

Guidelines on Private Use of University of Rochester Facilities

University of Rochester research facilities exist primarily to further free and open inquiry by University faculty, students and staff. Other uses are of secondary importance, and no use is permitted that interferes with the conduct of the University's research and other scholarly or instructional activities, or that is inconsistent with the University's status as a tax-exempt educational institution. University research facilities include laboratory space, bench space, storage, equipment, offices and support space, testing and processing instrumentation and supporting space/facilities, and any other spaces in which research is or will be conducted.

As a corporation that is exempt from income tax under IRS Code Section 501(c)(3), the University of Rochester must ensure that its resources are used in furtherance of its exempt research and educational purpose and must avoid activities that benefit private interests. Similarly, the University's facilities must be used for educational purposes in order to remain exempt from real property taxes under New York state law. Further, buildings that have been financed through tax-exempt bonds – a category that includes essentially all of the University's on-campus facilities -- are subject to strict limitations on the amount of allowable "private use" activities. Failure to comply with these rules may result in the loss of the tax exempt status of the bonds, significant penalties and other consequences. As used in these Guidelines, "private use" means use of University facilities (by University staff or external entities) for non-University purposes. Common examples of private use include use of facilities by University faculty, staff, or students to conduct start-up related activities and granting access to space or equipment to an external entity to conduct its own research or testing (see below).

In addition to tax considerations, private use activities pose other potential risks, including conflicts of interest; risk to University and inventor intellectual property rights and commercialization opportunities; liability and compliance risk; and community relations risk when the private use activity places the University in competition with for-profit entities. As a result, private use of University research facilities is generally not allowed, except in specific situations. As noted in the [University's Tax Exempt Bond Policies](#), Divisional Finance Leaders must submit any requests to the Office of Counsel for approval for the use or lease of facilities that are tax exempt bond financed when the following conditions exist:

1. Use of the tax-exempt bond financed facility by employees to operate an unrelated trade or business;
2. Use of a tax-exempt bond financed facility by individuals not employed by the University of Rochester;
3. Use of a tax-exempt bond financed facility in a joint venture/limited liability corporation/partnership agreement between the University of Rochester and another entity;
4. Use of the tax-exempt bond financed facility for research sponsored by private non-government parties where the sponsor obtains rights to resulting technology or intellectual property, unless the Office of Counsel determines, after review of the

contract prior to acceptance, that they meet the IRS safe harbor for research agreements (Rev. Proc. 2007-47)

Examples of situations that would be deemed to be unallowable use of University research facilities include:

1. Faculty use of significant university resources (e.g., resources other than other than conventional office equipment and generally available services such as a computer, e-mail service, mail service and the like) for personal consulting. Additional information on what constitutes significant university resources can be found [here](#). Also refer to [Faculty Guidance on Consulting](#).
2. Use or lease of University facilities and other resources (e.g., purchasing services) to a University start-up company. In addition to private use implications, this use may violate the [University's Faculty Policy and Conflict of Interest and Commitment](#).
3. Use of University facilities by, or lease of University facilities to, a small business in receipt of an SBIR or STTR award to conduct its own research and testing. Additional guidance on SBIR and STTR programs can be found [here](#).
4. Testing agreements between the University and for-profit entities for testing services to be provided by University faculty (e.g., reagent or assay testing) if the agreement prohibits publication and has no programmatic benefit for the University. The University's template service agreement can be found [here](#).

It is permissible for external entities to engage the services of our research cores and other research services provided these services are determined by the Office of Counsel to be within the research and educational mission of the University and do not unfairly compete with the for-profit sector. Other examples of permissible activities are collaborations with external entities for shared resource use (e.g., bio banking) that benefit the research and educational mission of the University. These activities are not considered private use.

Recognizing that situations involving potential private use are complex and often gray, we encourage questions to be directed to the Divisional Finance Leaders.

Note: This draft guidance does not address use or lease of University equipment or specialized research cores directly to an external entity (e.g., not utilizing University services) to pursue its business objectives. In addition to private use issues, these situations entail liability and security concerns that must be addressed.