

**CLASS DEVIATION  
FINDINGS AND DETERMINATION  
DOE FINANCIAL ASSISTANCE REGULATION  
COST SHARING REQUIREMENTS AT 2 CFR 910.130**

**FINDINGS:**

1. Section 10725 of the Research and Development, Competition, and Innovation Act, P.L. 117-167 (Aug. 9, 2022) included an amendment to the Energy Policy Act of 2005 (EPACT 2005), section 988(b) (42 U.S.C. 16352) that exempts institutions of higher education or nonprofit institutions (as defined in section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703)) from the minimum cost sharing requirements for research and development activities during the 2-year period beginning on August 9, 2022.
2. DOE Financial Assistance regulation at 2 CFR 910.130 implements the cost sharing requirements of EPACT 2005, section 988 (42 U.S.C. 16352).
3. 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.
4. 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 U.S.C. 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.
5. In 2019, pursuant to the Innovation Act, DOE modified its regulation regarding cost share by amending the text at 2 CFR 910.130(b) to explicitly add the exemption for institutions of higher education and nonprofit institutions from the requirement that the Secretary requires a 20 percent non-Federal cost sharing for research or development activities. As a result, DOE programs were not required to obtain cost share waivers to reduce or eliminate cost share requirements for institutions of higher education (IHEs) and nonprofit institutions performing applied research and development.
6. 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.

7. 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. As a result, the exemption for institutions of higher education and nonprofit institutions from the requirement that the Secretary requires a 20 percent non-Federal cost sharing for research or development activities in paragraph (b)(3) was deleted.

8. Currently, 2 CFR 910.130(b) does not provide the cost share exemption enacted by the Research and Development, Competition, and Innovation Act P.L. 117-167 (Aug. 9, 2022) and therefore it institutes a cost sharing requirement more restrictive than that required by the statute it implements.

**DETERMINATION:**

It is hereby determined that a class deviation to 2 CFR 910.130(b) is appropriate to implement Section 10725 of the Research and Development, Competition, and Innovation Act and essential to the public interest.

Therefore, for the two-year period beginning August 9, 2022, institutions of higher education or nonprofit institutions (as defined in section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703)) shall be exempted from the minimum cost sharing requirements for research and development activities at 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.

This class deviation is effective upon the date of signature and will remain in effect for the 2-year period beginning on August 9, 2022, or until cancelled.

**APPROVED:**

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