

Summary of IRS Revenue Procedure 97-13

Generally, under IRS Revenue Procedure 97-13, the provisions of services at bond-financed facilities by private persons or businesses will not constitute private business use if:

- the method or formula for compensation falls within one of the various defined categories or combinations of such categories described in the table below;
- compensation for services rendered under the contract is reasonable and is not based, in whole or in part, on net profits from the operation of the bond-financed property;
- depending on the compensation method, the term of the contract, including applicable renewal options (which does not include automatic rollovers absent termination by one party or the other) does not exceed, and the contract may be terminated without penalty or cause as set forth in the table below.

No compensation may be based, in whole or in part, on a share of the net profits. A "productivity reward" equal to a stated dollar amount based on increases in revenues or decreases in expenses (but not both) does not cause compensation to be based on net profits.

No circumstances may exist which limit the qualified user's ability to exercise its rights, including cancellation rights, under the contract. *Safe Harbor:* This requirement is met if (i) not more than 20% of the voting power of the governing body of the qualified user is vested in the service provider or its directors, officers, shareholders and employees, and (ii) overlapping board members do not include the CEO's of the service provider or its governing body or the qualified user or its governing body and the qualified user and service provider are not related persons, as defined in the Regulations.

Definitions:

"*Adjusted Gross Revenues*" means gross revenues less allowances for bad debts and contractual and similar allowances.

"*Capitation Fee*" means a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially. A fixed periodic amount may include an automatic increase linked to a specified, objective, external standard, such as the Consumer Price Index.

"*Periodic Fixed Fee*" means a stated dollar amount for services rendered for a specified period of time. The stated dollar amount may automatically increase according to a specified, objective, external standard, such as the Consumer Price Index.

"*Per-Unit Fee*" means a fee based on a unit of service specified in the contract or otherwise specifically determined by an independent third party or the qualified user. The per-unit fee may automatically increase according to a specified, objective, external standard, such as the Consumer Price Index.

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

"*Service Provider*" means any person other than a qualified user that provides services under a contract to, or for the benefit of, a qualified user.

Compensation Fee Structure	Contract Terms
95% Periodic Fixed Fee	Including all renewal options, the lesser of (i) 80% of the reasonably expected useful life of the financed property and (ii) 15 years. One-time incentive award under which compensation automatically increases, if a revenue or expense target is met, does not cause this test to be failed if the award is a single, stated dollar amount.
80% Periodic Fixed Fee	Including all renewal options, the lesser of (i) 80% of the reasonably expected useful life of the financed property and (ii) 10 years. One-time incentive award under which compensation automatically increases, if a revenue or expense target is met, does not cause this test to be failed if the award is a single, stated dollar amount.
Either (i) 50% Periodic Fixed Fee or (ii) capitation fee or (iii) a combination of a Capitation Fee and a Periodic Fixed Fee.	Including all renewal options, not more than 5 years, terminable by the qualified user without penalty or cause at the end of the 3rd year.

<p>Either (i) Per Unit Fee or (ii) a combination of a Per Unit Fee and a Periodic Fixed Fee.</p>	<p>Including all renewal options, not more than 3 years, terminable by the qualified user without penalty or cause at the end of the 2nd year.</p>
<p>Either (i) a percentage of fees charged or (ii) a combination of a Per Unit Fee and a percentage of revenues or expenses or (iii) during a start-up period, a percentage of gross revenues, Adjusted Gross Revenues or expenses.</p>	<p>Including renewal options, 2 years, terminable by the qualified user without penalty or cause at the end of the 1st year. These terms are available only for contracts under which the service provider generally provides services to third parties (for example, radiology services to patients) and management contracts involving a facility during an initial start-up period.</p>

IRS Rev. Proc. 97-13 does not provide a safe harbor for the granting of any ownership or leasehold interest in bond financed property.