



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

APR 05 2010

MEMORANDUM FOR SECRETARY OF THE ARMY

ATTN: DEPUTY ASSISTANT SECRETARY OF THE
ARMY (PROCUREMENT)

ATTN: DEPUTY ASSISTANT SECRETARY OF THE
ARMY (RESEARCH & TECHNOLOGY)

SECRETARY OF THE NAVY

ATTN: CHIEF OF NAVAL RESEARCH

ATTN: DEPUTY ASSISTANT SECRETARY OF THE
NAVY (ACQUISITION & LOGISTICS MANAGEMENT)

SECRETARY OF THE AIR FORCE

ATTN: DEPUTY ASSISTANT SECRETARY OF THE
AIR FORCE (CONTRACTING)

ATTN: DEPUTY ASSISTANT SECRETARY OF THE
AIR FORCE (SCIENCE, TECHNOLOGY &
ENGINEERING)

ASSISTANT TO THE SECRETARY OF DEFENSE FOR
NUCLEAR & CHEMICAL & BIOLOGICAL DEFENSE
PROGRAMS

DIRECTOR, DEFENSE ADVANCED RESEARCH
PROJECTS AGENCY

DIRECTOR, DEFENSE THREAT REDUCTION AGENCY

DIRECTOR, WASHINGTON HEADQUARTERS SERVICES

SUBJECT: Indirect Cost Limitation for Basic Research Awards

To comply with the requirements of section 8101 of the DoD Appropriations Act, 2010 (Public Law 111-118), please issue direction to all organizations within your Military Department or Defense Agency that may obligate or transfer for obligation Basic Research appropriations. Section 8101 states:

Notwithstanding any other provision of law, none of the funds made available in this Act may be used to pay negotiated indirect cost rates on a contract, grant, or cooperative agreement (or similar arrangement) entered into by the Department of Defense and an entity in excess of 35 percent of the total cost of the contract, grant, or agreement (or similar arrangement): Provided, That this limitation shall apply only to contracts, grants, or cooperative agreements entered into after the date of enactment of this Act using funds made available in this Act for basic research.


For the purpose of implementing section 8101:

- Basic Research means funds in programs within Budget Activity 1 of the Research, Development, Test and Evaluation appropriations.
- The restriction on payment of indirect costs applies to all FY 2010 Basic Research appropriations obligated by any award (i.e., procurement contract, grant, cooperative agreement, or other obligational arrangement) to a non-Federal entity, or awardee.
- The limitation on payment of indirect costs applies to an award entered into at the prime level only and does not flow down to subordinate instruments.
- For the restriction on payment of indirect cost as a percentage of total cost, “total cost” has the meaning given in the Federal cost principles that apply to the particular awardee (2 CFR part 220, 225, or 230, or 48 CFR part 31). “Indirect costs” are costs of a prime award that are Facilities and Administration costs (for awardees subject to the cost principles in 2 CFR part 220) or indirect costs (for awardees subject to the cost principles in 2 CFR part 225 or 230 or 48 CFR part 31).

Please issue direction to affected program and awarding offices to include a:

- Term or condition to provide for compliance with section 8101: (1) in each new award entered into using FY 2010 Basic Research funds; and (2) as a matter of policy, in any modification – e.g., incremental funding action or exercise of an option – that obligates FY 2010 Basic Research funds for an award made on or after November 14, 2007, using FY 2008 or FY 2009 Basic Research funds.
- Statement in each document transferring FY 2010 Basic Research funds to another Federal agency for obligation to a non-Federal entity, to require the agency to include a term or condition to provide for compliance with section 8101 in any new award or modification that meets the criteria in the previous paragraph.

My point of contact for grants or cooperative agreements is Dr. Mark Herbst at 703-588-1377 or mark.herbst@osd.mil. For procurement, contact Mr. Clyde Wray at 703-602-8387 or clyde.wray@osd.mil.



Ashton B. Carter