

Now & Next

Healthcare Alert

February 14, 2025

NIH seeks reduction of research indirect cost rates to 15%

By Hannah Bornstein, Seth Levy, Lindsay Maleson and Samuel Ryder

On February 7, 2025, NIH issued guidance that seeks to immediately reduce indirect cost rates to 15% for all existing and new NIH research grants.



What's the impact?

- If implemented, the reduction in indirect cost rates would severely disrupt research conducted across medical and research institutions nationwide, resulting in a multi-billion dollar reduction of research funding and leaving institutions with critical and potentially insurmountable funding gaps.
- Three federal lawsuits filed in the District of Massachusetts resulted in the issuance of a February 10, 2025, Temporary Restraining Order (TRO) on the Guidance, with a court hearing scheduled on February 21, 2025.
- Funding levels beyond FY 2025 remain uncertain.

The National Institutes of Health (NIH) published [guidance](#) on Feb. 7, 2025, titled, "Supplemental Guidance to the 2024 NIH Grants Policy Statement: Indirect Cost Rates," and announced that

“this Guidance implements and makes publicly available NIH’s updated policy deviating from the negotiated indirect cost rate for new grant awards and existing grant awards, effective as of the date of this Guidance’s issuance. Pursuant to this Supplement Guidance, there will be a standard indirect rate of 15% across all NIH grants for indirect costs in lieu of a separately negotiated rate for indirect costs in every grant.”

The Guidance sent shock waves through medical and research institutions across the United States, as existing negotiated indirect cost rates range from approximately 20–60%, and the newly announced rate cap collectively threatens billions of dollars of academic and medical research funding.

NIH grants permit awardees to negotiate indirect cost allocation as a percentage of a research grant award. The indirect cost rate is intended to support facilities and administrative expenses, which encompass substantial expenses necessary to supporting vital scientific research. Indirect cost rates include, for example, costs for infrastructure, equipment, and support staff.

DISTRICT OF MASSACHUSETTS LAWSUITS

On February 10, 2025, three lawsuits were filed to enjoin the Guidance. As of February 10, 2025, the plaintiffs include twenty-two state governments,¹ five trade groups,² and sixteen universities.³ The lawsuits assert multiple violations of the Administrative Procedure Act (APA), including the following.

- / Plaintiffs allege that the Guidance is arbitrary and capricious because it fails to justify its immediate and striking deviation from historic negotiated rates and because it fails to account for each individual institution’s specific reliance on indirect costs.
- / Plaintiffs allege that the Guidance exceeds the NIH’s statutory authority because the manner in which the Guidance seeks to alter indirect cost rates directly violates an existing congressional directive. In 2017, the first Trump administration proposed a similar policy to set blanket rate caps at 10%.⁴ Congress rejected this push and provided in the 2018 budget, and all subsequent budgets including for 2025, that NIH may not alter indirect funding rates.⁵
- / Plaintiffs allege that the statutory authority providing NIH with the power to negotiate

¹ *Commonwealth of Massachusetts, et al. v. National Institutes of Health, et al.*, No. 1:25-cv-10338-AK (D. Mass., Feb. 10, 2025).

² *Association of American Medical Colleges, et al. v. National Institutes of Health, et al.*, No. 1:25-cv-10340-AK (D. Mass., Feb. 10, 2025).

³ *Association of American Universities, et al. v. National Institutes of Health, et al.*, No. 1:25-cv-10346-AK (D. Mass., Feb. 10, 2025).

⁴ See OMB, *Major Savings and Reforms: Budget of the US Government Fiscal Year 2018*, at 43 (2017).

⁵ See Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 224, 226; Consolidated Appropriations Act, 2025, Pub. L. No. 118-83, §§ 101, 106 and Further Consolidated Appropriations Act, 2025, Pub. L. No. 118-158, § 101.

individual rates with awardees implicitly prohibits the NIH from enacting a blanket rate.⁶

On February 10, 2025, the District Court for Massachusetts issued a nation-wide temporary restraining order barring enforcement of the Guidance, pending a February 21, 2025, hearing.⁷

The complaints contain extensive allegations outlining the drastic impact of the reduction in indirect cost rates. For instance, the University of Michigan alleges that it currently has a negotiated indirect cost rate of 56%, which is similar to the rates alleged for other research institutions like Oregon Health and Science University (56%) and the University of Colorado Anschutz Medical Campus (56%).⁸ If the Guidance is upheld and implemented, the rate cut would “eliminate approximately \$181 million in funding” to the University of Michigan, \$80 million to the Oregon Health and Science University, and \$74 million to the University of Colorado Anschutz Medical Campus.⁹ Notably, these institutions allege that the rate cut would limit research into areas that include “life-saving” treatments, “ongoing clinical trials,” and “new approaches for [treating] Alzheimer’s disease.”¹⁰ These examples reflect a small sampling of the scientific and clinical areas that would be affected by the rate decrease, as outlined in the complaints.

ADDITIONAL CONSIDERATIONS

The funding shortfalls that would arise if indirect cost rates were reduced to 15% portend additional funding questions that institutions will need to address beyond FY 2025, as indirect cost rates are generally (with some exceptions) negotiated on an annual basis. The funding uncertainty is likely to impact future planning and resource allocation unless and until more clarity is provided.

These funding uncertainties also may raise ancillary legal, business, and operational questions, such as adherence to contractual commitments with third-party sponsors or other research funders, personnel retention and HR implications, regulatory compliance commitments, and capital resource questions.

Nixon Peabody attorneys familiar with the Guidance and associated litigation are monitoring the fast-moving litigation and related developments.

⁶ 45 CFR § 75414(c)(1)-(3).

⁷ [Order Granting Plaintiffs’ Emergency Motion for Temporary Restraining Order](#), *Association of American Medical Colleges, et al. v. National Institutes of Health, et al.*, No. 1:25-cv-10340-AK (D. Mass., Feb. 10, 2025).

⁸ Complaint at ¶¶ 98, 137, and 113, *Commonwealth of Massachusetts, et al. v. National Institutes of Health, et al.*, No. 1:25-cv-10338-AK (D. Mass., Feb. 10, 2025).

⁹ *Id.*

¹⁰ *Id.* at ¶¶ 98, 137, and 112.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Hannah Bornstein

617.345.1217

hbornstein@nixonpeabody.com

Seth D. Levy

213.629.6161

slevy@nixonpeabody.com

Lindsay Maleson

516.832.7627

Lmaleson@nixonpeabody.com

Samuel J.B. Ryder

617.345.6046

sryder@nixonpeabody.com