

Leasehold Surrender Interest

Issue	NPHA proposal	Interior Proposed Rule	Garden	Van Ness Feldman
<p>Using Leasehold Surrender Interest to Encourage Private Investment In Public Structures: <b>GAAP standard, Rehab defined as % of structure value</b></p>	<p><i>A capital improvement</i> is a structure, fixture, or non-removable equipment provided by a concessioner pursuant to the terms of a concession contract, and located on lands of the United States within a park area <b>and the costs of which have been capitalized in accordance with GAAP. ...</b></p> <p>(2) The <del>construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure</del> <b>costs of which are capitalized in accordance with GAAP. In general, a major rehabilitation is rehabilitation of all or any portion of a structure that adds to the value of the structure, prolongs its useful life or adapts it to new uses. Examples of major rehabilitations include but are not limited to adding a room, adding new built-in appliances/coolers/ freezers, wall-to-wall carpeting or flooring, or improvements to a structure, such as replacing the roof, siding, storm windows, wiring, plumbing or HVAC. Structure means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. A</b></p>	<p><b>§ 51.51 What special terms must I know to understand leasehold surrender interest?</b> * * * * *</p> <p><i>Major rehabilitation</i> means a planned, comprehensive rehabilitation of an existing structure that:</p> <p>(1) The Director approves in advance; and</p> <p>(2) The construction cost of which exceeds thirty percent of the pre-rehabilitation value of the structure.</p>	<p><b><i>Leasehold Surrender Interest (§ 51.51):</i></b> NPS did not accept NPHA’s proposal that major rehabilitations should exist for any projects or portions of projects whose costs are capitalized per GAAP. NPS did, however, lower the threshold for projects to qualify as major rehabilitation (construction costs must now exceed only 30% of the pre-rehabilitation value of the overall structure). Nonetheless, NPS’ proposed regulation, which is based on whether a project is “critical” to a structure, could result in a violation of the 1998 CMIA because the statute requires LSI for any “capital improvement” irrespective of whether it is “critical.” Therefore, if a construction project meets the standard (<i>i.e.</i>, GAAP) criteria for a capital improvement, NPS <i>must</i> provide LSI for the cost of that project. NPS also stated this change would only apply to future contracts. NPHA may want to address these two issues in its comments.</p>	<p><b>Leasehold Surrender Interest (LSI)</b></p> <ul style="list-style-type: none"> <li>• <b>Major rehabilitations.</b> To further encourage capital investment by concessioners in NPS-owned concession facilities, NPS proposes to expand the definition of what constitutes a “major rehabilitation,” allowing more construction projects to qualify for increased LSI. Specifically, based on industry standards, the proposed rule would decrease the construction cost threshold for LSI eligibility from 50% of the pre-rehabilitation value to 30% of the pre-rehabilitation value. NPS also proposes to eliminate the requirement that rehabilitation projects generally be completed within 18 months from the start of work. As proposed, this change would apply only to future contracts. Notably, NPS seeks public comment on other ways to incentivize concessioners to make capital investments that improve the quality of facilities for the public.</li> </ul>

	<p>structure also includes all individual components and elements of the structure when the costs of construction of the component or element are included as part of the overall capitalized cost of the structure in accordance with GAAP. Landscaping that is integral to the construction of a structure is also considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.</p>			
RMR versus LSI	No request	<p><b>§ 51.81 May the Director include “special account” provisions in concession contracts?</b> * * * * *</p> <p>(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a component renewal reserve to be used at the direction of the Director solely for renewal of real property components located in park areas and utilized by the concessioner in its operations. Component renewal reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Component renewal reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from these reserves will be expended only for the renewal of real</p>	<p><b>Change from “repair and maintenance reserve” to “component renewal reserve” (§ 51.81):</b> NPS unilaterally proposed to codify its effort to incorporate “component renewal” into concession contracts by proposing a regulation that explicitly allows it to set up “component renewal reserves” rather than “repair and maintenance reserves.” NPS claims this change is needed to clarify that these funds cannot be used for ordinary maintenance. However, the concern is that the agency is actually trying to use these funds for what otherwise should qualify for LSI. The proposed regulation would assist NPS’ efforts to avoid LSI by breaking down projects which are “capital improvements” qualifying for LSI into smaller projects that NPS will insist do not qualify for LSI. NPHA may want to submit comments that raise this concern and point out that the regulation may be used by the</p>	<p>• <b>Special Accounts.</b> Existing regulations allow NPS to require concessioners to set aside a percentage of gross receipts in a repair and maintenance reserve to be used at NPS’s direction for maintenance and repair of real property improvements used in concession operations. The proposed rule would replace the term “repair and maintenance reserve” with “component renewal reserve” to clarify that the reserve is not intended for routine maintenance and repair activities, but rather to fund projects to replace systems and components that have reached the end of their design life, are non-recurring within a seven-year time frame, and are not part of an LSI-eligible capital improvement project. This change would apply to current concession contracts if the contract was amended, as well as future contracts. NPS also seeks public comment on other ways to incentivize concessioners to complete component renewal activities, such as whether contracts could contain provisions that allow</p>

		property components assigned to the concessioner by the Director for use in its operations.	agency to claim fixtures, such as sprinkler systems, do not qualify for LSI when in fact, under the law, they do.	the concessioner to deduct from its periodic franchise fee payments amounts that were expended by the concessioner during the preceding period for component renewal activities.
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