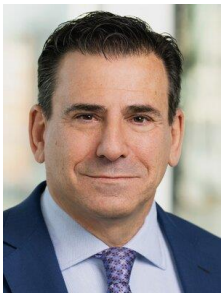
What Trump Actions Mean For Federal Research Funding

By **Mehrin Masud-Elias, Amy Ryan and James Joseph** (February 27, 2025)

Mehrin Masud-Elias

Amy Ryan



James Joseph

The U.S. has long held the well-earned position of being a world leader in cutting-edge scientific research and innovation.

In the past few weeks, the second Trump administration has taken active steps to significantly reshape various aspects of U.S. federal funding infrastructure, the effects of which are reverberating across all industry sectors.

Specifically, a stunning blow was just dealt to federal funding available for institutions of higher education in the form of a historic reduction in the indirect cost rate that can be charged to federally funded research projects at such institutions.

This article examines the unfolding impact in terms of legal and practical effects of such executive branch actions — which could include executive orders, federal agency guidance or the deletion of federally available datasets and databases — on scientific research and healthcare delivery in the U.S.

This article focuses on the potentially broad-ranging effects of the unprecedented move by the National Institutes of Health to cap indirect cost rates that can be charged by any NIH grantee, including universities, teaching hospitals and other research facilities, to 15%.

These executive branch actions present both a major departure from how scientific research in the U.S. has been funded historically and a significant reshaping of the research ecosystem that most U.S. universities, teaching hospitals, research institutes, foundations, life sciences companies and their scientists have known for the past several decades.

Since life-saving and groundbreaking therapies have traditionally emerged from painstaking, long-term, federally funded research, including clinical trials conducted at academic research universities — often through productive collaborations with foundations and life sciences companies — the real-world benefits of these studies for everyday Americans will likely decrease.

Collectively, this could have the unintended long-term effects of making the U.S. less competitive and less secure in the years to come.

Capping Indirect Cost Rates for Federally Funded Research

NIH Guidance

In a seismic policy shift, the NIH is implementing a standard 15% indirect cost rate across all NIH grants applicable to all awardees as of Feb. 10, including to institutions of higher education, including universities, medical schools and other research facilities, which replaces the previous system of individually negotiated rates specific to each such

institution.[1]

The NIH guidance applies to both new grants and existing grants, in terms of expenses incurred after Feb. 10. Importantly, this cap of 15% will not be applied retroactively to the initial date of issuance of existing grants, even though the NIH believes it has the authority to do so under Title 45 of the Code of Federal Regulations, Section 75.414(c).[2]

Specifically, the NIH guidance states that as long as it publicizes "the policies, procedures, and general decision-making criteria that [the NIH's] programs will follow to seek and justify deviations from negotiated rates," the NIH believes it has the authority to unilaterally change the indirect cost rates previously negotiated with a research institution grantee.

Since, to our knowledge, the NIH has never before changed indirect cost rates midstream during a grant cycle, i.e., this is a significant deviation from prior precedent, and there are counterarguments against the justifications provided in the NIH guidance, it is possible that the interpretation of Title 45 of the Code of Federal Regulations, Section 75.414, may be open for litigation in the federal courts, especially in a post-Chevron era where unfettered deference is no longer granted to an agency's interpretations of statutes it administers.[3]

Indirect Costs

Indirect or "facilities and administration" costs are used for general operational, administrative and other overhead expenditures, and as such, are the lifeblood of academic research institutions because these costs support the entire research enterprise of federal grant awardees.

They are called indirect because it is difficult and impractical to directly assign each of these costs to specific aspects of a given research project.

Title 45 of the Code of Federal Regulations, Section 75.414(b) states:
[T]ypical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.[4]

Since not all universities provide the same resources to a given researcher and the overhead costs of space, electricity, personnel expenses, etc., will vary by location, each university and research institution historically has negotiated its own indirect cost rate with the NIH and other federal funding agencies, with these rates ranging from 30%-65% depending on the size, leverage, location, etc., of the university in question.

This, in turn, has made those scientists who have track records of getting NIH funding to support their critically important research quite attractive to universities. This has further allowed the research function at U.S. institutions to operate relatively independently and autonomously, and this balance has been important to guard against undue political influence on science, research and technology.

NIH Rational for Reduction and Potential Challenges

While not the focus of this article and not cited in the NIH guidance, trouble was already brewing in 2016 when the U.S. Government Accountability Office released a report stating that agencies involved in the indirect cost rate-setting process needed to improve their controls.[5]

The report noted that deficiencies in the controls of certain agencies setting indirect cost rates that could result in the waste of federal resources.

Instead, the rationale provided in the NIH guidance for this drastic reduction includes: (1) to bring indirect costs in alignment with the private sector, namely, the indirect cost rates allowed by tax-exempt foundation grantors; and (2) to direct more funding toward direct research costs, i.e., for the costs of the specific funded project itself.

With respect to the former rationale, which is based on a similar proposal in Project 2025's "Mandate for Leadership: The Conservative Promise," the NIH guidance cited the indirect cost rates of 10%-15% that are typically allowed by several high-profile, specifically named philanthropic foundations that provide research grants to universities.

However, in our view, there are potential weaknesses in such a justification. Philanthropic organizations do not have the deep resources and broad mandate of the federal government. Projects supported by these organizations tend to be more focused on the particular interests of the donors based on the former's own limited — relative to the federal government — resources.

Also, foundations routinely allow certain expenditures, e.g., on equipment, facilities, etc., that can be used across multiple research projects, to be allocated to the direct cost of research that would typically be tagged as indirect costs in an NIH grant, thereby allowing foundations to cap indirect cost rates at a lower range of 10%-15% on their grants.

Sometimes, foundation-funded projects are designed to piggyback off existing or previous research that has already been undertaken with federal funding.

In fact, many philanthropic organizations encourage scientists to work with federal agencies to have larger projects be jointly funded in order to achieve a greater impact, e.g., by yielding patentable inventions that drive innovation, and eventually deliver much-needed therapies to patients, or even shorten the timeline for research conclusion, thereby hastening dissemination of the results not just to the research community, but also to the public at large.

With respect to the second rationale, the White House has already commented on the fact that capping indirect costs increases the portion of the grant funding available for direct costs, i.e., more money will be available for the actual research itself, since the overall grant amount has not been reduced.

While that sounds reasonable on the surface, this rationale reflects a fundamental misunderstanding of the highly integrated nature of a university's research administration infrastructure. Complex research cannot be conducted in a vacuum without being supported by capital-intensive overhead costs related to items as diverse as ensuring patient safety, proper disposal of hazardous waste, research security, appropriate legal and other professional services reviews, etc., that cannot be charged to any specific research project.

Lastly, as discussed above, there is valid justification for having separately negotiated rates for the diverse set of universities operating across the country rather than subjecting all of them to a flat rate of 15%, as they are not all similarly situated in terms of both the scale of and expenses associated with their respective research enterprises.

Section 75.414 itself acknowledges in Subsection (b) the diversity of nonprofit

organizations, and how it is not possible "to specify the types of cost which may be classified as indirect (F&A) cost in all situations."[6]

If it is not possible to classify these costs across a diverse body of institutions, one can argue that it is also not possible to quantify these costs across these very same institutions.

Impact on Universities and Foundations

The cap proposed by the NIH will represent a significant shortfall — e.g., in 2023, indirect costs accounted for approximately $9 billion in funding from the NIH to U.S. academic research institutions — as many research universities have had the ability in the past to argue in favor of charging 50%-60% in indirect costs based on audited financial statements and arms-length negotiations with the federal government.

The shortfall is exacerbated by the fact that the 15% cap applies to existing grants for expenses going forward, which will throw long-term planning, budgeting, personnel expenses, etc., for a university's research administration function into complete disarray in the near term, even if the overall grant amount stays the same, presumably allowing for greater recoupment of direct costs.

According to the NIH guidance, this policy will affect grants to over 2,500 academic research institutions across the U.S. and deliver a significant financial blow to the operational costs and research administration infrastructure of these institutions.

In addition, a flat indirect cost rate cap will disproportionately affect smaller research universities and teaching hospitals, many of which operate in rural areas and provide care to underserved populations, thereby exacerbating existing inequities in the demographic and socioeconomic makeup of populations who can benefit from academic research.

Lastly, the NIH cap will likely put more pressure on philanthropic organizations and make it more difficult for them to accomplish their research and philanthropic goals in joint collaboration with academic research institutions as discussed above.

Such a deep reduction in indirect cost rates could also have significant ripple effects across university campuses with respect to industry-funded sponsored research.

At some institutions, to create parity between research funded by the U.S. government and research funded by industry, the federal indirect cost rate is used as a benchmark to set the rate charged by the institution to its biotech and pharma company sponsors of research, with exceptions being made for volume-based and translational research, such as clinical trials.

Thus, a university's ability to negotiate anything more than the currently, federally mandated indirect cost rate of 15% to its industry collaborators may have been dealt a stunning blow as well.

Since this will have a chilling effect on U.S.-based research overall, it is possible that the lower indirect cost rates that such industry collaborators may be able to negotiate in the future will not make up for the fact that the research pipeline for U.S. universities that such collaborators rely on for their own research and development may start to feel drier compared to the pipeline's historic largesse.

Thus, the momentum of productive joint industry-university research collaborations leading

to a diverse array of groundbreaking therapies that we've seen in recent years will likely stall.

Challenges Facing U.S. Research Institutions

The already heavy administrative burden on higher education institutions and research institutes has increased overnight with the need for enhanced compliance monitoring, additional reporting requirements, resource reallocation for policy implementation, legal, accounting and compliance considerations, as well as enhanced risk management and mitigation strategies.

This is coupled with the perfect storm of a significant resource shortfall due to upcoming years of reduced federal funding and possible taxation of university endowments.

Some immediate actions could be the following to the extent not already underway. Institutions should:

- Review existing research portfolios for compliance;
- Assess institutional policies against new requirements;
- Develop communication strategies for stakeholders; and
- Establish monitoring systems for policy changes.

Long-term strategic planning could involve the following. Institutions should:

- Develop alternative funding strategies;
- Reinforce compliance frameworks that are robust yet nimble;
- Build flexible research support infrastructure; and
- Monitor institutional policies to align with evolving requirements.

Mehrin Masud-Elias is counsel at Arnold & Porter Kaye Scholer LLP and was previously chief counsel and executive director of legal affairs at the University of Pennsylvania's Abramson Cancer Center.

Amy Ryan is a partner at Arnold & Porter.

James Joseph is a partner at the firm.

Arnold & Porter partner Pari Mody contributed to this article.

[1] https://grants.nih.gov/grants/guide/notice-files/NOT-OD-25-068.html.

[2] https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-E/subject-group-ECFR1eff2936a9211f7/section-75.414.

[3] https://www.arnoldporter.com/en/perspectives/advisories/2024/06/chevron-overturned.

[4] https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-E/subject-group-ECFR1eff2936a9211f7/section-75.414.

[5] https://www.gao.gov/products/gao-16-616.

[6] https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-E/subject-group-ECFR1eff2936a9211f7/section-75.414.