

## Guidelines for Determining Private Business Use Research Agreements

**Private business use** is the use of tax-advantaged bond-financed property (including property financed with tax-exempt bonds or build America bonds) in a trade or business carried on by a person other than a state or local government entity. Private users could include the following:

- Private for-profit business
- Natural person conducting his or her trade or business
- Private nonprofit organization (501(c)(3) or otherwise)
- The federal government or its agencies

*Note: a private user would not include any private person acting solely and directly as an officer or employee of or on behalf of the University or other governmental unit. Private users do include independent contractors of the University.*

A research agreement between a governmental person and a private user with respect to bond-financed property may result in private business use.

There are certain IRS “safe harbors” for basic research which could cause certain research agreements to not be considered private business use.

**Basic research** means any original investigation for the advancement of scientific knowledge not having a specific commercial objective. Basic research does not include product testing.

### Safe Harbors and Exceptions

- **Corporate Sponsored Research** – a research agreement relating to facilities used for basic research supported or sponsored by a corporate sponsor will not create private business use so long as all of the following are met:
  1. The University permits any license or other use of resulting technology by the sponsor on the same terms as such use by any unrelated, non-sponsoring party. Meaning, the sponsor must pay a competitive price for its use.
  2. The price paid for use of any license or other use of resulting technology is determined at the time the license or other resulting technology is available for use.
    - *Note: the University does not need to permit persons other than the sponsor to use any license or other resulting technology, but the price paid by the sponsor cannot be less than the price that would be paid by any non-sponsoring party for those same rights.*
- **Industry or Federally Sponsored Research** – a research agreement relating to facilities used for basic research pursuant to an industry or federally sponsored research agreement will not create private business use so long as all of the following are met:
  1. The University determines the research to be performed and the manner in which it is to be performed.

2. The University retains exclusive title to any patent or other product incidentally resulting from the basic research.
3. The industry or federal sponsor is entitled to no more than a nonexclusive, royalty-free license to use the product of any of the research.
  - *Note: Rights of the federal government under the Bayh-Dole Act are permitted so long as (1) and (2) are met and the license granted to any third party is no more than a non-exclusive, royalty-free license.*

Clinical trials are not considered basic research and therefore will not qualify under the Rev. Proc. 2007-47 safe harbor. All facts and circumstances must be considered to determine whether a clinical trial will give rise to private business use.

- Please consult with University Financial Services Administration prior to conducting a clinical trial in a bond-financed facility.

**Do not rely solely on these guidelines to determine private business use. If you have questions or believe there is any possible private business use, please contact University Financial Services Administration at (859) 257-4758 or [pbu@uky.edu](mailto:pbu@uky.edu).**

### Instructions

Please complete this form by supplying the requested information for each question. Please use a separate form for each bond-financed project for which you are responsible. When completed, please submit to:

University Financial Services Administration  
[pbu@uky.edu](mailto:pbu@uky.edu)  
(859) 257-4758

Following your submission of a completed questionnaire, someone from University Financial Services Administration may need to contact you for additional information.

## Private Business Use Questionnaire Research Agreements

**Building Name:**

**Responsible Department:**

### Questions

- 1) Does the University have any research which does not fit into one of the safe harbors described above?

Yes

No

If you answered yes to the question above please provide a list of the research agreements and the buildings in which the research is taking place. Provide copies of the research agreements listed below.

### Certification

I certify to the best of my knowledge that the above statements and representations are true and correct and that there are no material omissions of relevant facts.

Electronic Signature

Date

Title

Email Address

Phone Number