

on which the Government's estimate is predicated in order to demonstrate its reasonableness. The Government's estimate of cost for items of restoration may be made available to the lessor upon request. When the lessor requests items of work not shown on the Government's estimate, careful consideration will be given to his request, further inspection of the premises made, when necessary, and a determination made as to whether the Government is obligated under the lease to perform the work. If no liability is determined to exist, the lessor will be fully informed as to the reasons for noninclusion in the estimate. If liability is determined to exist, the estimate will be adjusted accordingly. In any case where the existence or extent of the legal obligation of the Government to restore is questionable, the DE will submit the facts, in writing, to DAEN-REM together with his recommendation. No lease restoration settlement will be allowed to become involved in litigation or formal claims procedure without the matter having been submitted to DAEN-REM for review. When a satisfactory cash settlement by the Government cannot be negotiated, the DE is authorized to perform the actual restoration work.

**§644.455 Claims for loss or damage of personal property.**

In some cases, owners have been allowed to store personal property, owned by them or under their control, on premises leased from such owners by the Government, the personal property not being covered by the lease. The rooms in which this property was stored have been broken into and, upon termination of the lease, it has been found that much of the property is damaged or is missing. Unless the lease specifically places some responsibility on the Government, payment for such damaged or missing property cannot be included in restoration settlements for payment. In the event the lessor refuses to sign a full release, a provision may be included in the supplemental agreement releasing the Government from all liability except for claims for damage, loss, or destruction of personal property stored on the leased premises and not covered by the lease,

and the lessor advised that he may submit a claim for the amounts which he considers due him.

**§644.456 Rent during the period required for restoration.**

A sufficient period of time for performance of the restoration, commencing on the date premises are vacated by the Government, will be specified in the Government's estimate, and rent allowed in the settlement during such period to the extent that the lessor is actually deprived of beneficial use. If there is an outstanding maintenance and operation contract with the lessor, contained in either the lease or in an independent instrument, which fixes compensation in addition to the rent, the settlement agreement with the lessor will include the rent and such part of the compensation for maintenance and operation as will be necessarily incurred by the lessor during the performance of restoration.

**§644.457 Settlement where part of the premises is surrendered.**

Where there is a partial reduction of area in a lease requiring restoration, the supplemental agreement may contain a settlement in lieu of restoration of the area surrendered. A waiver of further claims covering the space released will be contained in the supplemental agreement.

**§644.458 Documenting lease terminations and restoration settlements.**

In the case of leases in which there is no obligation to restore, and in all cases of leases where terminal survey discloses no damage to the premises for which the Government is liable, an effort will be made to obtain an unqualified release from the lessor as of the date the premises are vacated and Government improvements removed. Releases will also be obtained as indicated in §644.462.

(a) *Form to be Used.* Releases will be executed, in triplicate, on ENG Form 232-R, Release (Corporation), or ENG Form 231, Release (Partnership), according to whether the lessor is a corporation or partnership. If signed by an attorney or agent, evidence of authority should be attached to the release. If

the lessor is an individual, a letter incorporating a Notice of Termination and a Release Clause will be sent. The letter will substantially follow the form shown in Figure 11-16 in ER 405-1-12. Distribution of releases will be accomplished in the same manner as set forth in § 644.460.

(b) *Qualified Release.* In case the lessor declines to sign an unqualified release, he should be requested to execute an appropriate release subject to exceptions. The exceptions may be enumerated on the reverse side of the form.

**§ 644.459 Preparation of supplemental agreements effecting settlement.**

The terms of settlement in lieu of restoration, negotiated with the lessor, will be embodied in a supplemental agreement to the lease, antedating termination, substantially in accordance with ENG Form 341, Supplemental Agreement Transferring Improvements to Lessor. Supplemental agreements may be used to effect restoration settlements of obligations incurred under permits, trespass right agreements, and other unnumbered contracts for the temporary use of land. Restoration settlements may also be effected even though the premises were occupied rent free and without formal contract, provided use of the premises was authorized properly by the Government (Decision of the Comptroller General B-63340, February 1947). Care should be exercised in determining the existence and extent of the legal obligation of the Government to restore. Payment will not be made for doubtful items; instead, the other party to the agreement will be advised of his right to submit a claim. On the other hand, every effort will be made to agree upon a reasonable settlement as to items for which the Government is legally responsible.

**§ 644.460 Supplemental agreement assembly.**

(a) *Composition.* Supplemental agreement assembly, covering agreement for settlement in lieu of restoration, will be composed of the following:

- (1) Completed Notice of Termination.
- (2) ENG Form 340 (Supplemental Agreement Accepting Proposed Res-

toration) or ENG Form 341 (Supplemental Agreement Transferring Improvements to Lessor).

(3) Lessor's notice requiring restoration, unless the lessor has signified that restoration is not required.

(4) Joint terminal survey and condition report.

(5) ENG Form 1440-R, or 1440A-R and 1440B-R.

(6) Estimated cost of restoration of leased personal property if not otherwise included.

(7) Statement of cost of any restoration actually performed by the Government.

(b) *Distribution.* An executed copy of the assembly will be retained by the DE. An executed copy of the supplemental agreement will be furnished the lessor. Conformed copies will be transmitted to the major command, the installation commander and, when monetary consideration is involved, to the appropriate finance and accounting office.

**§ 644.461 Payment for restoration or settlement in lieu of restoration.**

Voucher forms, appropriate to the circumstances, will be used in making payment of the settlement. Reference should be made on the voucher to the lease and supplemental agreement. The cost of restoration work performed directly by the Government, or by contract, or compensation in any settlement agreement in lieu of restoration, will be paid from funds available for the payment of rental. The limitations of section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a and b), on the expenditure of funds for the alteration, improvement, or repair of leased premises to 25 percent of rent for the first year, are not applicable to costs of performing restoration work pursuant to obligations of the lease nor for payments of settlements in lieu thereof (20 Comp. Gen. 105).

**§ 644.462 Performance of restoration work by district engineer—extension of time.**

Where the lessor will not accept a cash settlement in lieu of restoration, or desires the work to be done by the Government, the restoration will be performed, without delay, directly or