



RESEARCH  
AND ENGINEERING

## ASSISTANT SECRETARY OF DEFENSE

3030 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3030

JUN 01 2015

MEMORANDUM FOR SECRETARY OF THE ARMY

ATTN: DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)

ATTN: DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(RESEARCH & TECHNOLOGY)

SECRETARY OF THE NAVY

ATTN: CHIEF OF NAVAL RESEARCH

SECRETARY OF THE AIR FORCE

ATTN: DEPUTY ASSISTANT SECRETARY OF THE AIR  
FORCE (CONTRACTING)

ATTN: DEPUTY ASSISTANT SECRETARY OF THE AIR  
FORCE (SCIENCE, TECHNOLOGY & ENGINEERING)

CHAIRMAN, JOINT CHIEFS OF STAFF

ATTN: COMMANDER, U.S. SPECIAL OPERATIONS  
COMMAND

DIRECTORS OF THE DEFENSE AGENCIES

DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Prohibition on Using FY 2015 Funds under Grants and Cooperative Agreements  
with Entities that Require Certain Internal Confidentiality Agreements

In accordance with section 743 of the Financial Services and General Government Appropriations Act, 2015 (Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235), none of the FY 2015 funds appropriated or otherwise made available by that or any other Act may be made available for a grant or cooperative agreement with an entity that requires its employees or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting those employees or contractors from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive the information. DoD Components must comply with this prohibition in accordance with the guidance in the Attachment. The guidance also provides an approach that DoD Components may tailor to implement identical or similar provisions, if they are included in subsequent appropriations acts.

DoD Components must disseminate this guidance to all offices that make grant or cooperative agreement awards, including Technology Investment Agreements. Please refer any questions about this matter to Mr. Wade Wargo ([wade.d.wargo.civ@mail.mil](mailto:wade.d.wargo.civ@mail.mil), 571-372-2941).

Alan R. Shaffer  
Principal Deputy

Attachment: As stated

## **FY 2015 Appropriations Provision on Entities that Require Certain Internal Confidentiality Agreements**

### **I. GUIDANCE**

A. **Scope.** This guidance specifies actions DoD Components must take to implement section 743 of the Financial Services and General Government Appropriations Act, 2015 (Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235).

B. **Applicability.** This guidance applies to awards of grants and cooperative agreements, including Technology Investment Agreements (TIAs), using FY 2015 funds appropriated or otherwise made available by any act. Included are awards that:

1. DoD Components make using funding provided directly to the Department of Defense by the Department of Defense Appropriations Act, 2015; the Energy and Water Development and Related Agencies Appropriations Act, 2015; or the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2015 (Divisions C, D, and I of Pub. L. 113-235, respectively).

2. DoD Components make using FY 2015 funding provided to another Federal agency that transfers such funding to a DoD Component for obligation on its behalf.

3. Another Federal agency makes using any FY 2015 DoD appropriation transferred to such agency.

C. **Effective date.** The requirements in this guidance are effective immediately after the signature date of the cover memorandum.

D. **Statutory restrictions and implementation.** A grant or agreements officer is prohibited from making FY 2015 funds available through a grant or cooperative agreement, including a TIA, to an entity that requires its employees or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting those employees or contractors from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive the information. In implementing this requirement, the Department broadens the applicability to include internal confidentiality agreements or statements an entity requires its subrecipients, in addition to its employees and contractors, to sign.

E. **Procedures.**

1. DoD Components' awarding offices must obtain the representation in Part II of this attachment from each intended recipient prior to award. For a program with an application process, the awarding office must do this by including a statement in each program announcement under which it will receive applications after the effective date of this guidance requiring each applicant to make the representation with its application. For programs with applications using the SF-424 submitted through Grants.gov, the appropriate way to do this is to

have the program announcement include the representation in Part II so that the applicant's electronic signature of the SF-424 affirms its agreement with the representation.

2. Awarding offices must include the provision in Part III of this attachment in all resultant or existing awards when obligating FY 2015 funds.

3. Because subsequent appropriations acts may include provisions that are identical or substantially similar to section 743 of the Financial Services and General Government Appropriations Act, 2015, awarding offices of DoD Components:

- a. Must review subsequent appropriations acts to determine whether they include the provisions; and
- b. Should continue to follow the procedures specified in this guidance, with appropriate adjustments in wording of representations and assurances to reflect any differences in the applicable statutory wording, until this guidance is superseded by future guidance.

4. Awarding offices should assume that section 743 will remain in effect during the period of any Continuing Appropriations Resolution (CR).

## **II. REPRESENTATION**

Representation regarding the Prohibition on Using Funds under Grants and Cooperative Agreements with Entities that Require Certain Internal Confidentiality Agreements. Use the following representation if the FY 2015 funding to be obligated was appropriated or made available by any act:

By submission of its proposal or application, the applicant represents that it does not require any of its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting those employees, contractors, or subrecipients from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. Note that: (1) the basis for this representation is a prohibition in section 743 of the Financial Services and General Government Appropriations Act, 2015 (Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235) and any successor provision of law on making funds available through grants and cooperative agreements to entities with certain internal confidentiality agreements or statements; and (2) section 743 states that it does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

## **III. AWARD PROVISION**

Prohibition on Using Funds under Grants and Cooperative Agreements with Entities that Require Certain Internal Confidentiality Agreements. Use the following award provision when using FY

2015 funding appropriated or made available by any act to either make a new award or add funding to an existing award. A DoD Component may do non-substantive editing of the award provision to conform it with the wording of its other award terms and conditions (e.g., replacing “the recipient” and “the Government” with “you” and “we” if the DoD Component’s awards use personal pronouns in that manner).

(a) The recipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The recipient must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this award provision are no longer in effect.

(c) The prohibition in paragraph (a) of this award provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d) If the Government determines that the recipient is not in compliance with this award provision, it:

(1) Will prohibit the recipient’s use of funds under this award, in accordance with section 743 of Division E of the Consolidated and Further Continuing Resolution Appropriations Act, 2015, (Pub. L. 113-235) or any successor provision of law; and

(2) May pursue other remedies available for the recipient’s material failure to comply with award terms and conditions