



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

APR 13 2010

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Indirect Cost Limitation For Basic Research Awards

The attached memorandum from the Under Secretary of Defense for Acquisition, Technology and Logistics of April 5, 2010 addresses Section 8101 of the Department of Defense (DOD) Appropriations Act, 2010 (Public Law 111-118) which limits payments of negotiated indirect cost rates on contracts, grants, or cooperative agreements (or similar arrangements) that are funded with FY 2010 Basic Research funds to not more than thirty-five percent (35%) of the total cost of the instrument. This same statutory restriction has been in place for the past two fiscal years. Memoranda from the Deputy Assistant Secretary of the Navy for Acquisition and Logistics Management of January 9, 2008 and November 4, 2008, provide implementing guidance on the earlier statutes.

To the extent that your activity obligates Basic Research funds through contracts, grants, cooperative agreements, or other arrangements, please ensure that you include the necessary language to incorporate this limitation in applicable instruments. Funding documents transferring FY 2010 Basic Research funds to another Federal agency for obligation to a non-Federal entity must also 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.

Please disseminate this information to your program managers, financial managers and contracting staff for appropriate action. 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).

*Elliott B. Branch*  
Elliott B. Branch  
Executive Director  
DASN (A&LM)

Attachment :  
As stated

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SUBJECT: INDIRECT COST LIMITATION FOR BASIC RESEARCH AWARDS

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**SUBJECT: INDIRECT COST LIMITATION FOR BASIC RESEARCH AWARD**

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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](mailto:mark.herbst@osd.mil). For procurement, contact Mr. Clyde Wray at 703-602-8387 or [clyde.wray@osd.mil](mailto:clyde.wray@osd.mil).

  
Ashton B. Carter