

**JONES HALL,**  
A PROFESSIONAL LAW CORPORATION

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**REVENUE PROCEDURE 97-14**  
**RESEARCH AGREEMENT RULES**

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**REVENUE PROCEDURE 97-14  
RESEARCH AGREEMENT RULES**

**I. INTRODUCTION.** On January 10, 1997, the Department of the Treasury issued Revenue Procedure 97-14 setting forth conditions under which a research agreement does not result in private business use of a bond-financed facility (or unrelated use, in the case of qualified 501(c)(3) bonds).<sup>1</sup> These conditions establish safe harbors.<sup>2</sup>

**II. EFFECTIVE DATE.** Revenue Procedure 97-14 applies to any research agreement entered into on or after May 16, 1997.<sup>3</sup> In addition, the Revenue Procedure may be applied by the issuer to any research agreement entered into before that date.<sup>4</sup>

**III. SCOPE**

**A. In General.** The Revenue Procedure applies when, under an agreement, a sponsor (see below) uses bond-financed property<sup>5</sup> and thus the Revenue Procedure generally relates to agreements by a nongovernmental person to sponsor basic research (see below) to be performed by a governmental person on financed property.<sup>6</sup>

**B. Excluded Agreements.** A research agreement with respect to financed property will result in private business use of that property if the sponsor is treated as the lessee or owner of the property for federal income tax purposes.<sup>7</sup>

**C. Certain Definitions.** As used below and in the Revenue Procedure, the following terms have the following meanings:

1. "Qualified user" means the governmental unit or, in the case of qualified 501(c)(3) bonds, the 501(c)(3) organization, that is entering into the agreement with the sponsor.<sup>8</sup>

2. "Sponsor" means any person, other than a qualified user, that supports or sponsors research under an agreement.<sup>9</sup>

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<sup>1</sup> §§ 1 and 2.05.

<sup>2</sup> Preamble to Regulations, Part C, item 5, second paragraph.

<sup>3</sup> § 6.

<sup>4</sup> *Id.*

<sup>5</sup> § 4.

<sup>6</sup> § 2.02. Regulations § 1.141-3(b)(6)(i) provides that an agreement to sponsor research may result in private business use of property used for the research, based on all of the facts and circumstances.

<sup>7</sup> § 2.03. Regulations 1.141-3(b)(6)(ii).

<sup>8</sup> § 3.02.

<sup>9</sup> § 3.03.

3. "Basic research" means any original investigation for the advancement of scientific knowledge not having a specific commercial objective (e.g., product testing for a specific nongovernmental person is not basic research).<sup>10</sup>

#### **IV. TWO SAFE HARBORS**

**A. In General.** A research agreement does not result in private business use if it satisfies the provisions below for (i) corporate-sponsored research or (ii) cooperative research agreements.<sup>11</sup>

**B. Corporate-Sponsored Research.** This safe harbor is satisfied if

1. The research agreement relates to property used for basic research that is supported by a sponsor,

2. Any license or other use of resulting technology by the sponsor is permitted only on the same terms as the recipient would permit that use by a non-sponsoring party (i.e., the sponsor must pay a competitive price for its use),

3. The price paid for the use is determined at the time the license or other resulting technology is available for use, and

4. The price paid by the sponsor is not less than the price that would be paid by any non-sponsoring party for those same rights (although the recipient need not permit other persons to use the license or other resulting technology).<sup>12</sup>

**C. Cooperative Research Agreements.** This safe harbor is satisfied if

1. The research agreement relating to property is used pursuant to a joint industry-governmental cooperative research agreement,

2. Multiple, unrelated sponsors agree to fund governmentally performed basic research,

3. The research and manner of performance (e.g., selection of the personnel to perform the research) is determined by the qualified user,

4. Title to any patent or other product resulting from the basic research lies exclusively with the qualified user, and

5. Sponsors are entitled to no more than a non-exclusive, royalty-free license to use the product of any of the research.<sup>13</sup>

January 20, 1997

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<sup>10</sup> § 3.01.

<sup>11</sup> § 5.01.

<sup>12</sup> § 5.02.

<sup>13</sup> § 5.03.