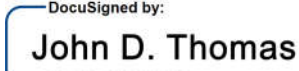




GSA Public Buildings Service

June 30, 2021

MEMORANDUM FOR: REGIONAL COMMISSIONERS, PBS
REGIONAL LEASING DIRECTORS
REGIONAL LEASE ACQUISITION OFFICERS

FROM: JOHN D. THOMAS 
ACTING ASSISTANT COMMISSIONER FOR OFFICE OF
LEASING – PR

SUBJECT: LEASING ALERT (LA-21-07) Implementing Certain
Provisions of the Secure Federal LEASEs Act, Pub. L. 116-
276

1. **Purpose.** This Leasing Alert issues specific leasing guidance to implement certain parts of the Secure Federal Leases from Espionage And Suspicious Entanglements Act, (Pub. L. 116-276, 134 Stat. 3362), otherwise referred to as the Secure Federal LEASEs Act, or Act. Note that this Leasing Alert guidance reflects an interim rule under GSAR Case 2021-G527 which is expected to be published on or about July 1, 2021, but will be effective June 30, 2021. Since this is an interim rule, this guidance is subject to change, once the GSAR rule is final.
2. **Background.**
 - a. On January 30, 2017, the Government Accountability Office (GAO) issued Report Number GAO-17-195 entitled, "FEDERAL REAL PROPERTY - GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners." This report examined GSA's leasing of high-security space from foreign owners and identified risks posed by this ownership. Based on its finding, GAO recommended that GSA determine whether the beneficial owner of high-security leased space is a foreign entity and, if so, share that information with the tenant agency. In response to this GAO report, the Office of Leasing issued Leasing Alert LA-FY17-06 on March 27, 2017, requiring Lease Contracting Officers (LCOs) to determine whether the ownership of leased space is identified as a foreign-owned entity and to notify the client agency in such instances,

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www.gsa.gov

so that the agency can take any needed security mitigation measures. The Leasing Alert outlined the procedures to make this determination which involved a review of the entity's SAM registration; the Leasing Alert also required this review for all lease procurements and novations, regardless of the Facility Security Level (FSL).

- b. Effective October 2018, GSA added a "Foreign Ownership and Financing Representation," to be included with all Request for Lease Proposals (RLP) packages issued for prospectus-level lease projects. This "paper" representation required the offeror to confirm both foreign ownership and foreign financing, in response to prospectus authorizing language from House and Senate subcommittees.
- c. These efforts did not satisfy Congressional concerns with respect to national security risks in high-security leased space; as a result, Congress enacted the Secure Federal LEASEs Act in December 2020 to further address the issues that were identified in the GAO report.
 - i. Sections 3 and 5 of the Act require that, before the Government may enter into a lease agreement or novation with an entity for high-security leased space (defined as FSL III, IV or V), offerors must disclose whether the immediate or highest-level owner of the leased space, including an entity involved in the financing thereof, is a foreign person or entity, including the country associated with the ownership entity. Section 3 also requires annual updates to this disclosure. Section 5 of the Act also requires that leases for high-security space include language limiting access to the high-security leased space by the lessor, including representatives of the lessor's property management company responsible for operation and maintenance of the leased space. Per Section 7 of this Act, these requirements must be implemented by June 30, 2021.
 - ii. Section 4 of the Act, which adds the requirement for identification of beneficial owners of high-security leased spaces, must be fully implemented by December 31, 2022. This section of the statute is not covered by the attached GSAR case or this leasing alert; additional implementing instructions for Section 4 will be addressed in subsequent rulemaking.

- d. GSAR Case 2021-G527 implementing Sections 3 and 5 of the Act is scheduled to be published in the Federal Register as an interim rule on or about July 1, 2021, with an effective date of June 30, 2021. This rule, which revises certain parts of GSAR, including part 570, establishes a new GSAR representation (Attachment 1) and a new GSAR clause (Attachment 2) required for all lease procurements and novations for high-security leased spaces, defined under the statute as FSL III, IV and V. As outlined under the GSAR Case, these clauses apply to new, new/replacing, succeeding, superseding, renewal options, extensions and novations for high-security leased space.
 - i. The new GSAR representation, GSAR 552.270-33, Foreign Ownership and Financing Representation for High-Security Leased Space (Attachment 1), requires offerors for high-security leased space to identify whether the immediate owner, highest-level owner, and any entity involved in the financing of the lease is foreign-owned¹. In the event the offeror is awarded the lease, this clause also requires the successful offeror (now lessor) to re-represent this on an annual basis. This representation is also required for extensions, renewals, and novations.
 - ii. The new GSAR clause GSAR 552.270-34 Access Limitations for High-Security Leased Space (Attachment 2) imposes access restrictions for lessors and their property management companies of high-security leased space. This clause is required for new, new/replacing, succeeding, superseding, extension, renewal, and novation lease actions for high-security leased space.
3. **Effective Date.** This Leasing Alert is effective as of June 30, 2021, unless modified, canceled, or reissued.
4. **Applicability.** This Leasing Alert and its attachments are mandatory for new, new/replacing, succeeding, superseding, extension, renewal, and novation lease actions and apply to GSA real property leasing activities and activities delegated by GSA to other Federal agencies.
5. **Cancellation.**

¹ Definitions that are applicable to this Leasing Alert, instructions, and statute can be found in GSAR 552.270-33 (Attachment 1)

- a. Leasing Alert LA-FY17-06, Implementing GAO's Recommendation Regarding Foreign Ownership of High-Security Leased Space.
- b. Foreign Ownership and Financing Representation REV 10/18

6. Instructions and Procedures. Additional guidance concerning the implementation of GSAR Case 2021-G527 is as follows:

- a. For RLP packages issued on or after June 30, 2021:
 - i. LCOs must include GSAR representation 552.270-33, Foreign Ownership and Financing Representation for High-Security Leased Space (Attachment 1) when seeking high-security leased space (FSL III, IV, or V).
 - ii. Until incorporated into the national FSL III and IV templates, LCOs must also include the GSAR access limitation clause 552.270-34, Access Limitations for High-Security Leased Space (Attachment 2), when seeking high-security leased space (FSL III, IV, or V). Note that inclusion of 552.270-34 as a separate clause is not necessary if issuing an RLP that contains updated (2021) FSL III and IV security countermeasure templates containing the clause. These updated FSL templates will be issued later this fiscal year under a separate leasing alert.
 - iii. At the time of their initial offer, offerors must complete the GSAR representation 552.270-33 requiring foreign ownership disclosure for the immediate owner, highest-level owner, and financing entity.
 - iv. LCOs must confirm whether the apparent successful offeror's submittal represents foreign ownership with respect to any of the three parties (immediate owner, high-level owner, or financing entity). If there is a foreign ownership disclosure, the LCO or his/her designee shall inform the appropriate client agency point of contact, in writing, prior to lease award, of the foreign ownership/financing and coordinate with the agency regarding security concerns and any necessary mitigation measures. This agency notification should identify only the country associated with the ownership/financing entity. Do not identify the entity name, as this is considered procurement sensitive information at this time in the procurement process. Note that this agency notification is for the purposes of advising the agency, so that they can implement internal security mitigation measures. The presence of a foreign ownership/financing, in and of itself, cannot be used as grounds for eliminating an offeror from consideration. An agency may not

“reject” a property solely because of foreign ownership, as there is no basis to do so under current law, regulation, or policy.

Documentation related to this notification must be included in the lease project file.

- v. LCOs must include the completed GSAR representation 552.270-33 and the GSAR clause 552.270-34 in the awarded lease contract.
- vi. GSAR 552.270-33 annual representation requirements:
 - 1. The lessor must submit the GSAR representation 552.270-33 on an annual basis, starting one year after the effective date of the lease.
 - 2. As part of the Lease Contract Administration (LCA) annual lease file review process, the LCA zones will send out follow-up notifications to those lessors who are required to submit this annual representation, using the template found under Attachment 3.
 - a. LCA zones shall review the representation and compare it against the prior representation to confirm whether there is a change with respect to foreign ownership or foreign financing. In the event there is change to foreign ownership/financing, the LCA zones shall reach out to the regional LCO or Leasing Specialist, who will be responsible for tenant agency notification.
 - 3. In cases where the lessor fails to submit the required representation, LCA zones should refer the matter to the LCO for further lease enforcement action.
- vii. GSAR 552.270-34 compliance:
 - 1. GSAR clause 552.270-34(c) states that “Written procedures governing access to the Space in the event of emergencies shall be documented as part of the Government’s Occupant Emergency Plan, to be signed by both the Government and the Lessor.”
 - 2. Note that Lease paragraph 6.27, OCCUPANT EMERGENCY PLANS, also requires the lessor to “cooperate, participate and comply with the development and implementation of the Government’s Occupant Emergency Plan (OEP)...”
 - 3. While the GSA Lease Administration Manager (LAM) is responsible for confirming that the OEP is established and maintained in each facility as part of his/her annual inspection, it is ultimately the tenant agency’s Designated

Official who is responsible for developing the OEP in coordination with the lessor.

- b. For high-security lease projects where GSA has issued the RLP package but has not issued a request for Final Proposal Revisions (FPR) as of June 30, 2021, the LCO must issue an RLP amendment transmitting GSAR representation clause 552.270-33 (Attachment 1) and GSAR access limitation clause 552.270-34 (Attachment 2). All offerors must acknowledge receipt of the RLP amendment, by signing it and returning it, along with both attachments. Offerors must complete and sign the GSAR representation 552.270-33. LCOs should follow the procedures described under 6.a above regarding review, agency notification, inclusion in the lease contract, and annual representation requirements.
- c. For high-security lease projects where GSA has issued the RLP package, but Final Proposal Revisions (FPR) were due prior to June 30, 2021, the LCO is not required to amend the RLP package and reopen negotiations. However, the LCO must transmit to the apparent successful offer the GSAR representation clause 552.270-33, and the GSAR access limitation clause 552.270-34.
 - i. The apparent successful offeror must complete and sign GSAR representation 552.270-33, and acknowledge receipt of GSAR access limitation clause 552.270-34. LCOs should follow the procedures described under 6.a above regarding review, agency notification, inclusion in the lease contract, and annual representation requirements.
- d. For offers received through the Automated Advanced Acquisition Program (AAP) procurements, LCOs must implement the above procedures, as applicable, as part of the due diligence phase, until the GSAR representation 552.270-33 and GSAR clause 552.270-34 can be incorporated into the AAP RLP package.
- e. Foreign Ownership Review as Part of Change of Ownership/Novation:
 - i. Note that templates in support of the novation process are being updated separately to reflect this guidance and will be posted on the Office of Leasing Google site.
 - ii. The steps outlined above must also be followed as part of the change of ownership/novation process for leased locations with a designated FSL III, IV or V.
 - iii. Notify the appropriate client agency POC, in writing, of the foreign ownership/foreign financing, identifying only the country associated with the ownership entity, so that they can implement internal security mitigation measures.

1. The presence of a foreign ownership, in and of itself, cannot be used as grounds for refusing to process a Novation.
- iv. This notification and consultation must occur before finalizing the Novation.
- f. **This Leasing Alert cancels the requirement as previously outlined under Leasing Alert LA-FY17-06 to check for foreign ownership through the System for Award Management (SAM) for all lease procurements and novations. LCOs should instead follow the processes and thresholds outlined under this Leasing Alert.**

Attachments:

- **Attachment 1**, GSAR Representation 552.270-33, Foreign Ownership and Financing Representation for High-Security Leased Space
- **Attachment 2**, GSAR Clause 552.270-34, Access Limitations for High-Security Leased Space
- **Attachment 3**, Lessor Reminder Letter – Annual Foreign Ownership/Foreign Financing Representation
- **Attachment 4**, Secure Federal LEASEs Act Clause Chart

COVER PAGE FOR ATTACHMENTS 1 THROUGH 4

Per Leasing Alert LA-21-07 and as prescribed in 570.703(c), use the representation clause 552.270-33, Foreign Ownership and Financing Representation for High-Security Leased Space, in solicitations, extensions, renewals and novations for leased space that has a facility security level (FSL) of III, IV, or V.

Include the completed representation in the awarded lease contract or lease amendment.

If a foreign ownership disclosure is made, the LCO shall notify the Federal tenant for the leased space in writing prior to award of the lease, executing the extension, exercising the renewal option, or completion of the novation; and shall coordinate with the Federal tenant regarding security concerns and any necessary mitigation measures.

Offerors' Initial Representation: Complete the representation below, sign and return to the LCO or his/her designee. NOTE: The "Offeror," as used on this form, is the owner of the property offered, not an individual or agent representing the owner.

Lessors' Representation: Complete the annual representation below, sign and return to the ALCO or his/her designee via GSA's Real Estate Tax portal at ret.gsa.gov, or subsequent portal.

Novation Transferees' Representation: Complete the representation below, sign and return to the ALCO or his/her designee along with other required novation documentation.

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552.270-33 Foreign Ownership and Financing Representation for High-Security Leased Space.

FOREIGN OWNERSHIP AND FINANCING REPRESENTATION FOR HIGH-SECURITY LEASED SPACE (JUN 2021)

(a) *Definitions.* As used in this clause—

Financing means the process of raising or providing funds through debt or equity for purposes of meeting the requirements of the Lease, including, but not limited to, acquisition, maintenance, and construction of, or improvements to, the Property.

Foreign entity means a:

- (i) Corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group that is headquartered or organized under the laws of a country that is not the United States or a state, local government, tribe, or territory within the United States; or
- (ii) Government or governmental instrumentality that is not the United States Government.

LESSOR: _____ GOVERNMENT: _____

Foreign person means an individual who is not:

- (i) A United States citizen; or
- (ii) An alien lawfully admitted for permanent residence in the United States.

Highest-level owner means the entity that owns or controls an immediate owner of the offeror or Lessor, or that owns or controls one or more entities that control an immediate owner of the offeror or Lessor. No entity owns or exercises control of the highest-level owner.

Immediate owner means an entity, other than the offeror or Lessor, that has direct control of the offeror or Lessor. Indicators of control include, but are not limited to, one or more of the following: ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

Unique entity identifier means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b) *Timing.* The Offeror or Lessor shall complete this representation when submitting a proposal. If the Offeror is the successful awardee, the Offeror (now Lessor) shall review, update, and provide this representation on an annual basis, reflecting all changes to immediate owner, highest-level owner and financing during the preceding 1-year period, starting one year from the Lease Term Effective Date through final payment of any contract. If the Lessor intends to transfer the lease to a successor in interest under the circumstances set forth in FAR 42.1204, the Lessor shall submit this representation to the Lease Contracting Officer with any request to novate the lease. The Offeror or Lessor is responsible for the currency, accuracy and completeness of the data disclosed, and for any liability resulting from the Government's reliance on inaccurate or incomplete data.

(c) *Immediate owner.*

(1) The Offeror or Lessor represents that it does or does not have an immediate owner.

(2) If the Offeror or Lessor indicates "does" in paragraph (c)(1) of this clause, then enter the following information for the immediate owner. If the offeror or Lessor has more than one immediate owner (e.g., joint venture), then the offeror or Lessor shall provide the information for each entity.

Legal name (do not use a "doing business as" name)	
Unique entity identifier (if available)	

(3) If the Offeror or Lessor indicates "does" in paragraph (c)(1) of this clause, then complete this additional representation: Is the immediate owner a foreign entity?:

Yes or No.

(4) If the Offeror or Lessor indicates "does" in paragraph (c)(1) of this clause, then complete this additional representation: Is the immediate owner a foreign person?:

Yes or No.

(5) If the Offeror or Lessor indicates "Yes" in either paragraph (c)(3) or (4) of this clause, indicating that there is foreign ownership (as a foreign entity or foreign person), then enter the following information for the foreign owner (respond for each as applicable).

Physical address	
Country	

(d) *Highest-level owner.*

(1) The Offeror or Lessor represents that the immediate owner, if any, is or is not owned or controlled by another entity?

(2) If the Offeror or Lessor indicates "is" in paragraph (d)(1) of this clause, indicating that the immediate owner is owned or controlled by another entity, then enter the following information for the highest-level owner.

Legal name (do not use a "doing business as" name)	
Unique entity identifier (if available)	

(3) If the Offeror or Lessor indicates "is" in paragraph (d)(1) of this clause, then complete this additional representation: Is the highest-level owner a foreign entity?:

Yes or No.

(4) If the Offeror or Lessor indicates "is" in paragraph (d)(1) of this clause, then complete this additional representation: Is the highest-level owner a foreign person?:

Yes or No.

(5) If the Offeror or Lessor indicates "Yes" in either paragraph (d)(3) or (4) of this clause, indicating that there is foreign ownership (as a foreign entity or foreign person), then enter the following information for the foreign owner (respond for each as applicable).

Physical address	
Country	

(e) *Financing entity.*

(1) The Offeror or Lessor represents that the financing does or does not involve a foreign entity?

(2) The Offeror or Lessor represents that the financing does or does not involve a foreign person?

(3) If the Offeror or Lessor indicates "does" in either paragraph (e)(1) or (2) of this clause, indicating foreign financing (as a foreign entity or foreign person), then enter the following information for the foreign financing (respond for each as applicable).

Legal name (do not use a "doing business as" name)	
Unique entity identifier (if available)	

Physical address	
Country	

(End of clause)

OFFEROR OR LESSOR NAME AND SIGNATURE	_____	
	Name	
	_____	_____
	Signature	Date

ACTION REQUIRED:

Per Leasing Alert LA-21-07 and as prescribed in 570.703(d), use the following clause 552.270-34, Access Limitations for High-Security Leased Space, in solicitations and resulting contracts for high-security leased space (FSL III, IV, or V). Also required for extensions, renewals and novations involving high-security leased space.

NOTE: Office of Leasing will be incorporating this clause into FSL III and IV security countermeasure templates sometime in FY21. Do not add this clause if using an updated FSL template (2021 or later) that already contains this clause.

552.270-34 Access Limitations for High-Security Leased Space.

ACCESS LIMITATIONS FOR HIGH-SECURITY LEASED SPACE (JUN 2021)

(a) The Lessor, including representatives of the Lessor's property management company responsible for operation and maintenance of the leased space, shall not—

(1) Maintain access to the leased space; or

(2) Have access to the leased space without prior approval of the authorized Government representative.

(b) Access to the leased space or any property or information located within that Space will only be granted by the Government upon determining that such access is consistent with the Government's mission and responsibilities.

(c) Written procedures governing access to the leased space in the event of emergencies shall be documented as part of the Government's Occupant Emergency Plan, to be signed by both the Government and the Lessor.

(End of clause)

LESSOR: _____ GOVERNMENT: _____

LA-21-07 Attachment 3

ACTION REQUIRED: As part of the LCA annual lease file review, LCA zones should confirm whether the lease is FSL III or above.

If so, review the lease, or subsequent lease amendments, to confirm whether the lease contains GSAR representation 552.270-33 requiring annual foreign ownership/foreign financing representation. For leases containing this representation, LCA zones must send out this reminder letter.

ACTION REQUIRED: Fill in lessor name, lease number, due date and contact information.

Lessor Reminder Letter – Annual Foreign Ownership/Foreign Financing Representation

Dear _____:

A recent review of our leasing records indicated that the General Services Administration (GSA) has not received the required annual representation under Lease Contract Number GS-0XP-LXXXXXX. In accordance with the terms and conditions of the lease contract, GSAR clause 552.270-33, Foreign Ownership and Financing Representation for High-Security Leased Space, you are required to submit an annual representation to the Government regarding your entity's ownership and financing changes during the past year.

This re-representation, which must be submitted each year on the anniversary of the Lease Term Effective Date, is due _____.

I have attached a blank version of the representation for your completion. Please submit the completed representation and return it to me, either by email or using this portal, ret.gsa.gov, at your earliest convenience.

Thank you, in advance, for your cooperation in resolving this matter. If you have any questions or concerns, please contact me via telephone at _____ or via email at _____.

Regards,

Administrative Lease Contracting Officer (or designee)
Public Buildings Service
General Services Administration

Attachment 4 to LA-21-07

Secure Federal LEASEs Act Clause Chart (June 2021)

**GSAR Representation
552.270-33**

- Stand alone representation clause to confirm foreign ownership/foreign financing for high-security space
- Include in RLP packages or lease amendments for extensions, renewals or novation for FSL III, IV or V
- Notify agency of foreign ownership/financing disclosure
- Include completed representation in awarded lease contract/extension lease amendment/renewal lease amendment/novation lease amendment
- Must be re-represented annually by lessor

**GSAR Clause
552.270-34**

- Stand alone* clause limiting lessor access to space
- Include in RLP packages or lease amendments for extensions, renewals or novations for FSL III, IV or V
- Include clause in awarded lease contract/extension lease amendment/renewal lease amendment/novation lease amendment
- *This clause will be incorporated into national FSL III and IV templates in FY 21; LCOs will not need to include as a separate attachment if using updated FSLs (2021 version) in their RLPs

**Foreign Ownership and
Financing
Representation (10/18)**

- Stand alone representation clause added in 2018 to confirm foreign ownership/foreign financing for prospectus-level leases, in response to congressional subcommittee authorizing resolutions
- **THIS REPRESENTATION IS NO LONGER REQUIRED**

Certificate Of Completion

Envelope Id: 9BBD1D4FAA55400A8A9045AFEB727CF	Status: Completed
Subject: Please DocuSign: LA-21-07, Implementing Certain Provisions of the Secure Federal LEASEs Act	
Source Envelope:	
Document Pages: 15	Signatures: 1
Certificate Pages: 1	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Julie Hepp
Time Zone: (UTC) Dublin, Edinburgh, Lisbon, London	1800 F St NW
	Washington DC, DC 20405
	juliek.hepp@gsa.gov
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Signer Events

John D. Thomas
 johnd.thomas@gsa.gov
 US General Services Administration
 Security Level: Email, Account Authentication (None)

Signature

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 John D. Thomas
B43ABD9FD7914DC...
 Signature Adoption: Pre-selected Style
 Using IP Address: 159.142.146.3

Timestamp

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Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/30/2021 1:06:24 PM
Certified Delivered	Security Checked	6/30/2021 4:49:56 PM
Signing Complete	Security Checked	6/30/2021 4:50:29 PM
Completed	Security Checked	6/30/2021 4:50:29 PM
Payment Events	Status	Timestamps