

CORPORATE POLICY

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Title: Space and Equipment Leases with Referral Sources	Effective Date: 6/15/22
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	Approved By: Executive Leadership Team
	Approval Date: 6/10/22

I. Scope:

This policy applies to Tenet Healthcare Corporation, its subsidiaries and affiliates (each, an “Affiliate”), any other entity or organization in which Tenet or an Affiliate owns a direct or indirect equity interest of greater than 50%, and any entity in which an Affiliate either manages or controls the day-to-day operations of the entity (each, a “Tenet Entity”) (collectively, “Tenet”).

II. Purpose:

To establish processes to ensure Lease Arrangements comply with the federal Anti-Kickback law, the Stark law, and other applicable laws and regulations.

III. Definitions:

Assistant General Counsel: The attorneys in the Tenet Law Department who oversee the Operations Counsel for the Tenet Entity. Tenet’s General Counsel can approve in lieu of the Assistant General Counsel if/when needed.

Fair Market Value (FMV): For rental property, the value of the property for general commercial purposes. The value shall not be adjusted to reflect the additional value that one party (either the prospective Lessor or Lessee) would attribute to the property as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare, Medicaid and all other Federal Health Care Programs. See L-25 Referral Source Fair Market Value for additional requirements on determining FMV.

Federal Health Care Program: Any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government, as defined in 42 U.S.C. § 1320a-7b(f). This includes but is not limited to: Medicare, Medicaid/MediCal, managed Medicare/Medicaid/MediCal, TriCare/VA/CHAMPUS, SCHIP, Federal Employees Health Benefit Plan, Indian Health Services, Health Services for Peace Corps Volunteers, Railroad Retirement Benefits, Black Lung Program, Services Provided to Federal Prisoners, and Pre-Existing Condition Insurance Plans (PCIPs).

FMV Report: A written report prepared by an independent appraiser establishing the FMV of a financial arrangement between a Tenet Entity and a Referral Source. A FMV Report may be:

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- A. **Annual FMV Report:** part of the annual process conducted by the Tenet Real Estate Department, which is building specific and provides FMV rent ranges and other pertinent information (e.g., tenant improvement allowance, rent escalators, etc.); or
- B. **Ad Hoc FMV Report:** part of a separate review by an approved independent appraiser for non-Medical Office Building (MOB) premises.

Group Practice: Two or more Physicians who practice medicine through a single legal entity, using a common trade name and a common tax identification number, including a faculty practice plan or other Physician practice organization affiliated with an academic medical center.

Immediate Family Member: A husband or wife; birth or adoptive parent, child or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild of a Physician or non-Physician Referral Source.

Lease Administrator: Tenet-designated third-party lease administrator(s) providing leasing and property management services for Tenet.

Lease: The written agreement setting forth the specific terms and conditions of a Lease Arrangement regarding leased or subleased space (a space lease) or leased equipment (an equipment lease).

Lease Arrangement: An arrangement pursuant to which a Tenet Entity leases or subleases space or leases equipment to or from a Referral Source. The term specifically includes the situation when Tenet holds a master lease on certain office space and then subleases all or part of that office space to a Referral Source.

Leasing Plan: A plan designating the rental rates for the spaces within the subject MOB.

Lessee: The party that is leasing space or equipment from another party.

Lessor: The Tenet Entity or Referral Source which is leasing space or equipment to another party.

Operations Counsel: The attorney assigned by the Tenet Law Department to support the Tenet Entity's legal operations.

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Other Potential Referral Source: Any individual or entity, other than a Physician or Group Practice that is in a position to make or influence referrals to, or otherwise generate business for, a Tenet Entity, or an entity owned by a Physician.

Physician: A duly licensed and authorized doctor of medicine or osteopathy, doctor of dental surgery or dental medicine, doctor of podiatric medicine, doctor of optometry, or chiropractor and his or her Immediate Family Members.

Referral Source: A Physician, Group Practice, or Other Potential Referral Source.

Remuneration: Anything of value including but not limited to cash, items, or services.

Tenet Entity Leader: CEO, ASC Administrator or other senior-most Tenet Entity leader.

IV. Policy:

Tenet Entities shall only enter into Lease Arrangements with Referral Sources that comply with applicable laws and regulations, including the federal Anti-Kickback Statute and the Stark Law. Under any Lease Arrangement, Tenet Entities shall not, directly or indirectly, pay, transfer, or receive Remuneration to or from Referral Source with the intent to induce one party to refer patients to, or otherwise generate business for, another party.

V. Procedure:

- A. Tenet Entities shall follow the steps set forth in Exhibit A when entering into space Leases with Referral Sources.
- B. Tenet Entities shall follow the steps set forth in Exhibit B when entering into equipment Leases with Referral Sources.
- C. Obtain Legal Review and Approval
 1. All Lease Arrangements shall be submitted and approved through eCATS prior to executing the Lease as outlined in L-15.
 2. Until the Tenet Entities have obtained required approvals, executed the Lease and paid any required deposit, a Lessee shall not be allowed to occupy office space, commence

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construction of any leasehold improvements, take delivery of equipment, or use equipment in the capacity of a Lessee.

3. Immediately after execution of the Lease, the Tenet Entity Leader, or his or her designee, shall provide the fully executed Lease to the Contract Administrator to enter into the eCATS system.
- D. For guidance on who is responsible for managing leases, collection of rents, maintenance of accurate files on space leased, and the operational/financial control of office buildings, refer to [AD 2.14 Lease and Operation of Medical Office Buildings \(Policy\)](#).
 - E. The Tenet Entity that is a party to the Lease shall retain all eCATS Packages, agreements, and other documentation relating to each Lease Arrangement according to the requirements of AD 1.11 Records Management and its Record Retention Schedule.

VI. Enforcement:

All employees whose responsibilities are affected by this policy are expected to be familiar with the basic procedures and responsibilities created by this policy. Failure to comply with this policy will be subject to appropriate performance management pursuant to all applicable policies and procedures, up to and including termination. Such performance management may also include modification of compensation, including any merit or discretionary compensation awards, as allowed by applicable law.

VII. References:

- Stark Law, 42 U.S.C. § 1395nn and implementing regulations
- Rental of Office Space exception, 42 U.S.C. § 1395nn(e)(1); 42 C.F.R. § 411.357(a)
- Rental of Equipment exception, 42 U.S.C. § 1395nn(e)(1); 42 C.F.R. § 411.357(b)
- Definition of Immediate Family Member, 42 C.F.R. § 411.351
- Anti-Kickback Statute, 42 U.S.C. §1320a-7b(b)
- Safe Harbor for Space Rentals, 42 C.F.R. § 1001.952(b)
- Safe Harbor for Equipment Rentals, 42 C.F.R. § 1001.952(c)



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CAM Standard Form Space Lease

CAM Standard Form Equipment Lease

[AD 2.14 Lease and Operation of Medical Office Buildings \(Policy\)](#)

[L-4.PR.01 Accounts Receivable Due from Referral Sources \(Procedure\) \(L-04JA\)](#)

[L-15.PR.01 Operations Counsel Approval of Delayed Signature and Limited Remuneration Arrangements \(Procedure\)](#)

VIII. Exhibits:

Exhibit A Steps to Enter into Space Leases with Referral Sources

Exhibit B Steps to Enter into Equipment Leases with Referral Sources

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Exhibit A – Steps to Enter into Space Leases with Referral Sources

Tenet shall enter into space Leases with Referral Sources pursuant to the steps below:

- A. For each proposed Lease Arrangement, the Tenet Entity will determine what space is reasonable and necessary.
 1. Regardless of whether the Tenet Entity is the Lessee or Lessor, when a Tenet Entity proposes to enter into a Lease for space with a Referral Source, the leased premises shall
 - a. not exceed that which is reasonable and necessary for the legitimate business purposes of the Lease; and
 - b. be used exclusively by the Lessee, i.e. not shared with or used by the Lessor or any person or entity related to the Lessor, unless the Lease Arrangement is expressly non-exclusive and each occupant makes payments for the use of space, including common areas, which are consistent with the Lessee’s pro rata share of licensed space, including a proportional share of common area costs, based upon the ratio of the space used exclusively by the Lessee to the total amount of space (other than common areas) occupied by all persons using the common areas.
 2. If the Tenet Entity is the Lessor, the Tenet Entity shall state its business purpose, which may include generating revenue for space or equipment not required for its operations and may presume that the proposed Lessee has a legitimate business purpose for its lease of space or equipment.
 3. A Tenet Entity shall not lease space which is part of its licensed facility to a Referral Source, unless approved in advance by Operations Counsel and the Assistant General Counsel.
- B. For each proposed Lease Arrangement, the Tenet Entity will determine FMV of the rent in a space lease.
 1. On an annual basis, the Tenet Real Estate Department shall engage an independent third-party to undertake a local market survey in each geographic region in which Tenet is a Lessor (an Annual FMV Survey). Annual FMV Survey will determine the following:
 - a. FMV rental rates for which space rental is contemplated in each Tenet-owned or master-leased building,
 - b. Lessee improvement allowances, and

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- c. rent abatements for comparable office space.
- 2. The independent appraiser who undertakes the Annual FMV Survey shall complete a written report of its findings meeting the requirements listed below.
 - a. The Annual FMV Survey report shall specify the FMV rental rate range for each building in question and include the data used by the appraiser to determine the range of rental rates, which shall include at least the following: business class and type, lease type, and supporting information for the rent range.
 - b. If the rental rate is expressed in terms of a per square foot basis, the report shall state whether it is based on rentable or usable square feet.
- 3. Once the Tenet Real Estate Department approves an Annual FMV Survey report, it shall distribute the report to the Tenet Entity that owns or leases the office space contemplated in the Annual FMV Survey. Each Annual FMV Survey report shall remain in effect until the next Annual FMV Survey is completed and approved in accordance with this policy.

Tenet's third-party property manager shall prepare a Leasing Plan which shall be consistent with the recommendations of the Annual FMV Survey and be approved by the Real Estate Department. The rates in the Leasing Plan will control for all medical office leasing done in the ordinary course of business and shall be stated in either rentable or usable square feet, which shall be consistent with the manner in which the Lease states the rent payable. Likewise, if any concessions such as tenant improvement allowances are calculated based on rentable or usable square feet, then the Lease must include that square footage as well.

- 4. Deviations from the rental rates specified in the Leasing Plan must be approved by Operations Counsel based upon a determination that the adjustment is required as a result of unique conditions in the leased premises and supporting documentation for that approval shall be included in the eCATS package for each Lease entered into in reliance upon this approval. If a deviation from the Leasing Plan is needed because the space will be used for something other than a medical office and the Lease involves more complex terms than those covered in the Leasing Plan, an Ad Hoc FMV Report will be required, which must address all the material terms of the transaction.

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5. In the event that a Tenet Entity is the Lessee in a Lease Arrangement, and an Annual FMV Survey has not been prepared for the Lessor’s geographic area, then the responsible Operations Counsel shall approve engagement of an independent third-party to provide written guidance regarding the FMV terms for the proposed rental (an Ad Hoc FMV). The Ad Hoc FMV shall be obtained through the Real Estate Department utilizing an independent appraiser on the Law Department approved list as set forth in L-25 Referral Source Fair Market Value.
 6. Once the Real Estate Department approves an Ad Hoc FMV Report, it shall distribute the report to the applicable Tenet Lessee. The Ad Hoc FMV Report shall specify the acceptable rental rate range for each building in question and include the data used by the appraiser to determine the range of rental rates, which shall include at least the following: business class and type, lease type and supporting information for the rent range. If the rental rate is expressed in terms of a per square foot basis, it shall state whether it is based on rentable or usable square feet.
 7. The Tenet Real Estate Department and the Tenet Entity shall review and approve the Annual FMV Survey or Ad Hoc FMV only to confirm that the factual matters, assumptions, or format of said reports. They shall not consider the appropriateness of pricing methodologies or comparables used in the report.
 8. Lease rates shall not be determined in whole or in part based upon the actual or anticipated volume or value of referrals between the parties, the revenue generated by the occupant of the space, or other business generated by the parties.
- C. For each proposed Lease Arrangement, the Tenet Entity will review the terms of the lease agreement.
1. If the Tenet Entity is the Lessor, the Lease Arrangement shall be set forth in a written agreement in substantially the form provided in the Tenet Contractual Arrangement Manual (“CAM”). The Lease shall include (i) the proposed use for the premises (e.g. General Office, Medical Office, Imaging or Surgical) and (ii) a description of the rental structure (e.g. Gross, Modified Gross, Triple Net).
 2. The Lease shall set in advance the aggregate rental charges to be paid over the term as determined pursuant to Step B above. Neither the selection of a Lessee or Lessor nor the terms and conditions of the Lease shall be conditioned on the Lessee or Lessor
 - a. making payments based on the volume or value of business generated between the parties,

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- b. making referrals to the other,
- c. being in a position to make or influence referrals to the other, or
- d. otherwise generating business for the other.

However, the Tenet Entity who is a Lessor may require a Lessee of medical office space to be a member of its active medical staff.

3. The Lease shall be commercially reasonable without regard to any referrals made between the parties, and the leased space must be reasonable and necessary for the legitimate business purpose of the Lease. Documents evidencing the commercial reasonableness analysis for each Lease shall be maintained in the eCATS package for each Lease as outlined in L-15.
4. Lease Length & Renewal Terms
 - a. Except as approved by the Assistant General Counsel, the Lease term for medical office space shall be at least one year and no longer than five years and there shall be no automatic renewals or tenant renewal options if the Tenet Entity is the Lessor.
 - b. For ambulatory surgery centers, surgical hospital, and imaging centers, the main facility Lease may have an initial term of up to 15 years with an option to renew for 2 terms of up to 5 years each.
 - c. All Leases may contain an automatic month-to-month renewal provision for up to six months provided the Lease Arrangement is on the same terms and conditions as the immediately preceding Lease.
5. A space Lease shall not preclude or restrict Referral Source in any way from
 - a. establishing staff privileges at any non-Tenet Entity,
 - b. referring patients or utilizing the services of any non-Tenet Entity, or
 - c. otherwise generating business for any non-Tenet Entity.
6. If the Lease provides the Lessee with access to the leased premises for periodic intervals of time, rather than on a full-time basis for the term, the Lease shall specify exactly the schedule of such intervals, their precise length, and the exact rental charges for such intervals.

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7. Rent abatements (e.g., free rent) shall be offered only as contemplated in the Leasing Plan or the Ad Hoc FMV Report.
8. The following additional requirements apply to space Leases:
 - a. A Tenet Entity must obtain the advance written approval of the responsible Operations Counsel in order to make any deviations from the “Use of Premises” provision in the CAM Lease or to add any other non-competition provision or restrictive covenant to the approved CAM Lease.
 - b. The Lease shall provide that any costs incurred by the Lessee for leasehold improvements or refurbishments in excess of any Lessee improvement allowance provided in the space Lease shall be the sole responsibility of the Lessee. Any excess leasehold improvement costs may be paid by the Lessor and charged to the Lessee as additional rent, provided a fair market value interest rate is factored into the additional rent calculation and the repayment period is no longer than the Lease term.
 - c. The Lease shall require a security deposit equal to one month’s rent for
 - i. all new Lease Arrangements, including time share arrangements;
 - ii. renewal of Leases where the Lessee has been a tenant for less than three full years; and
 - iii. renewal of Leases where the Lessee has been a tenant for three or more years with a payment history of three or more late payments.

If a Lessee has previously paid a security deposit in accordance with a Lease for the same premises, the Lessee shall not be required to pay additional security deposit nor entitled to a refund of current security deposit amounts to equal the new monthly rental amount. This section shall not apply to a Lease Arrangement whereby the Lessee is a Tenet Entity.
 - d. Annual Adjustments to the Rent
 - i. Tenet’s Lease Administrator shall calculate the adjustments.
 - ii. Annual adjustments to the rent shall be based on the method recommended in the applicable FMV Report, such as Consumer Price Index, fixed increases and any other factors permitted by the approved template space lease.

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- iii. Unless the FMV Report recognizes increases based solely on CPI adjustments, annual adjustments shall be based on fixed increases in the range established in the FMV Report.
- iv. If there is a change of ownership in the non-Tenet Entity to the Lease Arrangement or an assignment of the Lease during the term of the Lease, the non-Tenet Entity shall provide reasonable evidence of the same for inclusion in the eCATS package for the Lease. In addition, such non-Tenet Entity shall provide additional information required to conduct an exclusions list screening and identify if any Referral Sources are affiliated with the new owner or assignee. If the Tenet Entity is required to make payments to such new entity or assignee, the non-Tenet Entity or its successor must provide the documentation to Tenet and, to the extent required by the Lease, the Tenet Entity shall document its consent to the assignment with approval by Operations Counsel before payments can be made to the new entity or assignee.

9. All Leases with Referral Sources shall require the parties to certify that they shall not violate the Anti-Kickback Statute or the Stark Law.

D. For each proposed Lease Arrangement, the Tenet Entity shall prepare all of the following documentation for submission into eCATS:

1. A fully completed Request for Agreement in the form established from time-to-time by the Law Department.
2. A draft Lease and a redlined draft of the proposed Lease which highlights all changes, if any, made to the approved CAM template space lease. A Lessor’s form of lease may be utilized if the Tenet Entity is the Lessee, and the Lessor declines to use the Tenet CAM template applicable to the arrangement.
3. If the Tenet Entity is the Lessor, for all renewal Leases, a complete Lessee payment history and information regarding collection of past-due accounts are required. Lessees in default of existing payment obligations cannot be renewed without approval of the Assistant General Counsel.
4. All documentation prepared in connection with determining the FMV and the rent for the space at issue.



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5. If the Tenet Entity is the Lessee, evidence that the Lessor (i) has been approved in VQP or (ii) is exempt from the VQP process, in which case there shall be reasonable evidence that the Lessor is not excluded from participation in state or federal programs.
6. Any other information required by responsible Operations Counsel, Assistant General Counsel or General Counsel.

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Exhibit B – Steps to Enter into Equipment Leases with Referral Sources

Tenet shall enter into equipment Leases with Referral Sources pursuant to the steps below:

- A. For each proposed Lease Arrangement, the Tenet Entity will determine what equipment is reasonable and necessary.
 1. Regardless of whether the Tenet Entity is the Lessee or Lessor, when a Tenet Entity proposes to enter into a Lease for equipment with a Referral Source, the leased equipment shall
 - a. not exceed that which is reasonable and necessary for the legitimate business purposes of the Lease; and
 - b. be used exclusively by the Lessee, i.e. not shared with or used by the Lessor or any person or entity related to the Lessor, unless the Lease Arrangement is expressly non-exclusive.
 2. If the Tenet Entity is the Lessor, the Tenet Entity shall state its business purpose, which may include generating revenue for equipment not required for its operations and may presume that the proposed Lessee has a legitimate business purpose for its lease of equipment.
 3. A Tenet Entity shall not lease equipment to a Referral Source which is not a Tenet Entity on a part-time basis. Additionally, a Tenet Entity shall not lease equipment from a Referral Source unless Tenet Entity demonstrates that the equipment is not reasonably available from a non-Referral Source.
- B. For each proposed Lease Arrangement, the Tenet Entity will determine FMV in an equipment lease.
 1. Tenet may not enter into equipment Lease unless
 - a. the aggregate rent (or the per service rent, if applicable) over the term is set in advance; and
 - b. the Tenet Entity has objectively determined that the rent is consistent with FMV for the equipment rented.
 2. If the Referral Source refers patients for the service utilizing the leased equipment, the following rental rates are not permitted:
 - a. Per click and per use rental rates
 - b. hourly rates, and

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- c. rates determined by reference to revenue attributable to the leased equipment with Referral Sources.
- 3. Lease rates shall not be determined in whole or in part based upon volume or value of referrals between the parties or the revenue generated by the user of the equipment.
- 4. See L-25 Referral Source Fair Market Value for additional requirements on determining FMV.
- C. For each proposed Lease Arrangement, the Tenet Entity will review the terms of the lease agreement.
 - 1. If the Tenet Entity is the Lessor, the Lease Arrangement shall be set forth in a written agreement in substantially the form provided in the Tenet Contractual Arrangement Manual (“CAM”). The Lease shall include (i) the proposed use for the equipment (e.g. General Equipment, Medical Equipment, Imaging or Surgical) and (ii) a description of the rental structure (e.g. Gross, Modified Gross, Triple Net).
 - 2. The Lease shall set in advance the rental charges to be paid over the term as determined pursuant to Step B above. The rent shall not take into account the volume or value of any actual or expected referrals to, or business otherwise generated for, either the Lessor or Lessee. Neither the selection of a Lessee or Lessor nor the terms and conditions of the Lease shall be conditioned on the Lessee or Lessor
 - a. making payments based on the volume or value of business generated between the parties,
 - b. making referrals to the other,
 - c. being in a position to make or influence referrals to the other, or
 - d. otherwise generating business for the other.
 - 3. The Lease shall be commercially reasonable without regard to any referrals made between the parties, and the leased equipment must be reasonable and necessary for the legitimate business purpose of the Lease. Documents evidencing the commercial reasonableness analysis for each Lease shall be maintained in the eCATS package for each Lease as outlined in L-15.
 - 4. Lease Length & Renewal Terms

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	Previous Versions: 10/5/2020, 7/30/19, 5/11/18, 2/1/17, 10/26/12, 9/27/11, 5/11/09, 11/1/07, 2/12/07, 1/1/07, 3/1/05, 5/10/04, 10/1/99
	Approved By: Executive Leadership Team
	Approval Date: 6/10/22

- a. Except as approved by the Assistant General Counsel, there shall be no automatic renewals or tenant renewal options if the Tenet Entity is the Lessor.
 - b. An equipment Lease shall have a term of no longer than three years.
 - c. All Leases may contain an automatic month-to-month renewal provision for up to six months provided the Lease Arrangement is on the same terms and conditions as the immediately preceding Lease.
5. If the Lease provides the Lessee with access to the leased equipment for periodic intervals of time, rather than on a full-time basis for the term, the Lease shall specify exactly the schedule of such intervals, their precise length, and the exact rental charges for such intervals.
 6. Rent abatements (e.g., free rent) shall be contemplated in the Leasing Plan or the Ad Hoc FMV Report.
 7. All Leases with Referral Sources shall require the parties to certify that they shall not violate the Anti-Kickback Statute or the Stark Law.
- D. For each proposed Lease Arrangement, the Tenet Entity shall prepare all of the following documentation for submission into eCATS:
1. A fully completed Request for Agreement in the form established from time-to-time by the Law Department.
 2. A draft Lease and a redlined draft of the proposed Lease which highlights all changes, if any, made to the approved CAM template equipment lease. A Lessor’s form of lease may be utilized if the Tenet Entity is the Lessee, and the Lessor declines to use the Tenet CAM template applicable to the arrangement.
 3. If the Tenet Entity is the Lessor, for all renewal Leases, a complete Lessee payment history and information regarding collection of past-due accounts are required. Lessees in default of existing payment obligations cannot be renewed without approval of the Assistant General Counsel.
 4. All documentation prepared in connection with determining the FMV and the rent for the equipment at issue.



CORPORATE POLICY

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- If the Tenet Entity is the Lessee, evidence that the Lessor (i) has been approved in VQP or (ii) is exempt from the VQP process, in which case there shall be reasonable evidence that the Lessor is not excluded from participation in state or federal programs.
- Any other information required by responsible Operations Counsel, Assistant General Counsel or General Counsel.