Office has staff with expertise in negotiating leases and can provide lease checklists to use as planning tools before beginning negotiations.

Leases handled by the TFC will be in the form approved by the TFC and do not require U. T. System Real Estate Office approval, unless the lease requires Board of Regents' approval.

- 9.3 Approval of Lease Renewals. Renewals by U. T. System institutions of standard or nonstandard leases that (1) do not modify in any way the form of the original lease, (2) do not require Board of Regents' approval, and (3) are documented by using the [Standard U. T. System Amendment and Extension form](#), without modifying the substance of that form, do not require the approval of the U. T. System Real Estate Office.

Renewals that (1) modify the form of the original lease, (2) require Board of Regents' approval, or (3) are documented by an instrument other than the Standard U. T. System Amendment and Extension form require the prior approval of the U. T. System Real Estate Office.

Renewals of TFC-handled leases should be in accordance with Section 7.2 above and do not require U. T. System Real Estate Office approval, unless the renewal requires Board of Regents' approval.

- 9.4 Approval of Lease Amendments. If the lease amendment is not being handled by TFC, lease amendments by U. T. System institutions require the prior approval of the U. T. System Real Estate Office. U. T. System institutions requesting amendments to any lease must submit to the U. T. System Real Estate Office a copy of the original lease and any previous amendments.

The U. T. System institution should contact the TFC if it desires amendments to a TFC-handled lease. Amendments to TFC-handled leases do not require U. T. System Real Estate Office approval, unless the amendment requires Board of Regents' approval.

Sec. 10 Approval by the Board of Regents.

- 10.1 Leases Exceeding Institution's Authority Level. Regental approval is required for all leases, lease renewals, and lease amendments with a total cost exceeding the U. T. System Institution's Authority Level. This requirement applies to lease documents entered into directly by the institution and to lease documents entered into by the TFC on behalf of the institution.
- 10.2 Consent Agenda or Agenda Item Approval Determination. The appropriate Executive Vice Chancellor, in consultation with the Office of the Board of Regents, will determine whether the lease will be submitted to the Board of Regents for approval via the institutional consent agenda or as an agenda item.
- 10.3 Limitation Statement. If a lease document must be signed before Regental approval is granted, the document must contain an acceptable limitation such as the following statement:

"This [Lease] is not effective until approved by the Board of Regents of The University of Texas System."

Sec. 11 Execution of Lease Documents.

- 11.1 Delegation of Authority. The president of each institution is authorized in the Board of Regents' *Rules and Regulations*, Rules 10501 and 70301, to sign space leases, renewals, and amendments on behalf of the institution. The president may delegate in writing the authority to execute lease documents.
- 11.2 U. T. System Real Estate Office Approval. If approval by the U. T. System Real Estate Office is required (see Section 9 above), the president may not sign the lease document until the U. T. System Real Estate Office has notified the institution that the office has approved the lease document.
- 11.3 Board of Regents' Approval. If a lease, lease renewal, or amended lease has a total cost exceeding the U. T. System's Institution's Authority Level, the U. T. System institution should obtain the approval of the Board of Regents via the institutional consent agenda before the lease document is executed. If a lease document must be signed before Regental approval is granted, the document must contain an acceptable limitation such as the following statement:

“This [Lease] is not effective until approved by the Board of Regents of The University of Texas System.”

Sec. 12 Leases for Federal Projects. All space to be leased for federal projects and for which payment will be made from federal funds should meet the federal requirements for individuals with physical disabilities, in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12101 - 12213), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), as they may be amended from time to time.

3. Definitions

U. T. System Institution’s Authority Level - the dollar amount over which a U. T. System institution must obtain Board of Regents’ approval before executing the lease, as determined pursuant to Board of Regents’ *Rules and Regulations*, Rule 10501.

4. Relevant Federal and State Statutes

[Texas Education Code Section 55.11, Financing Permanent Improvements, General Authority](#)

[Texas Government Code Chapter 2167, Lease of Space for State Agencies](#)

[Texas Administrative Code, Title 1, Chapter 115, Facilities Leasing Program](#)

[Texas Government Code Chapter 469, Elimination of Architectural Barriers](#)

[Texas Administrative Code, Title 16, Chapter 68, Elimination of Architectural Barriers](#)

[Americans with Disabilities Act of 1990, as amended](#)

[Rehabilitation Act of 1993, Section 504, as amended](#)

5. Relevant System Policies, Procedures, and Forms

[UTS135, Fire and Life Safety Reviews](#)

[Board of Regents' Rules and Regulations, Rule 70301, Matters Relating to Real Property](#)

[Board of Regents' Rules and Regulations, Rule 10501, Delegation to Act on Behalf of the Board](#)

[Standard U. T. System Space Lease Agreement](#)

[Standard U. T. System Amendment and Extension Form](#)

6. System Administration Office(s) Responsible for Policy

U. T. System Office of General Counsel - Real Estate Office

7. Dates Approved or Amended

December 31, 2002
September 24, 2009
September 27, 2011

8. Contact Information

Questions or comments about this policy should be directed to:

- bor@utsystem.edu