

New DOD Guidance on Publication Restrictions

Once again the Department of Defense (DOD) has issued a memorandum indicating that, in general, DOD funded research done at universities, or by university researchers, is to be free from publication restrictions and nationality restrictions. Any exceptions to this general rule are to be “extremely rare and exceptional.” This latest memorandum was issued on May 24, 2010 by Ashton B. Carter, the Under Secretary of Defense. The memorandum was issued to the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, and the Directors of the Defense Agencies.

The memorandum states:

The performance of contracted fundamental research also should not be managed in a way that it becomes subject to restrictions on the involvement of foreign researchers or publication restrictions. There may be exceptional cases in which these guidelines should not be applied, but I believe that such cases will be extremely rare and that exceptions should be made only with the approval of high-level Component management.

The new memorandum appears to strengthen the prior memoranda on this subject. For example, there is an explicit portion of the memorandum making it clear that contracts should be managed so that prime contractors do not flow down inappropriate restrictions on universities doing fundamental research. The memorandum states:

Provisions shall be made to accommodate such subcontracts for fundamental research and to ensure DoD restrictions on the prime contract do not flow down to the performer(s) of such research.

The memorandum applies to all research that is funded by two DOD budget categories. These two budget categories are Research, Development, Test, and Evaluation Budget Activity 1 (Basic Research) and 2 (Applied Research).

As is well known, restrictions on publication rights and the nationality of researchers have a significant effect on whether or not research is exempt from application of the United States export control laws. Hopefully, the new memorandum will make it easier for UAHuntsville contract and subcontract negotiators and Principal Investigators to have such restrictions removed from all federally-funded research awarded to UAHuntsville, particularly DOD-funded research.