2025 Year-in-Review for Federal Grants

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With a strategic approach shaped by years of private and federal practice, including service as an attorney within the U.S. Navy and Military Sealift Command, Scott Sheffler brings deep insight to clients facing high-stakes regulatory and funding issues. Scott has more than 15 years of experience advising on federal grant compliance, government procurement law, and internal investigations. He counsels nonprofits, commercial entities, and state and local governments navigating complex federal funding requirements.

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The views expressed in this presentation are exclusively those of the presenters, Dismas Locaria and Scott S. Sheffler. They should not be attributed more broadly to Venable LLP or anyone other than the presenters.

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Agenda

- Recent Cases – Important Principles and Trends
- Diversity, Equity, and Inclusion ("DEI") in the context of Federally Funded Programs
- Indirect Cost Rates – Legal Update
- Executive Order 14332: Improving Oversight of Federal Grantmaking
- Questions

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CASES IN 2025
REFLECTING IMPORTANT PRINCIPLES AND TRENDS

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Cases in 2025 Reflecting Important Principles and Trends

Case	Posture	Principle/Trend IMS0
National Institutes of Health, et al. v. American Public Health Association, et al. (U.S. Supreme Court)	Grant terminations permitted (preliminary injunction stayed).	Challenges to agency policy action should proceed in District Court under the APA; Challenges of grant terminations must proceed in the Court of Federal Claims.
RFE/RL, Inc. v. Kari Lake, et al. (District Court, D.D.C.)	Seemingly near final grant agreement (appeal withdrawn).	The fact that RFE/RL was listed as a mandated recipient by statute made action under the APA for failure to award funds and proposing very different new award terms from historical practice much more accessible.
President and Fellows of Harvard College, et al. v. United States Dept. of Health and Human Services, et al. (District Court, D. Mass.)	Summary judgment ordered. Government appealed to First Circuit in December).	Where a challenge is to actions that are more traditionally challenged in District Court, such as violations of Constitutional rights or administrative processes implementing Title VI, action and injunctive relief may be possible in District Court notwithstanding the APHA decision above. – It seems likely, however, this case may make its way to the Supreme Court.
Trump, et al. v. CASA, Inc., et al. (Supreme Court)	Final (June 27).	Universal (nationwide) injunctions likely exceed the equitable authority of federal district courts. Courts are now generally limiting preliminary and permanent injunctions to the parties or entities represented by the parties.

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National Institutes of Health v. American Public Health Association

Court: U.S. Supreme Court

Citation: 145 S. Ct. 2658 (2025)

Key Issues and Take-Aways:

- Numerous NIH grant terminations challenged in District Court under the Administrative Procedure Act (APA). The District Court for the District of Massachusetts enjoined the terminations and vacated certain underlying agency policy directives. Upon appeal, the First Circuit declined a petition by the government to stay the vacatur and injunction. The government then appealed to the Supreme Court, seeking a stay of both.
- Four Justices (Thomas, Alito, Gorsuch, and Kavanaugh) opined that the stay of both should be granted.
- Four Justices (Roberts, Sotomayor, Kagan, and Jackson) opined that the stay of both should be denied—at a minimum viewing this case as different from the Court's prior consideration of *Department of Education v. California*, 604 U.S. 650 (2025) (per curiam) in that there are underlying directives at issue directly leading to the grant terminations.
- Justice Barrett's opinion therefore drives the result. She opines: (i) the grant termination challenges likely belong at COFC, (ii) the vacatur of unlawful directives belongs before the District Court.

National Institutes of Health v. American Public Health Association

Key Issues and Take-Aways Continued:

- Justice Barrett acknowledges her opinion may mean that plaintiffs must pursue two causes of action through sequential litigation, depending upon whether 28 U.S.C. § 1500 would bar simultaneous suits.
- 28 U.S.C. § 1500 states: "The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States."

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RFE/RL, Inc. v. Kari Lake

Court: D.D.C.

Citation: 25-cv-799 // 2025 U.S. Dist. LEXIS 138057 (Jul. 18, 2025)

Key Issues and Take-Aways:

- Although RFE/RL (Radio Free Europe) is listed by statute as an entity to which grant funds are to be awarded for its operations, the U.S. Agency for Global Media (USAGAM), the agency responsible for issuing such awards, at first withheld an award from RFE/RL, then offered a grant agreement with terms very different from prior agreements, some of which RFE/RL and the Court considered extraordinary (including a government right to appoint RFE/RL board members).
- RFE/RL sued in District Court seeking injunctive relief and arguing the new terms were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under the APA.
- The Court first concluded that it had jurisdiction under the APA as the issue involved whether a grant agreement must be issued and on what terms, not a matter arising under the terms of an existing contract (as would, by comparison, be the case in a termination dispute).
- The Court then concluded that the proposed terms constituted reviewable final agency action.
- The Court reasoned that asserting entirely new terms in a decades-old relationship followed by silence when the parties could not at first agree was inconsistent with the above APA standard, in particular that no explanation for the new agency position was offered.

President and Fellows of Harvard College v. United States Department of Health and Human Services

Court: D. Mass.

Citation: 25-cv-11048

Key Issues and Take-Aways:

- In April 2025, Harvard rejected demands by several agencies, issued to Harvard by letter, to adopt certain changes at Harvard to address alleged discriminatory conduct.
- Shortly thereafter, numerous federal agencies terminated awards to Harvard, largely invoking 2 CFR § 200.340(a)(4) as the termination basis, asserting that the awards no longer effectuated agency priorities. Largely, the termination notices asserted Harvard permitted anti-Semitic activity on its campus.
- At the time and after, the President and other federal officials publicly criticized Harvard.
- Harvard sued in District Court, alleging (i) violations of its First Amendment rights, (ii) violations of Title VI procedural safeguards, and (iii) that the terminations were "arbitrary and capricious" agency action in violation of the APA.

President and Fellows of Harvard College v. United States Department of Health and Human Services

Key Issues and Take-Aways Continued:

- Notwithstanding the Supreme Court decision in NIH v. APHA (discussed above), the Court found that it had jurisdiction, reasoning that First Amendment and Title VI-based causes of action are typically asserted in District Court, not the Court of Federal Claims.
  - According to the Court, unlike APHA v. NIH, in this instance, the terminations were merely an extension/necessary consequence of the underlying unlawful action and thus be enjoined by the District Court as part of the remedy regarding underlying action.
- According to the Court, the grant terminations constituted impermissible retaliation for Harvard exercising its First Amendment rights. The Court asserted retaliation could be shown merely by demonstrating: (1) the harmed party engaged in First-Amendment-protected activity; (2) it suffered adverse action; and (3) its protected conduct played a "substantial or motivating" part in the adverse action. (quotes omitted)
- According to the Court, the government's demands also represented unconstitutional conditions on Harvard's grant funding. The Court notably does not thoroughly address *Agency for International Development v. Alliance for an Open Society*, 570 U.S. 205 (2013) (*AOSI*)—but, in this matter, the conditions do appear to go beyond the scope of the grant projects themselves, so the holding seems consistent with *AOSI*, albeit potentially limited.
- Appeal to the First Circuit filed by the government on December 30. Docket No. 25-2230.

Trump v. CASA, Inc.

Court: U.S. Supreme Court

Citation: No. 24A885 // 606 U.S. 831 (2025)

Key Issues and Take-Aways:

- On June 27, 2025, the Court held by 6-3 decision that nationwide ("universal") injunctions are generally outside the scope of the equitable power of Federal District Courts. The Court reasoned that such remedies were not supported by historical common law rights and practice. Injunctive relief, therefore, should generally be limited to the parties to the action.
- This case did not involve federal grant matters. However, in the wake of this decision, in grant cases, the government has more successfully argued that District Courts must limit the scope of their injunctions to the parties in the case and those entities the parties represent.
- Note that, where broad policy matters or wide-spread terminations are at issue, a practical result of this decision is that trade associations bringing actions on behalf of their members will often be more impactful than an action brought by an individual entity.

DEI in the Context of Federally Funded Programs

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Impactful 2025 Executive Orders for Grantees

E.O. 14151: Ending Radical and Wasteful Government DEI Programs and Preferencing

- Sec. 2(b):

> (b) Each agency, department, or commission head, in consultation with the Attorney General, the Director of OMB, and the Director of OPM, as appropriate, shall take the following actions within sixty days of this order:
>
> (i) terminate, to the maximum extent allowed by law, all DEI, DEIA, and "environmental justice" offices and positions (including but not limited to "Chief Diversity Officer" positions); all "equity action plans," "equity" actions, initiatives, or programs, "equity-related" grants or contracts; and all DEI or DEIA performance requirements for employees, contractors, or grantees.

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Impactful 2025 Executive Orders for Grantees

E.O. 14168: Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

- Sec. 3(g):

> (g) Federal funds shall not be used to promote gender ideology. Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.

- Sec. 2(f): (f) "Gender ideology" replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true. (printed page 8616) Gender ideology includes the idea that there is a vast spectrum of genders that are disconnected from one's sex. Gender ideology is internally inconsistent, in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body.

Impactful 2025 Executive Orders for Grantees

E.O. 14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunity

- Sec. 3(iv):

> (iv) The head of each agency shall include in every contract or grant award:
>
> (A) A term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and
>
> (B) A term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.

Impactful 2025 Executive Orders for Grantees

Initial (Spring 2025) Take-Aways:

- Grants reviewed for being potentially "equity-related"
- Grant terms to eventually (likely) be asserted by funding agencies:
  - No overt funding of DEI initiatives (though not explicitly stated in the EOs)
  - No "promoting" of DEI or "gender ideology" within the scope of one's federal grant project
  - Violations of federal civil rights to be considered potential FCA violations, because compliance with federal civil rights laws will be asserted as a material term of payment
- Left with questions at first:
  - What DEI initiatives would be viewed as problematic?
  - What constitutes promoting DEI or gender ideology?
  - What will be considered a violation of federal civil rights laws?

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Key Underlying Anti-Discrimination Laws

(Non-exhaustive list—also age, disability, and veteran status)

Statute	Scope	Implementing Regs (or example thereof) IMS0
Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d *et seq.* (Triggered by receipt of federal funds)	Prohibits, generally organization-wide, discrimination in program access on the basis of race, color, or national origin.	45 C.F.R. Part 80 (HHS implementing regulations)
Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e (Regulatory, no federal funds needed to trigger)	Prohibits, organization-wide, discrimination in employment practices on the basis of race, color, religion, sex, or national origin.	Generally enforced by EEOC
Education Amendments Act of 1972, Title IX, 20 U.S.C. § 1681 *et seq.* (Triggered by receipt of federal funds)	Prohibits, generally organization-wide, discrimination in program access on the basis of "sex" in education programs.	34 C.F.R. Part 106 45 C.F.R. Part 86 (HHS implementing regulations)
Patient Protection and Affordable Care Act (ACA) Sec. 1557 anti-discrimination provision, 42 U.S.C. § 18116 (Triggered by receipt of federal funds)	Prohibits, generally organization-wide, discrimination on the basis of race, color, national origin, sex, age, or disability in health programs and activities.	45 C.F.R. Part 92

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July 29, 2025 DOJ Memo

Available here: https://www.justice.gov/ag/media/1409486/dl

Clarifies DOJ's Position Through Examples:

- Unlawful Preferential Treatment:
  - "Preferential treatment occurs when a federally funded entity provides opportunities, benefits, or advantages to individuals or groups based on protected characteristics in a way that disadvantages other qualified persons, including such practices portrayed as 'preferential' to certain groups."
- Examples:
  - Race-based scholarships or programs
  - Preferential hiring or promotion practices
  - Access to facilities or resources based on race or ethnicity
- Caution regarding "proxies," specifically:
  - "Cultural Competence" Requirements
  - Geographic or Institutional Targeting
  - "Overcoming Obstacles" Narratives – when "in a manner that advantages those who discuss experiences intrinsically tied to protected characteristics"

July 29, 2025 DOJ Memo

Available here: https://www.justice.gov/ag/media/1409486/dl

Clarifies DOJ's Position Through Examples:

- Segregation:
  - "Segregation based on protected characteristics occurs when a federally funded entity organizes programs, activities, or resources-such as training sessions-in a way that separates or restricts access based on race, sex, or other protected characteristics."
- Converse with Respect to Sex:
  - "While compelled segregation is generally impermissible, failing to maintain sex-separated athletic competitions and intimate spaces can also violate federal law. Federally funded institutions that allow males, including those self-identifying as 'women,' to access single-sex spaces designed for females-such as bathrooms, showers, locker rooms, or dormitories-undermine the privacy, safety, and equal opportunity of women and girls. Likewise, permitting males to compete in women's athletic events almost invariably denies women equal opportunity by eroding competitive fairness."
- Examples:
  - Race-based training sessions
  - Segregation in facilities or resources

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July 29, 2025 DOJ Memo

Available here: https://www.justice.gov/ag/media/1409486/dl

Clarifies DOJ's Position Through Examples:

- Segregation Example in Program Eligibility:
  - "A federally funded community organization hosts a DEI-focused workshop series that requires participants to identify with a specific racial or ethnic group (e.g., 'for underrepresented minorities only') or mandates sex-specific eligibility, effectively excluding others who meet objective program criteria. Use of Protected Characteristics in Candidate Selection."

July 29, 2025 DOJ Memo

Available here: https://www.justice.gov/ag/media/1409486/dl

Clarifies DOJ's Position Through Examples:

- Unlawful Use of Protected Characteristics:
  - "Unlawful use of protected characteristics occurs when a federally funded entity or program considers race, sex, or any other protected trait as a basis for selecting candidates for employment (e.g., hiring, promotions), contracts (e.g., vendor agreements), or program participation (e.g., internships, admissions, scholarships, training). This includes policies that explicitly mandate representation of specific groups in candidate pools or implicitly prioritize protected characteristics through selection criteria, such as 'diverse slate' requirements, diversity decision-making panels, or diversity-focused evaluations. It also includes requirements that contracting entities utilize a specific level of working hours from individuals of certain protected characteristics to complete the contract. Such practices violate federal law by creating unequal treatment or disadvantaging otherwise qualified candidates, regardless of any intent to advance diversity goals."
- Examples:
  - Race-based "Diverse Slate" policies (specific minimum numbers)
  - Sex-based Selection for Contracts
  - Race- or Sex-based Program Participation (specific minimum quotas)

July 29, 2025 DOJ Memo

Available here: https://www.justice.gov/ag/media/1409486/dl

Clarifies DOJ's Position Through Examples:

- Training Programs That Promote Discrimination or Hostile Environment:
  - "Unlawful DEI training programs are those that-through their content, structure, or implementation-stereotype, exclude, or disadvantage individuals based on protected characteristics or create a hostile environment. This includes training that:
    - "• Excludes or penalizes individuals based on protected characteristics.
    - "• Creates an objectively hostile environment through severe or pervasive use of presentations, videos, and other workplace training materials that single out, demean, or stereotype individuals based on protected characteristics."
- Examples:
  - Trainings that Promote Discrimination Based on Protected Characteristics

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July 29, 2025 DOJ Memo

Available here: https://www.justice.gov/ag/media/1409486/dl

Clarifies DOJ's Position Through Examples:

What to do—What is encouraged:

- Inclusive access
- Focus on skills and qualifications
- Prohibit demography-driven data
- Document legitimate rationales—"If using criteria in hiring, promotions, or selecting contracts that might correlate with protected characteristics, document clear, legitimate rationales unrelated to race, sex, or other protected characteristics. Ensure these rationales are consistently applied and are demonstrably related to legitimate, nondiscriminatory institutional objectives."
- Scrutinize neutral criteria for proxy effects—encourages "low-income" as a category
- Eliminate diversity quotas
- Avoid exclusionary training programs

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Department of Transportation DBE Regs Updated

90 Fed. Reg. 47969 (Oct 3, 2025):
https://www.federalregister.gov/documents/2025/10/03/2025-19460/disadvantaged-business-enterprise-program-and-disadvantaged-business-enterprise-in-airport

- For certain DOT-funded programs, there is a statutory requirement that Disadvantaged Business Enterprises (DBEs) be provided certain support and advantages
- The statute mandates that certain racial groups and women are presumed to be socially disadvantaged for purposes of DBE eligibility
- After *SFFA*, lower courts have held such preferences to be violations of equal protection requirements under the Constitution
- DOT has amended its regulations to remove these presumptions

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IMS0 Added “are”

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Notable Litigation

National Association of Diversity Officers, et al v. Trump, et al

District Court for District of Maryland:

- Docket No. 25-cv-333
- Plaintiffs challenged the certification and termination provisions of E.O. 14151 and 14173
- Preliminary Injunction granted by District Court, nationwide and affecting all federal agency actors other than the President directly
- March 10 (as clarified), District Court held:
  - Plaintiffs likely to prevail in argument that the termination provision was impermissibly vague regarding prohibited conduct
  - Plaintiffs likely to prevail in argument that the certification provision impermissibly restricts speech of grantees both within and to the extent it applies beyond the scope of their grant-funded activities
  - Plaintiffs likely to prevail in argument that the certification provision also is impermissibly vague with respect to prescribed content

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Fourth Circuit Court of Appeals:

- Docket No. 25-1189
- March 14: Court stayed District Court's preliminary injunction pending appeal on base that E.O.s had not been implemented
- Substantive litigation on appeal ongoing
- Oral argument took place on September 11
- Government continues to argue that any dispute over a termination must be brought before the Court of Federal Claims

Slide 26

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Notable Litigation

Chicago Women in Trades v. Donald J. Trump, et al

District Court for Northern District of Illinois:

- Docket No. 25-cv-2005
- Preliminary Injunction order is a reported decision at 778 F.Supp. 3d 959 (N.D. Ill. 2025)
- CWIT received Dept. of Labor (DOL) funding directly, as a subrecipient, and as a "subcontractor" for "educational and apprenticeship programs focused on retaining and increasing the employment of women in skilled trades"
- Among other things, CWIT challenged:
  - The "termination provisions" of E.O. 14151 and 14173, described generally as provisions calling for termination by federal agencies, internally and in the form of grant support, of DEI-related activities
  - The certification provision of E.O. 14173, *i.e.,* the provision calling for an FCA-based non-discrimination term in grant agreements
- District Court held: IMS0
  - Jurisdiction was proper in District Court, since the challenge was to the Executive Orders on the basis of asserted First Amendment rights, not underlying grant terms.
  - CWIT likely to prevail in argument that certification provision is impermissible. Reasoning: "Although the government may use conditions to 'define the federal program,' it may not 'reach outside' the program to influence speech." (Relies on Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 570 U.S. 205, 214 (2013)). Court focuses on the fact that the prohibition is vague and the government has not elaborated on its meaning. **Court grants nationwide injunction against enforcement of this provision by DOL.**
  - CWIT not likely to prevail in argument that termination provision impermissible because the government has considerable discretion regarding what to fund. Moreover, the language is not impermissibly vague with respect to termination, since that provision is inward-facing.
  - CWIT is likely to prevail in argument that terminating a particular grant for which the authorizing act directs funding of women-oriented activities (as compared to grants where the authorizing act lacks such specificity).

Slide 27

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Notable Litigation

Chicago Women in Trades v. Donald J. Trump, et al

Seventh Circuit Court of Appeals:

- Docket No. 25-2144
- Government appeal of injunction against the certification provision.
- Government argues in its Aug. 18, 2025, brief:
  - The certification provision does not violate the First Amendment because it simply calls for compliance with existing laws, imposing no new requirement on underlying activity.
  - Any self-censoring that results from the certification provision does not render the condition impermissible, because such self-censoring would either reflect (i) complying with existing law, or (ii) a misperception of the law by the grantee, and therefore unreasonable apprehension.
  - Nationwide injunction exceeds the District Court's authority (on basis of recent Supreme Court decision, *Trump v. CASA*, 145 S. Ct. 2540 (2025)).
- Remains pending before the 7th Cir.

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Notable Litigation

San Francisco Unified School District et al v. AmeriCorps et al

District Court for Northern District of California*:*

- Docket No. 25-cv-2425
- Plaintiffs challenged AmeriCorps directive to comply with E.O.s.
- June 18: District Court **granted preliminary injunction** prohibiting the cessation of funding to plaintiffs on the basis of failure to comply with the Executive Orders and prohibiting implementation of the certification provision of E.O. 14173 with respect to plaintiffs.
- **PI only applies to AmeriCorps' attempt to implement DEI E.O.s.**
- Government appealed but then withdrew their appeal in Sept. 2025—substantive litigation of case continues.
- January 2026, plaintiffs filed a motion for summary judgment, remains pending with the District Court.

Slide 29

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Notable Litigation

National Education Assoc. v. U.S. Dept. of Education

District Court for District of New Hampshire*:*

- Docket No. 25-cv-00091
- Plaintiffs challenged the constitutionality of the Dept. of Ed.'s "Dear Colleague Letter"
- The Dear Colleague Letter, issued on Feb. 14, 2025, provides in sum that Title VI of the Civil Rights Act means that many DEI initiatives, focused IMS0race and ethnicity, are discriminatory and unlawful, and that any educational institution may lose federal funds for promoting or advocating DEI initiatives.
- The District Court **granted a preliminary injunction covering plaintiff nonprofits** (including their members, contractors, etc.) enjoining the enforcement of the Dear Colleague Letter.
- The District Court held that the letter likely violates rights under the First and Fifth (due process vagueness) Amendments, as well as the APA (exceeds statutory authority by controlling curricula; violated notice and comment rulemaking)
- Both sides have filed motions for summary judgement and the decision remains pending.

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Notable Litigation

State of Tennessee v. United States Dept. of Education

District Court for Eastern District of Tennessee*:*

- Docket No. 25-cv-270
- State of Tennessee challenges Hispanic Serving Institutions (HSI) programs and grants alleging that qualification based on specific percentage of Hispanic students is unlawful.
- Department of Education and Department of Justice have announced they do not intend to defend the case.
- In October, Hispanic Association of Colleges and Universities (HACU) was allowed to intervene to defend the program.
- Case still in the pleading stages, no substantive ruling in case yet.
- In the interim, Department of Education has announced that HSI grants will be treated as in their last budget period with no cost extensions and otherwise discontinued. *See* Department of Education Press Release available here: https://www.ed.gov/about/news/press-release/us-department-of-education-ends-funding-racially-discriminatory-discretionary-grant-programs-minority-serving-institutions.

Slide 31

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INDIRECT COST RATE CAPS

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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

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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: • 15% of total a[illegible]or 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)

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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. IMS0
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.

Slide 35

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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.

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Summaries to Convey Key Issues

- 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

Summaries to Convey Key Issues

- 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)

Summaries to Convey Key Issues

- 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.

INDIRECT RATE RELATED LEGISLATIVE INITIATIVES
(As of January 14, 2025)

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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).

NDAA 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.

Commerce, Justice, Science; Energy and Water Development; and Interior and Environment Appropriations Bill, 2026 (H.R. 6938)

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.

Notes (as of Jan. 20):

- Passed House and Senate
- Pending Signature by President
- Joint Explanatory Statement does not clarify

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Commerce, Justice, Science; Energy and Water Development; and Interior and Environment Appropriations Bill, 2026 (H.R. 6938)

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.

Notes (as of Jan. 20):

- Passed House and Senate
- Pending Signature by President
- Joint Explanatory Statement does not clarify

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Various Other Efforts in Appropriations Bills in 2025

- Senate Version of DoD Appropriations Bill (S. 2572), Sec. 8123
  - Similar to limitation above for Commerce, NASA, NSF, and Energy
- Senate Version of Labor, HHS, Education, and Related Agencies Appropriation Bill (S. 2587)
  - Continues to include NIH appropriations rider discussed in litigation section above
- House Version of Labor, HHS, Education, and Related Agencies Appropriation Bill (H.R. 5304)
  - Includes the following:

> SEC. 235. None of the funds made available by this Act to the National Institutes of Health may be used for facilities and administration costs (as defined in section 200.414 of title 2, Code of Federal Regulations) that exceed 30 percent of an award to an applicable educational institution that is an organization subject to taxation under section 4968 of the Internal Revenue Code of 1986.

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EXECUTIVE ORDER 14332: IMPROVING OVERSIGHT OF FEDERAL GRANTMAKING

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EO 14332 (Aug. 7, 2025)

Improving Oversight of Federal Grantmaking

High-level Policy Provisions:

- Directs agency heads to designate a senior official to be directly involved in review of Funding Opportunity Announcements (FOAs) and discretionary awards "for consistency with agency priorities and the national interest."
- Asserts that "[d]iscretionary awards must, where applicable, demonstrably advance the President's policy priorities."
- Asserts a long-term coordinating role in individual agency grant-making processes.
- Instructs that research awards should focus on demonstrated commitment to "rigorous, reproducible scholarship" and not focus on institutional historical reputation.

EO 14332 (Aug. 7, 2025)

Improving Oversight of Federal Grantmaking

Uniform Guidance Updates Forthcoming:

- OMB to revise the Uniform Guidance, 2 C.F.R. Part 200, to add an express regulatory basis for terminating awards for convenience, including when awards no longer effectuate agency priorities.
- OMB to revise the UG to "appropriately limit the use of discretionary grant funds for costs related to facilities and administration."
- Agency heads to review existing grants to assess extent to which they contain termination for convenience provisions, and ensure new awards include such terms.
- Agency heads to ensure "affirmative authorization" by agencies incorporated into drawdown process and "require grantees to provide written explanations or support, with specificity, for each drawdown."

Venable LLP Client Alert: https://www.venable.com/insights/publications/2025/08/how-the-latest-executive-order-reshapes-federal

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IMS0 Added “they”

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