

(28 Comp. Gen 206). As a corollary, restoration, or payment in lieu thereof, is not authorized where Government improvements enhance the value of the property. Representatives of the General Accounting Office have advised informally that it is not the intention to have appraisals made of the before and after value in each instance and that the lack of such appraisals will not be the cause for questioning a restoration settlement. It is considered, however, that where the estimated cost of restoration is a substantial amount in comparison with the value of the property covered by the lease, such appraisals should be made. Obviously, however, it would not be to the Government's advantage to make appraisals where the estimated restoration cost is small.

§644.449 Requirement for notice by lessor.

Ordinarily, notification by the lessor of his intention to require restoration of the premises is, when required by the terms of the lease, a condition precedent to any obligation on the part of the Government to restore and is a vested contract right which no part of the Government has authority to give away or surrender (16 Comp. Gen 92; *Simpson vs. United States*, 172 U.S. 372; *United States vs. American Sales Corp.*, 27 F. 2d 389, affirmed in 32 F. 2d 141, certiorari denied, 280 U.S. 574; *Pac. Hardware Co. vs. United States*, 49 Ct. CL 327, 335). However, it has been held in the case of *Smith vs. United States*, 96 Ct. CL 326, that a formal written notice of demand for restoration might be waived, provided knowledge of the lessor's intention to require restoration was conveyed to the Government orally or by implication at, or prior to, the time required under the terms of the lease. In opinion B-48678, 10 April 1945, the Comptroller General expressed the following views along this line:

(a) In leases pertaining to provisions for termination by the Government prior to the end of the term, and which require 60 days written notice of demand for restoration, a supplemental agreement relinquishing space prior to the end of the term, which contains a stipulation excepting restoration from the provisions of the release may be re-

garded as notice to the Government of the lessor's intention to require restoration and an otherwise proper claim for restoration may be considered where the entire transaction is in the interest of the United States.

(b) In leases which require 30 days written notice of termination and 30 days notice of demand for restoration, waiver of termination notice by the lessor would constitute sufficient consideration to support a waiver of restoration notice by the Government where the effect of waiving the notices would be to protect more adequately the Government's interest through immediate termination of the lease.

(c) Generally, in leases which require 90 days written notice of demand for restoration and 30 days written notice of termination, if it is determined administratively under the particular facts, that the failure to give restoration notice until receipt of termination notice does not affect the merits of the claim for restoration, or operate to the prejudice of the United States, an otherwise proper claim for restoration may be considered.

(d) As a general rule, in leases which require 30 days written notice of termination and 30 days written notice of demand for restoration, notice of demand for restoration given within a reasonable time after receipt of termination notice would be sufficient and, in this connection, a few days delay would not be regarded as unreasonable. Where restoration is predicated on other than strict compliance by the lessor with requirements of the lease relative to notice requiring restoration, the facts will be clearly stated in the restoration assembly.

§644.450 Items excluded from usual restoration obligation.

Damage to the following items will not ordinarily be restored as under the standard provisions of the lease it will be attributable to reasonable and ordinary wear and tear, damage by the elements, or damages by circumstances over which the Government has no control. (However, where the lease requires the Government to maintain the interior or exterior, or both, such of the items as the Government is obligated to repair during the term of the