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Agenda

- Recap of 2025 Rate Caps (Briefly)
- Litigation as of January 31, 2026
- Congressional Action:
 - 2026 National Defense Authorization Act
 - Appropriations Language



RECALL THE RATE CAPS AT ISSUE

Various Rate Caps in 2025

| Agency (Issuance Date) | Targeted Grantees (Asserted applicability date) | Nature of Cap | Link to Rate Cap Policy |
|---|--|--|---|
| National Institutes of Health (NIH) (Feb 7, 2025) | All grantees (Immediate effect on all awards for Institutions of Higher Education; Applied only to new awards for all others) | “[S]tandard indirect rate of 15% across all NIH grants for indirect costs in lieu of a separately negotiated rate for indirect costs in every grant” | https://grants.nih.gov/grants/guide/notice-files/NOT-OD-25-068.html |
| National Science Foundation (NSF) (May 5, 2025) | Institutions of Higher Education (Applied only to new awards made to Institutions of Higher Education) | Rate capped at 15% over MTDC Note: Pending outcome of litigation, new awards contain a term stating that, if NSF prevails in the litigation, NSF will impose the cap. As noted below, however, NSF has lost and withdrawn appeal. | https://www.nsf.gov/policies/document/indirect-cost-rate?_ga=2.120720577.896795908.1757032900-1270759832.1757032900 |
| Department of Defense (DoD) (Jun 12, 2025) | Institutions of Higher Education (Applied to new awards; For existing awards, DoD to renegotiate to rate cap by Nov 10, 2025, or terminate award) | Rate capped at 15%. No base specified, but negotiation procedures of 2 C.F.R. Part 200, Appendix III referenced, implying MTDC. | https://www.cogr.edu/sites/default/files/DOD%20Implementation%20of%20SECDEF%20Indirect%20Cost%20Cap%20Memo%20-%202025-06-12.pdf?_ga=2.247253837.896795908.1757032900-1270759832.1757032900 |

Various Rate Caps in 2025

| Agency (Issuance Date) | Targeted Grantees (Asserted applicability date) | Nature of Cap | Link to Rate Cap Policy |
|---|---|---|--|
| Department of Energy (DOE 1) (Apr 11, 2025) | Institutions of Higher Education (Applied only to new awards executed on or after May 8, 2025) (PF 2025-22) | “[S]tandardized 15 percent indirect cost rate for all grant awards to IHEs” Immediately effective in that PF asserts DOE will terminate all inconsistent awards | https://www.energy.gov/management/pf-2025-22-adjusting-department-energy-grant-policy-institutions-higher-education-ihe |
| Department of Energy (DOE 2) (May 8, 2025) | State/Local, Nonprofit, and For-profit grantees (different rates) (Applied only to new awards executed on or after May 8, 2025) (PF 2025-25 for State/Local; PF 2025-26 for Nonprofits; PF 2025-27 for For-Profits) | Indirect costs + fringe benefit costs capped as percentage of total award amount, including federal and mandatory cost share amounts, as follows: <ul style="list-style-type: none"> • 15% of total award for Nonprofit and For-Profit grantees • 10% of total award for State and Local Government grantees | https://www.energy.gov/sites/default/files/2025-11/FAL25-05%20%20Indirect%20Cost%20and%20Fringe%20Benefit%20Reimbursement%20Limitations%206-30%20%28revised%29.pdf (Also see Policy Flashes referenced in FAL) |



LITIGATION SUMMARY

Litigation

| Cap | Case | Status |
|-----|--|--|
| NIH | Commonwealth of Massachusetts, et al v. National Institutes of Health, et al, Docket No. 25-1343 (1st Cir., filed Apr 09, 2025) | D. Mass. permanently enjoined implementation nationwide. First Circuit affirmed D. Mass decision on January 5, 2026, preventing application of NIH rate cap. |
| NSF | Association of American Universities, et al v. National Science Foundation, et al, Docket No. 25-1794 (1st Cir., filed Aug 15, 2025) | D. Mass. vacated policy. Government appealed to First Circuit. Appellant (government) moved to dismiss appeal on September 26, granted by First Circuit on September 30. |
| DOD | Association of American Universities, et al v. Department of Defense, et al, Docket No. 25-2184 (1st Cir., filed Dec. 16, 2025) | D. Mass. vacated policy through final judgement on October 10. DoD has appealed to the First Circuit. DoD brief due on February 17, 2026. |

Litigation

| Cap | Case | Status |
|----------------------------|---|--|
| DOE 1 (IHE) | Association of American Universities, et al v. Department of Energy, et al, Docket No. 25-1727 (1st Cir., filed Jul 31, 2025) | D. Mass. vacated policy flash and enjoined application. Appeal to First Circuit underway. Appellant's (government) brief filed September 24. Proceedings suspended during government shutdown. With recommencement of government operations, Appellee's response brief filed December 22. Government's reply brief due February 2. |
| DOE 2 (State/ Local) | State of New York, et al v. Department of Energy, et al, Docket No. 26-214 (9th Cir., filed Jan 12) | D. Or. vacated Policy Flash 2025-25 (State/Local Government Cap). Government appealed to the Ninth Circuit on January 12, 2026. |

D. Oregon Case Offers Nice Overview

- DOE State and Local Cap in D. Oregon:

- Plaintiffs successfully challenged Policy Flash 2025-25 (Cap of 10 percent for State and Local Governments) and the relevant portion of Financial Assistance Letter 2025-05
- Summary Judgement
- Challenge under APA, arguing it is contrary to law because inconsistent with 2 C.F.R. § 200.414(c), which provides:

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See § 200.306.)

- (1) Negotiated indirect cost rates must be accepted by all Federal agencies. A Federal agency may use a rate different from the negotiated rate for either a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by the awarding Federal agency in accordance with paragraph (c)(3) of this section.
- (2) The Federal agency must notify OMB of any approved deviations. The recipient or subrecipient may notify OMB of any disputes with Federal agencies regarding the application of a federally negotiated indirect cost rate.
- (3) The Federal agency must implement, and make publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.
- (4) The Federal agency must include, in the notice of funding opportunity, the policies relating to indirect cost rate reimbursement or cost share as approved under paragraph (e). As appropriate, the Federal agency should incorporate discussion of these policies into its outreach activities with applicants before posting a notice of funding opportunity. See § 200.204

D. Oregon Case Offers Nice Overview

- DOE State and Local Cap in D. Oregon:
 - Government argued that a cap on a line item is not alteration of indirect cost mechanisms governed by the Uniform Guidance, and further argued that such caps to budget line items are committed entirely to agency discretion
 - Court disagreed, holding that “the regulations [UG] define what costs are allowable and allocable and establish a procedure for determining what costs are reimbursable in what proportions” which provides the Court a meaningful standard to apply in review under the APA
 - Court vacated the PF, holding with respect to plaintiff’s contrary to law argument:
 - The effect of the PF is to override effectiveness of NICRAs. As such, a “deviation” for a “class” of awards must comply with the procedures of 2 C.F.R. § 200.414(c). The Court holds that a “class” cannot be *all awards*.
 - The PF does not provide, as required by § 200.414(c)(3), criteria DOE will use to seek and justify deviations.
 - The PF was not incorporated into FOAs as required by § 200.414(c)(4).
 - The PF would, in some instances, result in forcing a grantee to accept less than the *de minimis* rate in violation of § 200.414(f).
 - To the extent the PF caps fringe costs, it is inconsistent with the Uniform Guidance, which permits recovery of otherwise allowable and allocable fringe costs.
 - By grouping fringe costs with indirect costs for purposes of the cap, the PF essentially forces recipients to treat fringe costs as indirect costs when they can be treated as direct costs.
 - The effective result of the PF is to create a mandatory cost share obligation, which is an item requiring notice in the FOA.
 - Now on Appeal to the Ninth Circuit (see table above)

First Circuit Hold NIH Cap Unlawful

- NIH IHE First Circuit Decision:

- Court applies Justice Barrett's reasoning in her controlling concurrence in *APHA* (discussed above), asserting that a challenge to an agency-wide policy such as this rate cap is properly within the District Court's jurisdiction under the APA.
- Held that the following NIH appropriations rider language effectively prohibited NIH from imposing the rate cap:

SEC. 226. In making Federal financial assistance, the provisions relating to indirect costs in part 75 of title 45, Code of Federal Regulations, including with respect to the approval of deviations from negotiated rates, shall continue to apply to the National Institutes of Health to the same extent and in the same manner as such provisions were applied in the third quarter of fiscal year 2017. None of the funds appropriated in this or prior Acts or otherwise made available to the Department of Health and Human Services or to any department or agency may be used to develop or implement a modified approach to such provisions, or to intentionally or substantially expand the fiscal effect of the approval of such deviations from negotiated rates beyond the proportional effect of such approvals in such quarter.

- Held that the regulatory framework of the Uniform Guidance (similar to discussion by D. Oregon above) effectively prohibited NIH from imposing a rate cap.

What to Watch

- Uniform Guidance (2 C.F.R. Part 200) updates per E.O. 14332 (Aug. 7, 2025)
- Action by Congress (underway)

ACTION BY CONGRESS (As of January 31, 2026)

***Process Constraint/Requirement in 2026 NDAA
(Enacted into Law)***

National Defense Authorization Act (NDAA) 2026

Pub. L. 119-60 (Dec. 18, 2025)

**SEC. 230. PROHIBITION ON MODIFICATION OF INDIRECT COST RATES
FOR INSTITUTIONS OF HIGHER EDUCATION AND NON-
PROFIT ORGANIZATIONS.**

(a) PROHIBITION.—The Secretary of Defense may not change or modify indirect cost rates (otherwise known as facilities and administration cost rates) for Department of Defense grants and contracts awarded to institutions of higher education and nonprofit organizations (as those terms are defined in part 200 of title 2, Code of Federal Regulations) until the Secretary makes the certification described under subsection (b).

NDAAs 2026

(b) CERTIFICATION.—A certification under this subsection is a certification to the congressional defense committees that the Department of Defense—

(1) working with the extramural research community, including representatives from universities, university associations, independent research institutes, and private foundations, has developed an alternative indirect cost model that has—

(A) reduced the indirect cost rate for all applicable institutions of higher education and nonprofit organizations (compared to indirect rates for fiscal year 2025); and

(B) optimized payment of legitimate and essential indirect costs involved in conducting Department of Defense research to ensure transparency and efficiency for Department of Defense-funded grants and contracts; and

(2) established an implementation plan with adequate transition time to change budgeting and accounting processes for affected institutions of higher education and nonprofit organizations.

***Appropriations Riders
(Enacted in January)***

Commerce, Justice, Science; Energy and Water Development; and Interior and Environment Appropriations Act, 2026 Pub. L. 119-74 (Jan. 23, 2026)

- Appropriations for:
 - Department of Commerce
 - Department of Justice
 - National Aeronautics and Space Administration (NASA)
 - National Science Foundation
 - U.S. Army Corps of Engineers civil works projects
 - Department of Energy
 - Department of the Interior
 - Environmental Protection Agency
 - U.S. Forest Service
 - Indian Health Service
 - Several related and independent agencies
- Indirect Rate language included for those above **highlighted in red text.**

Commerce, NASA, and NSF:

SEC. 542. In making Federal financial assistance, the Department of Commerce, the National Aeronautics and Space Administration, and the National Science Foundation shall continue to apply the negotiated indirect cost rates in section 200.414 of title 2, Code of Federal Regulations, including with respect to the approval of deviations from negotiated indirect cost rates, to the same extent and in the same manner as such negotiated indirect cost rates were applied in fiscal year 2024: *Provided*, That none of the funds appropriated in this or prior Commerce, Justice, Science, and Related Agencies Appropriations Acts, or otherwise made available to the Department of Commerce, the National Aeronautics and Space Administration, and the National Science Foundation may be used to develop, modify, or implement changes to such fiscal year 2024 negotiated indirect cost rates.

Energy:

SEC. 313. In making Federal financial assistance, the Department of Energy shall continue to apply the indirect cost rates, including negotiated indirect cost rates, as described in section 200.414 of title 2, Code of Federal Regulations, including with respect to the approval of deviations from negotiated indirect cost rates, to the same extent and in the same manner as was applied in fiscal year 2024: *Provided*, That none of the funds appropriated in this or prior Acts or otherwise made available to the Department of Energy may be used to develop, modify, or implement changes to such negotiated indirect cost rates.

***Appropriations Riders
(Pending—Appropriations Situation Evolving)***

H.R. 7148: Compromise “Minibus”

- As passed with Amendment by Senate on Friday, January 31 (and sent back to the House)
- Appropriations contemplated for:
 - Department of Defense
 - Department of Labor
 - Department of Health and Human Services (including NIH)
 - Department of Education
 - Department of Transportation
 - Department of Housing and Urban Development, and related agencies.
- Possible Indirect Rate language included for those above highlighted in red text.
- Delay and changes due to removal of Department of Homeland Security FY 2026 full appropriation

Department of Defense (pending)

10 SEC. 8146. In making Federal financial assistance,
11 the Department of Defense shall continue to apply the ne-
12 gotiated indirect cost rates in section 200.414 of title 2,
13 Code of Federal Regulations, including with respect to the
14 approval of deviations from negotiated indirect cost rates,
15 to the same extent and in the same manner as such nego-
16 tiated indirect cost rates were applied in fiscal year 2024:
17 *Provided*, That none of the funds appropriated in this or
18 prior Department of Defense Appropriations Acts, or oth-
19 erwise made available to the Department of Defense may
20 be used to develop, modify, or implement changes to such
21 fiscal year 2024 negotiated indirect cost rates.

National Institutes of Health (pending)

8 SEC. 224. In making Federal financial assistance, the
9 provisions relating to indirect costs in part 75 of title 45,
10 Code of Federal Regulations, including with respect to the
11 approval of deviations from negotiated rates, shall con-
12 tinue to apply to the National Institutes of Health to the
13 same extent and in the same manner as such provisions
14 were applied in the third quarter of fiscal year 2017. None
15 of the funds appropriated in this or prior Acts or otherwise
16 made available to the Department of Health and Human
17 Services or to any department or agency may be used to
18 develop or implement a modified approach to such provi-
19 sions, or to intentionally or substantially expand the fiscal
20 effect of the approval of such deviations from negotiated
21 rates beyond the proportional effect of such approvals in
22 such quarter.

Lining Up Appropriations Riders Against Caps

| Cap | Act / Bill Impacting Rate Cap Authority (Status as of Jan. 31, 2026) |
|--|--|
| NIH | H.R. 7148, passed by Senate with Amendment, pending enactment in House |
| NSF | Pub. L. 119-74 (Jan. 23, 2026) |
| DOD | H.R. 7148, passed by Senate with Amendment, pending enactment in House |
| DOE 1 (IHE) | Pub. L. 119-74 (Jan. 23, 2026) |
| DOE 2 (State/Local, non-IHE non-profit/For-profit) | Pub. L. 119-74 (Jan. 23, 2026) |
| NASA (if attempted) | Pub. L. 119-74 (Jan. 23, 2026) |



QUESTIONS / DISCUSSION

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