



**DEPARTMENT OF THE NAVY**  
OFFICE OF THE ASSISTANT SECRETARY  
(RESEARCH, DEVELOPMENT AND ACQUISITION)  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000

NOV - 4 2008

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Indirect Cost Limitation For Basic Research Awards

Ref: (a) DASN(A&LM) memo of January 9, 2008

Encl: (1) USD(AT&L) memo of October 28, 2008

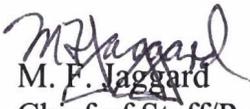
Reference (a) advised of restrictions imposed by Section 8115 of the DoD Appropriations Act for FY 2008 on payments of negotiated indirect cost rates on contracts, grants, or cooperative agreements. This same restriction is included in Section 8109 of the Department of Defense Appropriations Act, 2009 (Division C of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110-329). Enclosure (1) advises that the limitation applies to the following actions when using funds made available in the Act for Basic Research:

- contracts, grants, cooperative agreements, or similar arrangements entered into after the date of the enactment of the Act (September 30, 2008);
- modifications to contracts, grants, cooperative agreements, or similar arrangements entered into before that date and subject to the limitations described in reference (a); and
- any award or modification made by another Federal agency to a non-Federal entity on behalf of DoD meeting either of the above criteria.

To the extent that your activity obligates Basic Research funds through contracts, grants, cooperative agreements, or other arrangements, ensure you include the necessary language to incorporate this limitation in applicable instruments. Additionally, funding documents transferring FY 2009 Basic Research funds to another Federal agency for obligation to a non-Federal entity must contain a statement requiring the Federal agency to comply with the stated limitation on payments of negotiated indirect cost rates in each new action it executes using these funds.

Subj: INDIRECT COST LIMITATION FOR BASIC RESEARCH AWARDS

Please disseminate this policy memorandum to your program managers, financial managers and contracting staff for their awareness. Questions regarding this matter should be directed to Ms. Evelyn Ortiz at (703) 614-9640, email [evelyn.ortiz@navy.mil](mailto:evelyn.ortiz@navy.mil).

  
M. F. Jaggard  
Chief of Staff/Policy  
DASN (A&LM)

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Subj: INDIRECT COST LIMITATION FOR BASIC RESEARCH AWARDS

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**OCT 28 2008**

**MEMORANDUM FOR SECRETARY OF THE ARMY**

**ATTN: DEPUTY ASSISTANT SECRETARY OF THE  
ARMY (PROCUREMENT)  
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)**

**DIRECTOR, DEFENSE ADVANCED RESEARCH PROJECTS  
AGENCY**

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

**DIRECTOR, DEFENSE THREAT REDUCTION AGENCY  
DIRECTOR, WASHINGTON HEADQUARTERS SERVICES**

**SUBJECT: Indirect Cost Limitation for Basic Research Awards**

Please expeditiously issue direction to all organizations within your Military Department or Defense Agency that may obligate or transfer for obligation Basic Research appropriations, to comply with the requirements of section 8109 of the Department of Defense Appropriations Act, 2009 (Division C of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110-329). Section 8109 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 the enactment of this Act using funds made available in this Act for basic research.

For the purposes of implementing section 8109:

- Basic Research means funds in programs within Budget Activity 1 of the Research, Development, Test and Evaluation appropriation.



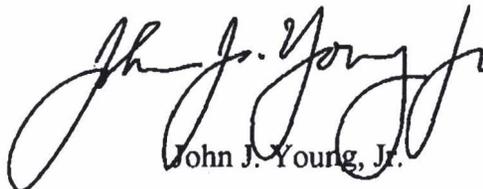
- The restriction on payment of indirect costs applies to all FY 2009 Basic Research appropriations obligated by any award (i.e., procurement contract, grant, cooperative agreement, or other obligational arrangement) to a non-Federal entity, or awardee.
- The limitation on payment of indirect costs applies 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 requiring compliance with section 8109: (1) in each new award entered into using FY 2009 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 2009 Basic Research funds for an award made in FY 2008, if the FY 2008 funding under the award is subject to the limitation on indirect costs in section 8115 of the Department of Defense Appropriations Act, 2008 (i.e., the award was made on or after November 14, 2007, using FY 2008 Basic Research funds).
- Statement in each document transferring FY 2009 Basic Research funds to another Federal agency for obligation to a non-Federal entity, to require the agency to include a term or condition requiring compliance with section 8109 in any new award or modification that meets the criteria in the previous paragraph.

My points of contact are Dr. Mark Herbst (703-588-1377, [mark.herbst@osd.mil](mailto:mark.herbst@osd.mil)) for grants or cooperative agreements and Ms. Sandra Morris (703-602-0296, [sandra.morris@osd.mil](mailto:sandra.morris@osd.mil)) for procurement contracts.



John J. Young, Jr.