

## **Indirect Cost limitation for Basic Research Awards funded by the Department of Defense**

**What is the DoD limitation and under what authority is this limitation imposed?**

**The DoD limitation is a cap on indirect costs payable to the recipient of certain types of DoD financial assistance awards. Its authority is derived from the FY2008 Department of Defense (DoD) Appropriations Bill, Section 8115, which 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 fiscal year 2008 for basic research.”

**Which DoD awards are affected?**

The DoD cap is applicable to “basic research” that is funded from the DoD Research, Development, Test and Evaluation appropriation entered into after enactment of the Act (i.e., awards made on or after November 14, 2007. This is known to many as “6.1 funds”. Awards made for “applied research” and “development” (“6.2 funds” and “6.3 funds”, respectively) are not affected.

Awards received between November 14, 2007 (the date the cap became effective) and December 1, 2007 (the date stamped on the DoD internal memo) may have to be amended to account for the cap.

The DoD cap is applicable to FY08 appropriated funds that meet the criteria included in this document. The cap will be applicable to FY09 funds **only** if the same cap language is included in the FY09 DoD Appropriations Bill.

Award renewals are not affected by the cap. For example, an award continuation made from FY08 DoD funds is not subject to the cap.

Awards to Subrecipients (“subordinate instruments” per the DoD internal memo) are not affected by the cap. While this creates an inconsistency as to how the prime recipient and the subrecipient are treated, the DoD internal memo is clear in its directions.

Although Penn has a DoD contract waiver as part of our F&A rate agreement that allows the institution to charge the uncapped administrative portion of their F&A rate

on selected DoD contracts, the same analysis and management of the 35 percent cap is applicable.

Congressionally Directed Medical Research Programs (CDMRP) encompass breast, prostate, and ovarian cancers, neurofibromatosis, military health, and other specified medical research areas. A small portion of CDMRP is funded from the Research, Development, Test and Evaluation appropriation, and is subject to the cap. The majority of CDMRP is funded from the DoD Operations and Maintenance appropriation, and is not subject to the cap.

“Earmarks” that fund basic research can be funded from either the Research, Development, Test and Evaluation appropriation or the DoD Operations and Maintenance appropriation. If funded by the Research, Development, Test and Evaluation appropriation, then the earmark is subject to the cap.

### **Should we consider the limitation when constructing proposal budgets?**

No, since it is not always clear whether an award will be affected by the limitation and the limitation only applies to FY08 funding, proposals should use the appropriate University F&A rate. Please note that the current rate for DoD *contracts* is 59.9%, while DoD *grants* use the standard rate of 57.5%.

### **How is the limitation calculated and will the indirect cost recovery be reduced?**

The impact of the limitation will vary on an award by award basis. The limitation is that total indirect costs charged cannot exceed 35% of total direct cost. This is not a limitation on the rate that can be charged, so accordingly, we will charge all affected awards at our negotiated rate. Penn’s negotiated indirect cost rates are based on modified total direct cost. Therefore, the impact of the cap will vary depending on the amount of excluded costs charged to the award. For instance, if a \$100,000 award is made that is subject to the cap, no more than \$35,000 can be charged to the award for indirect costs. If the direct costs of \$65,000 did not include any charges that are normally excluded from the indirect cost calculation, Penn would normally be allowed to recoup \$37,375 in indirect costs at our present rate of 57.5%, so in this example Penn would forfeit \$2,375 in indirect costs. If the charges against this same award included \$5,000 of excluded costs such as tuition or equipment, Penn could recoup its full indirect costs at 57.5% since the total amount of indirect costs would not exceed the \$35,000.

### **How will the affected awards be managed?**

The appropriation bill stipulates that awarding offices are to include terms and conditions requiring compliance with section 8115 in each new award made on or after November 15, 2007, using basic research funds made available by the DoD Appropriations Act for

FY2008. Award documents should be reviewed carefully for these terms. Provisions limiting indirect cost recovery for DoD projects, when included in the award document, will be noted on the AIS and will be recorded in the Terms and Conditions section of PennERA for the project.

In order to comply with the Department of Defense (DoD) Appropriations Bill, Section 8115 the Office of Research Services will begin to cap indirect cost recovery for the affected DoD projects awarded after 11/14/2007. FUND numbers associated with affected DoD projects will be setup at the appropriate University negotiated rate. The overhead recovery will be capped through the general ledger custom indirect cost recognition process using Special Budget Object Code PIND MAX IND COST REC.

After a new FUND has been established for an affected DoD contract, grant, or cooperative agreement, a Special Budget journal entry will be performed to set the maximum indirect cost to 35% of the total award amount for the project for fiscal year 2008 via object code PIND. In order for this process to be effective, a new FUND number will need to be created for affected awards for each new budget year.

It is essential that each DoD award and associated AIS be reviewed at set-up to ensure the appropriate indirect costs are shown in the budget and subsequently charged to the award.

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