

Fifty Day Rule

November 4, 2015

Introduction and Purpose

The University utilizes bond financing for many of its buildings. Federal bond laws limit the amount of certain non-University private business use (PBU) of such bond financed buildings. The Treasury Regulations contain key exceptions to the PBU characterization. One of the exceptions is the Fifty Day Rule, which excludes some short-term uses of the property. The University of Minnesota utilizes the Fifty Day Rule to the extent allowed. The University Facility Use Agreement templates and Lab Use Agreement templates have been drafted to incorporate language that meets the qualifications of the exception.

Fifty Day Rule

Any contract that provides an outside party access to University space for fifty days or less falls under this exception. As a result, such use is not counted as PBU of the space. Treasury Regulation § 1.141-3(d)(3)(ii) sets forth the Fifty Day Rule:

Use by a nongovernmental person pursuant to an arrangement, other than an arrangement resulting in ownership of financed property by a nongovernmental person, is not PBU if

- A. *The term of the use under the arrangement, including all renewal options, is not longer than 50 days;*
- B. *The arrangement is a negotiated arm's-length arrangement, and compensation under the arrangement is at FMV; and*
- C. *The property is not financed for a principal purpose of providing that property for use by that nongovernmental person.*

In addition, certain contracts with renewal clauses can also fall under the Fifty Day Rule. Treasury Regulation § 1.141-1(b) defines *Renewal Option*:

Renewal option means a provision under which either party has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for 1-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed.)

This definition means that if either party has a unilateral right to renew the contract, without approval from the other party, it is a renewal option. If there is a right to renew the contract only with the approval of the other party (mutual agreement), then that is not considered a renewal option. Therefore, for Fifty Day Rule purposes, automatic extensions or extensions by mutual agreement are not considered renewal options. Contracts that provide an outside party access to University space for fifty days or less, with an automatic extension or an extension by mutual agreement, would only look to the original time frame of the contract and still fall under this exception. As a result, such use, including the extended use, would not be counted as PBU of the space.