



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

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.

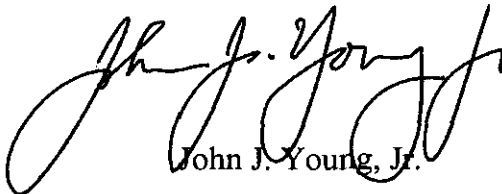


- The restriction on payment of indirect costs applies to all FY 2009 Basic Research appropriations obligated by any award (i.e., procurement contract, grant, cooperative agreement, or other obligational arrangement) to a non-Federal entity, or awardee.
- The limitation on payment of indirect costs applies 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) for grants or cooperative agreements and Ms. Sandra Morris (703-602-0296, sandra.morris@osd.mil) for procurement contracts.



John J. Young, Jr.