



FINANCIAL ASSISTANCE LETTER

This Financial Assistance Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA

Subject: Two-Year Cost-Share Pilot Program Extension

**References: Research and Development, Competition, and Innovation Act,
P.L. 117-167, Section 10725, enacted August 9, 2022**

Energy Policy Act of 2005, P.L. 109-58, Section 988

42 USC 16352 Cost sharing

2 CFR 910.130 Cost sharing (EPACT)

2 CFR 910.133 Deviation Authority

**Department of Energy Research and Innovation Act, P.L. 115-246,
Section 108, enacted September 28, 2018**

When is this Financial Assistance Letter (FAL) effective?

The statutory provisions addressed in this FAL are effective as of August 9, 2022.

When does this FAL expire?

This FAL remains in effect until canceled or superseded.

Who is the point of contact?

For DOE questions, please contact the Contract and Financial Assistance Policy Division at DOE_OAPMPolicy@hq.doe.gov.

For NNSA, contact NNSA at (505) 845-4337.

Who is the intended audience?

Department of Energy (DOE) and National Nuclear Security Administration (NNSA) Contracting and Grants Officers. Any reference in this guidance to Contracting Officer should be understood to include Grants Officer. Any reference in this guidance to the DOE should be understood to include the NNSA, unless otherwise indicated.

What is the purpose?

The purpose of this FAL is to provide information and guidance regarding the Department of Energy's (DOE or Department) implementation of the extension of the cost-share exemption enacted in Section 10725 of the Research and Development, Competition and Innovation Act of 2022.

What types of actions are affected by this FAL?

This FAL applies to all DOE funding opportunity announcements and financial assistance awards issued between August 9, 2022, and August 8, 2024.

What is the Background?

DOE financial assistance regulations at 2 CFR 910.130 implement the cost sharing requirements of the Energy Policy Act of 2005 (EPACT 2005), section 988 (42 USC 16352), that the Secretary require not less than 20% non-federal cost share for research or development activities.

2 CFR 910.130(b) establishes a cost share requirement of at least 20 percent of the cost of an activity for research and development except where: (1) the research or development activity is of a basic or fundamental nature that has been excluded by an appropriate officer of DOE, generally an Under Secretary; or (2) the Secretary has determined it is necessary and appropriate to reduce or eliminate the cost sharing requirement for a research and development activity of an applied nature. A cost share waiver is required to reduce or eliminate 2 CFR 910.130(b) cost share requirements in either case.

In 2018, Section 108 of the Department of Energy Research and Innovation Act, Public Law 115-246 (Innovation Act), amended EPACT 2005, section 988 (42 USC 16352) and instituted a two-year cost share exemption pilot program, active from September 28, 2018 through September 27, 2020, exempting a "research or development activity performed by an institution of higher education or nonprofit institution" from the cost share requirements of Section 988 of EPACT 2005. The two-year pilot program allowed DOE programs to reduce or eliminate cost share requirements for institutions of higher education (IHEs) and nonprofit institutions performing applied research and development without the need for a cost share

waiver. In 2019, DOE modified its cost share regulations at 2 CFR 910.13(b) to explicitly address the cost share pilot program.

In 2020 DOE amended 2 CFR 910 adding section 910.133 Deviation Authority, to provide the Director for the Office of Acquisition Management (for DOE actions) and the Deputy Associate Administrator for the Office of Acquisition and Project Management for NNSA (for NNSA actions) or their designees authority to authorize deviations from agency-specific regulations, when: (1) necessary to achieve program objectives; (2) necessary to conserve public funds; (3) otherwise essential to the public interest; or (4) necessary to achieve equity.

In 2022, DOE removed the cost-share pilot program from its regulations at 2 CFR 910.130(b), following the expiration of the pilot program.

Enacted on August 9, 2022, Section 10725 of the Research and Development, Competition, and Innovation Act (RDCIA), P.L. 117-167 re-authorized the 2018 cost-share exemption pilot program for another two-year period, from August 9, 2022, through August 8, 2024.

As previously implemented, this two-year cost-share exemption program exempts a “research or development activity performed by an institution of higher education or nonprofit institution” from the cost share requirement imposed by section 988 of EPACT 2005 that the Secretary require not less than 20 percent non-federal cost sharing for applied research or development activities. Therefore, during the period of August 9, 2022, through August 8, 2024, DOE programs have discretion to impose, as a matter of programmatic policy, cost share requirements for IHEs and nonprofit institutions performing applied research and development under DOE financial assistance awards.

Currently, 2 CFR 910.130(b) does not provide the cost share exemption enacted by the RDCIA and therefore it institutes a cost sharing requirement more restrictive than that required by the statute it implements. Since this cost share exemption is temporary and essential to the public interest, DOE utilized its deviation authority at 2 CFR 910.133 to provide a class deviation to the 2 CFR 910.130(b) cost share requirements to implement section 10725 of the RDCIA. See the attached Class Deviation Findings and Determination.

What guidance is included in this FAL?

During the two-year period beginning on August 9, 2022, the research and development activities of an applied nature performed by an IHE or nonprofit institution are exempt from the cost share requirement of 2 CFR 910.130(b). DOE programs have discretion to impose, as a matter of programmatic policy, cost share requirements for IHEs and nonprofit institutions performing applied research and development under DOE financial assistance awards.